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IN THE HIGH COURT OF DELHI AT NEW DELHI

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W.P.(C) 3706/2018 & CM APPL. 14696-14697/2018

EFKON INDIA PRIVATE LIMITED

..... Petitioner

Through

Mr.Neeraj Malhotra, Sr.Adv. with
Mr. Sunil Singh Parihar,
Mr.Anirudh Singh and Mr. Aditya
Dev Triguna, Advocates.

versus

INDIAN HIGHWAYS MANAGEMENT COMPANY LIMITED

..... Respondent

Through

Ms.Soumya Priyadarshni and Mr.
Mukesh Kumar, Advocates.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

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16.04.2018

Petitioner's grievance is that despite having successfully bid for free contract (Zone 2, 6 and 7) in a tender process which resulted in award of contract for five years effective from 2014, the respondents have now by the impugned tender (RFT) dated 08.3.2018, elicited fresh tenders for the same which include the same work list. It is contended that the National Highway Authority of India (NHAI), a statutory authority and corporation established by law, is a substantial shareholder with the respondent-Indian Highways Management Company Limited (IHMCL). It is also contended that the petitioner had represented to the NHAI, which is a 41% stakeholder of the respondent company, on this aspect and till date no response has been received.

Learned counsel for the IHMCL, who appeared on advance notice, urged that the present petition is not maintainable under Article 226 of the Constitution since the entity is not substantially

owned by the State or its instrumentalities, given that the NHAI has 41% stake in the respondent company. It is further contended that the petitioner's grievance is essentially of civil nature and that it can avail other remedies in accordance with law. The petitioner has adverted to a representation of 26.3.2018 and the same has been perused during the course of the proceedings. Undoubtedly, that representation was addressed to the NHAI and not to IHMCL. The same is taken on record.

In these given circumstances, the Court is of the opinion that to finalize the contract or to process the bids, which the respondent has entertained pursuant to the tender, the petitioner's representation ought to be considered and an appropriate written response indicated to it. The entire process should be completed within five days. In the event, petitioner has any further grievance, in the light of the correspondence or response received, it is open to it to seek remedies under the contract or in accordance with law, as the case may be. A copy of the representation has been handed to the counsel for the respondent who shall take appropriate steps in this regard. It is open to the petitioner to address further representation, with additional necessary facts, if so advised.

The writ petition is disposed of in the above terms.

Order dasti under signatures of the Court Master.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

APRIL 16, 2018/ndn