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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ LPA 343/2018, CM No. 25469/2018

AVIATION & DEFENCE SPARES LTD

..... Appellant

Through: Mr. Rakesh K. Khanna, Sr. Adv. with Mr. Davinder N. Grover & Ms. Vijaylaxmi Grover, Advs.

versus

UNION OF INDIA & ORS

..... Respondent

Through: Mr. Rajesh Gogna, CGSC with Ms. L. Gangmei, Adv. & GP Capt. Ashish Tripathi

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V. KAMESWAR RAO

<u>O R D E R</u>

% **03.10.2018**

1. The challenge in this appeal by the appellant is to the orders dated April 06, 2018 and May 30, 2018 passed in W.P.(C) No. 3274/2018 whereby the learned Single Judge has directed the respondents to allow the respondent Nos.6 and 7 (petitioners in the writ petition) to prefer their bid as long as the respondent No.6 is able to obtain certificate, as required and further rejected the prayer of the appellant in the application seeking impleadment in the said writ petition.

2. It is the submission of Mr. Rakesh K. Khanna, learned Senior Counsel

appearing for the appellant that the appellant Company is incorporated in England, United Kingdom as a Limited company and is engaged in the business of sourcing and supplying of parts and sub-systems of aircrafts.

3. The Ministry of Defence introduced Defence Procurement Manual 2009 which contains principles and procedure relating to procurement of goods and services for the defence services, organizations and establishments in the year 2009. The oxygen regulators, which are the subject matter of the tender process under challenge before the learned Single Judge has been supplied to Indian Air Force in the year 2010 by the appellant Company. The appellant Company got registered with Indian Air Force for supply of spares which has been renewed in August 2017 for another period of three years.

4. On February 12, 2018, the appellant Company was invited to participate in the limited tender enquiry floated by the respondent 1 to 5 on behalf of Indian Air Force for supply of 23 oxygen regulators used by pilots flying the Jaguar aircraft. It is the case of the appellant that the Honeywell, who is Original Equipment Manufacturer ('OEM' in short) has given exclusive sole distributorship for the oxygen regulator to the appellant Company. The appellant had submitted its bid online. One company

namely M/s RMC Power (India) Pvt. Ltd. respondent No.6 was also one of the bidders of the tender and submitted its bid. According to the appellant, as per its understanding of the terms and conditions of the tender document, the present tender is open only for foreign registered bidder and not for any other category. A writ petition was filed by M/s RMC Power (India) Pvt. Ltd. being W.P.(C) No. 3274/2018 whereby the learned Single Judge on April 06, 2018 has allowed the said Company to prefer the bid.

5. It is his submission that such a direction has been given without appreciating the fact that the said Company was not eligible to participate in the tender process. Without prejudice, it is his submission that if the said Company is allowed to participate, the chances of the appellant Company gets sufficiently reduced. He states that an application being CM No. 23575-23576/2018 was filed by the appellant Company before the learned Single Judge seeking impleadment. The same was rejected by the learned Single Judge. He submits that the appellant is a necessary and proper party as its chances shall get effected.

6. We have perused the order passed by the learned Single Judge. In paras 4 to 6, the following has been noted / stated by the learned Single Judge while rejecting the application filed by the appellant herein.

4. Mr. Khanna says that there are certain facts, which have not been disclosed to the Court, by the official respondents and therefore, the move by the applicant company to get itself impleaded.

5. According to me, this application is not maintainable for the reason, facts, if any, which are required to be disclosed, would be disclosed surely by the official respondents.

5.1 Furthermore, Mr. Khanna, while pressing his contention has placed before me a judgment of the Supreme Court, passed in the matter of Union of India vs. Bharti Hexacom Ltd. & Ors., (2015) 15 SCC 25. Mr. Khanna relies, in particular, on paragraph 25 of the said judgment.

5.2. As far as the observations made in Union of India Vs Bharti Hexacom

Ltd. are concerned, they would not help the cause of the applicant company, as they advert to successful bidders. As indicated above, the applicant company has made, in fact, a bid, which is lower than the petitioner.

6. In these circumstances, I find no merit in the captioned applications.

The captioned applications are, accordingly, dismissed."

7. We agree with the aforesaid conclusion of the learned Single Judge. It is primarily the respondent Nos.6 and 7, who have challenged the action of the respondents 1 to 5 in the writ petition and it is for the respondents 1 to 5 to justify their action and not the appellant herein. As is seen from the

order, the basis for the appellant to file the application was that the official respondents may not disclose certain facts, which would be relevant for the adjudication of the case.

8. As noted above, the learned Single Judge had observed that it is for the official respondents to disclose all the facts while justifying their impugned action. That apart, we are also of the view that till such time, the bid is awarded, the appellant Company shall have no *locus standi* to seek its impleadment.

9. We do not see any merit in the appeal. The same is dismissed.

CHIEF JUSTICE

V. KAMESWAR RAO, J

OCTOBER 03, 2018/*ak*