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

+ W.P.(C) 11171/2018

MIDDLE EAST ONSHORE AND OFFSHORE
OIL AND GAS EQUIPMENT FZE

..... Petitioner

Through: Mr Jayant Mehta, Ms Priyanka Das
and Mr Rajiv Dalal, Advocates.

versus

OIL AND NATURAL GAS CORPORATION
LIMITED & ORS

..... Respondents

Through: Mr A.C. Mishra, Mr Vineet S.
Shrivastawa and Ms Pallavi Dubey,
Advocates for ONGC.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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26.10.2018

CM Nos. 43402/2018, 43403/2018 & 44391/2018

1. The petitioner has filed the present petition, *inter alia*, impugning a communication dated 31.08.2018 whereby the dealings with the petitioner have been suspended pending completion of the inquiry instituted for blacklisting the petitioner.
2. The petitioner contends that the proceedings initiated against the petitioner are wholly arbitrary and unreasonable.
3. The said proceedings were commenced on account of the petitioner's failure to perform the contract for supply of high strength proppants and

20/40 Mesh, which was awarded to the petitioner on 21.07.2017.

4. The petitioner contends that the said supply could not be made within a period of 60 days of the purchase order due to reasons beyond the control of the petitioner. The same was occasioned by suspending the supply of electricity to the manufacturing unit from where the goods were to be supplied.

5. Mr Mehta, the learned counsel appearing for the petitioner earnestly contends that notwithstanding the mitigating circumstances, the petitioner had offered to supply the goods in question from another facility. He further states that the goods in question have been manufactured, and repeated requests have been made to the respondents to inspect the same.

6. The learned counsel appearing for respondents has countered the submissions made on behalf of the petitioner. He submits that the present petition is not maintainable as the petitioner is not a company incorporated in India. He further states that the petitioner has violated the Integrity Pact executed between the parties. He has also drawn the attention of this Court to Paragraph 51 of the General Conditions of Contract (GCC) forming the part of the purchase order dated 07.09.2017. The said clause reads as under:-

“51. PUTTING SUPPLIER ON HOLIDAY DUE TO CANCELLATION OF PURCHASE ORDER.

In case of cancellation of the purchase order(s) on account of non-execution of the order and / or annulment of the award due to non-submission of Performance Security or, failure to honour the commitments under ‘Warranty & Guarantee’ requirements following actions shall be taken against the Supplier:

- i. ONGC shall conduct an inquiry against the Supplier and consequent to the conclusion of the inquiry, if it is found that the fault is on the part of the Supplier, then they shall be put on holiday [i.e. neither any tender enquiry will be issued to such a Supplier by ONGC against any type of tender nor their offer will be considered by ONGC against any ongoing tender(s) where contract between ONGC and that particular Contractor (as a bidder) has not been concluded] for a period of two years from the date the order for putting the Contractor on holiday is issued. However, the action taken by ONGC for putting that Supplier on holiday shall not have any effect on other ongoing PO(s), if any with that Supplier which shall continue till expiry of their term(s).
- ii. Pending completion of the enquiry process for putting the Supplier on holiday, ONGC shall neither issue any tender enquiry to the defaulting Supplier nor shall consider their offer in any ongoing tender.”

7. It is apparent from the above that the petitioner had agreed that it would not be permitted to participate in the tenders pending the completion of the enquiry process.

8. Admittedly, the petitioner had failed to supply the goods in question within specified period as agreed. At this stage, this Court is refraining from expressing any opinion as to the merits of the allegations made against the petitioner, as it would be for the respondents to examine the same in the first instance. However, this Court considers it apposite to direct the respondents to complete the inquiry as expeditiously as possible, not later than four weeks from today and after giving the petitioner due opportunity of being

heard. It is so directed.

9. The petition is disposed of in the aforesaid terms. All applications are also disposed of.

10. All rights and contentions of the parties are reserved.

11. The hearing scheduled on 01.11.2018 stands cancelled.

VIBHU BAKHRU, J

OCTOBER 26, 2018
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