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

+ W.P.(C) 12613/2018

SHILPI ENGINEERING PRIVATE LIMITED Petitioner

Through: Mr P. V. Dinesh and Ms Sindhu T. P.,
Advocates.

versus

INDIAN OIL CORPORATION LIMITED AND
ORS

..... Respondents

Through

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **28.11.2018**

CM Nos.48987/2018 & 48988/2018

1. Allowed, subject to all just exceptions.

W.P.(C) 12613/2018 & CM No. 48986/2018

2. The petitioner has filed the present petition, *inter alia*, impugning an order dated 13.11.2018 rejecting the petitioner's bid pursuant to a notice inviting tender (NIT) dated 14.11.2018 issued by respondent no.3 (BPCL). The impugned communication dated 13.11.2018 indicates that the petitioner's bid was rejected as the petitioner had been placed on a 'holiday list' by respondent no. 2 (EIL).

3. By a notice dated 02.02.2018, EIL had invited bids on behalf of respondent no.1 (IOCL) for execution of "Composite Works for Utilities and Offsites of Bongaigaon Refinery". The petitioner had participated in the

bidding process and had submitted its bids pursuant to the aforesaid notice.

4. In order to establish its eligibility for award of the aforesaid tender, the petitioner had submitted a provisional work completion certificate purportedly issued by M/s Thyssenkrupp Industrial Solutions (India) Pvt. Limited, indicating that the petitioner had completed works of the value of ₹29,17,94,295.25/-. EIL has determined that the said certificate is forged and consequently, by an order dated 25.06.2018, placed the petitioner on a holiday list and has debarred the petitioner from entering into any contract with EIL for a period of three years from 25.06.2018.

5. The petitioner questions the decision of EIL in placing the petitioner on a holiday list (which appears to be a benign sounding synonym for 'black listing'). The petitioner contends that the petitioner had been placed on a holiday list on account of the Provisional Work Completion Certificate (to establish past experience) furnished by it. It is stated that the said certificate contained an inadvertent error inasmuch as the figure of work done, which was ₹21,17,94,295.25/-, was erroneously indicated as ₹29,17,94,295.25/-. The petitioner submitted that this error had occurred since the certificate issued by the employer in question did not indicate any value. It is also asserted that the work finally completed was to the extent of ₹29 crores and therefore, one of its employees had altered the figure in the Provisional Work Completion Certificate.

6. It is also the petitioner's case that the said error made no difference as the work experienced require to qualify for submission of the tenders to EIL was only ₹12,92,55,000/-. He earnestly contended that the petitioner

derived no benefit from the enhancing value of work done as reflected in the Provisional Work Completion Certificate submitted by the petitioner.

7. It is stated that the petitioner had already filed an appeal against the decision of EIL in placing the petitioner on a holiday list and the same is pending consideration. The petitioner has set up a case of bonafide error and it is possible that the petitioner may succeed in its appeal against the EIL's decision of placing the petitioner on a holiday list and debarring the petitioner from participating in further tenders for a period of three years. However, BPCL is not concerned with the controversy between the petitioner and EIL. The decision of BPCL to reject the petitioner's tender rests on the ground that the petitioner has been placed on a holiday list by another Public Sector Enterprise (PSE).

8. It also appears that one of the eligibility criteria for any bidder to submit its bid pursuant to the NIT dated 14.11.2018 issued by BPCL was that the said bidder ought not to have been blacklisted by the Government of India or any PSE. The fact that the petitioner has been placed on a holiday list by EIL is admitted.

9. This Court is also not persuaded to accept that the eligibility conditions framed by BPCL, which disqualify any entity which has been placed on a holiday list by another PSE, from submitting a bid is perverse or arbitrary and, therefore cannot be interfered with in these proceedings. In this view, no interference with the decision of the BPCL to reject the petitioner's tender is warranted in these proceedings. The petition is, accordingly, dismissed. The pending application is also disposed of.

10. Since, it is apparent that the EIL's order dated 25.06.2018 is also adversely affecting the petitioner in participating another tenders, the Appellate Authority of EIL is directed to consider the petitioner's appeal against the said decision, as expeditiously as possible and preferably within a period of four weeks from today.

VIBHU BAKHRU, J

NOVEMBER 28, 2018
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