24.03.2022.
Court No.13
Item Nos. 22 & 23
ap

W.P.A. No. 3282 of 2022
(Through Video Conference)

Kesha Construction
Versus
Union of India & Ors.
And
W.P.A. No. 3284 of 2022
(Through Video Conference)

Kesha Construction
Versus
Union of India & Ors.

Mr. Aniruddha Chatterjee,
Mr. Abir Lal Chakravorti.
...For the petitioner.

Mr. Subrata Mukherjee.
...For the UOI.

Ms. Ankita Upadhyay.
...For the respondent nos.3 to 6.

Affidavit-of-service filed in Court today be taken on record.

The writ petitioner is aggrieved by an order dated 4th January, 2022 by which the declaration given in lieu of Earnest Money Deposit (in short EMD) was invoked by Hindustan Steelworks Construction Limited (in short HSCL) and the petitioner came to be debarred from entering into future contract with HSCL for a period of two years thereafter.

The brief facts relevant for the case are that pursuant to the Notice Inviting Tender for "Construction of 0.25 Unit Girls Dormitory for 48 students with 01 Nos. Warden residence at JNV Dhenakanal (Odisha) under Navodaya Vidyalaya

Samiti (NVS), Ministry of Education, Govt. of India", the petitioner submitted its bid.

In lieu of EMD and in terms of the COVID Guidelines, the petitioner was required to submit a declaration that if it, inter alia, withdraws from the tendering process, after submitting bid, it would be debarred from participating the NIT and be on holiday from participating in HSCL contracts for a period of two years.

The petitioner sought for permission to withdraw his bid by a communication dated 15th December, 2021. Treating the request as a withdrawal per se, HSCL passed an impugned order debarring him as above.

Counsel for the petitioner, Mr. Chatterjee, would argue that his client's undertaking must be viewed in the context of Clause VIII of the Instructions to Tenderers (ITT). It is submitted that since the petitioner, firstly only sought leave to withdraw and did not withdraw and secondly, that the validity period of the tender process must be reckoned for a period of 150 days from opening of the Financial bid, the respondents were not justified in imposing the debarment order.

Without interfering with the order of debarment already passed, this Court is of the view that the interest of justice would be served if the petitioner makes a comprehensive representation to the respondents within a period of seven days from date as to why he should not have been debarred.

Upon receipt of the petitioner's representation, the respondent no.4 shall pass appropriate orders thereon. The order of debarment shall abide by any order that may be passed by the respondent no.5 on the petitioner's representation as above.

The respondent no.4 shall pass order within a period of two weeks from the date of receipt of a representation from the petitioner, as directed hereinabove.

With the aforesaid observations, the instant writ petition shall stand disposed of.

There will be no order as to costs.

All parties are directed to act on a server copy of this order duly downloaded from the official website of this Court.

(*Rajasekhar Mantha, J.*)