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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **LPA 357/2022 & CM APPL. 25452/2022**

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Date of decision: 27.05.2022

JBM ELECTRIC VEHICLES PRIVATE LIMITED Appellant**Through: Mr Mukul Rohatgi and Mr Sandeep Sethi, Sr. Advs. with Mr Atul Sharma, Mr Sanjay Gupta, Mr Abhinav Agnihotri, Mr Siddharth Mehra and Mr Dipan Sethi, Advs.****Versus****UNION OF INDIA & ANR.****..... Respondents****Through: Mr Apoorv Kurup, CGSC with Ms Nidhi Mittal and Mr Ojaswa Pathak, Advs. for R-1/UOI.
Mr Kush Chaturvedi and Mr Syed Faraz Alam, Advs. for R-2.****CORAM:****HON'BLE MR JUSTICE RAJIV SHAKDHER****HON'BLE MS JUSTICE TARA VITASTA GANJU****[Physical Hearing/Hybrid Hearing (as per request)]****RAJIV SHAKDHER, J. (ORAL):**

1. With the consent of counsel for the parties, the appeal is taken up for hearing and final disposal, at this stage itself.
2. The above captioned matter was listed before us on 26.05.2022. At the request of Mr Apoorv Kurup, central government standing counsel for respondent no.1/Union of India (UOI), we had directed that the matter be listed before us today i.e. 27.05.2022.



3. Mr Apoorv has returned with instructions. According to Mr Apoorv, respondent no.1/UOI [which is represented by Ministry of Heavy Industries (in short “MHI”)] says debarment, which has been assailed by the appellant before the learned Single Judge, is limited to the tenders floated by the MHI.

4. To be noted, the appellant has assailed before the learned Single Judge two communications dated 25.04.2022 and 29.04.2022, whereby, in effect, the appellant has been debarred from participating in future tenders/contract.

4.1. The appellant has raised several pleas in the writ action which is pending adjudication before the learned Single Judge. *Inter alia*, it is the assertion of the appellant i.e., the original writ petitioner that there has been a breach of the principles of the natural justice.

4.2. The appellant has taken the stand that the debarment communication has not been served upon it up-until now.

4.3. It is also the appellant’s contention that no hearing was granted. Quite obviously, respondent no.1/UOI-MHI disputes this position.

4.4. These are issues which would require adjudication by the learned Single Judge.

5. However, what ails the appellant is the order dated 23.05.2022 passed by the learned Single Judge, whereby simply notice has been issued in the writ petition without rendering a decision in the appellant’s interlocutory application.

5.1. The appellant contends that because interim directions that were sought were not granted, the appellant is debarred from participating in the tenders issued by various State Governments and/or instrumentalities of the



State. By way of illustration, our attention has been drawn to pages 53 and 300 of the case file.

6. Messrs Mukul Rohatgi and Sandeep Sethi, learned senior advocates, who appear for the appellant, submit that the appellant's bid will not be considered by any State Government or instrumentality of the State on account of the impugned debarment communication issued by respondent no.1/UOI-MHI. In support of this plea, once again, by way of an illustration, our attention has been drawn to the tender issued by Brihanmumbai Electric Supply and Transport (in short "BEST"), Maharashtra. In particular, Messrs Rohatgi and Sethi have laid emphasis on Clause 7 of the said tender, which finds mention on page 57 of the case file.

"7) JBM ECOLIFE MOBILITY PVT. LTD.

Based on the letter from Ministry of Heavy Industries, GOI dated 25/04/2022; the offer of the firm is not considered for evaluation. Hence, same is considered as "TECHNICALLY NON RESPONSIVE"

6.1. It is contended on the basis of the said clause that because MHI has issued the impugned debarment communication dated 25.04.2022, the appellant's bid was declared as "Technically Non Responsive".

6.2. To be noted, insofar as this tender is concerned, the deadline for preferring a bid has passed. However, as indicated above, there are other tenders in the offing. These are tenders, the brief details of which are listed out in Annexure A-6, which is appended on page 300 of the case file.

6.3. According to Messrs Rohatgi and Sethi, the tenders which are in offing are listed at serial nos. 5 to 8 of the table set out in Annexure A-6. Besides this, Messrs Rohatgi and Sethi have placed before us the photocopies of the relevant pages of the tender documents concerning the



aforementioned tenders.

6.4. From what has been shown to us, it is clear that the debarment by respondent no.1/UOI-MHI would come in the way of the appellant's tender/bids being considered.

6.5. It is, therefore, quite apparent to us that in order to ensure that the writ petition, which is pending adjudication before the learned single judge, is not rendered inefficacious and/or mere formality, the rights of the appellant will need to be preserved, *albeit*, to a limited extent. Therefore, the appeal is disposed of with the following directions:

(i) The appellant would be entitled to participate in the tenders which, we are told, are in the offing. These being tenders floated by :

- (a) Jammu Smart City Limited, Jammu;
- (b) Aurangabad Smart City Development Corporation Limited, Aurangabad;
- (c) Navi Mumbai Municipal Transport (NMMT), Navi Mumbai; and
- (d) Assam State Transport Corporation, Guwahati.

(ii) The employer and/or the authority considering the bid(s) submitted by the appellant will not reject it on the ground that the appellant has been debarred by respondent no.1/UOI-MHI. This direction, however, will not come in the way of the employer and/or authority considering the bid, rejecting the appellant's bid on other tenable grounds.

(iii) Needless to add, the aforementioned direction will not come in the way of the learned Single Judge disposing of the writ action. The writ action will be adjudicated without being influenced by the directions issued by us hereinabove.

(iv) The aforementioned directions have been issued, without prejudice to the rights and contentions of both the parties.



7. Since the learned Single Judge has fixed the matter before the vacation Bench on 10.06.2022, we would request the concerned bench to dispose of the same, if time permits, on that date or any other date which is convenient to the concerned Bench. This decision will be of the concerned Bench, sitting in vacation.

8. At this stage, Mr Sethi says that similar directions would be required *vis-a-vis* group companies as well, since the debarment qua the appellant impacts other sister concerns.

8.1. To our minds, since the other sister concerns are not before us in this appeal, liberty is given to the appellant to move the learned Single Judge by way of an appropriate action, albeit as per law.

8.2. As and when an action is instituted, the learned Single Judge will consider it, as per law.

9. Parties will act based on the digitally signed copy of this order.

10. Consequently, pending application shall stand closed.

RAJIV SHAKDHER, J

TARA VITASTA GANJU, J

MAY 27, 2022

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Click here to check corrigendum, if any