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

+ **W.P.(C) 5860/2012 & CM APPL. 12584/2022**

M/S RHEIMETALI AIR DEFENCE AG Petitioner

Through: Mr. HS Chandhoke, Mr.
Prashant Mishra & Ms. Aimen
Reshi, Advs.

versus

ORDANCE FACTORY BOARD AND ORS Respondents

Through: Mr. Anil Soni, CGSC with Mr.
Devesh Dubey, Advs. for UoI

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

J U D G E M E N T (O R A L)

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27.04.2022

CM APPL. 12584/2022

1. WP (C) 5860/2012, in which the present application has been filed by the petitioner, assails orders dated 5th March, 2012 and 12th March, 2012 and letter dated 28th August, 2012, cancelling all agreements between the petitioner and the respondents and further debarring the petitioner from entering into any contract with respondents, for a period of ten years.

2. The aforesaid order dated 5th March, 2012, was subsequently modified with a corrigenda dated 12th March, 2012 and 12th April, 2012.

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3. Reckoned from any of the aforesaid dates, the period of ten years for which the decision to black list the petitioner operated, has come to an end.

4. In the circumstances, the petitioner has moved the present application. The application draws attention to the fact that the period of ten years, for which the debarment order operated, has come to an end. The petitioner is desirous of again participating in bids or tenders if invited by the respondents, but has had to approach this Court by the present application in view of Clause 6(a) of the Defence Acquisition Procedure, 2020, issued by the Ministry of Defence.

5. The Proforma for request for proposal, to be floated by the Ministry of Defence for procurement of equipment, forming part of the Defence Acquisition Procedure has been placed on record. Clause 6(a) sets out the undertaking which prospective bidders are required to subscribe to.

“6(a) **Undertaking by Bidders.** The Bidder will submit an undertaking that they are currently not banned / debarred / suspended from doing business dealings with Government of India / any other government organisation and that there is no investigation going on by MoD against them. In case of ever having been banned / debarred / suspended from doing business dealings with MoD/any other government organization, in the past, the Bidder will furnish details of such ban / debarment along with copy of government letter under which this ban / debarment /suspension was lifted / revoked. The Bidder shall also declare that their sub-contractor(s)/supplier(s)/technology partner(s) are not Suspended or Debarred by Ministry of Defence. In case the sub-contractor(s)/supplier(s)/ technology partner(s) of the Bidder are Suspended or Debarred by Ministry of Defence, the Bidder shall

indicate the same with justification for participation of such sub-contractor(s)/supplier(s)/ technology partner(s) in the procurement case.”

6. Mr. Chandhoke has drawn my attention to the second sentence in Clause 6(a) which deals with cases where the prospective bidder has earlier been banned/ debarred/ suspended from doing business dealings with the Ministry of Defence or any other Government organisation in the past. The clause requires the bidder to furnish details of such ban/ debarment along with “*copy of Government letter under which this ban/ debarment/ suspension was lifted/ revoked*”.

7. Quite obviously, it is not possible for this Court to modify the conditions which are required to be fulfilled by prospective bidders who seek to respond to bids invited by any Government organisation including the Ministry of Defence. However, as the period of ten years of debarment, proposed by the impugned orders dated 05th March, 2012, 12th March, 2012 and 12th April, 2012, has come to an end, this application seeks permission to withdraw the petition with a clarification that the aforesaid orders would not come in the way of the petitioner applying in any public procurement/ public tender/ request for proposal as may be issued by the Government or any State or any wing of the Ministry of Defence.

8. This Court can only clarify this matter to the extent of holding that the period of black listing or debarment as envisaged by the orders dated 05th March, 2012, 12th March, 2012 and 12th April, 2012, of ten years has come to an end. The stipulation in the said orders, to the

effect that the direction debarring the petitioner from entering into any contract with the respondents for a period of ten years, as contained in the impugned orders dated 05th March, 2012, 12th March, 2012 and 12th April, 2012, shall no longer apply, as the period of ten years is over.

9. Subject to the above clarification, leave is granted to withdraw the writ petition.

10. The writ petition stands disposed of as withdrawn.

C.HARI SHANKAR, J

APRIL 27, 2022
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