

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
WRIT PETITION NO. 3499 OF 2019**

Netspider India and Anr	...Petitioners
<i>Versus</i>	
The Directorate of Archives	...Respondent

Mr Ruchir Tolat, i/b LC Tolat, for the Petitioners.
Mr Himanshu Takke, AGP, for the Respondent-State.

**CORAM G.S. Patel &
 S.G. Dige, JJ.**
DATED: 2nd January 2023

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1. Mr Thorat seeks leave to withdraw the Petition.

2. We have made it clear that we have no longer willing to permit these withdrawals for the asking. The reason is plain. The Supreme Court itself has noted more than once, especially recently, that our judicial system is increasingly clogged with frivolous Petitions and with Petitions that “take a chance” — so that if the Petition does not succeed, it can be simply withdrawn with no adverse consequences. Meanwhile, scarce time of the court is taken up dealing with such matters. There is a very real cost element to such litigations. This has to be discouraged.

3. This Petition assails the rejection of the Petitioners' tender bid. The reason for that rejection was stated to be that the past performance was not satisfactory. The Petition proceeds not once but at least twice, in paragraph 4(h) at pages 6 and 7 and in ground (g) at page 9 on the basis that the Respondents had "confused" two entities, namely the Petitioner, a partnership firm called Netspider India, and another "closely held" public limited company called Netspider Infotech India Limited. The suggestion in the Petition is clearly that this was a case of mistaken identity and that one entity had nothing to do with the other.

4. This is in fact untrue. The same gentleman, one Samir Dhingra, is not only partner of the Petitioner but is the promoter director of the private limited company. It is he who has affirmed and verified the Petition. The Petition does not state, importantly, that the private limited company is an associate or a group entity of the Petitioner. Both entities are said to be engaged in exactly the same work of digitizing old records and archival documents.

5. This happens all the time, and far too often. We have seen this in municipal construction contracts, especially in road building. When a particular entity is found to be at fault, the individuals behind that entity immediately regroup, form another entity, and begin tendering in the name of that new entity. That is precisely the case here. There is no doubt that the performance of the private limited company was, in another past contract, found to be poor. The present Petition not only fails to make an important disclosure of the connection between the two entities but actively projects an

image of the two entities being at arms' length. Indeed, the submission before us was that this was the Petitioners' "first bid", this deliberately glossing over the fact that the alter ego, the private limited company, had made similar bids in other projects and had received adverse comments. The attempt is to say that the Petitioners' past performance was never unsatisfactory *in its present avatar*.

6. We deprecate and condemn this approach. This Petition is a gross abuse of the process of the Court. It is clearly an attempt to take a chance and to gamble with a litigation result.

7. Thus, while we do permit the Petitioner to withdraw this Petition, we make this withdrawal subject to payment of costs. Had this been a dismissal on merits, the costs would have been much higher — perhaps even a percentage of the bid value.

8. We quantify the costs at Rs. 1 lakh. These are payable not to the Respondents but to the Maharashtra State Legal Services Authority. Costs to be paid within two weeks. In default, MSLSA may apply to court for directions.

(S. G. Dige, J)

(G. S. Patel, J)