

Jvs.

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION NO. 1014 OF 2024

Aurea Aviation Pvt. Ltd.	}	Petitioner
Versus		
Government of Maharashtra,	}	
through Director of Aviation	}	
& Anr.	}	Respondents

Mr. Maulik Bhansali i/b. Jain Law Partners
LLP for the petitioners.

Mr. Amar Mishra, AGP for respondents 1 & 2.

**CORAM: DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.**

DATE: 5th MARCH 2024

ORAL JUDGMENT: (Per **the Chief Justice**)

- 1.** Rule. Rule is made returnable forthwith.
- 2.** With the consent of the learned counsel for the parties, the matter has been taken up for final adjudication and disposal.
- 3.** By means of this petition filed under Article 226 of the Constitution of India, the petitioner-company challenges the decision of respondent no. 2, whereby the petitioner's bid, submitted pursuant to the Tender ID No. 2023_MADC_904985 (Ref No. MADDC/DCA/Empanelment/Hiring of Aircraft), has been rejected on the ground that the petitioner-company was debarred by the Airports Authority of India (AAI) and hence, the petitioner-company did not meet the minimum eligibility criteria.

4. The submission of Mr. Bhansali, learned counsel for the petitioner is that the AAI, by means of an order dated 6th June 2023, debarred the petitioner-company and provided that the petitioner-company shall not be eligible to participate in any tender or RFP issued by the Authority during a period of three years w.e.f. 8th May 2023. The said order of debarment was challenged by the petitioner before Hon'ble Delhi High Court by instituting Writ Petition (C) No. 10681 of 2023, wherein an interim order was passed on 17th August 2023 providing therein that as an interim measure, the order dated 6th June 2023 will not prejudice the petitioner from participating in any other tenders or RFPs for ground handling services floated by the AAI. Certain typographical corrections were sought in the said order, which were allowed by the Hon'ble Delhi High Court by means of an order dated 13th September 2023.

5. It is, thus, the submission of learned counsel for the petitioner that in view of the interim order dated 17th August 2023, as corrected by means of the order dated 13th September 2023, the petitioner was eligible to participate in the subject tender and hence, the technical bid of the petitioner-company has illegally been rejected. The learned counsel further stated that the writ petition filed by the petitioner-company before the Hon'ble Delhi High Court has finally been disposed of by means of an order dated 29th November 2023, whereby, the Court declined to entertain the writ petition in view of the fact that Arbitration proceedings had been already initiated. The Hon'ble Delhi High Court, by the said order dated 29th November 2023 directed the AAI to expedite the process and ensure that the dispute is resolved at the earliest under the dispute resolution clause, failing which, an Arbitrator shall be appointed to resolve

the dispute within a period of eight weeks. The Hon'ble Delhi High Court has also made it clear that the issue of debarring the petitioner shall also be considered under the dispute resolution clause and if not, by the Arbitral Tribunal.

6. In view of the aforesaid, it has been submitted by the learned counsel for the petitioner that having regard to the interim order passed by the Hon'ble Delhi High Court, rejection of the technical bid of the petitioner cannot be justified.

7. On the other hand, Mr. Mishra, learned counsel representing respondent no. 2-Maharashtra Airport Development Company Limited has argued that the Hon'ble Delhi High Court, by passing the order dated 29th November 2023 had declined to entertain the writ petition on the ground that the Arbitration proceedings had already been resorted to and in view of the final disposal of the writ petition by the Hon'ble Delhi High Court, the interim order dated 17th August 2023, as corrected by means of order dated 13th September 2023, is not operative as on today and hence, there is no illegality in rejecting the technical bid of the petitioner-company.

8. Having heard learned counsel for the parties, we find force in the submission made by learned counsel representing respondent no. 2. Having perused the order dated 29th November 2023 whereby the petition filed by the petitioner challenging the order of debarment passed by the AAI was finally disposed of, it is abundantly clear that the Hon'ble Delhi High Court refused to entertain the writ petition on the ground that the Arbitration proceedings had already been taken recourse to. Thus, the interim order passed earlier on 17th August 2023, as corrected by means of the order dated 13th

September 2023, stood merged with the final order dated 29th November 2023. In absence of any specific direction by the Hon'ble Delhi High Court about deferment of the order of debarment dated 6th June 2023, we do not find any substance in the submission made by learned counsel for the petitioner that on account of the interim order passed by the Hon'ble Delhi High Court, the order of debarment dated 6th June 2023 could not have been taken into consideration by respondent no. 2 while evaluating the technical bid of the petitioner-company. As a matter of fact, once the Hon'ble Delhi High Court declined to entertain the writ petition on the ground that the petitioner-company had already invoked the remedy based on the arbitration and the dispute resolution clause, the appropriate course available to the petitioner-company may have been to resort to the various provisions available under the Arbitration and Conciliation Act, 1996 for availing reliefs as an interim measure, if such a remedy was available under law.

9. It is also to be noticed that in a petition filed by the petitioner-company under section 11 of the Arbitration and Conciliation Act, 1996, the Hon'ble High Court of Jammu and Kashmir and Ladakh at Srinagar has already appointed the third Arbitrator of the Arbitral Tribunal.

10. In view of the aforesaid, we are not inclined to interfere with the impugned decision. The writ petition, being devoid of merit, stands dismissed.

11. However, we make it clear that dismissal of the writ petition will not prejudice the remedies which may be available to the petitioner under the Arbitration and Conciliation Act, 1996 or any other law.

12. Rule is discharged.

13. There shall be no order as to costs.

JAYANT
VISHWANATH
SALUNKE

Digitally signed by
JAYANT VISHWANATH
SALUNKE
Date: 2024.03.05
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(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)