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W.P. Nos.23446-26896/2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Reserved on	Pronounced on
11.09.2024	30.09.2024

CORAM

THE HONOURABLE MR. JUSTICE M.DHANDAPANI

W.P. NOS. 23446 & 26896 OF 2023

AND

W.M.P. NOS. 22980, 26316, 28346, 22979 & 26317 OF 2023

W.M.P. NOS. 3692 & 27567 OF 2024

M/s.Saptagiri Restaurant Pvt. Ltd.

Rep. By its Director

L-322, Mahipalpur Extension

New Delhi 110 037.

.. Petitioner in WP 23446/2023

M/s.Syona Spa

Rep. By its Proprietor

L-73/L322, 1st Floor

Mahipalpur Extension, HI-8

New Delhi 110 037.

.. Petitioner in WP 26896/2023

- Vs -

1. The Chairman

Airports Authority of India

Safdarjung Airport, Rajiv Gandhi Bhawan

New Delhi 110 001.

2. The Airport Director

Airport Authority of India

Chennai International Airport



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.. Respondents in both petitions

W.P. No.23446 of 2023 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorarified mandamus calling for the entire records of the 2nd respondent in connection with the Letter of Debarment dated 26.07.2023 vide F. No.13041/44/2022-APD-CHENNAI/2090-2094 and quash the same and consequently direct the respondents to declare the petitioner as the successful bidder.

W.P. No.26896 of 2023 filed under Article 226 of the Constitution of India praying this Court to issue a writ of certiorari calling for the entire records of the 2nd respondent in connection with the Letter of Debarment dated 04.08.2023 vide F. No.13041/44/2022-APD-CHENNAI/2126 and quash the same.

For Petitioners : Mr. S.Prabhakaran, SC, for
M/s.Rajnish Pathiyil in
WP No.23446/2023
Mr. R.S.Diwagar for
M/s.Vivrti Law in WP 26896/23

For Respondents : Mr. Shankararanarayanan, SC
For M/s.P.Rajkumar Jhabak

COMMON JUDGMENT



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Assailing the impugned orders in and by which the 2nd respondent had debarred the respective petitioners from participating in the tender process for a period of three years, the present writ petitions have been filed questioning the respective impugned order and seeking quashment of the said order of debarment and in addition, further prayer is also sought for in W.P. No.23446/2023 to declare the said petitioner as the successful bidder.

Brief facts in W.P. No.23446/2023 :

2. The petitioner is a company registered under the Companies Act, 1988 and is carrying on business of managing restaurants and other related services for the past 23 years having its registered office at L-322, Mahipalpur Extension, New Delhi 110 037 and has been running various food and beverage outlets, restaurants, Spa, Massage Chair facility, etc. in the Airports all over the country for the last two decades.

3. It is the further averment of the petitioner that pursuant to the notice inviting tender bearing E-Bid ID No.2022_AAI_131566_1 dated 11.10.2022 and E-Bid ID No.2022_AAI_131571_1 dated 11.10.2022 issued by the 2nd respondent,



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for operation of Wellness Centre/Spa and Massage Chair Facility at various locations at the new Terminal of the Chennai Airport. It is the further averment of the petitioner that three different spaces were earmarked in the new terminal with a Minimum Reserved License Fee of Rs.19,63,000/- per month for the Terminal (T-1) and Rs.8,52,000/- per month for the Terminal (T-4).

4. It is the further averment of the petitioner that the petitioner having found to be satisfying the qualifications and conditions to meet out the eligibility criteria as per the tender requirement, intended to submit the bid as the last date fixed was 31.10.2022. However, the 2nd respondent extended the last date for submission of the e-bid to 7.11.2022 and, therefore, along with all the documents, the petitioner submitted the e-bid on 7.11.2022, which was received and acknowledged by the 2nd respondent.

5. It is the further averment of the petitioner that the tender process is spread over two phases, the 1st phase being technical bid and subject to fulfilment of all the requisite qualifications, the financial bid would be opened. The petitioner having met the qualification stood qualified in the technical bid.



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However, instigated and anonymous complaints were sent and the 2nd respondent by letter dated 21.02.2023 informed the petitioner that complaints have been received against them stating that one Karan Singh, Proprietor of M/s.Syona Spa, the petitioner in W.P. No.26896/23 is an employee of the petitioner and that he had availed the benefits like ESI, PF, etc., and also has an Airport Employee Pass issued to the said individual in the name of the petitioner. It was further stated that the said Karan Singh had availed loan from the petitioner and, hence, there is a conflict of interest as per the tender conditions contained in the notice inviting E-Tenders and, therefore, called for explanation from the petitioner. It is the further averment of the petitioner that the 2nd respondent did not provide the petitioner with the alleged copy of the said complaints.

6. It is the further averment of the petitioner that on receipt of the said letter, the petitioner sent a detailed reply dated 25.02.2023 to the 2nd respondent denying the allegations contained in the letter as baseless and not true and have been engineered at the instance of rival vested interests. However, inspite of the



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said explanation dated 25.2.2023, the 2nd respondent issued a show cause notice dated 5.6.2023 alleging conflict of interest and material misrepresentation.

7. On receipt of the show cause notice dated 5.6.2023, the petitioner, vide its reply dated 14.6.2023, sent a detailed explanation pointing out the wrongs in the show cause notice and pointed out the provisions contained in Clauses 9 (a) (iv), 10 (iv) and (vi) and other conditions in the notice inviting E-tender. The reply was submitted on 14.6.2023 and there were no further communications between the petitioner and the 2nd respondent and the petitioner assumed that the explanation was satisfactory and was looking forward to the tender, however, out of blue, vide proceedings dated 26.7.2023, which is impugned herein, the 2nd respondent not only cancelled the e-tender, as was evident from the website of the 2nd respondent, but had also debarred the petitioner from participating in future tenders floated by the Airports Authority of India for a period of three years. The letter of debarment was received by e-mail dated 26.7.2023.

8. It is the further averment of the petitioner that the website of the 2nd respondent revealed the cancellation of the e-tenders dated 11.10.2022 alleging



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violation of tender conditions stipulated in the notice inviting e-tender and alleging conflict of interest and material misrepresentation. It is the further averment of the petitioner that for the aforesaid acts, the petitioner stood disqualified on the basis of Clause 9 (a)(ii) and 9 (a)(v) and 10 (iv) and 10 (vi).

9. It is the further averment of the petitioner that clause 9 (a)(ii) would not apply for false representation and clause 9 (a)(iv) is not violated. It is the further averment of the petitioner that one Karan Singh, the proprietor of M/s.Syona Spa had conflict of interest with the petitioner as he was an employee and that he had been given loan in the past and that benefits like PF, ESI, etc., were being deducted and paid by the company in which the Director of the petitioner company was a shareholder.

10. It is the further averment of the petitioner that on the date when the notice inviting tender was published, the said Karan Singh was not working with the petitioner and that the said Karan Singh was working with the petitioner for seven years but as he started developing conflicting interest, he was terminated



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with effect from 8.8.2022 and his Airport Entry Pass was also cancelled and communication dated 26.8.2022 was also given and acknowledgment obtained.

11. It is the further averment of the petitioner that the petitioner has no control over the said Karan Singh once he stands terminated from the rolls of the petitioner and his submission of technical bid, which has since been rejected cannot be put against the petitioner under the ambit of conflict of interest and material misrepresentation as the petitioner has no knowledge or control over the activities of the said Karan Singh. Once an e-tender is floated, it is open to any member of the public to participate in the tender process so long as he fulfils the criteria stipulated therein.

12. It is the further averment of the petitioner that prior to 2015, the said Karan Singh was an employee of M/s.Mahesh Sunny Enterprises Private Ltd., which concern alone has deducted ESI, PF, etc., and the petitioner has never deducted the above amounts from the said Karan Singh. Further, the said Karan Singh, merely being a former employee of the petitioner company the petitioner



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cannot control the acts of the said individual in the said individual participating in the bids floated by the respondent.

13. It is the further averment of the petitioner that one of the Directors of the petitioner being a shareholder in M/s.Mahesh Sunny Enterprises Pvt. Ltd., in which the said Karan Singh was working would not amount to conflict of interest. The terms of employment of an employee may permit him to participate in the bidding process and would not preclude the employee from participating in the bid as otherwise it would infringe his right under Article 19 (1)(g) of the Constitution.

14. It is the further averment of the petitioner that on the date on which the e-bid was submitted, the said Karan Singh was not an employee of the petitioner, as his employment stood terminated 8.8.2022 and even the airport pass was cancelled on 26.8.2022, as is evidenced by the acknowledgement obtained in this regard. Therefore, on the date when the said e-bid was submitted, the said Karan Singh, not being an employee of the petitioner and no amount having been advanced to the said Karan Singh as loan by the petitioner,



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no conflict of interest would arise. It is the further averment of the petitioner that the petitioner would not be aware or would be having knowledge of the persons, who had applied for the bid as it would be revealed only when the bid is opened. In the absence of knowledge attributable to the petitioner with regard to the bid submitted by Karan Singh, the conflict of interest sought to be pushed by the respondents is wholly arbitrary and unsustainable.

15. In essence, it is the averment of the petitioner that none of the clauses in the notice inviting e-tender was violated and the impugned order was resultantly passed without appreciating the materials and, therefore, debarring the petitioner from participating in the bid for a period of three years is perverse. Further, the debarment would work great hardship and cause prejudice to the petitioner and, therefore, the same requires to be interfered with.

16. It is the further averment of the petitioner that invoking clause 21 and debarring the petitioner is wholly unreasonable and arbitrary as on the date when the show cause notice was issued, there exists no contract between the petitioner and the 2nd respondent and in the absence of any contractual



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relationship, the 2nd respondent does not have any power or authority to debar the petitioner from participating in any of the e-tenders of the respondent.

17. It is the further averment of the petitioner that the brother-in-law of one of the Directors of the petitioner and the maternal uncle of the deponent of the affidavit, with mala fide intent and to wreak vengeance due to personal family feud had instigated these complaints and that the said M/s.Soyana Spa seems to have been set up by the said relative, one Pradeep and this came to light when a copy of a similar complaint with regard to another airport contract was given to the petitioner in which the petitioner was awarded the contract. However, on the very same set of facts, the 2nd respondent has taken a diametrically opposite view, which is *per se* unsustainable.

18. It is the further averment of the petitioner that no opportunity of personal hearing was granted to the petitioner to counter the allegations and the said order of debarment was passed without giving adequate opportunity to the petitioner to put forth its case and, therefore, the said order passed is in violation of principles of natural justice and the said debarment, if allowed to continue,



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would cause great hardship and prejudice to the petitioner and, therefore, left with no other alternative, the present petition has been filed.

Brief facts in W.P. No.26896/2023 :

19. It is the averment of the petitioner that the petitioner was initially employed in one M/s.Mahesh Sunny Enterprises Pvt. Ltd. In the year 2005. Thereafter, the petitioner started his own firm under the name and style of M/s.Syona Spa having its office at L-73/L-322, 1st Floor, Mahipalpur Extension, NH-8, New Delhi 110 037 in the year 2014 and that the said establishment is carrying on its activities without any financial backing for the past 9 years. It is the further averment of the petitioner that during the very same time, the petitioner was also working with the petitioner in W.P. 23446/2023 from 2015 till July/August, 2022, but the services of the petitioner was dispensed with during August, 2022 by the petitioner in W.P. No.23446/2023.

20. It is the further averment of the petitioner that the petitioner participated in e-bid for operation of Wellness Centre/Spa and Massage Chair Facility in Domestic Terminal (T1) and International Terminal (T4) of Cnehhai



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Airport vide two different e-bids, both dated 11.10.2022. It is the further case of the petitioner that the last date for submission of the e-bid was initially on 31.10.2022 till 16.00 hours, which was extended to 7.11.2022 till 16.00 hours and the petitioner submitted the form along with necessary documents on 7.11.2022.

21. It is the further case of the petitioner that the tender of the petitioner was rejected in the first stage of the tender process as necessary documents could not be filed on time. It is the further case of the petitioner that Clause 5 (c) of the tender document stipulates that security deposit equivalent to six months license fee along with one month advance license fee be to deposited by the successful bidder. Though the petitioner had made arrangements for payments of the said sum, however, due to unforeseen circumstances, at the last minute, the petitioner could not mobilise the resources for submitting the license fee, though it had filed the EMD and the tender cost and, therefore, the petitioner did not upload the additional documents.

22. It is the further case of the petitioner that on 10.04.2023, the petitioner received mail from the officials subordinate to the 2nd respondent



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stating that complaints alleging that the petitioner was an employee under the petitioner in W.P. No.23446/2023 and, therefore, there was a conflict of interest as per the provisions and called for explanation from the petitioner. The petitioner sought for time and, thereafter, submitted his comprehensive explanation dated 12.04.2023, whereinafter, the show cause notice dated 5.6.2023 was issued alleging collusive bidding/bid rigging.

23. It is the further case of the petitioner that on receipt of the show cause notice, preliminary explanation was submitted on 16.6.2023 and a detailed reply was also issued on 19.6.2023. But without accepting the explanation of the petitioner, the impugned order, debarring the petitioner from taking part in any tender floated by the Airports Authority of India for a period of three years came to be issued on the ground of conflict of interest and material misrepresentation under clause 9 (a)(ii) and 9 (a)(v) and clause 10 of the General Information and Guidelines pertaining to the Tender without properly considering the explanation submitted by the petitioner, which order was passed based on the anonymous complaints received by the 2nd respondent that the petitioner was an employee of the petitioner in W.P. No.23446/2023 and that he had availed loan in the past



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and that benefits such as PF, ESI were being deducted and paid by M/s.Mahesh Sunny Enterprises Pvt. Ltd., of which one of the Director of the petitioner in W.P. No.23446/2023 is a shareholder and that the petitioner had not uploaded any technical bids in the portal and had simply remitted the EMD and the tender cost for the tender along with the copy of the floated RFP.

24. It is the case of the petitioner that though the said Karan Singh was initially working in M/s.Mahesh Sunny Enterprises Pvt. Ltd. till 2014, the petitioner started his own business under the name of M/s.Syona Spa and that without any financial backing the petitioner has been functioning. It is the further stand of the petitioner that though the petitioner was working with the petitioner in W.P. No.23446/2023, however, his services stood terminated with effect from August, 2022 and, therefore, on the crucial date, the petitioner was not in the service of the petitioner in W.P. No.23446/23. It is the further stand of the petitioner that the petitioner had obtained loan from the petitioner in W.P. No.23446/23 in the year 2016, which was way before the idea for the new terminal was envisaged and the loan was also repaid during the month of March,



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2023. Therefore, there is no violation of clause 3.7 of the integrity pact of the tender document or Section 3 (3)(d) of the Competition Act.

25. It is the further stand of the petitioner that as per clause 21 of the Notice inviting e-tender, the Airports Authority of India can only debar a party who has bagged the licence by submitting false/wrong document or concealed any information/document and it comes into play only after entering into draft license agreement and since there exists no contract between the petitioner and the 2nd respondent, there is no case made out for debarment and the impugned order passed without properly appreciating the above tender conditions renders the impugned order unsustainable. Aggrieved by the said impugned order, the present writ petition has been filed.

26. Learned senior counsel appearing for the petitioner M/s.Sapthagiri Restaurant Pvt. Ltd., in W.P. No.23446/2023 (for brevity, "SRPL"), submitted that the order of debarment has been passed invoking clauses 9 (a)(ii), 9 (a)(v) relating to material misrepresentation and clauses 10 (iv) and 10 (vi) relating to conflict of interest. It is the submission of the learned senior counsel that there is no



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conflict of interest and material misrepresentation as the petitioner M/s.Syone Spa (for brevity “Syona Spa”) in W.P. No.26896/23 had no relationship on and from 8.8.2022 as the employer-employee relationship stood severed on the said date. Such being the case, the conflict of interest alleged against SRPL stands ruled out.

27. It is the further submission of the learned senior counsel that during the employment of Karan Singh, way back in the year 2016, loan was given by SRPL to Karan Singh, which was repaid back on 9.3.2023 and the notice inviting e-tender having been issued only on 11.10.2022, there is no conflict of interest and clause 10 (iv) also cannot be invoked.

28. It is the further submission of the learned senior counsel that SRPL and Syona Spa are not affiliates and merely because one of the Directors of SRPL is a shareholder in Mahesh Sunny Enterprises, in which prior to 2014, Karan Singh was an employee, cannot form the basis to allege that SRPL and Syona Spa are affiliated. It is the further submission of the learned senior counsel that even otherwise, a bidder, member or affiliate, who has less than 20% shareholding in



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the company, Clause 10 (i) would not stand attracted as the Director of SRPL, who is a shareholder in Mahesh Sunny Enterprises holds only 8.04% of shares in Mahesh Sunny Enterprises and, therefore, Clause 10 (vi) of notice inviting e-Tender would not stand attracted. Further Mahesh Sunny Enterprises did not participate in the bid and, therefore, invocation of clause 10 (vi) is invalid.

29. It is the further submission of the learned senior counsel that there is no material misrepresentation as per clauses 9 (a)(ii) and 9 (a)(v) as the petitioner had no control over Syona Spa, as all the procedures relating to bidding were done online and only at the time of opening of the bid, the bidders identity would be known. Merely because Karan Singh, the proprietor of Syona Spa was a former employee of SRPL, without any knowledge of the said bidding, non-disclosure of the relationship of SRPL with the proprietor of Syona Spa would not arise. Further, the loan advanced to the said Karan Singh during his employment with SRPL is in no way connected to the bidding process and is irrelevant.

30. It is the further submission of the learned senior counsel that there is no contradiction in the statement of SRPL with regard to the loan advanced to



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Karan Singh as on the date when the reply dated 25.2.2023 was submitted the loan was still outstanding, which stood paid only on 9.3.2023 and, therefore, non-disclosure of the same in the reply dated 25.2.2023 would not arise and the same cannot be said to be contradiction in the statement of the petitioner.

31. It is the further submission of the learned senior counsel that the anonymous complaints had emanated from the brother-in-law of one of the Directors of SRPL due to family feud and the said Pradeep Kumar is none other than the maternal uncle of one of the Directors of SRPL and the brother-in-law of Bikram Singh, who is a shareholder in Mahesh Sunny Enterprises.

32. It is the further submission of the learned senior counsel that neither public policy nor public right have been violated and the petitioner has been running the business without any blemish for the past two decades. It is the further submission of the learned senior counsel that the debarment of SRPL would cause grave hardship and prejudice to SRPL, which would be nothing short of sounding a death knell to the company and would affect the livelihood of several employees employed by the company.



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33. To substantiate the aforesaid contentions, learned senior counsel for the petitioner placed reliance on the following decisions :-

- i) *Erusian Equipment & Chemicals Ltd. – Vs – State of W.B. (1975 (1) SCC 70); and*
- ii) *Gorkha Security Services – Vs – Govt. (NCT of Delhi) (2014 (9) SCC 105)*

34. Learned counsel appearing for Syona Spa, petitioner in W.P. No.26896/23 submitted that the impugned order is passed in violation of principles of natural justice as no opportunity of personal hearing was given to the petitioner pursuant to the show cause notice. It is the further submission of the learned counsel that no proper enquiry was conducted and in the absence of affording an opportunity of personal hearing the valuable rights of the petitioner stood violated. It is the further submission of the learned counsel that the petitioner was not provided with a copy of the complaint so as to enable the petitioner to submit proper reply to the show cause notice and the documents which were relied upon by the 2nd respondent for passing the impugned order was also not provided to the petitioner.



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35. It is the further submission of the learned counsel that the impugned order reveals total non-application of mind on the part of the 2nd respondent while passing the impugned order. It is the submission of the learned counsel that though the reply of the petitioner dated 26.6.2023 to the show cause notice dated 5.6.2023 was issued, which has been acknowledged by the respondents, however, a perusal of the impugned order would reveal that the explanation submitted by the petitioner were not considered while arriving at a finding and the non-consideration of the reply would be indicative of the non-application of mind of the respondents and on this aspect as well, the impugned order is liable to be set aside.

36. It is the further submission of the learned counsel that the order passed by the 2nd respondent is a cryptic and non-speaking order and on that score even, the impugned order is liable to be set aside. The respondents cannot improve or supplement their impugned order through their counter affidavit and arguments. In this regard, reliance is placed on the decision of the Apex Court in ***State of Orissa – Vs – Dhani Ram Luhar (2004 (5) SCC 568)***.



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37. It is the further submission of the learned counsel that there being no relationship between the petitioner and the respondents, as there was no existing contract, the power under clause 9 (b) of the guidelines cannot be invoked to debar the petitioner and the said debarment is perverse, arbitrary and unreasonable and the same is liable to be set aside. Clause 9 (b) could be invoked only in favour of a person or an entity, which has been provided with a letter of agreement or letter of intent or draft agreement and in the absence of any agreement, there being no contractual relationship between the petitioner and the respondents clause 9 (b) cannot be invoked to debar the petitioner and, therefore, the impugned order is liable to be set aside.

38. It is the further submission of the learned counsel that there is neither conflict of interest or material misrepresentation by the petitioner in the tender process and the impugned order having not elucidated the manner in which there is conflict of interest and material misrepresentation, the said impugned order suffers the vice of arbitrariness and unreasonableness and, therefore the same deserves to be set aside.



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39. Per contra, learned senior counsel appearing for the respondents, placing reliance on the counter filed by the respondents submitted that the complaint on which show cause notice was issued was not an anonymous complaint; it is rather a named complaint along with the address of the complainant and, therefore, action by way of show cause notice was initiated. It is the further submission of the learned senior counsel that the reliance placed on the letter of the Central Vigilance Commissioner with regard to initiation of action on anonymous letters pertains only to public servants and it is not applicable to the petitioner, who is a bidder.

40. It is the further submission of the learned senior counsel that clause 10 (iv) and 10 (vi) clearly spells out conflict of interest and it includes any bidder, who receives or has received concessional loan or grant or subsidy directly or indirectly. In the present case, it is the admitted case of both the petitioners, viz., SRPL and Syona that Karan Singh, the proprietor of Syona had received loan from SRPL and, therefore, there is conflict of interest as envisaged under clause 10 (iv)



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and 10 (vi) and, therefore, both the petitioners would not be qualified for bidding.

41. It is the further submission of the learned senior counsel that had there been monetary transaction in the form of loan between SRPL and Syona, even anterior in point of time, it ought to have been mentioned in the tender application and failure to disclose the same in their bid document would amount to misrepresentation. It is the further submission of the learned senior counsel that loan at the time of submission of bid is immaterial for establishing conflict of interest under clause 10 (iv) of the Tender Guidelines as granting loan by one bidder to another bidder or affiliate even in the past would amount to conflict of interest.

42. It is the further submission of the learned senior counsel that the percentage of shareholding of Bikram Singh, who is a Director in the petitioner company in Mahesh Sunny Enterprises will not have any relevance as the rejection of the bid and the consequential debarment was not on the basis of the shareholding of the said individual; rather the rejection and debarment of the



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petitioners is on the basis of conflict of interest under clauses 10 (iv) and 10 (vi) of the Tender Guidelines and, therefore, the quantum of shareholding is irrelevant.

43. It is the further submission of the learned senior counsel that SRPL and Syona sharing a common relationship with Mahesh Sunny Enterprises, they have access to each other's information and even influence the bid of each other, thereby, triggering clause 10 (vi) of the Tender Guidelines.

44. It is the further submission of the learned senior counsel that vide letter dated 25.2.2023, while SRPL submitted that the loan advanced to Karan Singh in the year 2016 was subsisting, however, curiously, when the show cause notice was issued, vide reply dated 14.6.2023, SRPL submitted that the loan has been remitted. It is the submission of the learned senior counsel that only on the show cause notice coming to be issued, SRPL, to cloth its fraudulent acts and to overcome the tender conditions, had informed that the loan amount has been remitted by Karan Singh.



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45. It is the further submission of the learned counsel that once the respondents discharges its onus relating to the loan transaction between SRPL and Karan Singh, it is the duty cast on SRPL and Karan Singh to prove that the said loan transaction does not amount to conflict of interest under clause 10 (iv) of the Tender Guidelines and the absence of the same being discharged, the findings rendered on the said aspect cannot be said to be perverse.

46. It is the further submission of the learned senior counsel that there is contradictory statements with regard to the employment of Karan Singh with Mahesh Sunny Enterprises, as in the letter dated 12.4.2023, while it is admitted that the employment of Karan Singh with Mahesh Sunny Enterprises is continuing, whereas in the reply to the show cause notice, it is stated that the services were discontinued much prior. The above contradictions are material misrepresentations which strikes at the base of the bidding process and are against the Tender Guidelines.

47. It is the further submission of the learned senior counsel that the contention of SRPL that debarment as mentioned in Chapter 8.12 of the



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Commercial Manual, 2019 has not been complied with as the case of SRPL and Syona was not placed before the Local Commercial Advisory Committee for consideration and that no opportunity of personal hearing for granted to them. In this regard it is the submission of the learned senior counsel that Clause 8.12 uses the terms “concession/license”, which clearly evidences that the said clause would become applicable only when tender is awarded, which is not the case on hand. SRPL and Syona were debarred at the stage of evaluation of technical bids and, therefore, the application of Chapter 8.12 of the Commercial Manual, 2019, does not arise.

48. It is the further submission of the learned senior counsel that the contention relating to grant of opportunity of personal hearing cannot be pressed as grant of personal hearing is not mandatory requirement when written representation effectively meets the requirements of principles of natural justice. It is the submission of the learned senior counsel that both SRPL and Syona were granted sufficient opportunity to show cause why they were not in violation of the clauses relating to conflict of interest and material misrepresentation, which are matters based on documents and not relatable to arguments, which alone



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could be made at the time of grant of personal hearing. In this regard, reliance was placed on the decision of the Apex Court in ***Madhya Pradesh Industries – Vs – Union of India (AIR 1966n SC 671)***.

49. It is the further submission of the learned senior counsel that since Syona Spa had withdrawn from the tenders on account of insufficiency of funds, they cannot be considered to be a 'bidder' for the purposes of tender and, therefore, their debarment order dated 4.8.2023 is wrong. In this regard, it is the submission of the learned senior counsel that notice inviting e-Tender was an invitation to offer and Syona Spa having submitted its bid, is considered to have made an offer to the respondents and for all purposes Syona Spa would be a bidder in the literal sense and merely because license fee as prescribed have not been paid, that could, at best be held to be a bid not fulfilling the terms of the notice inviting e-Tender and it cannot be taken out of the realm of bid to be considered in any different manner so as to grant the benefit to Syona.

50. It is the further submission of the learned senior counsel that the term "*bidder*" is not defined in the notice inviting tender and in such a backdrop, the



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definition as provided in Blacks' Law Dictionary 4th Edition defining "*bidder*" as "*one who makes a bid*", Syona having submitted its bid, though it is rejected, would very be construed as a bidder and, therefore, Syona would have to be treated as a bidder for all purposes.

51. It is the further submission of the learned senior counsel that it is the modus of SRPL and Syona that when any one of the regional airports across the country invites bids for tender, SRPL first submits their bid along with all the requisite documents and the policy of the respondent being that where there is only a single participant in the bid, the last date for submission is extended, as a pattern, it is observed that on the last date of the extended bid submission Syona submits their bid with incomplete documents as a consequence of which there is no further extension and SRPL is declared as the successful bidder. Therefore, considering all the above factors, the respondents have taken the action to debar the petitioners, which cannot be said to be perverse, arbitrary or unreasonable.

52. It is the further submission of the learned senior counsel that pursuant to the order of this Court dated 6.9.2024 vacating the interim orders granted on



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9.8.23 and 12.9.23, the tenders, which were floated were cancelled immediately on 26.7.2023 immediately after the debarment order against SRPL. The tender cancellation notice produced by SRPL pertains to tender bearing reference No.2024_AAI_187354_1, which was floated by the 2nd respondent for operating wellness centre/spa and massage chair facility in the mezzanine floor of New International Terminal (T2) whereas, the tenders, which are the subject matters of the present *lis* pertains to T-1 and T-4 terminal. SRPL has provided erroneous and incomplete information and have misled the court causing grave prejudice to the respondents. It is the further submission of the learned senior counsel that subsequent to the order dated 6.9.2023, by virtue of which the stay order dated 9.8.2023 was vacated, the debarment order dated 26.7.2023 issued against SRPL stood restored and, therefore, the 2nd respondent was constrained to cancel the T-2 tender in view of SRPL being the only participant bidder.

53. In fine, it is the submission of the learned senior counsel that the respondents, following the provisions in the notice inviting tenders and also taking into account the fraudulent acts of the petitioners, which have been observed over a length of time, have, on proper application of the provisions in



the tender guidelines, debarred the petitioners and also cancelled the tenders and the said act does not require any interference at the hands of this Court and, accordingly, prayed for dismissal of the present petitions.

54. This Court gave its careful consideration to the submissions advanced by the learned senior counsel appearing on either side and perused the materials available on record as also the decisions relied on by the parties in support of their respective contentions.

55. Before embarking upon finding out whether the impugned order debarring the petitioners are sustainable or does it require interference at the hands of this Court, the relevant clauses of the Notice Inviting Tender, viz., 9 (a)(ii) and 9 (a)(v) and 10 (iv) and 10 (vi), which have a bearing on adjudicating the issue, are quoted hereunder for ready reference :-

“9. Fraud & Corrupt Practices and Penalty

a) Even if the bidder satisfies every criterion as per the guidelines set forth above, but at any stage during the tender process, or after the issuance of LOIA to the successful bidder, or after the execution of concession



agreement or during the subsistence thereof, AAI at its discretion can disqualify the bidder or terminate the concession (as the case may be), if the bidder/licensee :

** * * * **

ii. has made misleading or false representation in the forms, statements and attachments submitted; or

** * * * **

v. The applicant has made a material misrepresentation; or

** * * * **

10. Conflict of Interest

A bidder shall not have a conflict of interest ("the Conflict of Interest") that affects the bidding process. Any bidder found to have a Conflict of Interest shall be disqualified. A bidder shall be deemed to have a Conflict of Interest affecting the bidding process, if :

** * * * **

(iv) such bidder or any affiliate thereof receives, has received, or has entered into an agreement to receive, any direct or indirect subsidy, grant, concessional loan, or subordinated debt from any other bidder, or any affiliate thereof or has provided or has entered into an agreement to provide any such subsidy, grant, concessional loan or subordinated debt to any other bidder, its member or any affiliate thereof;

** * * * **

(vi) such bidder or any affiliate thereof, has a relationship with another bidder or any affiliate thereof, directly or indirectly or



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through a common third party/parties, that puts either or both of them in a position to have access to each other's information or to influence the bid of either or each other; or such bidder or any affiliate thereof, has participated as a consultant to the Authority in the preparation of any documents, design or technical specifications of the Project."

56. Here and now, it could be stated without a semblance of doubt that the aforesaid provisions are unambiguous and there arise no dispute with regard to the manner in which it should be read. In fact, except for pointing out the clauses, which are the basis of the impugned orders, learned senior counsel on either side did not have any quarrel with the clarity in the aforesaid clauses and, therefore, this Court is not venturing into interpreting the said clauses.

57. Two allegations have been levelled by the respondents against the petitioner, viz., one pertaining to conflict of interest and the other pertaining to material misrepresentation, which has led to the issuance of the impugned orders.



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58. With reference to the allegation relating to conflict of interest, the respondents rely upon Clauses 10 (iv) and 10 (vi) of the Tender Guidelines, extracted above, which prescribes that bidder or any affiliate thereof receives, has received, or has entered into an agreement to receive, any direct or indirect subsidy, grant, concessional loan, etc., and where the bidders have with one another, then the same would be deemed to be conflict of interest and such bidder would stand disqualified.

59. In the case on hand, it is the claim of the petitioner that SRPL is in no way connected with Syona Spa, which is run by one Karan Singh on the material date and that there was also no monetary transaction between SRPL and Syona Spa when the bid was submitted and, therefore, there is no conflict of interest.

60. To find out whether clauses 10 (iv) and 10 (vi) stand attracted so as to show that there is an link between SRPL and Syona Spa, which alone would justify the passing of the impugned orders, this Court embarked upon finding out the same from the materials placed before the Court.



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61. It transpires that between 2015 and August, 2022, Karan Singh, the Proprietor of Syona Spa was employed with SRPL and during the said period of time, the said Karan Singh had received financial aid/loan from SRPL. The said fact is neither disputed by SRPL nor by Karan Singh, the proprietor of Syona Spa. It is the case of SRPL that there was no subsisting loan to be repaid by Karan Singh when the bid was submitted as, as early as during March, 2022, the loan stood repaid, whereas the bid was submitted much later in point of time.

62. However, a careful perusal of clause 10 (iv) reveals that where any bidder or any affiliate receives or has received, or has entered into an agreement to receive, any direct or indirect subsidy, grant, concessional loan, etc., which clearly spells out that transaction of loan or financial aid not only is limited to the currency of the bid or at the time of bidding, but it also takes within its fold any financial aid/loan transaction between two bidders even anterior in point of time to the submission of the bid. There is no iota of quarrel that there was a loan transaction between SRPL and Karan Singh, the Proprietor of Syona Spa, which has been admitted by the parties and, therefore, clause 10 (iv) of the Tender Guidelines would stand squarely attracted.



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63. Coming to clause 10 (vi), it prescribes that any bidder or any affiliate thereof, has a relationship with another bidder or any affiliate thereof, directly or indirectly or through a common third party/parties, then that would squarely be termed to be conflict of interest. In the case on hand, there existed a relationship of employer-employee between SRPL and Karan Singh, the Proprietor of Syona Spa, which is admitted by the parties, which was between 2015 and August, 2022. Further, the said Karan Singh himself has admitted, in his writ petition, to have been working with Mahesh Sunny Enterprises prior to 2014. It is the specific case of the respondent that one of the Director of SRPL is a shareholder with Mahesh Sunny Enterprises, which is not disputed by SRPL, but it is only submitted that the shareholding was less than 10%. However, the nexus of the Director of SRPL with Mahesh Sunny Enterprises as a shareholder clearly attracts clause 10 (vi) which clearly shows that there is a common third party, who is linked between SRPL and Karan Singh. In fact, the said individual cannot be brought within the ambit of third party, but stands on a more advantageous position, which will have a bearing on the tender process, as the said individual is in a



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controlling position. Therefore, clause 10 (vi) would also stand squarely attracted.

64. When clauses 10 (iv) and 10 (vi) is squarely attracted and the same having not disclosed in the bid submitted either by SRPL or by Syona Spa, the allegation of conflict of interest, alleged by the respondents cannot be said to be bereft of any material and, therefore, the respondents were within their right to call for explanation by issuing show cause notice and act on the same.

65. Insofar as fraud and corrupt practices is concerned, which relates to material misrepresentation, clause 9 (a)(ii) and (v) is alleged to have been infringed by the petitioners, which has led to their debarment.

66. A perusal of clause 9 (a)(ii) shows that it relates to misleading or false representation in the form of statements and attachments and 9 (a)(v) relates to material misrepresentation. The whole case of the respondents is that the link between SRPL and Karan Singh has not been divulged in the tender submitted by either party and, therefore, it attracts clause 9 (a)(ii) and (v) of the Tender



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Guidelines. However, it is the stand of SRPL that before the tender is opened, the respective bidders would not be aware of the persons, who would be participating in the tender and, therefore, not providing information about Syona Spa and Karan Singh cannot be put against SRPL and clauses 9 (a)(ii) and 9 (a)(v) cannot be pressed against SRPL.

67. There could be no quarrel with the said fact that anterior in point of time to the submission of the bid, a bidder would not be aware of the persons, who would partake in the bid process and, therefore, non-mentioning of the names of persons, who were associated with the bidder may not arise. However, the present case stands on a totally different footing as projected by the respondents while dealing with the explanation submitted to the show cause notice issued by them.

68. There is no quarrel with the fact that SRPL had employed Karan Singh on its rolls as its employee between 2015 and August, 2022. It is the claim of SRPL that the bid was submitted six months after the ouster of Karan Singh from the rolls of SRPL. However, it is the stand of Syona Spa that its Proprietor Karan



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Singh was operating Syona Spa even prior to his joining SRPL, as even when he was an employee under Mahesh Sunny Enterprises, the said Karan Singh had stated that he was running Syona Spa. It should not be lost sight of that the shareholder of Mahesh Sunny Enterprises is a Director in SRPL.

69. In the aforesaid backdrop, this Court has to consider the case holistically to see whether the allegations are made out. One of the Director of SRPL was a shareholder in Mahesh Sunny Enterprises during the point of time when Karan Singh of Syona Spa was working under Mahesh Sunny Enterprises. The said Karan Singh, even during the said point of time, was running Syona Spa, which is admitted by the said Karan Singh in the affidavit. Even thereafter on his relieving from Mahesh Sunny Enterprises, the said Karan Singh was operating Syona Spa. Therefore, SRPL cannot feign ignorance about the avocation of Karan Singh apart from his employment, as one of its Director is a shareholder in Mahesh Sunny Enterprises. Thereafter, from 2015 to August, 2022, the said Karan Singh was employed in SRPL even during which time, it is admitted, that the said Karan Singh was running Syona Spa. Therefore, SRPL cannot feign



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ignorance about the business activities of Karan Singh for certain other reasons, which are recorded in the later part of this order.

70. It is the specific case of the respondents that even in the other bids floated by the other Airports across the country, similar modus operandi has been followed by the petitioners. In that SRPL would be submitting the earlier bid followed by Syona Spa, which would submit a flawed bid on the last date of the bid, thereby disabling the respondents from extending the date for submission of the bid and after the closure of the last date, Syona Spa would have its bid rejected for the said flaw, thereby, the sole bidder, viz., SRPL gets the bid unopposed, which was exactly the case followed here.

71. To find out the veracity of the said allegation, this Court ventured to look into the materials placed before it, which reveals the following :-

- i) The address of SRPL is L-322, Mahipalpur Extension, New Delhi 110 037, while that of Syona Spa is L-73/L322, 1st Floor, Mahipalpur



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Extension, HI-8, New Delhi 110 037, which is in the very same area.

- ii) Karan Singh, the Proprietor of Syona Spa was the erstwhile employee of SRPL, who ceased to be an employee since August, 2022.
- iii) However, the said Karan Singh, the Proprietor of Syona Spa was running the said Syona Spa even while he was employed in Mahesh Sunny Enterprises and also continued to operate it even after his employment with SRPL.
- iv) The said Karan Singh had taken loan from SRPL, while he was an employee with SRPL, which was alleged to have been repaid by him before he left the services of SRPL.
- v) One of the Director of SRPL was also a shareholder in Mahesh Sunny Enterprises.



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72. SRPL feigns ignorance by stating that till the bid is opened it would not be aware of the participants in the bid and, therefore, the participation of Syona Spa in the bid would not be within the knowledge of SRPL. However, the facts, which are borne out by record, including the fact that both SRPL and Syona Spa had been functioning within touching distance of each other and that Karan Singh, the employee of SRPL was also running Syona Spa even during his currency of employment with SRPL cannot be slightly brushed aside, more so when SRPL had given loans to Karan Singh. Further, Karan Singh had been running Syona Spa even before his coming into employment with SRPL and that the Director of SRPL was, in fact, a shareholder in Mahesh Sunny Enterprises. Though it is the claim of SRPL that it had given loan to its employee, however, the fact remains that the said Karan Singh was, at the material point of time, also functioning as the proprietor of Syona Spa, it cannot be ruled out that the said loan given by SRPL was not utilised for running Syona Spa for enhancing the business opportunities of SRPL, which is specifically the modus operandi put forth by the respondents.

73. It is further to be pointed out that it is the specific case of the respondents that the rejection of the bids of both the petitioners was not on



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account of one of the Director of SRPL being the shareholder of Mahesh Sunny Enterprises, as, it is the case of SRPL that the shareholding was less than 10%. When there is clear infraction of the terms and conditions of the Tender Guidelines, more specifically clauses 9 (a)(ii) and (v) and 10 (iv) and (vi), relating to playing of fraud and material misrepresentation and conflict of interest, as provided for in the aforestated provisions, the respondents, after seeking the explanation of the petitioners have passed the impugned order. When the infractions are within the ambit of the aforesaid clauses of the Tender Guidelines, the respondents are well within their powers to take action.

74. Though it is the claim of SRPL that the stand of the respondents that there is material discrepancy in the date on which the loan was settled between Karan Singh and SRPL the said discrepancy would not be of any consequence as by the time during which explanation was initially offered and the explanation which was given to the show cause notice Karan Singh had paid the loan and, therefore, the discrepancy is there, however, the said stand is immaterial considering clause 10 (iv), which clearly spells out that even any previous loan or existing loan given to any bidder or affiliate by another bidder would constitute



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conflict of interest and in that backdrop, the receipt of loan by Karan Singh even anterior in point of time to the bid, not being spelt out in the bid, would definitely attract clause 9(a) (iv) and invoking the same, if the respondents had rejected the bid of both the petitioners, the same cannot be found fault with.

75. Further, it is to be pointed out that when the tender inviting authority had properly appreciated the terms of the tender and the guidelines and had come to the clear finding that there exists conflict of interest between SRPL and Syona Spa, which stands fortified by the materials available on record, the mere fact that on the day when the bid was submitted there was no relationship between SRPL and Syona Spa and, therefore, SRPL would not be aware of the persons, who had submitted the bid and had not given the necessary details in the bid cannot be a ground to interfere with the order passed by the 2nd respondent, when it is the specific case of the 2nd respondent that not only there is infraction of clauses 9 (a)(i) and (v) and 10 (iv) and (vi), but there exists a modus between SRPL and Syone Spa through Karan Singh in the bidding process, leading to rigging the bid and the modus having been carried out in other tenders relating



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to other Airports, the stand of SRPL that it would not be aware of the persons, who have submitted their bids pales into insignificance.

76. Further, it is also to be pointed out that it is the specific case of the respondents that for passing the impugned order of debarment and cancellation of tender, that there exists a modus operandi between SRPL and Syona Spa and that SRPL and Syona Spa, in a cartel formation, had worked hand in glove with its clandestine operation by duping the respondents and had secured many bids, which stand of the respondents cannot also be totally negated as the discussion made above reveals a sinister operation having been carried on by SRPL and Syona Spa and further the complaint not being an anonymous complaint, but is a complaint, which has been written by an individual, who is closely associated with the higher echelons in the management of SRPL, which has even been admitted by SRPL, the stand of SRPL that the said debarment is wholly arbitrary, capricious, perverse and illegal does not merit acceptance.

77. Insofar as the claim of the petitioners that there is violation of principles of natural justice as an opportunity of personal hearing has not been



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given before passing the said orders, it is to be pointed out that opportunity of personal hearing is not required in all cases, when the allegations are on the basis of documents. The explanation offered by the petitioners coupled with the documents placed would be suffice for the respondents to come to a conclusion with regard to the culpability of the petitioners and there arises no necessity for the respondents to grant an opportunity of personal hearing. So long as the explanation sought for is complete and the findings are based only on documents, grant of personal hearing would not in any manner further the case of the petitioners. The claim of the petitioners that there is violation of principles of natural justice in not granting an opportunity of personal hearing is nothing but a futile attempt by the petitioners to hold on to the last straw to defeat the debarment proceedings issued by the respondents. Such an attempt on the part of the petitioners cannot be allowed, more so, when it involves the exchequer and when the petitioners, by their clandestine act, have tried to rig the bidding process, necessarily a duty is cast on the respondents to take action, which has been done in the instant case, which cannot be said to be illegal and arbitrary.



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78. Further, the stand of the petitioners that to proceed with debarment, there should be compliance of Chapter 8.12 of the Commercial Manual, 2019 and as the matter was not placed before the Local Commercial Advisory Committee for consideration and that no opportunity of personal hearing having been granted to the petitioners, there is violation of principles of natural justice, such a contention is advanced cannot be countenanced, as, as has been rightly pointed out on behalf of the respondents, Clause 8.12 uses the terms “concession/license”, which clearly evidences that the said clause would become applicable only when tender is awarded, which is not the case on hand as the petitioners do not fulfil the said criterion. SRPL and Syona were debarred at the stage of evaluation of technical bids and they not being concessionaires/licencees, application of Chapter 8.12 of the Commercial Manual, 2019, does not arise and, therefore, non-placing of the matter before the Local Commercial Advisory Board will not arise.

79. Insofar as the stand of Syona Spa that it cannot be termed to be a bidder as their bid was not even accepted and, therefore, their debarment would not arise, is wholly misconceived. The floating of e-Tender is an invitation to



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submit a bid by an entity, and Syona Spa having submitted its bid, would fall within the ambit of bidder even in the literal sense of the word. Merely because certain conditions prescribed therein had not been fulfilled would not be a ground to hold that Syona Spa is not a bidder. The prescription of additional conditions is only for the purpose of accepting the bid and mere non-acceptance of the bid for other reasons would not deem the person, who had submitted the bid to be not a bidder. Giving any such restricted meaning, as canvassed by the petitioner, would be wholly impermissible and against the literal meaning of the term "*bidder*" and mere non-fulfilment of the terms of the notice inviting e-Tender cannot take the bid submitted by Syona Spa outside the realm of bid and the person, who had submitted the bid from the realm of bidder, which would be an erroneous interpretation of the term '*bidder*'.

80. Further, as pointed out by the learned senior counsel for the respondents, the term "*bidder*" is not defined in the notice inviting tender. Therefore, referencing the term from Blacks' Law Dictionary 4th Edition, where "*bidder*" is defined as "*one who makes a bid*", Syona having submitted its bid, though it has come to be rejected for non-submission of certain documents and



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monetary materials, would have to be construed as a bidder and, therefore, Syona would have to be treated as a bidder for all purposes. Therefore, the contention of Syona Spa that it is not a bidder in the absence of payment of license fee is misconceived and the same deserves to be dismissed.

81. Though decisions have been placed before this Court on behalf of the petitioners to substantiate their contentions, the said decisions would not be applicable to the facts of the present case, as they stand on a totally different footing and the same cannot be pressed into service for adjudicating the present issued.

82. For the reasons aforesaid, this Court does not find any infirmity with the orders passed by the 2nd respondent and there being no merits in the present writ petitions, the same are dismissed. Consequently, connected miscellaneous petitions are closed. There shall be no order as to costs.

30.09.2024

Index : Yes / No



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To

1. The Chairman
Airports Authority of India
Safdarjung Airport, Rajiv Gandhi Bhawan
New Delhi 110 001.

2. The Airport Director
Airport Authority of India
Chennai International Airport
Chennai 600 027.



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M.DHANDAPANI, J.

GLN

**PRE-DELIVERY ORDER IN
W.P. NOS. 23446 &
26896 OF 2024**



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**Pronounced on
30.09.2024**