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

+ **W.P.(C) 193/2024 & CM APPL. 888/2024**

SHIVA INDUSTRIES

..... Petitioner

Through: Mr. Ashish Lal and Mr. Raghav
Parwatiyar, Advocates

versus

THE SECRETARY MINISTRY OF DEFENCE & ORS.

..... Respondents

Through: Ms. Shiva Lakshmi, CGSC with Mr.
Madhav Bajaj, Mr. Vishal Singh and
Mr. Tarveen Singh Nanda, Advocates

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

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08.01.2024

CM APPL. 887/2024 (for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

W.P.(C) 193/2024 & CM APPL. 888/2024

1. Present writ petition has been filed by the Petitioner challenging the rejection letter dated 30th December, 2023 with respect to the Tender Enquiry dated 29th September, 2023 and to further direct the Respondent to allow relaxation of past performance and turnover for MSE as per Policy Circular dated 10th March, 2016 in order to enable the Petitioner to participate in the bid process.



2. Learned counsel for the Petitioner states that the Petitioner is a partnership firm, MSE in nature and is in business of manufacturing and supplying of various made-up textiles, metal products, plastic products, etc., and is duly registered under MSME.
3. Learned counsel for the Petitioner states that the Respondent No. 3 (Ministry of MSME) under start-up India initiative vide Policy Circular dated 10th March, 2016 has relaxed the norms of prior experience and prior turnover with respect to start ups and Micro and Small Enterprises in public procurement. He relies upon paragraph 7 of the letter dated 29th September, 2023 issued by Respondent No.2 inviting the bids to contend that Petitioner is entitled to relaxation of the condition of prior turnover and prior experience.
4. Learned counsel for the Petitioner states that the Respondent No. 2 has illegally and arbitrarily disqualified the Petitioner for non-submission of past performance certificate and Transfer of Technology (TOT) from DRDO vide e-mail dated 30th December, 2023 despite the fact that the Petitioner is a MSE and is exempted from the clauses of prior turnover-prior experience as per above policy circular and further the Petitioner is TOT holder for NBC Suits permeable MK-V from DRDO.
5. He states that Respondent No. 1 being vested with the power of general superintendence and direction and control of Indian Air Force, has failed to reply to Petitioner's representation dated 30th December, 2023 to open his financial bid.
6. Learned counsel for the Respondent, who appears on advance notice states that this Court has no territorial jurisdiction to entertain and decide the present petition.



7. She emphasises that the policy circular dated 10th March, 2016 states that the Ministries/Departments/PSLs 'may' relax and not 'shall' relax the conditions of prior turnover and prior experience. She contends that in the present RFP, the turn over and prior experience conditions have not been relaxed.

8. She, however, states that without prejudice to the aforesaid, the Respondent No. 2 shall dispose of the Petitioner's representation dated 30th December, 2023.

9. Keeping in view the aforesaid, this Court disposes of the present writ petition with a direction to Respondent No. 2 to decide the Petitioner's representation dated 30th December, 2023 by way of reasoned order within a week, without prejudice to the rights and contentions of either of the parties including the plea of territorial jurisdiction.

10. This Court clarifies that it has not commented on the merits of the controversy. The rights and contentions of all the parties are left open.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

JANUARY 8, 2024/rhc