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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
 + W.P.(C) 12393/2023, CM APPL. 48901/2023 & CM APPL. 48902/2023
 NUVIA INDIA PRIVATE LIMITED Petitioner
 Through: Mr. Anshuman Sharma and Mr. Azad Ahmed, Advocates

versus

UNION OF INDIA & ORS. Respondent
 Through: Mr. Vikram Jetly, CGSC with Ms. Shreya Jetly, Advocate for R-1.
 Mr. J.K. Sharma with Mr. Hitesh Kumar and Mr. Abhishek Bhardwaj, Advocates for R-3 and 4
 Mr. A.P. Singh with Ms. Akshada and Ms. Shrinkhla Tiwari, Advocates for R-3

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+ W.P.(C) 12397/2023, CM APPL. 48914/2023 & CM APPL. 48916/2023
 NUVIA INDIA PRIVATE LIMITED Petitioner
 Through: Mr. Anshuman Sharma and Mr. Azad Ahmed, Advocates

versus

UNION OF INDIA & ORS. Respondent
 Through: Mr. Vikram Jetly, CGSC with Ms. Shreya Jetly, Advocate for R-1.
 Mr. J.K. Sharma with Mr. Hitesh Kumar and Mr. Abhishek Bhardwaj, Advocates for R-3 and 4
 Mr. A.P. Singh with Ms. Akshada and Ms. Shrinkhla Tiwari, Advocates for R-3



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Date of Decision: 15th January, 2024**CORAM:****HON'BLE THE ACTING CHIEF JUSTICE****HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA****J U D G M E N T(ORAL)****CM APPL. 48902/2023 (for exemption) in W.P.(C) 12393/2023****CM APPL. 48916/2023 (for exemption) in W.P.(C) 12397/2023**

Allowed, subject to just exceptions.

Accordingly, these applications are disposed of.

W.P.(C) 12393/2023 & CM APPL. 48901/2023**W.P.(C) 12397/2023 & CM APPL. 48914/2023**

1. These writ petition(s) filed under Article 226 of Constitution of India impugn the entire tender process pertaining to two (2) Tenders floated by the Respondent No.2, Government-e-Marketplace ('GeM'), under the aegis of Respondent No.1 i.e. Department of Atomic Energy, viz. (i) Tender No. GEM/2023/B/1744514 dated 01.08.2023 (in W.P.(C) 12393/2023) and (ii) Tender No. GEM/2023/B/3699025 dated 15.07.2023 (in W.P.(C) 12397/2023) [collectively referred to as ('Tenders')].
2. The Respondent No.3 i.e., Nuclear Power of Corporation of India Ltd. invited tenders for 'Maintenance and Testing of Mechanical Snubbers' with respect to the nuclear power plant.
3. The Respondent No.4 i.e., M/s Sanav Energy (OPC) Pvt. Ltd., has been designated as the lower bidder ('L1 bidder') for the said Tenders and was issued Letter of Award ('LoA') dated 16.09.2023.
4. The Petitioner has filed the present petitions being aggrieved by the alleged actions of Director of Respondent No.4, i.e. Mr. Nirmal Kant Jha,



inasmuch as the said individual being an erstwhile employee of the Petitioner company has submitted the bids to the Tenders on behalf of Petitioner on 09.08.2023 and 17.08.2023. It is stated that it now appears that Mr. Nirmal Kant Jha simultaneously submitted the bids for the same Tenders on behalf of his own One Person Company ('OPC') i.e., Respondent No.4, and thus, vitiated the entire tender process due to his access to Petitioner's commercially sensitive information. The Petitioner has relied upon an e-mail dated 17.08.2023, alleged to have been issued by Mr. Nirmal Kant Jha, in support of its contentions.

5. This Court vide order dated 20.09.2023 issued notice in these petition(s) and directed Respondent Nos. 1 to 3 to ensure that no work is carried out by Respondent No.4 till the next date of hearing. The said interim order has continued and has remained in operation.

6. The Respondent No.4 filed its counter affidavit to these petition(s), denying the allegations raised therein, inter alia, on the ground that Mr. Nirmal Kant Jha could not have applied for Tenders on behalf of Petitioner on 09.08.2023 and 17.08.2023, as he had tendered his resignation to the Petitioner on 20.07.2023. It is stated that Mr. Nirmal Kant Jha was thereafter, serving his notice period of thirty (30) days and as per the Petitioner's policy, no confidential information is to be shared with an employee serving notice period. It is also asserted that the bid for the Tenders on behalf of Petitioner was submitted by one of their employees i.e., Mr. Prashant, and not Mr. Nirmal Kant Jha, who was undergoing his notice period. The Respondent No. 4 has disputed issuance of the e-mail dated 17.08.2023.



7. The Respondent No.1 and Respondent No.3 i.e., Nuclear Power of Corporation of India Ltd., who is the tenderer, have filed their common counter affidavit(s) to these petition(s). It is submitted that the petition(s) do not enlist any fault of on behalf of said Respondents and the issue is inter-se the Petitioner and its erstwhile employee, Mr. Nirmal Kant Jha. It is stated that the Respondent No.3 has chosen the Respondent No.4 as the L1 bidder only on the basis of price criteria. It is stated that the said Respondent has first qualified the technical bid criteria and he was found eligible.

8. In the aforesaid facts, it was undisputed that on the date of submissions of the bid by Respondent No. 4, Mr. Nirmal Kant Jha was serving the notice period with the Petitioner, though there was a dispute with respect to participation, if any, of Mr. Nirmal Kant Jha on behalf of the Petitioner in submission of the bid.

9. These petition(s) were heard at length on 12.01.2024 and on the said date were adjourned at the request of the learned counsel for Respondent No.3 so as to enable him to seek instructions in the petition(s).

10. Today, when the matters were taken up, learned counsel for Respondent No.3 states that, without expressing any opinion on the allegations made in the writ petition(s), the said Respondent has decided to recall the impugned Tenders and nullify the LoA issued in favour of Respondent No.4. He states that, in fact, during the pendency of these petitions, there are additional works which are required to be tendered and therefore, the Respondent Nos. 1 and 3 have decided to call for a fresh tender with the additional scope of work. He states that both the Petitioner and Respondent No.4 will be entitled to participate in the said fresh tender in accordance with law.



11. In reply, learned counsel for Respondent No.4 states that he has no objection to the said course of action proposed by Respondent Nos. 1 and 3. He states that Respondent No.4 will participate in the fresh tender.

12. Similarly, learned counsel for the Petitioner states that he has no objection to the course of action proposed by Respondent Nos. 1 and 3. He states that the Petitioner as well will participate in the fresh tender. He states, however, the Petitioner reserves its right to pursue the complaint dated 14.09.2023 filed by it against Respondent No.4 before Deputy Commissioner of Police, South East District, New Delhi, and SHO, P.S. Badarpur, Delhi.

13. This Court has considered the submissions of the learned counsel for the parties.

14. The present petition(s) have been filed challenging the award of tender by Respondent Nos. 1 and 3 in favour of Respondent No.4 in pursuance to Tender No. GEM/2023/B/1744514 dated 01.08.2023 and Tender No. GEM/2023/B/3699025 dated 15.07.2023 ('Tenders')

15. The submissions of the learned counsel for Respondent Nos. 1 and 3 that they shall recall the aforesaid Tenders and the LoA dated 16.09.2023 is taken on record and they are held bound down by the same. In view of the above, the prayers sought in these petition(s) stand satisfied and no further directions are required to be issued.

16. It is clarified that both Petitioner as well as Respondent No.4 shall be entitled to participate in the fresh tender called for by the Respondent Nos. 1 and 3. It is further clarified that Respondent Nos. 1 and 3 will be at liberty to include additional works in the fresh tender proposed to be called. It is also



clarified that Petitioner shall be at liberty to pursue its complaint dated 14th September, 2023.

17. This Court further clarifies that the aforesaid directions have been issued with the consent of the parties and this order is not an expression on the merits of the allegations raised by the Petitioner against Respondent No.4. The allegations raised by the Petitioner are contested by Respondent No.4 and therefore, this Court has not adjudicated upon the said allegations in these writ proceedings.

18. With the aforesaid directions, the present petition(s) along with pending applications stand disposed of. Interim order dated 20.09.2023 stands vacated.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

JANUARY 15, 2024/msh/aa

Click here to check corrigendum, if any