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

+ **W.P.(C) 12026/2024, CM APPL. 50042-50044/2024**

**M/S RAKESH GUPTA JV AND GLAZETECH INDUSTRIES
PRIVATE LIMITED**

.....Petitioner

Through: Mr. Uday Gupta, Senior Advocate
with Ms. Shivani Lal, Mr. Anurag
Aggarwal, Mr. Hiren Dasan, Ms.
Sanam Singh, Mr. Unmukt Gera, Ms.
Yogamaya M.G., Advocates

versus

**NATIONAL HIGHWAYS LOGISTICS MANAGEMENT LIMITED
& ANR.**

.....Respondents

Through: Mr. Santosh Kumar, SC with Mr.
Aditya Raman, Advocate for NHAI
Ms. Mehak Nakra, ASC for GNCTD
with Mr. Aabid, Mr. Mayank, Mr.
Krishna, Ms. Saloni, Advocates
Mr. Mrinmay Bhattmewara, Advocate
for R-2.

**CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA**

**ORDER
11.09.2024**

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1. This is the second instance where the Petitioner has approached this Court invoking Article 226 of the Constitution of India, 1950¹ in relation to Letter of Award bearing No. NHLML/HQ/WSA/DME/DLK-JV/23-

¹ "Constitution"



24/EFILE 239776/2978 dated 6th July, 2024,² issued by Respondent No. 1 in favour of Respondent No. 2 for bundle DLK-2.

2. The Petitioner contends that the award is arbitrary, unreasonable and irrational and therefore liable to be set aside. To substantiate this claim, the Petitioner raises an issue concerning interpretation of Clause 6.1 (a) of the Request for Proposal.³ This very issue had been earlier raised in W.P.(C) 10204/2024, where the Petitioner impugned the same Letter of Award. The matter was considered by a Division Bench of this Court, which disposed of the petition *vide* order dated 25th July, 2024, with the following directions:

“1. After some arguments, learned senior counsel for the petitioners wishes to withdraw the present writ petitions with liberty to file appropriate proceedings in accordance with law.

2. With the aforesaid liberty, present writ petitions along with the applications are disposed of. The rights and contentions of all the parties are left open.”

3. The Petitioner contends that, pursuant to the liberty granted by the Division Bench, they submitted a representation dated 27th July 2024,⁴ highlighting their concerns regarding the interpretation of Clause 6 of the RFP. The Petitioner argues that Respondent No. 1 was obliged to duly consider and decide on this representation. However, Respondent No. 1's failure to address the issues raised therein has compelled the Petitioner to seek the Court's intervention through this writ petition.

4. The instant writ petition seeks limited prayer to the following effect:

“a) Issue a writ of mandamus or any other appropriate writ, order or

² “Letter of Award”

³ “RFP”

⁴ “Petitioner's Representation”



direction in the nature of mandamus directing the Respondent No. 1 – National Highways Logistics Management Ltd. to decide the Representation dated 27.07.2024 filed by the Petitioner as expeditiously as possible and preferably within a fixed timeframe as directed by this Hon'ble Court; b) Any other relief, order or directions which this Hon'ble Court considers just and fit in the facts and circumstances of the case, may also be passed in the interest of justice.”

5. The relief sought by the Petitioner—specifically, a direction to Respondent No.1 to decide on their representation—might seem straightforward, and this Court has, on many occasions, issues such directions where representations are undecided. However, it is crucial to consider the context in which such directions are issued. In this instance, the Petitioner’s right to make a representation does not arise from any statutory provision or any contractual obligation that binds the Respondent to entertain such a request. Therefore, the Court must carefully consider whether it is appropriate to grant a direction for the Respondent to decide the representation, particularly when there is no underlying legal duty compelling the Respondent to do so.

6. During the initial hearing held on 30th August, 2024, Mr. Uday Gupta, Senior Counsel for the Petitioner, argued that the liberty to make a representation was implicitly granted by the Division Bench in its previous order. However, upon reviewing that order, this Court could not identify any such explicit liberty being granted. Consequently, the Court decided to adjourn the proceedings, allowing the Petitioner to seek clarification from the Division Bench regarding this matter.

7. When the matter was taken up again today, it became evident that the



Petitioner had not sought any clarification from the Division Bench. Mr. Gupta explained that, upon further consideration, the Petitioner believes that no clarification is necessary since their request is solely for the disposal of their representation.

8. In light of these submissions, the Court must consider whether a direction to Respondent No. 1 to decide the Petitioner's representation is warranted. It is pertinent to note that the Petitioner, having participated in the tender process, was unsuccessful, while Respondent No. 2 emerged as the successful bidder and was consequently awarded the Letter of Award on 6th July, 2024.

9. In these circumstances, directing Respondent No. 1 to consider the Petitioner's representation is likely introduce further uncertainty into the tender process. The Petitioner, having already unsuccessfully contested the award in favour of Respondent No. 2, cannot now seek to reopen the matter by first submitting a representation, then requesting a mandamus to compel a decision on that representation, and subsequently attempting to create a new cause of action for judicial intervention. Such an approach would compromise the finality of the previous proceedings and unnecessarily disrupt the settled tender process.

10. In view of the foregoing, and without delving into the merits of the case, the present writ petition is dismissed as not maintainable. The Court is of the opinion that this petition constitutes an abuse of the legal process, which would ordinarily justify the imposition of costs. However, considering the specific circumstances of the case, the Court refrains from imposing any costs on the Petitioner.

11. With the above directions, the present writ petition is disposed of



along with pending applications.

SANJEEV NARULA, J

SEPTEMBER 11, 2024/ab