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

+ **W.P.(C) 14156/2024**

BAG POLY INTERNATIONAL PVT. LTD.Petitioner

Through: **Mr. Jitender Chaudhary, Ms. Aditi Singh and Ms. Akansha Bhatia, Advocates.**

versus

UNION OF INDIA & ORS.Respondents

Through: **Mr. Om Prakash and Mr. Pankaj Kumar, Advocates for R-2 to 4 with Mr. Adarsh Gupta, MG and Mr. S. Vijay Kumar, DGM. Mr. Anil Kumar Saxena, SPC with Mr. Rajendra Rawat, GP for R-1. Mr. Anurag Ahluwalia, CGSC with Mr. Tarveen Singh Nanda, Govt. Pleader for Respondents, UOI.**

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

ORDER

% 28.11.2024

CM APPL. 69608/2024 (for early hearing)

1. For the grounds and reasons stated in the application, the same is allowed and with the consent of the counsels, the main petition is taken up for hearing today itself.

2. The application is disposed of.

W.P.(C) 14156/2024 & CM APPL. 59259/2024

3. The Petitioner has filed the present writ petition impugning



communication dated 16th January, 2023 issued by Respondent No. 3, which reads as follows:

No. FCI HQ-Pur028(11)/1/2022-PUR DATED: 16.01.2023

1. M/s Shivalik Agro Poly Products Ltd., Plot no. 1, Sector – 3 Industrial Area, Parwanoo District, Solan -173220, Himachal Pradesh
2. M/s Bagpoly International Pvt. Ltd., 95 K.M Stone, Village Alipur Khalsa Road, Post box 30, District Karnal-132114, Haryana
3. M/s Climax Synthetics Pvt. Ltd. 11, Pollock Street, room no. 8 C, 8th Floor, Kolkata, West Bengal

Sub: Forfeiture of EMD deposited against the tender no. Pur/14(3)/2011/TE/LDPE dated 11.04.2012 amounting Rs. 31 lacs each - reg.

Ref: TE no. Pur/14(3)/2011/ TE/LDPE dated 11.04.2012

Sir,

Whereas, FCI had floated a tender inquiry no. Pur/14(3)/2011/ TE/LDPE dated 11.04.2012 for purchase of LDPE Covers and that tender was awarded to three suppliers Namely M/s Shivalik Agro Poly Products Ltd., M/s Bagpoly International Pvt. Ltd., & M/s Climax Synthetics Pvt. Ltd.

And whereas, suspecting cartelization among the successful bidders FCI made a reference to the Hon'ble Competition Commission of India (CCI) for investigation which vide its order dated 29.10.2021 has found suppliers of LDPE Covers involved in the cartelization and thereby violating tender's terms & conditions.

Therefore, consequent upon findings of the Hon'ble CCI, the matter has been examined by FCI and the competent authority has decided to forfeit the EMD amounting Rs. 31 lacs each of your firm lying at FCI headquarters deposited against tender enquiry no. Pur/14(3)/2011/ TE/LDPE dated 11.04.2012 as per clause no. 20 of Detailed N.I.T, Clause 13 (F) of MTF & Clause 25 of special instruction to tenderers.

This issues with the approval of the competent authority.

Yours Faithfully

सोमोदिनी लकड़ा

सहा. महाप्रबंधक (खरीद)

कृते कार्यकारी निदेशक (खरीद)

4. Under the aforementioned impugned communication, competent authority of Food Corporation of India¹ has decided to forfeit the Earnest Money

¹ "FCI"



Deposit² amount of INR 31 lakhs deposited by the Petitioner, which was lying with the FCI against tender enquiry No. Pur/14(3)/2011/TE/LDPE dated 11th April, 2012 as per Clause No. 20 of detailed NIT, Clause 13 (F) of MTF, and Clause 25 of special instruction to tenderers.

5. The Petitioner's grievance is that the action of forfeiture of the EMD would also deprive them of the right to participate in future tenders issued by the FCI. In support of this claim, the Petitioner has placed reliance on the conditions of the tender issued by the FCI and other departments.

6. During the course of submissions, Mr. Jitender Chaudhary, counsel for the Petitioner, on instructions, states that in so far as the challenge to the forfeiture of the EMD is concerned, the Petitioner would like to explore other legal options and seeks leave to withdraw this relief. However, he requests this Court to clarify that the forfeiture of EMD would not prevent the Petitioner from participating in any future contracts issued by the FCI or other departments.

7. Regarding Petitioner's participation in future tenders, Mr. Om Prakash, counsel for FCI, states that the Petitioner has, in fact, participated in other tenders issued by FCI, Haryana on 10th February, 2024. Therefore, the Petitioner's understanding regarding deprivation of right of participation in future contracts is incorrect. He further submits that the forfeiture of the EMD of the Petitioner was effected pursuant to an order dated 29th October, 2021, passed by the Competition Commission of India, which is annexed as Annexure P-6 to the writ petition.

8. In light of the foregoing, since the issue of the forfeiture of the EMD is not being examined by this Court, the Court refrains from making any

² "EMD"



observations on the matter. All rights and contentions of the parties to that extent are left open. The Petitioner is granted liberty to take recourse to appropriate legal remedies, in this regard, in accordance with law.

9. As far as the Petitioner's right of participation in future tenders is concerned, in light of the statement made by the counsel for FCI as well as the fact that no show cause notice was issued to the Petitioner prior to the impugned order, it is clarified that the Petitioner shall not be debarred from participating in future tenders issued by FCI or other departments solely on the ground of forfeiture of the EMD under the impugned order. The Petitioner's bid shall be evaluated on its own merits, in accordance with law.

10. With the above directions, the petition is disposed of along with pending application(s).

11. The date fixed, *i.e.*, 9th January, 2025 stands cancelled.

SANJEEV NARULA, J

NOVEMBER 28, 2024

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