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

\+ W.P.(C) 2724/2025 & CM APPs.12907/2025, 12908/25, 12909/25

NEW GEN IT TECHNOLOGIES LIMITED .....Petitioner

Through: Mr. Pranav Sachdeva, Mr. Jatin Bhardwaj and Mr. P. Rohit Ram, Advs.

versus

AIRPORT AUTHORITY OF INDIA AND ANR. .....Respondents

Through: Ms. Shweta Bharti, Mr. Rohit Jolly, Ms. Bheeni Goyal, Advs. for R2

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

O R D E R

% **04.03.2025**

1. The present petition has been filed by the petitioner being aggrieved by the suspension of its Government e-Marketplace (GeM) Account by the respondent no.2 (GeM) on 14.02.2025 for a period of 45 days from 14.02.2025 to 31.03.2025 and seeking that the said suspension be revoked.

2. The petitioner is a company engaged in providing IT solutions and services such as IT infrastructure managed services, cyber security, application services including tools and automation to businesses across a wide range of industries.

3. The petitioner had participated in a bid bearing Bid Document No. GEM/2024/B/4798285 for ‘expansion of AAI LAN in the Annexe offices of Rajiv Gandhi Bhawan Air India buildings’ opened by the Airports Authority of India (AAI / respondent no.1). The said Bid Document, *inter alia,* made a provision for giving preference to Class 1 local suppliers of ‘Make in India’

products. In order to avail the same, a bidder was required to provide proof of the percentage of 'local content' and the details of 'local value addition' in its products. The relevant provision reads as under –

> "*4. Preference to Make In India products (For bids < 200 Crore):Preference shall be given to Class 1 local supplier as defined in public procurement (Preference to Make in India), Order 2017 as amended from time to time and its subsequent Orders/Notifications issued by concerned Nodal Ministry for specific Goods/Products. The minimum local content to qualify as a Class 1 local supplier is denoted in the bid document. If the bidder wants to avail the Purchase preference, the bidder must upload a certificate from the OEM regarding the percentage of the local content and the details of locations at which the local value addition is made along with their bid, failing which no purchase preference shall be granted. In case the bid value is more than Rs 10 Crore, the declaration relating to percentage of local content shall be certified by the statutory auditor or cost auditor, if the OEM is a company and by a practicing cost accountant or a chartered accountant for OEMs other than companies as per the Public Procurement (preference to Make-in-India) order 2017 dated 04.06.2020. Only Class-I and Class-II Local suppliers as per MII order dated 4.6.2020 will be eligible to bid. Non - Local suppliers as per MII order dated 04.06.2020 are not eligible to participate. However, eligible micro and small enterprises will be allowed to participate. The buyers are advised to refer the OM No.F.1/4/2021-PPD dated 18.05.2023. OM_No.1_4_2021_PPD_dated_18.05.2023 for compliance of Concurrent application of Public Procurement Policy for Micro and Small Enterprises Order, 2012 and Public Procurement (Preference to Make in India) Order, 2017.*"

4. The petitioner submitted its bid documents on 01.04.2024 along with a 'local content declaration' to avail the above said preference/criteria. After the technical qualification round which took place from 15.05.2024 to 20.05.2024, while the petitioner company was found to be technically qualified, it was only ranked as 'L2' in the tender process.

5. It is stated that the petitioner was given an opportunity by AAI to match the 'L1' rates by way of a 'counter offer' and consequently be ranked as 'L1' on account of the Make in India Class 1 preference / criteria. The petitioner

was able to match the 'L1' rates and thereby, accepted the counter offer. Thereafter, on 27.05.2024, the petitioner was called upon by the AAI to provide the necessary declarations and calculations in furtherance of satisfying the 'Make in India (MII) Class 1' preference / criteria and the same were submitted by the petitioner on 30.05.2024.

6. On 11.07.2024, a show cause notice came to be issued by AAI on account of some discrepancies in the documents submitted by the petitioner for availing the 'Make in India (MII) Class I supplier' preference / criteria in terms of the bid document. The same reads as under –

> *"Dear Sir,*
> *WHEREAS the Airports Authority of India (AAI) has been engaged in a procurement process for the work- "Expansion of AAI in the Annexe offices of Rajiv Gandhi Bhawan Air India Buildings." As per the GeM bid no. GEM/2024/B/4798285 dated 19.03.2024, in which your company has participated.*
> *AND WHEREAS it has been observed that your company has submitted an undertaking in the bid for claiming the Make in India (MII) purchase preference for Class-1 supplier. When justification was sought to substantiate the claim for MII Class-1 purchase preference, it is observed that the same is meant for the installation and services which cannot be considered as qualifying criteria in accordance with MII Policy guidelines. (please refer-DPIIT OM No. P-45021/102/2019-BE-II Part(1) (E-50310) dated 04.03.2021 para(2) and para(3)*
> *AND WHEREAS such an act of providing misleading documentation is seen as a violation of the GeM conditions and undermines the integrity of the procurement process of GoI.*
> *NOW THEREFORE in view of submission of misleading documentation for claiming MII Class-1 purchase preference, a show cause notice is hereby issued to explain why action should not be initiated against you besides lodging a complaint to GeM authorities for the submission of aforesaid misleading documentation with intent of gaining advantage in the said tender issued by AAI as per the GeM guidelines, which may include debarment from further participation in any tenders issued by the Airports Authority of India.*
> *Failure to respond within 7 days of issue of this notice will be construed as an acceptance of the aforesaid allegation. Nevertheless, AAI is constrained to inform the matter to GeM authorities to take necessary action at their end."*
> *Thanking you.*

7. Thereafter, the petitioner sought to resolve the matter with the AAI,

and submitted a response letter dated 17.07.2024 stating that the error in its documents was inadvertent, as no further communication was received from the respondent no.1 in relation to the said incident.

8. It is noticed from the aforesaid show cause notice dated 11.07.2024 that a complaint had also been lodged with GeM by AAI.

9. On 18.11.2024, an incident came to be reported against the petitioner on the GeM Portal for the reason "Mis-declaration/false declaration related to availability of required certifications". As reflected from a screenshot of the 'incident responses' on the petitioner's GeM Portal Account [appended as Annexure P-11], GeM called upon AAI to either close the incident if it had been resolved and if not, then escalate the same. In response, AAI escalated the incident to GeM and requested for an 'action taken report' on the petitioner for filing a false declaration.

10. Consequently, a show cause notice dated 10.12.2024 came to be issued by GeM on account of the petitioner having violated the Government e-Marketplace Incident Management Policy (hereinafter '*the GeM Policy*') by having "*intentionally submitted fake certificates or misdeclaration related to availability of required certifications*".

11. The petitioner responded to the same on 10.12.2024 by stating that it had already submitted all the documents and that the incident had been cancelled by AAI on account of a mutual understanding between the petitioner and AAI. However, the AAI addressed a comment to GeM on the GeM Portal itself, vaguely stating that the petitioner's response was "not appropriate and incorrect". Thereafter, on 16.12.2024, the petitioner again called upon the respondent no.1 to assist in closing of the incident as the petitioner had already admitted to the inadvertent error related to the

calculations for availing the ‘MII’ criteria.

12. Subsequently, on 14.02.2025, without giving an opportunity of hearing, the petitioner’s GeM account came to be suspended for the period from 14.02.2025 to 31.03.2025. The same was reflected on the petitioner’s GeM Portal Account and reads as under–

> “*Your account has been suspended from 14/02/2025 to 31/03/2025 due to Mis-declaration / false declaration related to availability of required certifications.*”

13. Thereafter, even though a request for mutual resolution was raised by the petitioner, the same could not be resolved.

14. Consequently, an appeal dated 23.02.2025 was filed by the petitioner before the Appellate Authority [specified under Clause 8 of the Government e-Marketplace Incident Management Policy] against the suspension of the petitioner’s GeM Account. The same is pending consideration.

15. Learned counsel for the petitioner submits that the petitioner’s GeM Account has been suspended without giving an opportunity of hearing to the petitioner and on the basis of an incident with the respondent no.1 which has since been resolved.

16. Learned counsel for the petitioner further submits that the suspension of the petitioner’s GeM Account has far reaching ramifications inasmuch as the same also prevents the petitioner from accessing the GeM portal and raising bills with respect to other ongoing contracts and bids.

17. Issue notice to respondent no.2.

18. Learned counsel, as aforesaid, accepts notice on behalf of the respondent no.2.

19. Learned counsel for the respondent no.2 submits, on instructions, that

the appeal filed by the petitioner before the Appellate Authority is under consideration.

20. In the circumstances, and with consent of respective counsel, it is directed that the Appellate Authority of the respondent no.2 which is seized of the appeal filed by the petitioner, shall decide the same within a period of two weeks. It is made clear that the Appellate Authority shall dispose of the aforesaid appeal after ensuring that a reasonable opportunity of hearing is granted to the petitioner and after considering the contentions of the petitioner.

21. The present petition is disposed of in the above terms. Pending applications also stand disposed of.

SACHIN DATTA, J

MARCH 4, 2025