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

\+ W.P.(C) 6011/2025 & CM APPL. 27510/2025

RNR CAB SOLUTIONS PVT. LTD. .....Petitioner

Through: Mr. Mohit Jasuja, Mr. Shaun Jomo and Mr. Mohd. Zaid Suleman, Advocates.

versus

NHAI .....Respondent

Through: Mr. Santosh Kumar, Standing Counsel with Mr. Kartik Gupta, Ms. Nidhi Rani, Mr. Vaibhav Mishra, Mr. Adithya Ramani and MR. Devansh Malhotra, Advocates for NHAI.

% ***Date of Decision: 13.05.2025***

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G E M E N T

TUSHAR RAO GEDELA, J: (ORAL)

1. Present petition has been filed under Article 226 of the Constitution of India, 1950 seeking quashing of the debarment order dated 14.02.2025 passed by respondent /NHAI and further directing respondent no.2/NHAI to consider the petitioner's H-1 bid submitted in response to the tender dated 06.03.2025.

2. It is the case of the petitioner that on 18.11.2024, an employee of the petitioner company inadvertently uploaded an excel sheet reflecting the annual remittance amount of Rs.26,38,95,009/- in the column meant for daily remittance, which was Rs.7,23,000/-. This error resulted in an abnormally high bid. Upon discovering the inadvertent error, the petitioner

immediately brought it to the notice of respondent/NHAI by way of a letter dated 19.11.2024, explaining the unintentional nature of the mistake and requesting that the said bid may not be considered. The petitioner also gave assurances that no such error would occur in future and requested that no coercive action be taken, including annulment or cancellation of the bid.

3. It is the case of the petitioner that in the meanwhile, respondent/NHAI floated a fresh tender for another toll fee plaza i.e., Saliwada Toll Plaza. The petitioner participated in the said tender and emerged as the H-1 bidder. However, on 03.02.2025, respondent/NHAI issued a show cause notice to the petitioner calling upon it to deposit a penalty equivalent to bid security, amounting to Rs.10 lakhs, citing misconduct in quoting an abnormally high bid.

4. In pursuance to the aforesaid notice, on 03.02.2025, the petitioner deposited the penalty amount of Rs.10 lakhs. However, on 14.02.2025, respondent/NHAI issued a list of debarred bidders, which enlisted the petitioner as well depicting debarment period of three months. It is stated that this debarment was imposed despite the petitioner having been declared as the H-1 bidder on 24.01.2025 for the Saliwada Toll Plaza tender. Instead of issuing the Letter of Award (LOA), respondent no.2/NHAI re-issued the tender for the same fee plaza on 20.02.2025 for engagement of user fee collection agency for Saliwada Fee Plaza at km 13,440 for two lanes with paved shoulders for rehabilitation and upgradation of Jabalpur Mandla in Madhya Pradesh.

5. It is further submitted that the petitioner approached the Punjab and Haryana High Court at Chandigarh by filing a writ petition bearing CWP No. 5951/2025, wherein the learned Single Judge, *vide* order dated 04.03.2025, permitted the petitioner to participate in the fresh bidding process. On that basis, the petitioner claims to have submitted its bid on

06.03.2025 and the petitioner again emerged as the H-1 bidder on 07.03.2025. However, no LOA was issued to the petitioner since the Punjab and Haryana High Court had only allowed participation in the bidding process.

6. On 01.05.2025, the Petitioner withdrew the said CWP No. 5951/2025 realising lack of territorial jurisdiction of the Punjab and Haryana High Court at Chandigarh. Accordingly, the petitioner has filed the present petition seeking quashing of the debarment order dated 14.02.2025 and issuance of a direction to respondent/NHAI to consider the petitioner's H-1 bid submitted pursuant to the tender dated 06.03.2025 regarding Saliwada Toll Plaza.

7. Mr. Mohit Jasuja, learned counsel appearing for the petitioner, at the outset submits that the petitioner while submitting its bid had erroneously entered a sum of Rs.26,38,95,009/- in the column meant for daily remittance which actually was Rs.7,23,000/-, which tantamounted to an abnormally high bid. He states that the moment this inadvertent error was discovered, on the very next day i.e. 19.11.2024, the petitioner had brought this bonafide mistake to the notice of respondent/NHAI requesting that the said bid may not be considered. An assurance that such error would not be repeated was also communicated to the respondent/NHAI with a request that no coercive action may be initiated. Learned counsel laid emphasis on the fact that consequent upon a show-cause notice dated 03.02.2025 issued by the respondent/NHAI, a penalty equivalent to bid security amount of Rs.10 lakhs was also deposited voluntarily by the petitioner without a protest or demur. According to him, this deposit was a visible demonstration of the bonafides of the petitioner. Despite the said deposit, respondent/NHAI debarred the petitioner for a period of three months *vide* the communication dated 14.02.2025. Learned counsel also emphasises that

in view of the bonafide and inadvertent mistake and keeping in view the deposit of penalty amount, the debarment for a period of three months in such facts is highly disproportionate and harsh and may be quashed and set aside.

8. *Per contra*, Mr. Kumar, learned counsel for the respondent/NHAI opposes the submissions addressed by learned counsel for the petitioner and states that the said debarment order may not be interfered with inasmuch as the error is not innocuous and often leads to cancellation/annulment of the tender entailing huge cost. He lays great emphasis on the fact that these kinds of tenders are issued very frequently involving a large number of contractors and such stringent measures are enforced only to ensure that the bidders do not misuse and protract the tender process. He was at pains to explain that at times, certain bidders attempting to continue/extend the ongoing contracts would instigate some unscrupulous bidders to enter such erroneous facts and figures with a view to prolong/extend the ongoing contract indefinitely. It is in such compelling circumstances that respondent/NHAI is obligated to take such strict and harsh measures. In any case he submits that the petitioner does not dispute that it had committed a grave error in citing such high figures and leaving no alternative to respondent/NHAI but to enforce the terms and conditions of the tender. In that view of the matter, he states that both the penalty as also the debarment for a period of three months is wholly justified.

9. After hearing the learned counsel for the parties, we are of the opinion that while upholding the debarment it would be apposite to interfere with the period of such debarment on the anvil of doctrine of proportionality.

10. It is not disputed by the petitioner that instead of citing a figure of Rs.7,23,000/- as daily remittance, it had cited a figure of Rs.26,38,95,009/-

which is the annual remittance amount, while submitting the bid document. The case of the petitioner is that such action was inadvertent and the error was bona fide. The petitioner also emphasized that the said error was immediately brought to the notice of respondent/NHAI immediately on the next day i.e. 19.11.2024 when the bids were opened. It is also not disputed by respondent/NHAI that the petitioner had, as ordered, deposited the penalty amount of Rs.10 lakhs without a demur or protest. Though the submission of learned counsel for the respondent/NHAI on the aspect of strict and stringent measures to be taken is well appreciated, yet, one cannot lose sight of the fact that such errors could also be bonafide and in this case, the mistake does not seem to be malafide. Nothing has been placed on record by respondent/NHAI to even, prima facie, demonstrate before us that the petitioner has indulged in any such infraction of the terms of the tender wilfully. In the aforesaid view, we are unable to accede to the submission of respondent/NHAI that in every case, not only penalty, but also debarment order must necessarily be passed and upheld without examining the bona fide nature of such error.

11. It is undisputed that the debarment order dated 14.02.2025 for a period of three months is almost complete by the time this order is passed. While curtailing the period of debarment to the period already undergone, we have also taken into consideration the deposit of Rs.10 lakhs as penalty imposed by respondent/NHAI which undoubtedly stands remitted by the petitioner. We are of the opinion that penalty coupled with the debarment for a period of three months is highly disproportionate to the apparently bonafide error on the part of the petitioner. As a result of the aforesaid analysis, we are of the opinion and provide that while upholding the debarment, the period with effect from 14.02.2025 till 04.03.2025, the date on which stay orders were passed by the Punjab and Haryana High Court at

Chandigarh, would be treated as the period of debarment already undergone.

12. The other aspect which concerns us is with respect to the petitioner having been declared as H-1 bidder on 07.03.2025 in respect of the Saliwada Toll Plaza Tender. From the perusal of the facts it emerges that the petitioner had participated in the said tender after the order dated 04.03.2025 passed by the High Court of Punjab and Haryana in CWP No.5951/2025 whereby the operation of the debarment order was restrained. In other words, as on the date of participation in the Saliwada Toll Plaza Tender, there was no debarment order in force and the declaration of petitioner as H-1 is unblemished. Since we have already restricted the debarment order to the period already undergone, the participation of the petitioner in the aforesaid tender on 06.03.2025 coupled with the restraint order dated 04.03.2025, we direct respondent/NHAI to complete the tender process in respect of the Saliwada Toll Plaza Tender keeping in view its own declaration of petitioner as H-1. The said tender process may be completed within a period of six weeks from today.

13. In view of the above directions, the writ petition stands partly allowed.

TUSHAR RAO GEDELA, J

DEVENDRA KUMAR UPADHYAYA, CJ

MAY 13, 2025/*yrj/rl*