



2025:DHC:409



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI*****Date of Decision: 16.01.2025***+ **W.P.(C) 5439/2016 & CM Appls.34145/2016 & 2263182016****M/S VOESTALPINE SCHIENEN GMBH**PetitionerThrough: Mr. Sanjay Ghose, Sr. Adv. with Mr.
Jeevan B. Panda, Mr. Satish Padhi,
Mr. Rahul Kaushik and Mr. Rohan
Mandal, Advs.

versus

DELHI METRO RAIL CORPORATION LTD. & ANR

.....Respondents

Through: Mr. Tarun Johri and Mr. Vishwajeet
Tyagi, Advs. for DMRC.**CORAM:****HON'BLE MS. JUSTICE TARA VITASTA GANJU****TARA VITASTA GANJU, J.: (Oral)**

1. The grievance of the Petitioner as articulated in the prayers to the present Petition is in relation to letters no. DMRC/20/III-088/2013 dated 22.04.2016 and DMRC/20/III-088/2013 dated 27.05.2016 [hereinafter referred to as "Impugned Communications"]. The import of these communications is that the Respondents had decided that all business dealings with the Petitioner shall be suspended for a period of 6 months from 22.04.2016.
2. This Court had stayed the Impugned Communications by its order dated 03.06.2016.
3. Learned Senior Counsel for the Petitioner submits that in terms of the Bidding Documents for supply of Rails [hereinafter referred to as



2025:DHC:409



“Contract”] between the parties, more specifically Clause 3 of the Contract, prior to such a decision being taken for suspension of all business, the approval of Japan International Cooperation Agency (JICA) was required to be taken. He seeks to rely upon Clause 3.1 of the Contract in this regard.

4. In addition, learned Senior Counsel for the Petitioner submits that the communications of such a nature which suspends all business dealings of the Petitioner with Respondent No.1, were passed without giving the Petitioner a reasonable opportunity of being heard.

5. Learned Counsel for the Petitioner relies on the additional affidavit dated 08.05.2018 filed by the Respondents, more specifically paragraph 2 and 3, to submit that in terms of Clause 3.1(b) of the Contract between the parties, it is JICA who will recognise the bidder as ineligible and only on the basis of recommendations of JICA, can an action be taken against the Petitioner.

6. Learned Counsel for Respondent No. 1 does not dispute that prior permission was requisite. He submits that the permission was sought from JICA by Respondent No.1, however till today, there is no response to the communication addressed by the Respondent No.1 to JICA.

7. Clause 3.1(b) of the Contract reads as follows:

“3. Fraud and Corruption

3.1 It is JICA’s policy to require that Bidders and Contractors, as well as Borrowers under contracts funded with Japanese ODA Loans and other Japanese ODA, observe the highest standard of ethics during the procurement and execution of such contracts. In pursuance of this policy, JICA:

(a) will reject a proposal for award if it determines that the Bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the Contract in question; and



2025:DHC:409



(b) will recognize a Bidder or Contractor as ineligible, for a period determined by JICA, to be awarded a contract funded with Japanese ODA Loans if it at any time determines that the Bidder or the Contractor has engaged in corrupt or fraudulent practices in competing for, or in executing another contract funded with Japanese ODA Loans or other Japanese ODA.”

[Emphasis supplied]

8. A plain reading of this Clause shows that JICA is to recognise a contractor to be ineligible for a period as determined by it, if it determines that such bidder/contractor has engaged in fraud and corrupt practices.

9. Undisputably there was no such determination. No approval of JICA been shown by Respondent No.1 either. The Impugned Communications therefore cannot be sustained and they are accordingly set aside.

10. Needless to add, in the event, that the approval as is required is obtained, the Respondent No.1 shall be at liberty to take appropriate steps in accordance with law against the Petitioner. All rights and contentions of the parties are left open in this regard.

11. The Petition is disposed of in the foregoing terms. Pending Applications also stand closed.

12. The parties will act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

JANUARY 16, 2025/r

Click here to check corrigendum, if any