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

+ **W.P.(C) 5700/2020 & CM APPL. 20595/2020**

BHARAT FRITZ WERNER LIMITED Petitioner

Through: Mr. Akhil Sibal, Sr. Adv alongwith
Mr. Gaurav Juneja, Adv.

versus

UNION OF INDIA & ANR. Respondent

Through: Mr. Harish Vaidyanathan Shankar,
CGSC for R-1.

Mr. Moazzam Khan, Adv. for R-2

CORAM:

**HON'BLE MR. JUSTICE VIPIN SANGHI
HON'BLE MS. JUSTICE REKHA PALLI**

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O R D E R
19.01.2021

CM APPL. 2056/2021

This is an application moved by the petitioner to seek condonation of 13 days delay in filing the rejoinder.

For the reasons stated in the application, the same is allowed and the delay of 13 days is condoned. The rejoinder is taken on record.

The application stands disposed of.

CM APPL. 20595/2020

The petitioner has preferred the present Writ Petition to *inter alia* assail the Letter of Acceptance dated 05.06.2020, issued by respondent No. 1 in favour of the respondent No. 2, in respect of the award of tender in respect of lot No. 3; ICB Ref. No. 21/TCSP/GOODS/P41/2018/TR/TC (Package-41). Tenders had been invited by the respondent No. 1 for supply

of CNC machines and equipments in 12 lots for new and existing technology centres through an internationally competitive bidding process. The case of the petitioner is that it was disqualified without assigning any reasons and simultaneously the contract was awarded to respondent No. 2, even though the petitioner's financial bid was substantially lower than that of respondent No. 2. With its rejoinder, the petitioner has placed on record a copy of the decision dated 24.12.2020 of this Court in respect of the same tender process relating to lots 4, 5 & 6. The petitioner claims that the said decision squarely applies to the facts of the case, which position, is disputed by the respondent.

We may note that the petitioner had earlier approached the Karnataka High Court, which held that it did not have the necessary territorial jurisdiction to deal with the matter. The petitioner has thereafter approached this Court on 25.08.2020 by way of the instant petition.

As noticed hereinabove, the contract already stands awarded to respondent No. 2 in June 2020. Keeping in view the fact that substantial time has elapsed since the award of the tender in favour of respondent No. 2, we are not inclined to interfere in these proceedings at this stage. We have therefore, not gone into the merits of the petitioner's claim or the respondent's defence.

Learned senior counsel for the petitioner submits that this Court, in its decision rendered in *Macpower CNC Machines Limited v. Union of India through the Development Commissioner, Ministry of Micro, Small and Medium Enterprises (MSME)* [W.P. 3942/2020] had after examining the records relating to the same tender, found various infirmities in the matter of evaluation of the various bids and the discriminatory treatment meted out to

some of the bidders. Mr. Sibal submits that the petitioner is also a victim of the same illegal process.

In these circumstances, even though we are not inclined to interfere with the award of the tender in favour of respondent No. 2 at this stage, we make it clear that it shall be open for the petitioner to raise all its pleas and claim whatever relief is available to him at this stage in appropriate civil proceedings. We also permit the petitioner to make a representation addressed to the Hon'ble Prime Minister of India highlighting the aspects with regard to wrongful evaluation of the bids and discrimination meted out to some of the bidders. In case such a representation is made, we request the PMO to ensure that the same receives the attention of the Hon'ble Prime Minister of India. We are inclined to grant this liberty to the petitioner in the light of the fact that the petitioner is an Indian manufacturer and we had earlier found merit in the claim of the petitioner in *Macpower CNC Machines Limited v. Union of India* (supra) that Indian bidders are being discriminated against, even though the tender conditions itself stipulated that Indian manufacturers would be given preference. Keeping in view the fact that the Government of India is laying emphasis on "Make in India" (Atma-Nirbharta), the grievances of the petitioner appear to be correct and in our view require serious consideration at the highest level.

The petition stands disposed of in the above terms.

VIPIN SANGHI, J

REKHA PALLI, J

JANUARY 19, 2021

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