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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **W.P.(C) 7437/2021****M/S SATYA BUILDERS**

..... Petitioner

Through Mr.Pankaj Mehta with  
Mr.R.K.Mehta, Advs.

versus

**NATIONAL HIGHWAY AND INFRASTRUCTURE  
DEVELOPMENT CORPORATION LIMITED** ..... RespondentThrough Ms.S.B.Upadhyay, Sr.Adv. with  
Ms.Anisha Upadhyay, Adv.**CORAM:****HON'BLE MS. JUSTICE REKHA PALLI****ORDER**

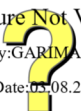
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**02.08.2021****CM APPL. 23426/2021**

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

**W.P.(C) 7437/2021 & CM APPL. 23427/2021(stay)**

3. The present petition assails the order dated 16.07.2021 passed by the respondent, vide which the petitioner stands disbarred from participating in any tendering process for the works of the respondent/corporation for a period of one year.
4. The case of the petitioner is that upon a tender being floated by the respondent on 04.12.2020 for "Construction of two lane with paved shoulders road of Tamenglong Mahur section in the state of Manipur", the petitioner submitted its bid on the last date of bid

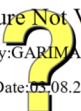


submission *i.e.* 09.02.2021. It is the petitioner's case that after it had submitted its bid, the respondent on the same date, *i.e.*, 09.02.2021, issued a Corrigendum increasing the scope of the work, and thereby increasing the performance security required to be furnished by the successful bidder. Vide this corrigendum, the respondent simultaneously also extended the last date for bids submission to 24.02.2021. The petitioner claims that it had no knowledge of either the increase of the scope of work, or the requirement to furnish any Additional Performance Security. It is only once the petitioner was awarded the project and received a Letter of Acceptance (LoA) on 23.03.2021, when it became cognizant of the changes made vide the Corrigendum and the consequential requirement imposed on the petitioner to furnish an Additional Performance Security to the tune of Rs. 22,89,22,000, which the petitioner was unwilling to furnish.

5. Learned counsel for the petitioner submits that within the stipulated period of 30 days in which the petitioner was required to furnish the performance security, it approached the respondent vide its letter dated 19.04.2021 making a two-fold request; (i) to permit the petitioner to perform the work on the performance security as stipulated in the original tender conditions (ii) or in the alternative, permit the petitioner to exit the tender process without imposition of any penalty in terms of the Corrigendum. However, the respondent, instead of accepting the aforesaid requests, proceed to issue a withdrawal letter dated 01.06.2021, followed by the impugned order dated 16.07.2021, debarring the petitioner for a period of one year.
6. Learned counsel for the petitioner submits that the respondent's action

in debarring the petitioner by way of the impugned order, by alleging wilful violation of the conditions imposed upon the petitioner by arbitrarily issuing the Corrigendum on the last date of bid submission, is wholly unwarranted and unjustified, specially keeping in view the fact that the petitioner had submitted a representation within the stipulated period of 30 days, which was available to the petitioner for submitting the Performance Security.

7. Issue notice. Ld. counsel for the respondent accepts notice. She prays for and is granted three weeks' time to file reply. Rejoinder thereto, if any, be filed within two weeks thereafter.
8. Learned senior counsel for the respondent submits that it was for the petitioner to be vigilant and keep a track of the increase in the scope of work and the corresponding extension in the last date of submission of bids. He further submits that it was always open for the petitioner to modify its bid in terms of clause 2.14.3.1 of the RFP and therefore, the petitioner cannot now fault the respondent for taking action against the petitioner in terms of the RFP.
9. Keeping in view the fact that the respondent had altered the terms of the RFP by increasing the scope of the work and the amount of the performance guarantee, after the petitioner had already submitted its bid, I am of the *prima facie* view that the impugned order debarring the petitioner from bidding for any tenders of the respondent for a period of one year was wholly unjustified. The petitioner having already approached the respondent to seek exit from the contract within the period of 30 days within which it was required to furnish the performance security, cannot be penalized once the respondent



had itself changed the terms of the RFP. In these circumstances, till the next date, the operation of the impugned debarment order dated 16.07.2021 will remain stayed.

10. List on 14.09.2021.

**REKHA PALLI, J**

**AUGUST 2, 2021**

SR

Signature Not Verified

Signed By:GARIMA MADAN  
Location:  
Signing Date:03.08.2021  
14:34:21

