



2025:DHC:3721-DB



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

+ W.P.(C) 6198/2025 & CM APPL. 28306/2025

GLOMET CORP LLP

.....Petitioner

Through: Mr. Mritunjay Kumar and Mr.
Mukesh Kumar Choubey, Advs.

versus

UNION OF INDIA AND ORS

.....Respondents

Through: Mr. Shashank Bajpai, CGSC with
Ms. Stuti Karwal, Adv. for UOI

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Date of Decision: 09.05.2025

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. The present writ petition is filed under Article 226 of the Constitution of India, inter alia, seeking quashing of the bid awarded to respondent no. 8 in relation to the tender dated 08.11.2024. The petitioner further prays for a direction to respondent no. 2 to consider the petitioner's bid and award the aforesaid tender in favour of the petitioner, being the lowest bidder.

2. It is the case of the petitioner that respondent no. 2 issued a tender on the Government e-Marketplace (GeM) portal, bearing tender number GEM/2024/B/5512350 dated 08.11.2024, for the procurement of Shotcreting Machine. The submission of bids was opened on 29.11.2024; closing date of bid submission was 07.12.2024 and; the last date for submission of bids was 26.12.2024. The petitioner, along with respondent no. 8, submitted bids pursuant to the said tender, and respondent no. 8 was subsequently declared the L1 bidder.



3. The petitioner states that *vide* letter dated 01.02.2025 addressed to the Director General of respondent no.2, it lodged a complaint regarding the participation of respondent no.8 in the subject tender, specifically raising concerns about their eligibility for exemption from submission of the Earnest Money Deposit (EMD). As per the conditions stipulated in the GeM bid document, under the section pertaining to EMD, only “*manufacturers of goods*” are eligible for EMD exemption under the Medium Small Enterprise (MSE) category. It is explicitly stated that traders are not entitled to such exemption. It is the case of the petitioner that respondent no.8 did not submit any EMD amount along with its bid and instead sought exemption by furnishing an MSME certificate. However, said certificate does not meet the eligibility requirements for exemption, as respondent no.8 is a trader and not a manufacturer of Shortcreting Machines.

4. The petitioner further states that, *vide* letter dated 06.02.2025, respondent no.2 informed that respondent no.8 had applied online for EMD exemption and uploaded its Udyam Registration Certificate as a supporting documentation. However, the said certificate was not accepted since respondent no.8 was not registered as a manufacturer of the offered product. It was further stated in that letter that respondent no.8 subsequently submitted the requisite EMD in the form of a Fixed Deposit Receipt (FDR). It is further stated by the petitioner that it again addressed a communication dated 06.02.2025 to respondent no.2, seeking clarification as to the date on which the EMD was actually submitted by respondent no.8 and the reasons for the same not being reflected on the GeM Portal. No response has been received from respondent no.2 till date. In the meantime, respondent no.8 has been declared as the L1 bidder. Aggrieved



by the same, the petitioner has preferred the present petition.

5. The questions which arise for our consideration in the present writ petition are, (i) as to whether there is any term in the subject tender stipulating the mandatory condition that EMD is to be furnished alongwith the bid, failure whereof, would result in disqualification or rendering such bidder being declared technically non responsive? and ; (ii) as to whether delayed submission of EMD would disentitle a bid of a bidder from being considered at all ?

6. Learned counsel for the petitioner referred to the clarification sought by the respondent no.2 *vide* its communication dated 26.12.2024 from the bidder/respondent no.8 amongst others, the fact that traders are excluded from purview of Public Procurement Policy for Micro and Small Enterprises which is available only to manufacturer or Original Equipment Manufacturer and that respondent no.8 is therefore, not eligible. He states that while holding so, two days' time was extended to furnish the requisite clarification. Arguing further, learned counsel for the petitioner referred to the reply dated 06.02.2025 communicated by the respondent no.2, whereby it was informed that though respondent no.8 was not eligible for exemption, yet had furnished the EMD in the form of FDR. This action, according to him, is violative of the mandatory term of the tender.

7. On a pointed query in regard to issue no (i) and the above argument, learned counsel for the petitioner was unable to point out at any such mandatory term or condition either in the tender document or any ancillary or incidental document appended thereto. Rather, he referred to page 34 of the paperbook containing clause (a) under EMD Detail of the tender document which reads thus:

“(a) EMD EXEMPTION: The bidder seeking EMD exemption, must submit the valid supporting document for the relevant category as per



GeM GTC with the bid. Under MSE category, only manufacturers for goods and Service Providers for Services are eligible for exemption from EMD. Traders are excluded from the purview of this Policy...”

8. Clause (a) of EMD Detail of the tender document only provides as to who would be eligible for exemption from furnishing EMD and further that, traders are excluded from such purview. It nowhere provides for the purported mandatory condition that if EMD is not furnished on or before the last date of submission of bids, such bids would be rejected or that such bidder would be disqualified. It is trite that unless the language in a specified term or a condition is ambiguous, the Courts will neither introduce nor insert their own interpretation. It is also trite that Courts have to read the terms and conditions of a document plainly, and so read, if they do not find any repugnancy or ambiguity, no interference would either be warranted or called for. In that view of the matter and for the reasons aforementioned, issue (i) is held against the petitioner.

9. So far as issue no (ii) is concerned, we are of the firm opinion that such consideration may vary from a tender to a tender and cannot be laid down as a principle of law or fact to be followed in all cases. That said, learned counsel was also unable to point out any term in the tender document in support of such contention, in failure whereof, we find the argument unsustainable and unmerited.

10. In view of the aforesaid, the present petition is dismissed alongwith pending applications. However, there shall be no order as to costs.

TUSHAR RAO GEDELA, J

DEVENDRA KUMAR UPADHYAYA, CJ

MAY 9, 2025/rl