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

+ W.P.(C) 11080/2025 & CM APPLs. 45583-84/2025

MORPHING INNOVATIONS OPC PVT LTDPetitioner

Through: Mr.Anil K. Airi, Sr. Adv. with
Mr.Ravi Krishan Chandna,
Mr.Vishal Tyagi, Mr.Shayuk Kumar,
Mr.Harsh Gautam & Ms.Sadhana
Sharma, Advs.

versus

NATIONAL HIGHWAYS AND INFRASTRUCTURE
DEVELOPMENT CORPORATION LIMITED (NHIDCL) & ANR.

.....Respondents

Through: Dr. Subhash C. Gupta, Adv. for R-1.

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Date of Decision: 29.07.2025

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 writ petition has been filed under Article 226 of the Constitution of India, 1950 seeking setting aside of annulment notice dated 08.07.2025 issued by the respondent no.1/National Highways and Infrastructure Development Corporation Limited (hereinafter referred to as 'NHIDCL') in respect of the tender bearing no. NHIDCL/RO/A&N/Package-IIIB/US/2nd/FY24-25/06 dated 02.04.2025. The petitioner also seeks direction to the respondents to reconsider the petitioner's case that led to the delay in submission of the Performance



Security and further direct respondent no. 1/NHIDCL to allow the petitioner to work on the same bid on the actual estimate given by the Electricity Department in place of the wrong estimate attached by the respondent no. 1/NHIDCL.

2. Brief facts as culled out from the petition are as under:

- a) The respondent no. 1/NHIDCL had issued the Notice Inviting Tender (NIT) in April, 2025 with regard to works of “*Shifting of 33 kV and 11 kV electrical utilities and the construction of power lines along NH-4 from Km155.00 to Km181.00 (from the end of Jarawa to Rangat) in the Baratang and Rangat feeder areas of Middle Andaman, in the Union Territory of Andaman and Nicobar Islands, based on percentage rate basis*” bearing Contract Package No. NHIDCL/RO/A&N/Package-IIIB/US/2nd/FY24-25/06 in relation to the works of the Electrical Department of Andaman and Nicobar.
- b) The petitioner was declared the successful bidder and was subsequently issued a Letter of Acceptance (LoA) dated 16.05.2025.
- c) It is the case of the petitioner that upon visiting the office of the respondent no.1/NHIDCL in Andaman and Nicobar Islands, the petitioner was informed that the Bill of Quantities (BOQ) relied upon by the petitioner was different from the BOQ issued by the Electrical Department of Andaman and Nicobar to the respondent no.1/NHIDCL for issuance of NIT.
- d) Thereafter, the petitioner *vide* letter dated 26.05.2025 addressed the issue of BOQ, BOQ rates and execution cost for the subject project to the respondent no.1/NHIDCL and requested intervention in processing a change of scope (COS). In response, the respondent no.1/NHIDCL *vide* its reply dated 05.06.2025 clarified



that the Electrical department of Andaman and Nicobar Islands is the authorized authority for the preparation of cost estimates and scope delineation and that all cost components and items rates are based on the utility's standard schedules, norms and practices. *Vide* the said letter, the petitioner was also requested to furnish Performance Security within 10 (ten) days of receipt of the LoA.

e) Pursuant to the said response, petitioner again sent a letter dated 12.06.2025 to the respondent no.1/NHIDCL seeking extension for depositing the Performance Security. The respondent no.1/NHIDCL *vide* its reply dated 20.06.2025 granted extension to the petitioner for depositing the Performance Security till 26.06.2025 while explicitly informing the petitioner that the deadline is final, considering the urgency of the project and any further correspondence or request for extension of time on behalf of the petitioner would not be entertained.

f) The petitioner yet again sent a representation dated 24.06.2025 requesting an extension of 60 days for depositing the Performance Security in accordance with Clause No. 2.21 of the RFP.

g) It is the case of the petitioner that however, a debarment notice dated 01.07.2025 was issued without any show cause notice or granting any opportunity of hearing to the petitioner. The same was challenged by the petitioner by filing of a Writ Petition bearing W.P.(C) 9438 of 2025 wherein this Court *vide* order dated 09.07.2025 quashed the said debarment order with liberty to the respondent no.1/NHIDCL to issue a show cause notice to the petitioner. However, in the meanwhile, the respondent no.1/NHIDCL had already issued an annulment notice dated 08.07.2025 thereby cancelling the said RFP



due to non-submission of the Performance Security by the petitioner.

h) Being aggrieved by the unjust and illegal action of the respondent no.1/NHIDCL in issuing an annulment notice dated 08.07.2025, the petitioner has preferred the present writ petition.

3. Mr. Anil K. Airi, learned Senior Counsel for the petitioner submits that the impugned annulment notice dated 08.07.2025 issued by the respondent no.1/NHIDCL after issuance of LoA to the petitioner, is violative of the conditions stipulated in the RFP and the LoA and ought to be quashed and set aside.

4. Learned senior counsel submits that the only reason for issuing the annulment notice is stated to be the failure to submit the Performance Security as required under RFP clause 33.1 of Section II of the Instructions to Bidders. He argues that the said reason is not available with the respondent no.1/NHIDCL inasmuch as the LoA dated 16.05.2025 in para 5 provided that if there was a delay in submission of the Performance Security, the petitioner was entitled to seek extension of time for a period not exceeding 60 days in accordance with clause 2.21 of the RFP. He submits that only in case of failure to comply with para 5, the respondent no.1/NHIDCL would have the right to cancel the award and simultaneously proceed for debarring the petitioner. It is his submission that the petitioner had, in fact, sought extension of time *vide* its letter dated 26.05.2025 apart from registering other objections. In response thereto, *vide* letter dated 26.05.2025, the respondent no.1/NHIDCL had granted ten days time from the date of receipt of the LoA. He states that while extending the time, in para 7 of letter dated 26.05.2025, the respondent no.1/NHIDCL clarified that the petitioner could seek extension of time for a period not exceeding 60 days. Having granted this extension of time of ten days and



subsequently having provided the right to the petitioner to seek further extension, the 60 days period not having been completed, the annulment notice being violative of the LoA could not have been issued and hence be held to be illegal and *non est*.

5. That apart, learned senior counsel also submits that *vide* letter dated 12.06.2025, the petitioner sought further extension of time to submit the Performance Security. In response thereto, *vide* letter dated 20.06.2025, the respondent no.1/NHIDCL granted time uptill 26.06.2025 to deposit the Performance Security. He submits that on account of some difficulties, the petitioner *vide* the letter dated 24.06.2025 sought further extension of 60 days for submission of the Performance Security. His contention is that having regard to the fact that the LoA dated 16.05.2025 and the letter dated 05.06.2025 clearly stipulated an extension of time of 60 days for submission of Performance Security, the petitioner was entitled to seek extension of time upto 60 days from 05.06.2025. Whereas, the respondent no.1/NHIDCL had, even before the expiry of 60 days period w.e.f. 05.06.2025, by the annulment notice dated 08.07.2025, proceeded to annul/cancel the NIT. This, according to learned senior counsel, was violative of a specific condition of the LoA and the extension letter dated 05.06.2025 which forms an intrinsic part of the RFP/tender document and could not have been violated by the respondent.

6. Thus, in substance, learned senior would contend that the LoA having provided in para 5 a period of 60 days for deposit of Performance Security and the letter dated 05.06.2025 granting extension for 10 days and also having the corresponding para further providing extension of 60 days time for such deposit, the unilateral decision to cancel/annul the NIT was not within the authority or jurisdiction of the respondent no.1/NHIDCL. He



contends that once the LoA itself contains the clause entitling the petitioner to seek extension of time for submission of upto 60 days, the respondent no.1/NHIDCL could not have curtailed such right by granting extension for a period less than 60 days.

7. Alternatively, his argument was also that even if the respondent no.1/NHIDCL did not grant 60 days at a stretch, a plain reading of the said clause in the LoA as also the letter dated 05.06.2025 would confer upon the petitioner a right to seek further extension of time till the 60 days period is exhausted. That having not been granted by the respondent no.1/NHIDCL, the annulment/cancellation of the NIT by the respondent no.1/NHIDCL is a unilateral act which is not binding upon the petitioner and also keeping in view the terms of the LoA, is an action which violates the material conditions of the RFP. On that premise, learned senior counsel stoutly contends that the annulment notice dated 08.07.2025 may be set aside and the respondent be directed to accept the Performance Security to be submitted/furnished by the petitioner.

8. *Per Contra*, learned counsel appearing for the respondent no.1/NHIDCL submits that the RFP was floated on BOQ basis on the rates that were derived from the Schedule of Rates as practised and approved by the Utility Owning Department and do not directly account for current market fluctuation or OEM Quotations. He also further submits that these rates explicitly incorporate transportation and installation costs which have been duly verified and sanctioned by the highest authorities within the Utility Owning Department. This issue was already in the knowledge of the petitioner and thus, according to him, all the objections raised by the petitioner in regard to the aforesaid issue are frivolous and only for the purpose of delaying the execution of the project. He submits that the non-



submission of the Performance Security despite two extensions granted, are a clear violation of clause 33.1 of the RFP and the respondent had accordingly, taken decision to annul the NIT. Predicated on the above, he prays that the present writ petition be dismissed with exemplary costs.

9. Having heard the learned counsel for the parties, we find no reason much less any cogent reason to exercise the power of judicial review in respect of the RFP in question.

10. Undoubtedly, as per the LoA dated 16.05.2025 vide para 4, the respondent had directed the petitioner to deposit Performance Security for an amount of Rs.27,80,989.00 as per clause 47.1 of the RFP within ten days of the receipt of the LoA. As per para 5 in case of any delay of submission of Performance Security, the petitioner was entitled to seek extension of time for a period not exceeding 60 days. Concededly, the petitioner *vide* its letter dated 26.05.2025, without having complied with the submission of Performance Security, sought clarification from respondent no.1/NHIDCL on the basis that after inspection of the site, the petitioner released certain core deficiencies and hence informed the respondent that execution of the contract at outdated rates would be financially unviable and requested that once the matter is addressed, it would proceed to submit the required bank guarantee without delay after processing of COS. It may be noted that there was neither any specific request for extension of time nor the period for extension was specified.

11. However, it appears that the respondent no.1/NHIDCL *vide* the letter dated 05.06.2025, while clarifying the objections raised, had granted an extension of ten more days for deposit of the Performance Security as indicated in para 6 of the said letter. Concededly, the petitioner did not deposit the said Performance Security even within that time. Rather, *vide*



the letter dated 12.06.2025, the petitioner sought further extension of time for submission of the Performance Security without specifying the duration. *Vide* the letter dated 20.06.2025, the respondent no.1/NHIDCL as a final consideration granted one last opportunity for submission of Performance Security and extended the time till 26.06.2025 as per clause 47.1 of the RFP. It was categorically mentioned in the said letter that in case of failure to submit the Performance Security within the stipulated time, the same shall result in cancellation of award and appropriate action may be taken in accordance with provisions of the RFP. Though *vide* letter dated 24.06.2025 the petitioner sought further extension of time for a period of 60 days, the respondent without responding thereto proceeded to annul the NIT *vide* the impugned annulment notice dated 08.07.2025.

12. Though, no doubt the LoA dated 16.05.2025 as also the letter dated 05.06.2025, while extending the time for submission of Performance Security, in para 5 and para 7 respectively, provided an opportunity to the petitioner to seek extension of time for 60 days, yet, in the present circumstances we are unable to agree with the contention of the petitioner that it had a right of being granted extension to the full period of 60 days from 05.06.2025 upon making such request to the respondent, times without number. In order to appreciate the contentions of the petitioner, it would be apposite to extract para 5 of LoA dated 16.05.2025 and para 7 of letter dated 05.06.2025 which are identically worded. The same reads thus:

“In case of delay in submission of Performance Security and Additional Performance Security, if any, you may seek extension of time for a period not exceeding 60 (sixty) days in accordance with Clause 2.21 of RFP.”

13. A careful reading of the said para brings to fore the fact that though



the petitioner did have the entitlement to seek extension of time for submission of Performance Security, yet, the discretion to grant or refuse such extension was clearly within the jurisdiction of the respondent no.1/NHIDCL. Merely because the para/clause provided the right to seek an extension of time upto 60 days would not, *ipso facto*, be construed to mean that the petitioner in all circumstances would be entitled, as a matter of right, be granted 60 days. This logic, if applied, particularly to contracts of such nature as in the present case, would defeat the purpose of time being the essence of such contract in as much as, the right to seek extension would be endless, resulting in delay and prolongation of the execution of the contract.

14. From the record, it is clear that the respondent no.1/NHIDCL had extended the period of submission of Performance Security twice, over and above the time of ten days originally granted *vide* the LoA dated 16.05.2025. According to us, the respondent no.1/NHIDCL had liberally indulged in the petitioner's request and had granted extension of time twice, for submission of Performance Security. As noted above, the petitioner may have the right to seek extension, however, the discretion to grant or refuse was always available with the respondent. It is pertinent to note that at this stage, that no reason or any explanation was furnished by the petitioner as to why it did not deposit the Performance Security within ten days from the LoA dated 16.05.2025 except to cite some objections regarding the terms and conditions of the RFP. This too would propel us to consider that the petitioner was only delaying and protracting the submission of Performance Security which is a necessary condition as per clause 33.1 of the RFP for the award of contract or the execution of the same. That apart, there is no reason forthcoming as to why the petitioner



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did not submit the Performance Security despite two extensions granted by the respondent.

15. Having regard to the fact that the petitioner did not submit the Performance Security in terms of the LoA or the subsequent time extended by the respondent no.1/NHIDCL, it was but natural for the respondent to have proceeded in terms of clause 33 of the RFP and annul the NIT.

16. Resultantly, there is no merit in the present writ petition and the same is dismissed with pending applications.

TUSHAR RAO GEDELA, J

DEVENDRA KUMAR UPADHYAYA, CJ

JULY 29, 2025/rl