



No. RW/NH-12037/91/2010/LWE-CHH

दिनांक, नई दिल्ली-110001 at 5th Mar. 2013
Dated, New Delhi-110001

7490.6

To

Niraj Cement Structurals Ltd, Mumbai (Petitioner)
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Near Deonar Bus Depot
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Subject: - The representation dated 24.12.2012 from Niraj Cement Structurals Ltd, Mumbai, the Petitioner firm in pursuance to the order dated 07.12.2012 of hon'ble High Court of Delhi at New Delhi regarding Debarment of the Petitioner Firm from Participation in Tenders for NH/ centrally sponsored works for a period of Three years.

Ref:- Civil Writ Petition No. 908 of 2013 and CM No. 1736 of 2013 in the hon'ble High Court of Delhi, at New Delhi in the matter of Niraj Cement Structurals Ltd, Mumbai (Petitioner) versus Union of India (Respondent).

Sir,

Whereas, Niraj Cement Structurals Ltd, Mumbai filed a Civil Write Petition No. 7635 of 2012 in the Hon'ble High Court of Delhi at New Delhi challenging the Ministry's decision dated 13.5.2011 of debarring the Petitioner from participation in tenders for NH/Centrally sponsored works for a period of three years.

2. Whereas, the primary grievance of the Petitioner is that the aforesaid Ministry's decision dated 13.05.2011 was taken without giving any opportunity of being heard to the petitioner.

3. Whereas, in its Order dated 07.12.2012, Hon'ble High Court of Delhi has directed the petitioner to submit the representation in response to the aforesaid Ministry's decision dated 13.05.2011 within one week from the date of the order dated 07.12.2012 to the Ministry of Road Transport & Highways. The Hon'ble High Court further directed that the competent authority shall thereafter consider all aspects of the matter and explanation offered by the petitioner and then take appropriate decision as may be advised within six weeks from today.

4. Whereas, in pursuance to the Order dated 07.12.2012 of the Hon'ble High Court of Delhi, the petitioner **Niraj Cement Structurals Ltd, Mumbai**, have submitted a representation dated 24.12.2012. The Petitioner firm is heard in Person represented by Sh. Gulshan Chopra, Director of the firm on 28.2.2013 (FN) at New Delhi

5. Whereas, the representation dated 24.12.2012 of the Petitioner has been deliberated in detail by the competent authority and matter has been looked into as fresh.

- (i) During the technical evaluation of bids of the Petitioner firm for the following four works of the ministry under LWE affected areas, in verification to the complaint dated 03.09.2010 from M/s BMS Tradewing (P) Ltd, Jagdalpur (CG) it was observed that the details about the petitioner firm Niraj Cement Structurals Ltd, Mumbai towards the existing commitments for ongoing works have been informed falsely / wrongly suppressing information in claiming thereby higher available bid capacity inspite of fact that an opportunity was given vide Ministry's letter of even no. dated 16-9-2010 in this regard.
- a) Widening to 2- lane and improvement in km 219.60 to 258.00 of Palli-Barsoor Road in Dantewada District in Chhattisgarh. (Amount Put to Tender Rs. 5149.28 lakh)
 - b) Construction of 2-lane Road in Km 0.00 to 70.00 of Bijapur-Awapalli-Basaguda- Jagargunda Road (SH-28) in Chhattisgarh. (Amount Put to Tender: Rs. 9631.84 lakh)
 - c) Widening to 2- lane and improvement in 0.00 to 97.20 kms of Barsoor Geedam- Dantewada Kirandul- Jagargunda- Mariyagudam Road in Dantewada District in Chhattisgarh (Amount Put to Tender Rs. 9192.36 lakh)
 - d) Widening to two lane & improvement from km 183/5 to 236/15 of NH-221 Vijayawada Jagdalpur road in A.P (Amount put to tender Rs. 81.55 crore).
- (ii) The Petitioner firm rather vide letter dated 20.09.2010 has given the information duly certified by Charter Accountant that the total revenue of Rs 187.79 cr. during 2009-10 but has not furnished the requisite turn over for civil engineering construction works. The petitioner firm gave a list of 11 ongoing works with value of works remaining to the completed as Rs 577.50 Cr. The Petitioner firm earlier furnished a list of 3 ongoing works with value of works remaining to be completed as Rs 33.46 Cr. in the bid documents for these works mentioned above.
- (iii) The details of the ongoing works were tallied from the information available from website of the firm, the details furnished by the firm to SEBI and Draft Red Hearing Prospectus available on the website of SEBI. It has been observed that information for 3 ongoing works is still not furnished by the firm. The details of these works have been obtained from the concerned authorities.
- (iv) As per clause 4.5.10 of the bidding document regarding disqualification, it is prescribed that "even though the Applicants meet the above criteria, they are subject to be disqualified if they have- made false representation in the form, statement submitted."
- (v) It may be seen that the bidder has not only presented false information about the existing commitments and ongoing works in form 1.4 (A) in pursuant to clause 4.3 (c) of Instructions to Bidders (ITB) of Qualification Information in his bids for LWE works, but also has further suppressed such information for 3 ongoing works on the subsequent submission vide letter dated 20.09.2010 to project higher bid capacity.

- (vi) Further, as clause 4.8 of ITB "Even though the bidders meet the above qualification criteria, they are subject to be disqualified if they have:
- "made misleading or false representation in the form, statements and attachments submitted in proof of the qualification requirement; and / or".
- (vii) The Petitioner firm as the bidder has also furnished an affidavit in prescribed form of SBD stating that "I, the undersigned, do hereby certify that all the statements made in the required attachments are true and correct."
- (viii) It was concluded that M/s Niraj Cement Structurals Ltd, Mumbai had furnished wrong information about ongoing works, even after giving him opportunity to rectify the mistake, to project his higher bid capacity.
- (ix) As per clause 37.1 of ITB. The Employer 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 questions and will declare him ineligible, either indemnify or for a stated period of time, to be awarded a contract with National Highways Authority of India / State PWD and any other agencies, if it at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for the contractor, or in execution. "
- (x) As per clause 59.2 of Condition of Contract of SBD. "Fraudulent practice means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Borrower, and includes collusive practice among bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the Borrower of the benefits of free and open competition.

7. Now therefore, taking note of the fact that the Petitioner firm, **Niraj Cement Structurals Ltd, Mumbai** has already undergone almost two third of the debarment period of three years, the punishment already undergone is considered to be commensurate to the wrong committed by the petitioner. The competent authority, taking a lenient view in the matter, has therefore decided to discontinue the debarment of the Petitioner of participation in tenders for NH/Centrally sponsored works with immediate effect **prospectively**. The performance of the petitioner firm may be reviewed after a working season, if warranted.

(S.S Nahar) 05/03/13
Chief Engineer (LWE)

Copy to:

1. The Secretaries and Engineers-in-Chief/Chief Engineers (National Highways), State Public Works Departments, Union Territories (dealing with National Highways and other Centrally Financed Schemes);
2. Director General (Works), Central Public Works Department;
3. Director General Border Roads;
4. The Chairman, National Highways Authority of India;
5. Secretary General, Indian Roads Congress
6. Director, Indian Academy of Highway Engineers, Sector-62, NOIDA.
7. Regional Officers/ Engineer Liaison Officers of MoRTH
8. All technical officers at the Headquarters

(S.S Nahar) 05/03/13
Chief Engineer (LWE)