
(2023) 01 DEL CK 0153

In the Delhi High Court

Case No : Civil Writ Petition No. 11417 Of 2021, Civil Miscellaneous Application
No. 35143 Of 2021

M/S Integrated Fire Protection Pvt. Ltd

APPELLANT

Vs

Indian Oil Corporation Ltd. & Anr.

RESPONDENT

Date of Decision : 11-01-2023

Acts Referred:

Citation : (2023) 01 DEL CK 0153

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Rajeev Sharma, Abhishek Birthray, Ahmed, Kartikeya Tripathi

Final Decision : Disposed Of

Judgement

Prathiba M. Singh, J

1. This hearing has been done through hybrid mode. Though an appearance has been received via SMS to the Court Master, of one Mr. S.S. Nehra, none appears for the Petitioner when the matter is called. It is noticed that on the last 3 occasions i.e. 16th December, 2021, 1st April, 2022 and 17th August, 2022, there is no appearance on behalf of the Petitioner. Mr. Rajeev Sharma, Id. Senior counsel has made his submissions for the Respondent.

2. The Petitioner - M/s. Integrated Fire Protection Pvt. Ltd. has filed the present petition against the Respondent - Indian Oil Corporation Ltd. (hereinafter referred as "IOCL") challenging the order dated 18th June, 2021 by which the IOCL has debarred the Petitioner from entering into any contract for a period of 1 year i.e. from 17th June, 2021 with IOCL.

3. The brief background is that a Notice Inviting Tender (NIT) was floated by the IOCL on 4th December, 2020 in response to which the Petitioner had submitted its bid on 18th December, 2020. One of the information sought by IOCL from the Petitioner in the said bid was as to whether the Petitioner had been placed on any 'holiday list' by any department, IOCL or any other government sector or

organization. During the examination/evaluation of the bid, the IOCL learnt of the fact that the Petitioner was, in fact, on the holiday list by M/s. Numaligarh Refinery from 29th February, 2020 to 28th February, 2021. Since this fact was not disclosed to the Respondent in its bid, a show cause notice was issued to the Petitioner on 17th March, 2021 to the following effect.

"You are hereby requested to show cause in writing within 15 days from the date hereof why you be not placed on the "holiday list" and be debarred from entering into any contracts with Indian Oil Corporation Ltd./be not be delisted from the list of approved vendors/Contractors of Indian Oil Corporation Ltd., for the following reasons:

"During the bidding, in the holiday listing declaration, M/s Integrated Fire Protection Pvt. Ltd. (IFPPL) has clearly mentioned "NIL" which denotes that the bidder is not in holiday list by IOCL or by any department of any Govt. or any Public Sector Organization.

However, it is found out that IFPPL was in holiday list of M/s Numaligarh Refinery from 29.02.2020 to 28.02.2021. This fact was not disclosed in the declaration. Therefore, your declaration is considered as a false declaration which calls for holiday listing as per clause no. 22.1 b & e of ITB"

Your reply (if any) should be supported by all documents and documentary evidence which you wish to reply in support of your reply.

Should you fail to reply to this show cause notice within the time and manner aforesaid, it will be presumed that you have nothing to say, and we shall proceed accordingly.

Your reply, if any, and the documents/documentary evidence given in support shall be taken into consideration prior to arriving at a decision."

4. A response dated 30th March, 2021 was received from the Petitioner, which was considered by the IOCL and vide its letter dated 18th June, 2021, IOCL directed as under:

"1. Tender for 2 years Rate Contract for supply of AFFF to IOCL Refinery Division, Marketing Division and Pipeline Division was floated vide Tender No. RHQMM20206 dated 04.12.2020. Technical bid was opened on 22.12.2020.

2. It is found out that your firm was in holiday list of M/s Numaligarh Refinery.

3. The matter was investigated, and it is found correct.

4. Show Cause Notice was issued to you vide letter dated 17.03.2021; In reply to show cause letter, you have accepted that Numaligarh Refinery Ltd. had put you on Holiday List for the period of 29.02.2020 to 28.02.2021.

5. You have also informed that Numaligarh Refinery Ltd. had put you on holiday for your inability to supply "Non Asbestos Fire & Welding Blanket 15 Mtrs." against one of their Purchase Orders. In your justification for not mentioning this

fact in Bid Document, you have stated that this item is traded item and not in your manufacturing item, so you have submitted NIL Declaration.

6. Your reply has been examined and found that the reason given by you is not justified. You should have mentioned the fact of Holiday listing by Numaligarh Refinery, whether the material is Manufactured Item or Traded Item for them in the Holiday List Declaration Format.

7. By not disclosing the fact, you have given a false declaration which is a violation of tender term & condition Clause No. 22.1 b & e of ITB.

You have committed breach of trust and failed to meet the tender's requirement. After considering allegation made in the show cause notice/ your reply to show cause notice, it has been decided that you be placed on Holiday List and debarred from entering into any contracts with Indian Oil Corporation Limited for a period of One (01) Year from 17.06.2021 i.e. the date when the intimation for holiday list was given to you."

5. It is noticed from the record that the Petitioner, after receiving the show cause notice, had made a complaint dated 18th June, 2021 to the Chief Vigilance Officer of the IOCL alleging that one L1 bidder had made a complaint against it to the IOCL.

6. Mr. Rajeev Sharma, Id. Senior Counsel appearing for the IOCL submits that the Petitioner admits that it was blacklisted by M/s. Numaligarh Refinery, in its response dated 30th March, 2021. It is further submitted by him that the period of one year of holiday listing has already elapsed.

7. Be that as it may, the ground on which the show cause notice dated 18th June, 2021 was issued i.e. holiday listing by M/s. Numaligarh Refinery having been not disputed by the Petitioner, the said fact ought to have been disclosed. In its reply dated 30th March, 2021, the Petitioner seeks to explain the same in the following manner.

"4. In your show cause notice, you had stated that M/s Numaligarh Refinery Limited put our name on the holiday list from 29.02.2020 to 28.02.2021, for your information in this period, we have executed so many projects for M/s IOCL and always supported M/s IOCL when no other vendors support during this pandemic situation with the help of IOCL, Local Administration and Government of India.

5. In our offer for the above tender, our declaration for holiday listing, we have mentioned NIL because our intention was very cleared that the items for which M/s Numaligarh Refinery Limited put our name on the holiday list, it's not our manufacturing item and it's a trading item only. We have no intention to suppress the facts from IOCL. We have presumed that this item is not within our manufacturing product and submitted a declaration as NIL. Even after putting us on holiday listing, M/s Numaligarh Refinery Limited verbally send us an order within the period of holiday listing and we have successfully executed orders of

NRL.”

8. Under these circumstances, as also due to the fact that the period of one year of holiday listing has also come to end, no further orders are called for in the present writ petition. The debarment period has come to an end and the Petitioner is free to participate in any tenders of the IOCL.

9. The writ petition along with all pending applications is, accordingly, disposed of.