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**(2011) 02 P&H CK 0042**  
**In the Punjab And Haryana At Chandigarh**  
**Case No : C.W.P. No. 2239 of 2011**

Nectar Lifescience Limited

APPELLANT

Vs

State of Punjab and Others

RESPONDENT

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**Date of Decision :** 09-02-2011

**Acts Referred:**

Constitution of India, 1950 — Article 226

**Citation :** (2011) 162 PLR 777 : (2011) 5 RCR(Civil) 637

**Hon'ble Judges :** Ranjan Gogoi, Acting C.J.;Augustine George Masih, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

Ranjan Gogoi, A.C.J.—Pursuant to a notice inviting tenders for purchase of 44.26% equity shares held by the Punjab State Industrial Development Corporation (PSIDC) in Punjab Alkalies and Chemicals Limited (PACL), fourteen companies including the writ Petitioner-Company submitted their respective responses. The bid submitted by the Petitioner-Company was found to be technically qualified. In a meeting held on 7.12.2010 of the Cabinet Sub-committee a decision was taken not to approve the bid of the Petitioner-Company. The Cabinet sub Committee came to take up the matter on a reference made by the Core Committee of Officers on Disinvestment in a meeting held on 14th September, 2010 which was presided over by the Chief Secretary of the State of Punjab. The resolution of the meeting of the Cabinet Sub-Committee in which the aforesaid decision was reached may be extracted below:

b) M/S Nectar Life Sciences Ltd. Principal Secretary Industries and Commerce apprised in detail that M/S Nectar Life Sciences Ltd. (formerly known as M/S Surya Medicare Ltd.) was a company promoted by PSIDC in joint sector. However, the private promoters of M/S Nectar Life Sciences Ltd. purchased equity shares held by PSIDC under a One Time Settlement Scheme which is at present under dispute since 15/16-05-2009. Further, the Bidder has deliberately avoided amicable settlement of the demand raised by PSIDC. Further, the RFQ

documents require every bidder to disclose all such material facts and disputes in its bid submissions, which the bidder has failed to do in this case. The Global Advisor apprised that under Clause 2.11 of the RFQ document, DOD/GOP has discretion to reject any bid where it finds reasonable grounds to do that. Therefore, keeping in view the defaults and disputes of the bidder as stated above and all other facts, circumstances and interest of PSIDC, CCD did not find it prudent to approve the bid of M/S Nectar Life Sciences Ltd. and, therefore, decided not to approve the pre-qualification of this bid also. CCD, therefore, approved the following 12 EOIs out of the total 14 received:

- (1). M/s J.P. Associates Ltd., Noida.
- (2). M/s Surya Pharmaceuticals Ltd., Chandigarh.
- (3). M/s Nirma Ltd., Ahmedabad.
- (4). M/s Kudos Chemie Ltd., Derabassi, Punjab.
- (5). M/s KLJ Resources Ltd., New Delhi.
- (6). M/s Amtek Auto Ltd., New Delhi.
- (7). M/s Goyal MG Gases Pvt. Ltd., New Delhi.
- (8). M/s Panoli Intermediates (India) Pvt. Ltd., New Delhi.
- (9). M/s Lords Chloro Alkali Ltd., New Delhi.
- (10). M/s Jay Polychem (India) Ltd., New Delhi.
- (11). M/s Grasim Industries Ltd., Nagda (M.P.)
- (12). M/s Bhushan Power & Steel Ltd., Chandigarh.

2. Aggrieved by the said order, the Petitioner is before this Court.

3. Though the aforesaid decision was taken on 7.12.2010, the writ petition itself was filed on 4.2.2011. The above date would be relevant to notice the fact that in the meantime, the due diligence process is over and tomorrow i.e. 10.2.2011 is the date fixed for the pre-bidding stage whereafter financial bids, on a date to be notified, will be required to be submitted by the eligible bidders.

4. The delayed approach to this Court has been sought to be explained by the learned Counsel for the Petitioner by contending that on 7.1.2011, the Petitioner-Company wrote a letter (Annexure P-5) seeking information with regard to the status of its bid to which a cryptic reply was given by Respondent No. 1 on the same date (Annexure P-7) that contained a reference to para 2.25(b) of the Request for Qualification Document. In terms of the aforesaid paragraph, No. queries were to be entertained with regard to the progress of the bids submitted. According to the Petitioner, it is only after another writ petition (C.W.P. No. 996 of 2011) was filed by another disqualified bidder that the details of the rejection of the bids of the Petitioner came to its knowledge leading to the filing of the

present writ petition. Learned Counsel has further submitted that the due diligence process is for the benefit of the bidders and the Petitioner is ready and willing to relinquish its rights under the said process.

5. The submissions advanced by the counsel for the Petitioner for the delayed approach to this Court and at a stage when the process is already underway have received our due consideration. A diligent bidder who is interested in submitting his/its bids would be expected to approach the Court well in time and not at a stage when the process has already commenced. Even if the explanations for the delayed approach are to be accepted, the same may not constitute a good ground to allow the Petitioner to participate in the process which has already begun and the pre-bidding process is due to commence tomorrow i.e. 10.2.2011. Abandonment of the rights under the due diligence process is one aspect of the matter; the consequential uncertainty that would result due to last minute entrance into the arena is an aspect that will always have to be kept in mind.

6. Even if we do not non-suit the Petitioner on the above ground, there are certain other fundamental aspects of the case which cannot escape our notice. The reasons which have prevailed upon the Committee while rejecting the bid of Petitioner, inter alia, refers to some dispute between the private promoter of the Petitioner-Company and the PSIDC over the buy-back of shares pertaining to the Petitioner-Company which had occurred in the year 2002-2003. The aforesaid dispute is presently adjudication before some other Forum and, therefore, it would not be correct on the part of this Court to attribute any blame to any of the parties for the said dispute. However, what cannot escape the notice of this Court is the fact that the Petitioner-Company had not mentioned about the said dispute in its bid submitted in the present case. Learned Counsel for the Petitioner has tried to overcome the aforesaid difficulty by contending that the Petitioner-Company was in No. way involved with the said dispute and the same involved only the private promoter and the PSIDC. The argument, though attractive, cannot have our acceptance. A Company does not function on its own except through individuals who are at the helm of its affairs. In the present case, it is not in dispute that the promoter involved in the dispute is the Managing Director of the Petitioner Company.

7. The power of the Court under Article 226 of the Constitution of India in matters involving the decision making process leading to grant of government largesse or contracts is extremely circumscribed. It is not the decision on merits that is scrutinized by the Courts; rather it is the decision making process which is subjected to scrutiny on the touch-stone of the well-known parameters laid down in repeated decisions of the Apex Court. If the Authority competent to decide has taken a decision which is otherwise fair and reasonable, the Court cannot reverse such a decision merely on the ground that on merits some other decision ought to have been taken at. In the present case, the decision to exclude the Petitioner is a well reasoned decision containing adequate reasons for the conclusions

arrived at. Materials on record have been considered and the decision in No. manner would be vitiated on account of consideration of irrelevant or extraneous facts.

8. In the above circumstances, we are of the view that the ultimate decision arrived at by the Cabinet Committee to exclude the Petitioner should not be gone into by us by formally admitting this writ petition which can only prejudice public interest inasmuch as a formal admission of the writ petition may throw a cloud over the entire process thereby keeping intending bidders at bay.

9. For the aforesaid reasons, we take the view that this writ petition should not be admitted and considered any further. It is accordingly dismissed, however, without costs. Sd/- Augustine George Masih.