THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Extraordinary Jurisdiction)

SINGLE BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE

WP(C) No.75 of 2025

Petitioner : Hill Brow Metallics & Construction Pvt. Ltd.

versus

Respondents : Ministry of Defence and Others

Application under Article 226 of the Constitution of India

Appearance

Mr. Tarique Sidique, Mr. Norzang Lepcha and Ms. Nima Phuti Lepcha, Advocates for the Petitioner.

Ms. Sangita Pradhan, Deputy Solicitor General of India for the Respondents No.1 to 5.

Mr. Sudesh Joshi, Advocate for the Respondent No.6.

Date of hearing	:	01-12-2025
Order reserved	:	01-12-2025
Order pronounced & uploaded	:	03-12-2025

ORDER

Meenakshi Madan Rai, J.

1. In the instant Petition, the Petitioner seeks an interim relief, *viz.;*

> **"**Stay the impugned letter/Summary of Technical Evaluation dated 04.10.2025 issued by the respondent no.5 whereby the technical committee of respondent no.5 has illegally, unlawfully, arbitrarily and wrongly evaluated bid documents of respondent no.6 during the technical evaluation and all consequential actions/proceedings including issuance of Letter of Acceptance (LoA) to Respondent No.6 who has been illegally and arbitrarily declared as L-1.**"**

2. Learned Counsel for the Petitioner submits that the Respondent No.5 the Chief Engineer, Border Roads Organisation, invited bids from eligible contractors for the construction and improvement of Rishi-Rongli-Kupup road in East Sikkim, as detailed in the Request for Proposal (RFP) [Annexure P-2] to the Petition. Both the Petitioner and the Respondent No.6, M/s Rajinder Infrastructure Private Limited participated in the tender

process relating to the Tender ID No.2025_BRO_706797_1. The technical committee of the Respondent No.5, vide the Summary of Technical Evaluation, dated 04-10-2025, illegally and arbitrarily declared Respondent No.6, M/s Rajinder Infrastructure Private Limited, as qualified in the technical bid despite it not meeting the requirements thereof and permitted it to participate in the next stage of bidding. The Respondent No.5 then declared that the financial bids of all technically responsive bidders would be opened on 11-10-2025, at 1700 hours. Thereafter, without following due process the financial bids were opened on 22-10-2025 declaring Respondent No.6 as L-1. It is canvassed by Learned Counsel for the Petitioner that the technical bid of Respondent No.6 is required to be set aside as illegal and arbitrary the selection of Respondent No.6 being in violation of the terms of the technical requirements of the Request for Proposal (RPF) consideration. That, the Respondent No.6 in the "Integrity Pact Format" filed along with its documents had declared that it had no previous transgressions in the last three years, immediately before signing of the Integrity Pact, which could justify its exclusion from the tender process which is contrary to records.

(i) That, Clause 2.1.14 of the RFP specifically lays down that the bidder shall be deemed to be a non-performing party, if it attracts any or more of the conditions detailed in the clause, in any of its ongoing or completed projects. The paragraph below sub-Clause (xx) of Clause 2.1.14 provides that, the bidder shall give the list of projects of Expressways, National Highways, works of Ministry of Road Transport and Highways, or it's implementing agencies (NHAI/NHIDCL/State PWDs/BRO) and the status of the each project and on the bid submission date undertake that they

do not attract any of the above categories. It is clarified that the categories indicated in the paragraph (*supra*) includes the categories detailed in Clause 2.1.14 (i) to (xx). All bidders were also to give not only the details of ongoing projects but also details of updated ongoing process of black listing if any under any contract with the authority and the Government.

(ii) It was urged by Learned Counsel that the Respondent No.6 had not disclosed relevant information pertaining to its debarment by a public undertaking being Greater Mohali Area Development Authority (GMADA) and Punjab Urban Development Authority (PUDA) from carrying out contract works or the fact that a criminal case was registered against Gurinder Pal Singh, who holds 99.95% shares of the Respondent No.6 Company. The information pertaining to Charge-sheet filed against Respondent No.6 Company and Gurinder Pal Singh under Section 420 of the Indian Penal Code and Prevention of Money Laundering Act, 2002, was also concealed. Relying on Annexure P-8, P-9 and P-12, Learned Counsel submitted that Respondent No.5 failed to take into consideration that Respondent No.6 was entrusted with the construction of high altitude road to Indo-China Border from Dorjila Base, which was to commence from 07-12-2021 and to be completed by 25-05-2024. This project is still incomplete but information pertaining to such incompletion was not furnished by Respondent No.6 to Respondent No.5, who has overlooked this shortcoming. In another contract pertaining to construction of high altitude road to Indo-China Border from Kerang, the project was to commence from 18-12-2021 and was to be completed on 26-05-2024. The Petitioner has failed to complete it on the scheduled date as also construction of ITBP high altitude road to Indo-China

Border from Leema which was to commence from 10-11-2022 and the date of completion is 03-01-2026. In the last contract the progress of the work is not in terms of the area to be covered and flies in the face of details required by Annexure P-7.

(iii) That, it is in such circumstances that the interim relief (*supra*) is being sought, as Respondent No.5 failed to take steps despite the Petitioner have issued an e-mail to them firstly on 12-11-2025 and thereafter on detecting defects and rectifying the errors, sent a repeat e-mail on 15-11-2025 at 11.29 a.m., regardless of which further steps were taken by Respondent No.5 in favour of Respondent No.6.

3. Learned Deputy Solicitor General of India (DSGI) for the Respondent No.1 to 5 submitted that, there has been no illegality or arbitrariness in the act of the Respondent No.5 who has already issued the LoA on 17-11-2025 to the Respondent No.6. The Learned DSGI denied knowledge of the e-mail dated 15-11-2025.

4. Learned Counsel for the Respondent No.6 for his part contended that after following due process and all necessary considerations by the Respondent No.5 in terms of the RFP, Respondent No.6 was found to be the lowest bidder and declared as "L-1". Consequent thereto, the LoA was issued to the Respondent No.6 upon which steps are yet to be taken by Respondent No.6. It was clarified that although the Petitioner placed reliance on Annexure P-16, i.e., the proceedings in Punjab and Haryana High Court in ***M/s. Rajinder Infrastructure Pvt. Ltd.*** vs. ***State of Punjab and Others***[1] the Counsel for the Petitioner failed to apprise this Court that the Counsel representing the Respondent

[1] CWP No.7158 of 2023 (O&M) dated 03-12-2024

No.6 in the said matter had conceded that both orders debarring the Respondent No.6 by the GMADA and PUDU respectively were not defensible and he was therefore under instructions to submit that the said Orders be deemed to have been withdrawn.

(i) Walking this Court through the provisions of Section 41(ha) of the Specific Relief Act, 1963, it was urged that the provision clearly lays down conditions when an injunction cannot be granted by the Court. Strength was also drawn from the decision of the Supreme Court in ***N. G. Projects Limited*** vs. ***Vinod Kumar Jain and Others***[2], wherein the Supreme Court has cautioned that, construction of roads is an infrastructure project, therefore the intent of the legislature should be kept in view and infrastructure projects should not be stayed. In the said matter, it was observed that the High Court would have been well advised to hold its hand to "stay the construction" of the infrastructure project. Besides, the decision as to whether the bidder satisfies the tender condition is primarily upon the authority inviting the bids. Reliance was also placed on ***Jagdish Mandal*** vs. ***State of Orissa and Others***[3], wherein the Supreme Court observed that it is the authority considering the tender who has to take into consideration various points while determining the validity of the tender. This was done by Respondent No.5 and pursuant thereto has carried out the necessary scrutiny and the LoA was issued to the Respondent No.6. Hence, the interim relief or the prayers sought by the Petitioner in the Writ Petition are not tenable.

5. I have given due consideration to the rival submissions advanced by Learned Counsel for the parties, perused the Petition and all documents relied on by the Petitioner.

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[2] (2022) 6 SCC 127
[3] (2007) 14 SCC 517

6. It is pertinent to mention at this juncture that upon perusal of the Petition, on the last date, an enquiry was made by this Court with regard to the *locus standi* of the authorised person of the Petitioner. Learned Counsel for the Respondent No.6 submitted that in ***State Bank of Travancore*** vs. ***Kingston Computers India Private Limited***[4], the Supreme Court has observed that there has to be evidence of a resolution passed by the Board of Directors of the company, authorising such persons to file the representation against the Respondents. No such documents have been furnished by the Petitioner. *Per contra* the Counsel for the Petitioner invited the attention of this Court to the affidavit filed by the authorised person "Sonam Choda Tamang" as also Special Power of Attorney, wherein the said person has been authorised by the Directors of the Petitioner Company to take all steps as detailed therein on behalf of the Petitioner Company. The attention of this Court was also invited to the *certified true copy of the resolution passed at the meeting of Board of Directors of Hill Brow Metallics & Construction Pvt. Ltd. held on 03-11-2025, at 11.30 p.m. at Jora NH-06, Road near Jora the Mall, Opposite Agriculture College Jora, Raipur (CG) - 492012*, wherein the Board resolved that Sonam Choda Tamang was the constituted attorney of the company. That, the Special Power of Attorney specified that, the Power of Attorney given to Sonam Choda Tamang was issued in pursuance to delegation of power vide resolution, dated 03-11-2025, passed by the Board of Directors.

7. Having considered and perused the above documents, I am of the considered view that the *locus standi* of the authorised person requires no further discussion.

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[4] (2011) 11 SCC 524

8. While considering the competing submissions advanced by Learned Counsel for the parties, at this stage I find that the Petitioner has made out a *prima facie* case to grant an interim relief for the reason that the RFP lays down certain requisites for a bidder to qualify and even if the Order of the Punjab and Haryana High Court (*supra*) is taken into consideration, which reflects that, the orders of debarment of the Respondent No.6 vide Orders dated 11-08-2021 and 06-07-2022 were deemed to be withdrawn as not defensible, it appears that in the instant bid, no disclosure was made by the Respondent No.6 with regard to details pertaining to its ongoing contracts and the work progress as required in Annexures of the RFP. It is also noticed that the Petitioner had issued an e-mail to all Respondents dated 15-11-2025, at 11.29 a.m. Surprisingly on 17-11-2025, the LoA in a rather unholy hurry was issued to the Respondent No.6. From the timelines which are reflected hereinbelow it is evident that prior to the e-mail sent by the Petitioner to Respondent No.5, the Respondent No.5 was taking its time with regard to the bid and the LoA, viz., on 05-05-2025 the RFP was issued by the Respondent No.5. On 20-06-2025 the technical bids were opened. On 04-10-2025 the results of technical bids were declared. On 11-10-2025 the bids were to be opened. On the said date the bids were not opened and the date was extended to 22-10-2025. Even after the opening of the bids on 22-10-2025, no steps were taken by Respondent No.5 but on 17-11-2025 immediately after the e-mails were sent to the Respondents on 15-11-2025, the LoA was issued.

9. The submission of Learned DSGI that Respondent No.5 was not aware of the e-mails cannot be countenanced. Appositely the LoA is not a contract, in this circumstance, reliance placed by

Learned Counsel for the Respondent No.6 on ***N. G. Projects Limited*** (*supra*) stating that the High Court should "stay its hand" in matters of infrastructure development is not relevant as the contract work has not even commenced nor has a date been set for such commencement. Only the LoA has been issued. It is now settled law that issuance of LoA does not tantamount to a concluded contract. The dates for commencement and completion of the contract have not been specified as that stage is yet to be reached.

10. Hence, in the facts and circumstances detailed hereinabove and in consideration of the balance of convenience and inconvenience of the parties, the impugned letter/Summary of Technical Evaluation, dated 04-10-2025, is stayed along with steps in the context of the LoA dated 17-11-2025, until further orders of this Court.

11. It is clarified that the observations made hereinabove are only for the purposes of interim stay and shall in no manner be construed as findings on the merits of the Writ Petition.

(Meenakshi Madan Rai)
Judge
03-12-2025

Approved for reporting : **Yes**

ds/sdl