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

\# **CNR No : DLHC010500512025**

% *Date of Decision : 29.07.2026*

\+ **W.P.(C) 10950/2025 CM APPL. 45125/2025 CM APPL. 41757/2026**

M/S. GOPAL AWASTHI CONTRACTORS PRIVATE LIMITED .....Petitioner

Through: Mr. K C Mittal, Sr Advocate with Mr. Yugansh Mittal, Mr. Keshav Poonia, and Mr Madhur Gupta, Advocates alongwith Mr. Ankur Awasthi, Director in person

versus

UNION OF INDIA THE THROUGH SECRETARY & ORS. .....Respondents

Through: Mr. Premtosh K Mishra CGSC, Mr. Anubhav Upadhyay Advocate for UOI.
Mr. Rajeev Saxena, Sr Advocate with Ms. Megha Saxena, Ms. Shreya Bhatnagar, Mr Hemant Kakkad, Advocates and Mr. Anil Arora, in person.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

MANMEET PRITAM SINGH ARORA, J. (*ORAL*)

1. This petition has been filed seeking the following reliefs: -

"(a) Call for the records of tender No. OSC-13013/5/2022-Outsrc.Cell-

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Dr. RMLH / 307 dated 11.07.2024 from Respondents No. 1 & 2; and/or

(b) Scrap / Cancel tender No. OSC-13013/5/2022-Outsrc.Cell-Dr. RMLH / 307 dated 11.07.2024; and/or

(C) Scrap/cancel the technical bid of the Respondent No 3, qua tender No. OSC-13013/5/2022-Outsrc.Cell-Dr. RMLH / 307 dated 11.07.2024"

1.1 Respondent no. 2 is the procuring authority which has issued a tender on 11.07.2024 for management of parking site and control of traffic at its hospital on a monthly licence fee basis. The petitioner and respondent no. 3 participated in the tender process and their technical bids were declared qualified. Respondent no. 3's financial bid emerged as L1 and the petitioner's financial bid emerged as L2.

1.2 In this writ petition, the petitioner has challenged the declaration of respondent no. 3's bid as technically responsive and seeks its disqualification. As per the petitioner, respondent no. 3's technical bid ought to be declared non-responsive due to a false declaration filed by respondent no. 3 *qua* its blacklisting status by DUSIB[1]. Respondent no. 3 has stated that the blacklisting order was stayed by a competent Court and therefore it bona fide did not declare the fact of the blacklisting order in its bid.

2. Mr. Mittal, learned senior counsel for the petitioner, states that respondent no. 3, who has been declared as L1, was ineligible to participate in this tender and therefore the declaration that respondent no. 3's bid is technically qualified is wrong.

2.1. He states that respondent no. 3 was blacklisted on 13.02.2020 by DUSIB for a period of five years. He states that respondent no. 3, however,

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failed to disclose this material fact to respondent no. 2. He states that respondent no. 3 filed an undertaking dated 08.08.2024 with its bid documents making a false declaration that it has not been blacklisted by any Government or Autonomous Body. He refers to the reply dated 13.01.2025 received from DUSIB under RTI[2] confirming that respondent no. 3 is blacklisted as on 13.01.2025 as per the DUSIB records and is not operating parking site at DUSIB.

2.2. He states that as per clauses 7.3[3], 10.3[4], 18.2[5] and 18.4(viii)[6] of the General Instructions to Tenders ['GIT'] in Section II of the tender, a bidder which has been blacklisted is ineligible to participate in the tender process. He states that respondent no. 3, by filing a false undertaking dated 08.08.2024, misled respondent no. 2 into processing its bid.

2.3. He states that respondent no. 3 has relied upon the interim orders passed in Commercial Suit, i.e. CS(COMM) No. 1158/2020 by the learned District Judge to justify non-disclosure of the blacklisting order dated 13.02.2020. He submits that, however, the orders passed in the Commercial Suit do not justify the non-disclosure in the undertaking dated 08.08.2024. He also relies upon the contents of the RTI dated 13.01.2025 to contend that despite the interim orders, as per DUSIB, the blacklisting order dated 13.02.2020 was still in existence and valid.

3. Mr. Saxena, learned senior counsel appearing on behalf of respondent

[1] Delhi Urban Shelter Improvement Board, Government of NCT of Delhi
[2] Right to Information Act, 2005
[3] Page 34
[4] Page 35
[5] Page 36

no. 3 relies upon the interim orders dated 28.09.2021 and 13.07.2022 passed by the learned District Judge in the Commercial Suit to contend that the operation of the blacklisting order dated 13.02.2020 has been stayed. He states that this was the reason for non-disclosure of the blacklisting order dated 13.02.2020 in the undertaking dated 08.08.2024. He states that the non-disclosure was bona fide.

3.1. He states that respondent no. 3 has filed an appeal against the order dated 13.02.2020 before DUSIB, which is pending consideration and has not been decided till date.

3.2. He states that the Commercial Suit itself is lying adjourned sine die.

4. Mr. Mishra, learned standing counsel appearing on behalf of respondent no. 2, i.e., the procuring entity, submits that it had sought a clarification from DUSIB with respect to the status of the blacklisting order dated 13.02.2020 vis-à-vis respondent no. 3. He states that a response was received from DUSIB on 19.06.2025[7] which has been placed on record with the counter affidavit. He states that the response clarifies that the blacklisting order has been stayed by the Court.

4.1. He relies upon the minutes of the meeting dated 23.07.2025 of the Service Procurement Committee [Technical Committee] to state that after considering the reply of DUSIB dated 19.06.2025, the Technical Committee did not find any ground for disqualifying respondent no. 3.

4.2. He states that pendency of this writ petition has led to commercial

[6] Page 36 and 37

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gains for the petitioner who is the incumbent contractor and revenue losses to respondent no. 2. He relies upon the contents of the minutes of the meeting dated 23.07.2025 of the Technical Committee in support of this submission.

4.3. He states that the petitioner herein was appointed as the contractor for parking services on 15.06.2017 for a duration of one year, i.e., until 14.06.2018. He states that this contract was extended from time to time and was last extended till 14.06.2025. He states that petitioner had also participated in the impugned tender dated 11.07.2024 and had emerged as the L2 bidder. He states that respondent no. 3, who is the L1 bidder, had quoted Rs. 2,95,801.86/- per month as the licence fee, whereas the petitioner, who is the L2 bidder, had quoted Rs. 2,31,346.98/- per month as the licence fee. He states that due to the pendency of these proceedings, respondent no. 2 has been forced to continue with the services of the petitioner at the old rate of Rs. 84,643/- per month. He states that this is the third tender which has been questioned by the petitioner, leading to his ad-hoc continuance and loss of revenue to the respondent no. 2.

5. In response, Mr. Mittal, learned senior counsel for the petitioner, states on instructions from Mr. Ankur Awasthi, Director of the petitioner company, who is present in Court, that the petitioner shall pay an enhanced monthly licence fee of Rs. 2,95,801.86/- from the date of filing of this petition, i.e., 24.07.2025, to make good the revenue loss suffered by respondent no. 2. He states, however, that respondent no. 3's bid cannot be accepted in view of the false undertaking dated 08.08.2024.

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[7] Annexure A/8

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6. We have heard the learned counsel for the parties and perused the record.

7. The short issue arising for consideration is whether the undertaking dated 08.08.2024 submitted by respondent no. 3 as per the format of Section VI of the tender contains a correct declaration and whether the tendering authority can accept it as being compliant with the eligibility conditions stipulated in the tender.

8. For adjudicating the aforesaid issue, it is necessary to examine the relevant clauses of the tender. Clause 18.4(viii) of GIT set out in Section II of the tender expressly states that a bid by a tenderer which has been blacklisted by any Government Authority will be declared non-responsive and summarily ignored. Clause 2.2 of Section IV of the tender, which enlists the eligibility criteria, expressly states that an entity which has been blacklisted by any Government or Government Authority or Autonomous Body shall not be eligible for submitting a tender. Section VI provides a format of the checklist to be filled in by a bidder, wherein, at Sr. No. 4, a bidder is required to expressly fill in its response in YES or NO format to the answer as to whether it has been blacklisted or not. In addition, at Section XII, a bidder is required to file a declaration in the format provided with respect to its status of not having been blacklisted by any Government or Government Authority or Autonomous Body, with the bid.

9. A review of the aforesaid clauses of the tender makes it explicitly clear to a bidder that if it has been blacklisted by any Government or Government Authority or Autonomous Body, it is not even eligible to

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participate in the tender process. The conditions also show that the tendering authority did not wish to in any manner deal with an entity which has been blacklisted by another entity, and this formed a fundamental basis of the eligibility criteria.

10. Respondent no. 3 participated in the bidding process by making an absolute and unqualified declaration that it has not been blacklisted by any Government or Government Authority or Autonomous Body. It filed a declaration/undertaking dated 08.08.2024 to this effect with its bidding documents, and this led to its technical bid being processed on 04.12.2024 and evaluated by the Tender Committee.

11. Respondent No. 3's undertaking dated 08.08.2024 makes no reference to the blacklisting order dated 13.02.2020 passed by DUSIB which was effective for five years, i.e., till 13.02.2025. Learned senior counsel for respondent no. 3 has submitted that respondent no. 3 made no reference to the said order in view of the interim orders dated 28.09.2021 and 13.07.2022 granted by the Commercial Court staying the operation of the blacklisting order.

In our considered opinion, the said explanation given by respondent no. 3 cannot be accepted. The effect of the interim orders is to stay the operation of the blacklisting order dated 13.02.2020, but it does not obliterate the said order. The blacklisting order dated 13.02.2020 continues to exist until it is set aside by the Court. It was therefore the obligation of respondent no. 3 to make a full disclosure of the blacklisting order dated 13.02.2020 passed by DUSIB in its bidding document along with the interim

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orders passed by the Commercial Court staying the effect of the said orders. This was necessary so that the procuring authority, i.e., respondent no. 2, was apprised of the fact that a blacklisting order had been passed, albeit the same was sub judice, enabling it to take an informed decision and independently assess the technical capacity of the bidder. However, the interim orders dated 28.09.2021 and 13.07.2022 passed by the Commercial Court did not entitle respondent no. 3 to withhold from the procuring entity the fact that the blacklisting order dated 13.02.2020 had been passed.

12. The proceedings of the present writ petition evidence that due to the non-disclosure of this material fact by respondent no. 3 in its bidding document, respondent no. 2 has been compelled to litigate in the present writ proceedings and also an earlier proceeding W.P.(C) 17430/2024, filed by another disqualified bidder. Respondent no. 2, for no fault of its own, was compelled to litigate due to the incorrect information furnished by respondent no. 3. It was compelled to consider objections raised by the petitioner and other bidders and to seek clarifications from DUSIB, all of which could have been avoided had respondent no. 3 made a full disclosure of the blacklisting order dated 13.02.2020 and the pending legal proceedings in its undertaking.

13. We therefore find that the participation of respondent no. 3 in the bidding process on the basis of the undertaking dated 08.08.2024 was contrary to the express conditions of the tender and therefore, its bid is liable to be declared as non-responsive.

14. We have, however, perused the minutes of the meeting of the

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Technical Committee dated 23.07.2025, which records that the petitioner is the incumbent contractor who was first appointed on 15.06.2017 for a duration of one year until 14.06.2018, and has thereafter continued on ad-hoc extensions granted till 14.06.2025. The minutes show that the Technical Committee took into consideration the value of the financial bid submitted by the L1 bidder and was of the opinion that objections being raised by the petitioner were without any merit. The inference this Court can draw is that the Technical Committee was of the view that the petitioner was raising objections to serve its personal financial interests and not the institutional interest. The Technical Committee was of the view that accepting the L1 bid would be in the financial interest of respondent no. 2. The submissions of learned counsel for respondent no. 2 in this regard have been noted at paragraph 4.3 above.

We find merit in these submissions of the respondent no. 2. We have been informed that the petitioner is continuing with providing parking services by paying a monthly licence fee of Rs. 84,643/-, whereas the L1 bidder has offered Rs. 2,95,801.86/- for monthly licence fee. In fact, the petitioner itself was an L2 bidder who had submitted a bid of Rs.2,31,346.98/- for the monthly licence fee. However, paradoxically, due to the pendency of these proceedings challenging the tender, the petitioner has continued with its services at the lower amount of Rs. 84,643/- per month. There has thus been a clear economic gain to the petitioner and revenue loss to respondent no. 2, which cannot be the intended result of Article 226 proceedings challenging the tender process. We have expressed this view during the hearing and in response thereto the petitioner has stated that it is

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ready and willing to pay monthly licence fee at Rs. 2,95,801.86/- to respondent no. 2 with effect from 24.07.2025 and continue to pay the said monthly licence fee until the termination of its contract.

15. The aforesaid submission of the petitioner is taken on record and the petitioner is bound down to the same. The petitioner is hereby held liable to make payment of monthly licence fee of Rs. 2,95,801.86/- w.e.f. 24.07.2025 until the termination of its contract by respondent no. 2. The petitioner is directed to make good the past arrears from 24.07.2025 to 31.07.2026, within a period of four weeks, failing which the arrears will carry an interest amount of 18% p.a. The petitioner shall pay a monthly licence fee of Rs. 2,95,801.86/- with effect from August 2026 and shall continue to do so until the termination of the contract, upon award of the contract, pursuant to fresh tender process as per our direction hereinafter.

We note that this statement made by the petitioner has weighed with us in exercising our extraordinary jurisdiction under Article 226 to set at naught the tender process despite the Technical Committee of the tendering authority taking a different view in its minutes of meeting dated 23.07.2025. Therefore, if the petitioner fails to abide by its statement, made today, the petitioner will be liable for contempt of Court and also disqualified from participation in future tenders of respondent no. 2.

16. In view of the findings *qua* respondent no. 3's bid being non-responsive, the tender process dated 11.07.2024 set out in prayer clause (a) is hereby set aside with liberty to respondent no. 2 to initiate a fresh tender process. Respondent no. 2 is directed to make an endeavour to initiate and

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complete the fresh tender process within a period of four months from today.

17. Learned counsel for respondent no. 2 has expressed an apprehension that even after the new tender process is complete, the petitioner herein will not vacate the parking area of the hospital for a smooth handover to the successful bidder. In this regard, we observe that the petitioner can have no legal right to continue with providing services in the parking area at the hospital after its contract is terminated by respondent no. 2.

18. With the aforesaid directions and observations, the present writ petition is allowed. Pending applications, if any, are disposed of.

MANMEET PRITAM SINGH ARORA, J

V. KAMESWAR RAO, J

JULY 29, 2026/mt/aa