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THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WA/4/2026

1.OHELEY BONVOYAGE TRAVELS AND ANR
REPRESENTED BY ITS PROPRIETOR,
MR. BIBEKANANDA PATOWARY
HAVING ITS REGISTERED ADDRESS AS CHAKRABORTY COMMERCIAL
COMPLEX, 2ND FLOOR, G. N. B. ROAD,
SILPHUKRI, GUWAHATI- 781003.

2: MR BIBEKANANDA PATOWARY
PROPRIETOR OF M/S OHELEY BONVOYAGE TRAVELS HAVING ITS
REGISTERED ADDRESS AS CHAKRABORTY COMMERCIAL COMPLEX
2ND FLOOR G. N. B. ROAD SILPHUKRI GUWAHATI-781003

VERSUS

1.THE UNION OF INDIA AND 2 ORS
REPRESENTED BY THE SECRETARY, MINISTRY OF COMMERCE
INDUSTRY, VANIJYA BHAWAN, NEW DELHI 11011.

2:ASSAM POWER DISTRIBUTION CORPORATION LIMITED
REPRESENTED BY THE CHIEF GENERAL MANAGER PPD HAVING OFFICE
AT BIJULEE BHAWAN PALTAN BAZAR GUWAHATI ASSAM-781001

3:THE GOVERNMENT E MARKET
MINISTRY OF COMMERCE AND INDUSTRY
REPRESENTED BY ITS CHAIRPERSON AND NOMINEE DIRECTOR
GEM VANIJYA BHAWAN NEW DELHI-11011

For the Appellant(s) : Mr. D. Rathi, Advocate.

For the Respondent(s) : Mr. K.P. Pathak, Standing Counsel, APDCL for respondent No.2.

- B E F O R E -

HON'BLE THE CHIEF JUSTICE MR. ASHUTOSH KUMAR
HON'BLE MR. JUSTICE ARUN DEV CHOUDHURY

08.01.2026

(Ashutosh Kumar, CJ)

We have heard Mr. D. Rathi, learned Advocate for the appellants and Mr. K.P. Pathak, learned Standing Counsel, APDCL.

By the impugned order dated 06.01.2026 passed by a learned Single Judge of this Court in WP(C) No.67/2026, the appellants have been permitted to submit their tenders under the Notice Inviting Tender (NIT) with deposit of 50% of the Earnest Money Deposit (in short, EMD) which, however, would be subject to further orders, which would be passed in the writ proceeding.

Mr. D. Rathi, learned Advocate for the appellants, dissatisfied with the exemption of 50% only, has preferred this appeal on the ground that under the directives, a Micro and Small Enterprise (MSE) is entitled to total exemption from payment of EMD for participation in the bid.

Opposing such contention, Mr. K.P. Pathak, learned Advocate for the respondent/APDCL submits that the General Terms and Conditions (GTC) on Government e-Marketplace (GeM) clearly specifies that the State Government/State Autonomous/State Local Bodies/State PSU/Co-operatives may choose to seek EMD from MSE bidders by specifying the same in ATC/STC of the bid. In case no such Clause is included in the ATC/STC, EMD exemption as per the provisions contained in Clause (m)

of Rule 4(xiii) of the GTC shall prevail.

Clause (m) of Rule 4(xiii) of the GTC on GEM-4.0 (version 1.27) dated 01.12.2025 specifies that there shall be no bid security for bids/RA having estimated value of less than 5 Lakhs. For bids/RA having estimated value of more than 5 Lakh, while finalizing e-bid/RA, the buyer shall indicate the exact amount of bid security required to be submitted by the bidders. In the present case, 50% exemption has already been granted by the learned Single Judge as an *interim* measure, which also would be subject to the final decision in the writ proceeding.

Under such circumstances, we do not find it appropriate to interfere, at this stage, with the order passed by the learned Single Judge and permit the appellants to participate in the writ proceeding so that the writ proceeding is taken to a logical conclusion.

Finding no merit in this appeal, we dismiss the same.

We make it clear that any observation made by this Court in the present appeal shall not influence the writ proceeding before the learned Single Judge.

JUDGE

CHIEF JUSTICE

Comparing Assistant