

## EXTRACTS FROM HON'BLE DELHI HIGH COURT'S ORDER ON CENTRAL GOVERNMENT PURCHASES FROM SMALL SCALE UNITS

- Providing special preferences to Small Scale Units (SSUs) in government stores purchase has been a stated policy of Government of India. (Circular no. CL/ 78-BPE/MM dt. 12th January 1978; circular no. 21 (1) 2000-EP&M Dt. 28/08/2000 may be referred among others at IIA website). Through circulars different Ministries were advised to provide four major benefits to units registered with NSIC:
  - Issue of tender sets free of cost
  - Exemption from payment of Earnest Money
  - Waiver of Security Deposit (to the monetary limit for which the unit is registered)
  - Price preference upto 15% over the quotation of large scale units
- The compliance of these recommendations has not been mandatory and over a period of time, the MSE's were being denied these promised benefits by most of the Government agencies/ PSUs. The reason cited by the authorities has been that the recommendations have been 'discretionary' and 'not mandatory'.
- The matter has been examined recently by the Hon'ble High Court of Delhi and has issued an important clarification through the Order observed [Delkon Textiles Vs Ministry of Railways WP(C) no. 7704 of 2009 Dt. 12.08.2010] as under:

**"If the circular Dt 28<sup>th</sup> Aug 2000 (*recommending the benefits to MSEs*) is read as being purely discretionary than the object sought to be achieved by such Circular would be defeated. Accordingly it is held that unless there are good reasons for not extending to duly qualified SSU the benefit under the circular dated 28<sup>th</sup> August 2000 by Ministry of Small Scale Industries & Agro and Rural Industries, Govt. of India, which reasons must be recorded in writing, such a qualified SSU should be extended all the benefits, including price preference of 15% over the price quoted by the qualified large scale unit in terms of above circular. The railways shall implement the said circular dated 28<sup>th</sup> August, 2010 while evaluating the bids submitted by the SSUs in the tenders floated by it".**

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IN THE HIGH COURT OF DELHI AT NEW DELHI

W.P.(C) No. 7704 of 2009

DELKON TEXTILES PRIVATE LTD. .... Petitioner  
Through: Ms. Puja Anand, Advocate.

versus

MINISTRY OF RAILWAYS & ORS. .... Respondents  
Through: Kumar Rajesh Singh, Advocate.

**CORAM: JUSTICE S. MURALIDHAR**

**ORDER**

**12.08.2010**

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1. The Petitioner seeks a direction to the Respondent, Ministry of Railways, Government of India to implement and grant the benefits to small scale units ('SSUs') like the Petitioner in terms of Circular dated 28<sup>th</sup> August 2000 issued by the Ministry of Small Scale Industries & Agro and Rural Industries, Government of India Respondent No.2 herein.

2. The Petitioner is a Small Scale Industrial Unit ('SSU') registered with the National Small Scale Industries Corporation Ltd. ('NSSICL'), which is a Government of India enterprise, for participation in the Central Government Stores Purchase Programme as per the Single Point Registration Scheme, ('SPRS') wherein, the SSU is considered to be at par with those registered directly with the Director General of Supply & Disposal ('DGS&D'). The Petitioner manufactures textile products including fire retardant curtain fabric, which conforms to the specifications of the Research Designs & Standards Organisation ('RDSO'), functioning under the Ministry of

Railways, Respondent No. 1.

3. There are four specific benefits granted by the Circular dated 28<sup>th</sup> August 2000 to SSUs which have been registered with the NSSICL under its SPRS in order to help them in marketing their products:

- “1. Issue of Tender set free of cost.
2. Exemption from payment of Earnest Money.
3. Waiver of Security Deposit to the Monetary Limit for which the unit is registered.
4. Price Preference upto 15% over the quotation of large-scale units.”

4. The Circular itself states that the abovementioned facilities are given “as the financial resources at the disposal of small scale units are limited and it becomes difficult for them to participate in more than one tender floated by any Government Department/PSU and hence they are not able to block their limited capital for long”.

5. The Circular reminds the Government and their departments of earlier Circulars dated 30<sup>th</sup> July 1993 and 15<sup>th</sup> May 1998 extending facilities to the SSUs which were not being implemented.

6. The events that led to the Petitioner approaching this Court with the above prayer is that Respondent No.1 invited tenders on 12<sup>th</sup> February 2008 for Fire Retardant Curtain Cloth Fabric for 2 AC and 3 AC coaches as per the RDSO specifications. On 4<sup>th</sup> March 2008, a letter inviting quotations for the above tender was issued by Respondent No.1 to the Petitioner. The

Petitioner submitted its offer on 14<sup>th</sup> March 2008 and quoted its final price keeping in mind the market rates prevalent and the best price possible which would make the tender viable for them. Among the four units that submitted their offers pursuant to the tender, the Petitioner was the only SSU. The Petitioner wrote letters dated 22<sup>nd</sup> April 2008 to the NSSICL and the Respondent No.2 asking them to direct the Respondent No.1 to grant benefits which had been extended to SSUs by the Circular dated 28<sup>th</sup> August 2000. The NSSICL, in turn, wrote to the Respondent No.1 on 28<sup>th</sup> April 2008. On 20<sup>th</sup> May 2008, Respondent No.1 wrote a letter of counter-offer to the Petitioner without extending the benefit under the Circular dated 28<sup>th</sup> August 2000. The Petitioner then again wrote to the NSSICL on 27<sup>th</sup> May 2008 asking it to take up the matter with Respondent No.1. This the NSSICL did by again writing to the Respondent No.1 on 28<sup>th</sup> May 2008. Further letters were written by the Petitioner and the NSSICL to the Respondent No.1 on 11<sup>th</sup> June 2008 and 7<sup>th</sup> July 2008 respectively.

7. The Petitioner does not, in this petition, challenge the denial to it of the award of any portion of the tender floated by the Respondent No.1 Railways on 12<sup>th</sup> February 2008. However, it apprehends that in respect of future tenders, the Railways may not follow the above Circular dated 28<sup>th</sup> August 2000. Accordingly, the only prayer in the writ petition is as under:

“to issue a writ of mandamus to the Respondent No.1 commanding and directing them to implement and grant all the benefits of Purchase Price Preference policy of the Government of India, Ministry of MSME issued vide its main Circular dated 28<sup>th</sup> August 2000 in favour of the Petitioner, which is NSIC approved small scale unit,

henceforth.”

8. A counter affidavit and a supplementary affidavit have been filed by the Railways on 12<sup>th</sup> November 2009 and 29<sup>th</sup> July 2010 respectively. Since the first counter affidavit did not specifically deal with the Circular dated 28<sup>th</sup> August 2009, this Court required the Respondent to file a supplementary affidavit. As far as the tender floated on 12<sup>th</sup> February 2008, it is stated that the offers were received from 5 units, including the Petitioner. The Petitioner was the only SSU. The Petitioner and one M/s. Anude Faze Auto Fab Ltd. ('AF AFL') were categorized as 'RDSO Part II sources'. A bulk order was placed on M/s. RSWM Ltd., which was a RDSO Part-I approved unit. It is submitted that the lowest offer received was from AF AFL, which is not a SSU, at Rs.265 per meter plus the excise duty @ Rs. 21.84 i.e. all inclusive rate of Rs. 286.84 per meter. 15% of the quantity was awarded to AF AFL. The offer of the Petitioner was Rs. 324 per meter. However, it is stated in para 3(x) and 3(xiv) as under:

“(x) That as per purchase/price preference clause, the purchaser reserves the option to give the price preference to the small scale industries over those from other firms. However it cannot be taken for granted, and every need be made by them to bring down the cost and achieve competitiveness. However the Petitioner has been given the benefits of waiver of cost of tender document and exempted from payment of EMD.

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(xiv) That by the above facts, it is very clear that the discounted rate offered by the firm which is affordable will be the best price and profitable to them, but claiming higher

price under the provision of benefit of price preference up to 15% over the large scale units is not proper and misleading the Government.”

9. Learned counsel for the Petitioner points out that the Petitioner being the only SSU was entitled to be considered since its offer of Rs. 321 per meter was less than the lowest offer of Rs. 286.84 plus 15% in terms of the Circular dated 28<sup>th</sup> August 2000. Learned counsel for the Petitioner, however, reiterates that the Petitioner is not seeking any directions with reference to the award of contract pursuant to the tender floated by the Railways on 12<sup>th</sup> February 2008 but would be satisfied if a clarification is issued for the future about the applicability of the Circular dated 28<sup>th</sup> August 2000.

10. Learned counsel for the Respondents, while not denying that the rate quoted by the Petitioner could be well within the acceptable quotation of 15% over the quotation offered by AFAPL, submitted that it was in the discretion of the Railways whether or not to extend the benefit in terms of the Circular dated 28<sup>th</sup> August 2000.

11. At the outset, this Court refrains from commenting on the Petitioner not being awarded of any portion of the tender floated by the Railways on 12<sup>th</sup> February 2008. As regards the only prayer in the writ petition, it appears to this Court that the Railways do not have any difficulty as regards extending three of the four benefits extended to SSLs by the Circular dated 28<sup>th</sup> August 2000. However, in granting the price preference “upto 15% over the

quotation of large-scale units" there appears to be a misconstruing of the Circular dated 28<sup>th</sup> August 2000 by the Ministry of Railways. While a SSU cannot insist that the entire quantity tendered must be offered to an SSU, a duly qualified SSU should be given preference in the matter of price in terms of the Circular dated 28<sup>th</sup> August 2000. In other words, where the bid of a non-SSU large scale unit have been accepted for a portion of the tendered quantity, then the qualified shall be qualified up to 15% above to price quoted by the large-scale unit. Between two SSUs, of course, it would be for the Railways to opt for the better price quoted, which again cannot exceed 15% over and above the lowest price quoted by the large-scale unit. It is further clarified that it is not necessary that the entire quantity should be offered to a SSU. If the Circular dated 28<sup>th</sup> August 2000 is read as being purely discretionary, then the object sought to be achieved by such Circular would be defeated. Accordingly, it is held that unless there are good reasons for not extending to duly qualified SSU the benefit under the Circular dated 28<sup>th</sup> August 2000, which reasons must be recorded in writing, such a qualified SSU should be extended all the benefits, including price reference of 15% over the price quoted by the qualified large-scale unit in terms of the Circular dated 28<sup>th</sup> August 2000. The Railways shall implement the said circular dated 28<sup>th</sup> August 2000 while evaluating the bids submitted by the SSUs' in the tenders floated by it.

12. With the above observations, the writ petition is disposed of.