IN THE COURT OF APPEAL
OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an Application for Orders in the nature of Writs of *Prohibition*, *Mandamus* and *Certiorari* under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

1. **Lyca Leasing Holding Limited**,
   195, Marsh Wall,
   London,
   England E14 9SG.

2. **Haims International Limited**
   195, Marsh Wall,
   London,
   England E14 9SG.

   Appearing by their Power of Attorney Holder.
   Pushpakumara Muthukuda Wijesinghe Arachchige
   42, Dr. N. M. Perera Mawatha,
   Colombo 08.

Petitioners

1. **Hon. Shehan Semasinghe,**
   State Minister of Finance,
   The Secretariat,
   Colombo 01.

   & 24 others

Respondents

Before: **M. T. MOHAMMED LAFFAR, J.**

Counsel: Kuvera De Zoysa, PC with Rasika Dissanayake, instructed by Sanath Wijewardane for the Petitioners.

Sumathi Dharmawardane, ASG, PC, with H. Jayasinghe, DSG and T. Gajanayake SC for the Respondents.

Arguementconcluded on: 21/05/2024

Written Submissions on:10/06/2024 by the Petitioners
04/06/2024 by the Respondents

Decided on: 27/06/2024

MOHAMMED LAFFAR, J.

The Petitioners in the instant application, are challenging the failure, omission, and/or refusal of the 2nd to 13thRespondents to consider the Petitioners application for prequalification in the Request for Qualification (RFQ) for the strategic divestiture of 51.84% of the Lanka Hospitals Corporation PLC.

On 02/04/2024 having heard the learned Presidents Counsel for the Petitioner this Court issued notices on the Respondents and limited interim order as prayed for in paragraph L) of the Prayers to the Petition which reads thus:

> *"L) Grant and issue an interim order at the first instance preventing the Respondents from proceeding with the divestiture process of the Lanka Hospital Corporation PLC with the already selected prequalified bidders if any until the hearing and final determination of this application,"*

The State is objecting to the extension of the limited interim order.

The Petitioners are the bidders to the matter at hand and their bid was subsequently rejected. To accept such a bid there exists two

requisites. Namely legal criteria and financial criteria. The contention of the State is that the Petitioners have failed to meet both the criteria.

In determining whether the legal criteria have been met, it is apparent that the Petitioners failed to file an essential affidavit within the stipulated time frame. This affidavit is crucial as it declares that the bidder is not under any suspicion or accusation of corruption or bribery. The deadline for submitting this affidavit was on 21/11/2023. However, the Petitioner filed the affidavit after the deadline, on 08/12/2023. Consequently, the requirement that the affidavit be filed on time has not been fulfilled. Therefore, it is evident that the bid is liable to be rejected based on this failure to meet the legal criteria.

In assessing whether the financial criteria have been met, it is evident from the Petition, specifically on page 161, that the Petitioner must demonstrate their financial strength to qualify for the bid. To satisfy this criterion, the Petitioner submitted a loan agreement, referenced on page 326. However, the loan agreement provided does not pertain to the Petitioner, thereby failing to establish their financial capability.

Additionally, the loan agreement that was submitted is dated 19/12/2024 and was provided after the stipulated deadline, as noted on page 454 of the Petition. This point is further corroborated on page 460 of the Petition, which clearly indicates that the late submission of the loan agreement fails to meet the financial criteria required for the bid. Therefore, it is clear that the Petitioner's bid does not fulfill the necessary financial criteria and is liable to be rejected on these grounds as well.

Further, the State contends that the P35 (i) government procurement guidelines are not applicable to the matter at hand. Instead, they argue that the relevant document is P19, a special guideline issued by the cabinet specifically for this procurement process. This distinction is significant because P19 outlines specific requirements and procedures that differ from the general

procurement guidelines in P35 (i). The State's position is that adhering to the P19 guidelines is mandatory for this particular bid evaluation.

I concur with this contention. The special guideline P19 was created to address unique aspects of this procurement process, which may not be adequately covered under the general guidelines of P35 (i). By following P19, the procurement process ensures compliance with the specific directives and considerations deemed important by the cabinet for this case. Therefore, it is appropriate to apply P19 instead of P35 (i) to the matter at hand.

It was further contended by the learned Presidents Counsel for the Petitioners that although the Petitioners have not satisfied the above criteriaviavarious short comings a duty is cast upon the Respondents to clear such shortcoming by calling for further clarification. This Court cannot agree with such a contention as it is the duty of the Petitioners to furnish the Respondents with proper documents within the stipulated time frame, which is evidence that the Petitioners concede to the fact that they have submitted an incomplete application. And without such documents the Respondents are unable to decide whether the Petitioner is a suitable candidate.

Therefore, after considering the *ex facie* contents to the application at hand, there is no basis for this Court to extend the interim order, and therefore the extension of the same is refused.

The Application for the extension of the stay order is refused. No cost.

JUDGE OF THE COURT OF APPEAL