

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

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Date of Decision: 07.11.2013

+ WP(C) No.773 of 2011

SHRI LAL MAHAL LIMITED Petitioner
Through: Mr Akhil Sibal, Ms Ruchi Agnihotri and
Mr Narendra M. Sharma and Mr Vishrut
Raj, Advs.

versus

UNION OF INDIA AND ORS Respondents
Through: Mr Rajeeve Mehra, ASG with
Mr Sachin Datta, CGSC, Mr Dinesh Sharma,
Mr Kartikey and Ms Shruti Aggarwal and
Ms Mala, Advs.

+ WP(C) No.2858 of 2011

EMMSONS INTERNATIONAL LTD. Petitioner
Through: Mr Akhil Sibal, Ms Ruchi Agnihotri and
Mr Pradeep and Mr Rohan, Advs.

versus

UNION OF INDIA AND ORS Respondents
Through: Mr Rajeeve Mehra, ASG with
Mr Sachin Datta, CGSC, Mr Dinesh Sharma,
Mr Kartikey and Ms Shruti Aggarwal and
Ms Mala, Advs.

+ WP(C) No.3132 of 2011

AMIRA FOODS (INDIA) LTD. Petitioner
Through: Mr Akhil Sibal, Ms Ruchi Agnihotri and
Mr Pradeep and Mr Rohan, Advs.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr Rajeeve Mehra, ASG with
Mr Sachin Datta, CGSC, Mr Dinesh Sharma,
Mr Kartikey and Ms Shruti Aggarwal and
Ms Mala, Advs.

CORAM:

HON'BLE MR. JUSTICE V.K.JAIN

JUDGMENT

V.K.JAIN, J. (Oral)

Vide notification dated 24.1.2008 issued by the Director General, Foreign Trade, prohibition on the export of non-*basmati* rice was lifted to the extent that 25,000 MT of such rice was allowed to be exported through three Public Sector Undertakings (PSUs) i.e. MMTC, STC and PEC. The petitioners before this Court entered into separate tripartite agreements with the overseas buyers and one of the PSUs named in the notification and exported rice in terms of the said tripartite agreement.

Vide order dated 10.11.2010, the Government of India, Ministry of Commerce, directed the above three (3) PSUs not to transact any business with the petitioners. Based on the aforesaid memorandum, an Office Order was issued, debarring the petitioners from all future transactions not only with the aforesaid three (3) PSUs, but all other organizations. W.P(C) No.8325/2010 came to be filed by Emmsons International Ltd, challenging the aforesaid memorandum / order. Vide order dated 14.1.2011 passed in the aforesaid writ petition filed by Emmsons International Limited, this Court directed the impugned order to be kept in abeyance and further directed that in the event of the respondents proposing to revive the said order, at least ten (10) days notice shall be given to the petitioner. W.P(C) No.773/2011 was

then filed by Lal Mahal Limited. Vide order dated 18.3.2011, this Court directed the respondent no.1 to issue a show cause notice to the aforesaid petitioner. A show cause notice was accordingly issued to the said petitioner. After considering the reply submitted by the said petitioner and giving a hearing to it, an order dated 13.4.2011 was passed reiterating the memorandum dated 10.11.2010. The writ petition was thereupon amended so as to challenge the memo dated 10.11.2010, the office order dated 11.11.2010 and the order dated 13.4.2011.

2. In case of Amira Foods (India) Ltd., the petitioner in W.P(C) No.3132/2011, after issuance of memorandum dated 10.11.2010, W.P(C) No. 8295/2010 was filed by the said petitioner seeking withdrawal of the blacklisting order as also the subsequent order/ letter dated 29.11.2010 cancelling the IPQC Certificate granted to it. The said writ petition was disposed of on 14.2.2011 by passing an order identical to the order passed in W.P(C) No.8325/2010 filed by Emmsons International Ltd. A show cause notice was thereafter issued to the said petitioner and after considering its reply, an order dated 25.4.2011 was passed, reviving the earlier order dated 10.11.2010. Being aggrieved, the aforesaid petitioner is impugning the memorandum dated 10.11.2010 as well as the order dated 25.4.2011.

3. Emmsons International Ltd was also served with a show cause notice on 14.3.2011 and after considering its reply and giving an oral hearing to its representatives, an order dated 26.4.2011 was passed reviving the order dated 10.11.2010. The aforesaid petitioner has also challenged the memorandum dated 10.11.2010 as well as the subsequent order dated 26.4.2011.

4. After extensive arguments, the learned counsel for the petitioners in W.P(C) Nos.773/2011 and 3132/2011 states that the petitioners would be satisfied, if without adjudicating upon the other contentions raised in the petitions, the duration of the order dated 10.11.2010 read with the order dated

in W.P(C) No.773/2011 and order in W.P(C) No.773/2011 is limited to a particular period. He further submits that since the debarring order applies only to dealings with three (3) PSUs, namely, MMTC, STC and PEC, the Court may also clarify that the petitioner is not debarred from dealing with Government of India or PSUs other than the above named three PSUs, nor would the order dated 10.11.2010 read with order dated 25.04.2013 have any bearing on its dealings with private persons. He also submits that the aforesaid order should not be held against any other sister concerned of the petitioner-companies. Identical statement is made by the learned counsel for Emmsons International Ltd, the petitioner in W.P(C) No.3132/2011.

5. A perusal of the impugned order would show that no duration of the debarring of the petitioner has been fixed in the said order, meaning thereby that it has the effect of permanent black listing/debarring of the petitioner.

In Vinay Construction Co. & Ors. Vs. Municipal Corporation of Delhi & Anr. 116 (2005) DLT 14, this Court rejected the contention that there can be indefinite period of blacklisting, holding that since blacklisting carries a very severe consequence and needs to be for a prescribed period.

In Writ Petition No.17517 of 2002 titled A. Rajendran vs. The General Manager decided on 16.10.2003, the Madras High Court, noticing that the order of blacklisting the petitioner did not specify the period of blacklisting, quashed the said order, thereby upholding the contention that blacklisting could not be for an indefinite period.

6. The decision in Vinay Construction (supra) was followed by this Court in Sabharwal Medicos Pvt. Ltd. Vs. Union of India and Ors. in W.P.(C) No. 7369/2011, decided on 25.09.2013.

Recently in M/s Kulja Industries Limited vs. Chief Gen. Manager W.P. Project BSNL and Ors., Civil Appeal No. 8944/2013 decided on 04.10.2013,

the Apex Court noted that debarment is never permanent and the period of debarment invariably depends upon the nature of the offence committed by the erring contractor.

7. Considering the legal proposition laid down in the above-referred cases and taking into consideration all the facts and circumstances of the case, it is directed that the orders debarring the petitioners from all future transactions with MMTC, STC and PEC will remain in force only for a period of four years commencing 10.11.2010, meaning thereby that the aforesaid order shall come to an end on 09.11.2014.

8. It is also made clear that this order has been passed, without taking a view on the other contentions raised in the writ petitions. It is also made clear that the order/Memo dated 10.11.2010 read with the orders dated 25.04.2011/26.4.2011/13.4.2011 does not come in the way of the petitioner companies dealing with Government of India or with any PSU other than MMTC, STC and PEC and the said order would have no bearing on the dealing with the petitioner-companies with the private parties. It is made clear that the impugned order/Memo dated 10.11.2010 read with the orders dated 25.04.2011/26.4.2011/13.4.2011 shall not be used for the purpose of debarring any sister concern of the petitioner companies.

Dasti.

NOVEMBER 07, 2013/BG

V.K. JAIN, J.