

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

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Date of decision: 10th July, 2015

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W.P.(C) 5485/2015

TRIGEN ELECTRONICS PRIVATE LIMITED Petitioner

Through: Mr. B.L. Wali and Ms. Deepti Gupta,
Advs.

Versus

**SOUTH DELHI MUNICIPAL CORPORATION
& ANR.**

..... Respondents

Through: Mr. Vikas Chopra, Adv.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. This order is in continuation of the order dated 8th July, 2015.
2. The counsel for the petitioner states that the petitioner has under the cover of letter dated 8th July, 2015 to the Assistant Commissioner, (RP Cell) of the respondent No.1 South Delhi Municipal Corporation (SDMC) handed over Pay Orders of the total value of Rs.52,16,018/- being the amount for deposit for which statement was made on 27th May, 2015. A copy of the said letter along with the photocopies of the Pay Orders is handed over in the Court and taken on record. A copy of the same has also been handed over to the counsel for the respondent No.1 SDMC.

3. Though the counsel for the respondent No.1 SDMC states that it will have to be verified, whether the correct payment has indeed been made but I feel that there is no reason to doubt the statement of the counsel for the petitioner that the amount vide Pay Orders good for payment has indeed been deposited.
4. The counsels have been heard.
5. At the time of issuance of notice of this petition on 27th May, 2015, the following order was passed:

*“The petitioner has filed the present petition, inter alia, impugning a letter dated 28.03.2015, calling upon the petitioner to pay the outstanding amount of Rs.4,53,24,675/- which is stated to be due and payable by the petitioner to the respondent corporation. The respondent corporation has further blacklisted the petitioner. The learned counsel for the petitioner has referred to the decision of a coordinate Bench of this Court in **Brite Aricon (Consortium) & Anr. v. Airports Authority of India & Anr.: 203 (2013) DLT 408** and **Bhim Sain v. Union of India & Anr.: AIR 1981 Delhi 260** in support of his contention that an order blacklisting a person for an indefinite period is not permissible in law.*

The petitioner further contends that the monthly licence fee was enhanced six times w.e.f. 01.11.2014. In the circumstances, the petitioner had voluntarily attempted to surrender the parking sites, however, the same was not accepted on account of alleged dues.

The learned counsel for respondent submits that the petitioner has been negligent in paying its dues from the very beginning. He further states that the representations made by the petitioner were duly considered and responded to, however, the petitioner has still failed to discharge his dues. He states that in addition to the amount which became due after 31.10.2014 a sum of Rs.1,04,32,035/- was outstanding on account of monthly licence fee and other charges for the period prior to the enhancement of the monthly licence fee.

Learned counsel for the petitioner, on instructions, of Mr Atinder Kaushik, authorized representative of the petitioner company who is present in court today, states that the petitioner would deposit 50% of the outstanding amount within a period of four weeks from today.

Issue notice.

Learned counsel for the respondent corporation accepts notice. Subject to the petitioner filing an undertaking by way of an affidavit to the aforesaid effect, the order dated 28.03.2015, insofar as it blacklists the petitioner is stayed till the next date of hearing.

Renotify on 08.07.2015.

Dasti under the signature of Court Master. ”

6. It has been enquired from the counsel for the respondent No.1 SDMC, whether before passing the order of blacklisting and cancellation of registration of the petitioner, impugned in this petition, any hearing was given to the petitioner.

7. The counsel for the respondent No.1 SDMC, on instructions, states that no hearing was given.

8. It has been enquired from the counsels, whether not before passing an order of blacklisting, a hearing / opportunity is required to be given.

9. The counsel for the petitioner has drawn attention to the order dated 18th May, 2015 of this Court in W.P.(C) No.4825/2015 titled ***M/s. L.R. Sharma and Co. Vs. The Commissioner (SDMC)*** by which the order of

blacklisting in that case was set aside and the respondent SDMC was directed to pass a speaking order, after affording an opportunity of hearing to the petitioner. He has, in this regard, also drawn attention to ***Bhim Sain Vs. Union of India*** AIR 1981 Delhi 260 but which is not found to be of any application on the aspect of hearing, though it may be mentioned that in that case the order of blacklisting was after affording an opportunity of hearing. Attention is also drawn to ***Brite Aricon (Constortium) Vs. Airports Authority of India*** 203 (2013) DLT 408 where on a conspectus of several dicta of the Supreme Court, it was held that an order of blacklisting cannot be passed, without following the principles of natural justice i.e. issuance of show cause notice against the proposed blacklisting followed by opportunity of hearing to noticee.

10. Per contra, the counsel for the respondent No.1 SDMC has referred to ***Patel Engineering Limited Vs. Union of India*** (2012) 11 SCC 257 where, in the context of an order of blacklisting, it was observed that there is no inviolable rule that a personal hearing of the affected party must precede every decision of the State.

11. The order dated 28th March, 2015 impugned in this petition, though records that the petitioner had been given reasonable opportunity by way of personal hearing as well as demand notice and demand-cum-cancellation notice to clear the outstanding of municipal dues (and on the basis of which the order of blacklisting and cancellation of registration has been passed) but had failed to do so, but does not record that any show cause notice before passing the order of cancellation of registration and of blacklisting was passed.

12. As far as the dicta of the Supreme Court in *Patel Engineering Limited* supra is concerned, a perusal thereof shows that in that case, before passing the order of blacklisting, a show cause notice intimating the person proposed to be blacklisted of the intention to blacklist was given and the order of blacklisting was found to deal with the contentions raised by the noticee in reply to the said show cause notice and on judicial review of which conclusions reached by the Blacklisting Authority, it was observed that the reasons given for blacklisting could not be said to be irrational or perverse. Else, the consistent view of the Supreme Court in *Erusian Equipment & Chemicals Ltd. Vs. State of West Bengal* (1975) 1 SCC 70, *Southern Painters Vs. Fertilizers & Chemicals Travancore Ltd.* AIR 1994

SC 1227, ***B.S.N. Joshi & Sons Ltd. Vs. Nair Coal Services Ltd.*** (2006) 11 SCC 548, ***Joseph Vilangadan Vs. The Executive Engineer (PWD)*** (1998) 3 SCC 36 has been that fundamentals of fairplay require that the person concerned should be given an opportunity to represent his case before he is put on the black list and that the principle of *audi alteram partem* applies to the process that may ultimately culminate in blacklisting of contractor.

13. Seen in this light, the order impugned in this petition, cannot be said to be at par with the order before the Supreme Court in ***Patel Engineering Limited*** supra. The Supreme Court in ***Patel Engineering Ltd.*** was satisfied that a reasonable opportunity to explain its case, before the decision to blacklist was taken, had been given. In the present case, no show cause notice or hearing was admittedly given and save for a bold statement that the petitioner was in default of municipal dues, the contentions now being raised by the petitioner have not been considered or dealt with. The petitioner has thus not been given any opportunity whatsoever to explain its case against blacklisting. Thus, in the present case, an opportunity would definitely have to be given.

14. Not only so, as observed in the order dated 27th May, 2015 *supra*, the order of blacklisting is also contrary to the dicta of this Court in ***Brite Aricon (Consortium)*** *supra* laying down that blacklisting for indefinite period is not permissible in law. Reference in this regard can also be made to the dicta of the Supreme Court in ***Kulja Industries Ltd. Vs. Western Telecom Project, BSNL*** (2014) 14 SCC 731 laying down that blacklisting / debarment is never permanent and the period of debarment would invariably depend upon the nature of offence committed by erring contractor. It was also held that the Court ought not to itself determine the time period for which the contractor should be blacklisted and should, after setting aside the order of permanent debarment, remit back to the authority concerned to, having regard to the attendant facts and circumstances, pass an appropriate order. It was held that blacklisting, being in nature of penalty, the quantum thereof is a matter that rests primarily with the authority competent to impose the same. The Division Bench of this Court of which undersigned was a member, in ***Gail India Ltd. Vs. Avinash Em Projects Pvt. Ltd.*** 2015 SCC Online Delhi 9128, following the said dicta of the Supreme Court, after setting aside order of permanent debarment, remitted the matter to authority concerned to take appropriate decision without being influenced by

observations of the Court as to what the period of debarment should be. Thus the matter has to be necessarily remanded / remitted.

15. Accordingly, need is not felt to call for the counter affidavit to the writ petition or to adjudicate the grounds urged by the petitioner in this petition challenging the order impugned.

16. The petition is allowed; the order dated 28th March, 2015, operation whereof was stayed on 27th May, 2015, is set aside and the matter is remanded to the respondent No.1 SDMC for consideration afresh, after giving notice to show cause setting out the grounds on which the registration of the petitioner is proposed to be cancelled and the petitioner is sought to be blacklisted including the period for which the petitioner is sought to be so blacklisted, within a period of one week from today and giving an opportunity to the petitioner to submit a reply thereof within two weeks thereafter. A hearing by the Appropriate Authority be given to the petitioner on 3rd August, 2015 at 1100 hours and a fresh reasoned order dealing with all the contentions raised by the petitioner in the reply, if any filed to the show cause notice, be passed on or before 12th August, 2015.

No costs.

Copy of this order be given dasti under the signatures of the Court
Master.

RAJIV SAHAI ENDLAW, J

JULY 10, 2015
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