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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 218/2016**
SHYAM DESINGERS & CONSULTANTS PVT LTD..... Petitioner
Through: Mr. Vikas Aggarwal, Adv.

Versus

UNION OF INDIA & ORS Respondents
Through: Mr. Rahul Sharma with Ms. Aastha
Jain, Adv. for R-1 to 4.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER
% **11.01.2016**

CM No.876/2016 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

W.P.(C) 218/2016

3. The petition impugns the communication dated 8th June, 2015 of the respondents Engineer-in-Chief, Military Engineer Services to the petitioner communicating to the petitioner the decision that no further tender / work shall be awarded to the petitioner till further intimation.
4. The counsel for the respondents appears on advance notice.
5. Though the petition has come up today for the first time but considering that the law on the subject of 'blacklisting' or 'debarment' from participating in government tenders / contracts is no longer *res integra*, it is not deemed necessary to issue formal notice of this petition or to call for reply or to keep this petition pending. The counsels have thus been requested to address on the petition finally.

6. A perusal of the communication dated 8th June, 2015 does not show that the petitioner has been given any show cause notice or was heard as is required as held by the Supreme Court in ***Kulja Industries Ltd. Vs. Western Telecom Project, BSNL*** (2014) 14 SCC 731 and in ***Gorkha Security Services Vs. Government (NCT of Delhi)*** (2014) 9 SCC 105. The blacklisting / debarment is also found to be for an undetermined / indefinite period and which also is contrary to the judgment in ***Kulja Industries Ltd.*** supra.

7. The counsel for the respondents has contended that the empanelment of the petitioner with the respondents has not been interfered with and it is only on periodic appraisal of the performance of the petitioner that the decision aforesaid has been taken. It is further contended that such appraisal of performance is done on a quarterly basis and the report for the quarter ending December, 2015 is expected and upon receipt of which, performance of the petitioner shall be re-appraised and if found to be upto the mark, the decision shall be recalled. He has on the aspect of show cause notice drawn attention to the letter dated 26th June, 2015 of the petitioner where the petitioner has referred to an opportunity of hearing given to the petitioner on 18th June, 2015. Attention is also drawn to the letter dated 13th July, 2015 of the respondents to the petitioner in which reference is made to a show cause notice given prior thereto. It is thus contended that it is not as if the petitioner has been condemned unheard. The counsel for the respondents has also contended that the present petition be adjourned for three weeks by when the respondents shall be able to intimate the outcome of the appraisal

for the quarter ending December, 2015 and it is stated that if the performance of the petitioner is good, the debarment aforesaid on the petitioner shall be removed.

8. I am of the view that neither of the aforesaid contentions are a reply to the procedure prescribed and required to be followed and which as aforesaid does not appear to have been followed and / or at least not recorded to have been followed.

9. Even though the name of the petitioner may not have been removed from the panel, the same would be no solace to the petitioner so long as the impugned order continues and owing whereto the petitioner, inspite of being on the panel, is not allowed to participate in the tenders invited for any work.

10. As far as the plea of periodic appraisal of the works is concerned, I am of the view that no purpose will be served in adjourning this petition by three weeks. Though in the event the decision to be taken on the basis of appraisal for the quarter ending December, 2015 being favourable to the petitioner, the petition may become infructuous but in the event of the same being against the petitioner, in the interregnum time would be lost. It is rather deemed appropriate that the respondents now itself give an appropriate show cause notice to the petitioner and reconsider its order of blacklisting of the petitioner. While doing so, the respondents can also consider the subsequent performance reports received.

11. As far as the aspect of hearing is concerned, the hearing given on 18th June, 2015 is of no avail inasmuch as it is of a date after the decision. Similarly, the letter dated 13th July, 2015 is the letter of cancellation of one

of the contracts between the parties and the issuance of a show cause notice prior to the cancellation of the contract would not be a substitute for show cause notice calling upon the petitioner to show cause as to why it should not be blacklisted.

12. Supreme Court in *Gorkha Security Services* supra has held that such show cause notice has to specify the reasons for blacklisting as well as the period for which a contractor is proposed to be blacklisted.

13. Accordingly, it is deemed appropriate to, rather than keeping this petition pending, dispose of the same with liberty to the respondents to after giving a show cause notice and an opportunity of hearing to the petitioner, reconsider its decision of blacklisting of the petitioner.

14. The petition is disposed of with the following directions:

- (a) The respondents, if so desire, may on or before 10th February, 2016 issue a notice to the petitioner to show cause as to why no further tender / work be awarded to the petitioner, specifying the grounds on which it is so proposed and also specifying the period for which the petitioner is proposed to be so excluded from further tender / work.
- (b) The petitioner may on or before 2nd March, 2016 (as sought) submit its reply to the said show cause notice if any.
- (c) The petitioner to appear before the **Director General (Works), Engineer-in-Chief, Kashmir House, Rajaji Marg, New Delhi** at 1440 hours on 10th March, 2016 for hearing on the aforesaid aspect.

(d) The respondents to pass an order on the aforesaid on or before 31st March, 2016 and communicate the same to the petitioner.

15. Needless to state that on passing of the fresh order, the impugned order dated 8th June, 2015 shall cease to have any effect. It is further clarified that if no show cause notice is given by 10th February, 2016 also, the order will stand set aside.

16. The counsel for the petitioner presses for the impugned order to be set aside with immediate effect to enable the petitioner to receive work.

17. However after considering, i) the fact that the contracts relate to defence, ii) the fact that the petitioner itself has approached this Court after six months, and iii) also considering the fact that the petitioner though was being given one week's time to reply to show cause notice has sought three weeks time to reply to the show cause notice, no case for granting stay of the impugned order is made out especially when time bound schedule for reconsideration has been fixed.

Dasti under signature of Court Master.

JANUARY 11, 2016
'gsr'..

RAJIV SAHAI ENDLAW, J