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

% Judgment delivered on: 22.12.2016

+ W.P.(C) 11714/2016

M/S B.R. ARORA & ASSOCIATES (P) LTD. & ORS..... Petitioners

versus

AIRPORTS AUTHORITY OF INDIA

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Ms. Anusuya Salwan with Mr. Vaibhav Dang
and Mr. B.R. Arora, Advocates.

For the Respondents : Mr. Digvijay Rai, Advocate with Mr.V.R. Aray,
JGM (Law)

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

22.12.2016

SANJEEV SACHDEVA, J. (ORAL)

CM No.46119/2016 (exemption)

Exemption is allowed subject to all just exceptions.

W.P.(C) 11714/2016 & CM No.46118/2016 (stay)

1. The petitioner impugns order dated 17.06.2016, communicated to the petitioner that the petitioner firm has been blacklisted for a period of 5 years w.e.f 01.07.2013 from participating in any tenders of Airport Authority of India in future and further informing the

petitioner that henceforth the Airports Authority of India shall not award any contract to the petitioner or to any firm or company having business link in the form of Joint Venture or the like with the petitioner.

2. It is contended that the respondent had invited tender for the work of expansion of apron, construction of additional taxiway, extension of runway and allied works at the Varanasi Airport. The petitioner was awarded the contract.

3. The petitioner is alleged to have completed the work to the entire satisfaction of the respondent on 20.08.2010. The final bill of the petitioner was submitted but the same was not accepted and a meagre amount credited to the petitioner's bank account.

4. It is contended that after the expiry of the defect liability period, the respondents invoked the petitioner's bank guarantee that was furnished towards security deposit. When the petitioner approached this Court, impugning the action of the respondent of encashing the bank guarantee, a dispute Resolution Board was constituted to decide

the disputes between the parties. This petition does not concern the dispute raised therein but concerns the action of the respondent in blacklisting the petitioner.

5. An offshoot of the said dispute was that the respondent blacklisted the petitioner by order dated 01.07.2013. The petitioner impugned the said order by filing a writ petition. The writ petition was disposed of directing the respondents to grant liberty to the petitioner to reply to the show cause notice and to afford a personal hearing.

6. Consequent to the directions passed by this Court directing filing of a response and a personal hearing, the impugned order dated 17.06.2016 has been passed.

7. Perusal of the impugned order shows that the Competent Authority has merely passed a one-line order that it has decided to, *inter alia*, blacklist the petitioner for a period of five years with effect from 01.07.2013. The order does not reveal any thought process, reasoning, or consideration of the response given by the petitioner.

8. The original departmental file of consideration has been produced. Perusal of the file shows that a hearing was granted by the Executive Director (Engineering) on 21.03.2016. The file noting contains various notes of several officers. The relevant file noting of the Executive Director (Engineering) shows that he had heard the petitioner on 21.03.2016 and, thereafter, there is a noting by him that the petitioner be debarred for a period of five years commencing from 01.07.2013.

9. The file does not contain any deliberation by the Executive Director (Engineering), who had heard the petitioner, giving reasons or discussing the points and contentions raised by the petitioner.

10. In my view, since the impugned order is cryptic and no reason or rationale can be discerned there from which could show that there is any application of mind to the pleas and objections raised by the petitioner, the order cannot be sustained. Accordingly, the impugned order dated 17.06.2016 blacklisting the petitioner for a period of five years w.e.f. 01.07.2013 from participating in any tender of Airports Authority of India in future and the decision of the respondents that

that henceforth the Airport Authority of India shall not award any contract to the petitioner or to any firm or company having business link in the form of joint venture or the like with the petitioner, is set aside.

11. It is clarified that the setting aside of order dated 17.06.2016 would not preclude the respondents from considering the reply furnished by the petitioner and disposing of the show cause notice by way of a speaking order. Till the respondents pass a fresh speaking order, the consequences of setting aside of order dated 17.06.2016 shall enure to the benefit of the petitioner.

12. It is further clarified that this Court has not examined the contentions of the petitioner that the Executive Director (Engineering) is not a competent authority and could not have passed the impugned order. This issue is left open.

13. The writ petition is disposed of in the above terms.

14. *Dasti* under the signatures of the Court Master.

DECEMBER 22, 2016/st

SANJEEV SACHDEVA, J