THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH
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CWP.-COM No.36 of 2016
Date of Decision:17.01.2017

M/s Laggar Industries Limited .....Petitioner
Vs.
State of Haryana and others .....Respondents

CORAM:- HON'BLE MR. JUSTICE RAKESH KUMAR JAIN

Present:- Mr. Sunil Chadha, Senior Advocate with
Ms. Swati Verma, Advocate for the petitioner.

Ms. Tanisha Peshawaria, DAG, Haryana.

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RAKESH KUMAR JAIN, J.(Oral)

This petition is filed for seeking a writ in the nature of certiorari for quashing the order dated 21.11.2016 (Annexure P.15) passed by respondent No.2 by which the petitioner has been declared ineligible to participate in the technical bid. In short, the Secondary Education Department Haryana and Elementary Education Department Haryana placed indents dated 29.10.2015 and 23.11.2015 to Director Supplies and Disposals, Haryana for arranging Annual Rate Contract of School Furniture (Dual Desks, Tables and Chairs) as per the details given below:-

Sr. No.	Name of item	Quantity required by Elementary Education Haryana	Quantity required by Secondary Education Haryana	Total Quantity
1	Chairs-Shisham Wood (Butter fly)	191355 Nos.	--	191355 Nos.
2	Tables-Shisham Wood trapezoidal shaped	63789 Nos.	--	63789 Nos.
3	Dual Desks-Kikar Wood of size 36”X15”X30”	198351 Nos.	--	198351 Nos.
4	Dual Desk = Kikar Wood of size 42”X15”X30”	--	150619 Nos.	150619 Nos.

The Director, Supplies and Disposals, Haryana invited online tenders in two parts (technical bid and financial bid) with brief intimation in newspapers with last date/ time of online bid preparation and submission to be 5th July, 2016 upto 2:00 P.M. The technical bids were to be opened on 5th July, 2016.

In response to the advertisement, eight bidders including the petitioner who applied on 30.6.2016, submitted their bids. Since the technical bid submitted by the petitioner was not being considered and the petitioner was not permitted to participate in the financial bid, had to file a petition bearing CWP No.22148 of 2016 titled as M/s Laggar Industries Limited v. State of Haryana and another which was disposed of by this Court on 24.10.2016 with a direction to respondent No.2 to take a decision on the representation dated 13.10.2016 (attached as Annexure P.11 with the said writ petition) in accordance with law by passing a speaking order and after affording an opportunity of hearing to the petitioner, within a specified time.

Pursuant to the aforesaid order, respondent No.2 provided an opportunity of hearing to the petitioner on 17.11.2016 and the impugned order dated 21.11.2016 was passed rejecting the claim of the petitioner, inter-alia, on the ground that one of the Directors of the petitioner-Company, namely, Ashok Kumar son of Uttam Chand was blacklisted forever by the Government of Haryana for his unethical business dealings, the petitioner was not having a valid licence as the licence of wood based industry, bearing No.130 dated 2.7.2007, transferred by Rajesh Batra in favour of Ashok Kumar on 24.7.2016 was not valid, the petitioner did not submit full clarifications of the documents related to bills of machinery and equipments/ bank documents of salary payment made to the employees regarding condition no.C(4) of the Schedule-A/DNIT and the petitioner was not having minimum 15000 chairs, 5000 tables and 10000 dual desks per month.

Counsel for the petitioner has submitted that Ashok Kumar son of Uttam Chand joined the petitioner Company as Director on 7.6.2016 but he resigned from the Company on 27.6.2016. The said resignation was accepted by a resolution of the Board of the same date. It is, thus, submitted that the said Ashok Kumar ceased to be a Director of the Company w.e.f. 27.6.2016, in terms of provisions of Section 168(2) of the Companies Act, 2013. It is further submitted that insofar as the licence is concerned, the petitioner had the licence, having been transferred to it by one Rajesh Batra Son of Inder Parkesh of M/s Batra Timber Pvt. Ltd, Karnal, Indri Road, Karnal (Indri Road) Km Stone 4, Village Drar, Tehsil and District Karnal and was not transferred in favour of Ashok Kumar son of Uttam Chand. It is also submitted that the respondent No.2 has been wrongly informed by the Industries Department when he sought the clarification about the meaning of the licence transferred in favour of Laggar Industries Limited, Director Ashok Kumar resident of Anaj Mandi, G.T. Road, Karnal, that it was transferred in the name of Ashok Kumar as submitted by the petitioner by misreading the letter of the petitioner- Company dated 29.8.2016 in which the petitioner had specifically mentioned that "This is with reference to the Saw Mill License number 130 issued by your office in favor of Laggar Industries Limited Director Ashok Kumar. We wish to inform you that Mr. Ashok Kumar resigned as director from our company on 27.06.2016. The relevant papers are enclosed herewith in this regard." It is submitted that the purpose of that letter was only to inform the respondent about the exit of Ashok Kumar from the affairs of the petitioner- Company and that licence which was issued in the name of the Company may be shown as such without referring to Ashok Kumar as one of the Director. It is further submitted that the objection raised by the respondent about non observance of Condition No.C(4) of the Schedule-A is also incorrect and is changed because the original Clause C(4) reads that "Certificate in respect of own infrastructure to manufacture furniture, proof to be submitted." whereas in the impugned order the said condition C(4) has been changed to "Further, the firm also did not submit full clarifications/ documents related to bills of machinery & equipments/ bank documents of salary payment made to employees regarding condition no.C(4) of the Schedule-A/DNIT." In this regard, he has relied upon a decision of the Kerala High Court in <u>Consolidated Engineering Enterprises v. The Superintending Engineer PWD and others, 2010(29) R.C.R. (Civil)</u> 531 to contend that the qualification in the tender has to be revaluated with reference to the last date fixed for submitting the tender and a subsequent change in the qualification would not affect the tenders already submitted. It is further submitted that insofar as the capacity of minimum manufacturing capacity of 15,000 chairs, 5000 tables and 10000 dual desks per month is concerned, the certificate in this regard has been issued by National Small Industries Corporation Limited (GOI) on 29.6.2016 as admitted by the respondents in the impugned order about the minimum manufacturing capacity of the petitioner of 15,000 chairs, 5000 tables and 10,000 dual desks per month. However, it has not been accepted only because of the reason that there is a reference of Ashok Kumar in the list of Directors along with other directors namely, Sandeep Sobti, Sanchit Sobti and Supriya Sobti. Learned counsel for the petitioner has thus submitted that the petitioner is fully eligible for participating in the technical bid even if the financial bid has been opened as suggested by the respondents during the course of hearing but no allotment of work has been made.

On the other hand, learned counsel for the respondents, while submitting regarding observations made in the impugned order has stated that the very fact that the name of Ashok Kumar is appearing in the technical bid, i.e. 5.7.2016 even after his resignation is sufficient to hold that he was still being considered as one of the Directors and has been held to be a blacklisted Director for all times to come. It is also submitted that if Ashok Kumar ceased to be a Director of the Company w.e.f. 27.6.2016, the petitioner had sufficient time with it to amend the technical bid which was to be submitted on or before 5.7.2016 upto 2:00 p.m. Thus the petitioner is estopped by its own act and conduct.

Counsel for the respondents has also submitted that respondent No.2 before passing the impugned order had sought information with reference to the licence of Saw Mill No.1 dated 2.7.2007 as to whether the said licence was transferred in the name of Ashok Kumar son of Uttam Chand or the Company. In this regard, the information supplied by the District Forest Officer, Forest Division, Karnal, vide his memo No.1165 dated 21.10.2016 and memo No.1177 dated 22.10.2016 that the concerned licence No.130 dated 2.7.2007 was transferred by the office in favour of Sh. Ashok Kumar son of Uttam Chand and not in favour of the petitioner because Ashok Kumar has submitted documents to the office as affidavit No.41AA579056 dated 24.6.2016, copy of Adhaar Card, Copy of Passport No.NO566704 and his own photograph. It is also submitted that the petitioner was not complying with the clause C(4) of the Schedule-A/DNIT as it did not give the details about the documents relating to bills of machinery and equipments/ bank documents of salary payment made to the employees which is a part of Clause C(4) of Schedule A/DNIT.

From the respective contentions of learned counsel for the parties, the following question emerges for determination by this Court:-

(i) Whether the relationship of Ashok Kumar as a Director of the Company came to an end when he tendered the resignation which was accepted by the Company through a resolution of the Board in view of Section 168(2) of the Companies Act, 2013?

(ii) Whether the licence No.130 dated 2.7.2007 was transferred in favour of Ashok Kumar as Director or in the name of the Company?

(iii) Whether the objection raised by the respondents for not submitting full clarification of the documents relating to Bills of Machinery and Equipments/ Bank documents of salary payment made to the employees was a part of Clause C(4) of the Schedule A/DNIT and Whether the petitioner had complied with the clause C(4) which only required a certificate in respect of own manufactured furniture which has been submitted by the petitioner?

(iv) Whether the manufacturing capacity of the petitioner to manufacture 15,000 chairs , 5000 tables and 10,000 dual desks per month has been established on record?

I will answer all the questions one by one but to start with I would deal with Question No.1. There is no dispute with the document appended with the petition. Ashok Kumar was appointed as a Director of the petitioner Company in the meeting of the Board of Directors held on 7.6.2016. However, it is also on record that Ashok Kumar resigned from the post of Director w.e.f. 27.6.2016 and apprised the Board of Directors in this regard. The Board of Directors passed a resolution on 27.6.2016 itself accepting the resignation of Ashok Kumar and the resolution read as under:-

> "Resolved that the Board of directors of the Company do hereby accepts the resignation tendered by Mr. Ashok Kumar from the office of director of the Company w.e.f. 27/06/2016 and Mr. Sandeep Sobti the director of the Company be and is hereby authorized to file e-form DIR-12 to that effect to the Registrar of Companies."

The said information was supplied to the Ministry of Corporate affairs on 9.7.2016. It is, however, not disputed that the name was there only in the certificate issued by the National Small Industires Corporation Limited dated 29.6.2016 because they had no information about the resignation of Ashok Kumar on 27.6.2016. In order to appreciate as to whether the resignation of the Director shall take effect from the date on which Company receives the notice or the date which is specified by him in his notice can be gathered from the provisions of Section 168 of the Companies Act, 2013 which is reproduced as under:-

> **"168. Resignation of director.** -- (1) A director may resign from his office by giving a notice in writing to the company and the Board shall on receipt of such notice take note of the same and the company shall intimate the Registrar in such manner, within such time and in such form as may be prescribed and shall also place the fact of such resignation in the report of directors laid in the immediately following general meeting by the company.
>
> Provided that a director shall also forward a copy of this resignation along with detailed reasons for the resignation to the Registrar within thirty days of resignation in such manner as may be prescribed.
>
> (2) The resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later.
>
> Provided that the director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure.
>
> (3) Where all the directors of a company resign from their offices, or vacate their offices under section 167, the promoter or, in his absence, the Central Government shall

appoint the required number of directors who shall hold office till the directors are appointed by the company in general meeting.”

Section 168(2) categorically provides that the resignation of the Director shall take effect from the date on which the notice given by the such Director is received by the Company or from the date which is specified by such Director in his notice, whichever is later. In this case, Ashok Kumar had tendered the resignation dated 27.6.2016 which was accepted on the same date by the Company through a Board resolution, therefore, for all intents and purposes, he ceased to be a Director of the Company w.e.f. 27.6.2016 and there is no estoppel against law if there is a reference of Ashok Kumar thereafter in any proceedings. It could only be an error of omission/ commission on the part of the petitioner- Company referring to the name of Ashok Kumar but insofar as his legal status in the Company is concerned of the Director it came to an end w.e.f. 27.6.2016 with the acceptance of his resignation notice. The first question is thus decided in affirmative in favour of the petitioner holding that in view of Section 168(2) of the Companies Act, 2013 in case the resignation submitted by the Director of the Company is received by the Company then it will take effect from the date of receipt of the said notice of resignation unless a specified date is mentioned in the said notice.

Insofar as the second question is concerned, the finding recorded by the respondent in the impugned order that it has been transferred in favour of Ashok Kumar is patently erroneous because the licence appended with the petition as Annexure P.12 clearly suggests that it was transferred in favour of the Company through the Director and not in favour of the Director as an individual. The letter dated 29.8.2016 which has been made the basis for observing that the licence was transferred in the name of the individual namely, Ashok Kumar, has been totally misread by the respondents because the said letter was only in the form of an intimation at the instance of the petitioner to the respondent about the exit of Ashok Kumar as a Director of the Company and there is nothing to suggest that the licence was obtained by Ashok Kumar as an individual and not the Company whereas in the transfer order of the licence, it is categorically mentioned that the said licence was transferred to the Company. Accordingly, the second question is also decided in favour of the petitioner holding that the finding recorded by the respondent in the impugned order about the transfer of the licence in favour of Ashok Kumar son of Uttam Chand is perverse because it has been recorded by misreading the documents available on record.

As regards the third question, the respondent has changed the language of condition No.C(4) of the Schedule A/ DNIT because Clause 4 of the DNIT is in the following words:-

> "Certificate in respect of own infrastructure to manufacture furniture. Proof to be submitted."

In this regard, counsel for the petitioner has produced the documents supplied at the time of technical bid in which certificates also attached from page 40 to 46 to satisfy the condition enumerated in caluse C (4). It is also pertinent to mention that the objection raised by the respondent for not complying with Clause (4) in the impugned order cannot be sustained because there is a sea change in the condition No.C(4) mentioned in the impugned order and in this respect, the judgment relied upon by the petitioner in the case of Consolidated Engineering Enterprises (supra) applies on all fours in favour of the petitioner. Consequently, the third question is also decided in favour of the petitioner. The fourth question was regarding the minimum capacity of the petitioner to manufacture 15000 chairs 5000 tables and 10000 dual desks is also established from the fact that the factory of the petitioner was inspected by National Small Industries Corporation Limited (Government of India) on 27.6.2016 and had found that the petitioner had the minimum manufacturing capacity of 15000 chairs, 5000 tables and 10000 dual desks per month. It is so recorded in the certificate dated 29.6.2016 but in the said certificate, name of Ashok Kumar, as one of the Directors is also mentioned despite the fact that he had already stepped down from the Office of the Director on 27.6.2016. Since it could not be brought to the notice of the Registrar of the Companies, therefore, it was not within the notice of National Small Industries Corporation Limited as well, therefore, the said mentioning of Ashok Kumar in the certificate dated 29.6.2016 is without any consequence. The fourth question is accordingly decided.

Thus, the cumulative effect of the observations recorded hereinabove on all the questions which have emerged in this petition leads to only one conclusion that the impugned order passed by the respondents is patently illegal and thus the same is hereby set aside and the consequent result of setting aside of the impugned order is that the petitioner would be entitled to the financial bid which he will submit and shall also be considered by the respondents as the work has not been allotted to any party. It is made clear that the work shall not be allotted to anybody till the case of the petitioner in respect of the financial bid is also considered.

With these observations, the present petition is hereby allowed.

January 17, 2017 **(RAKESH KUMAR JAIN)**
renu **JUDGE**

Whether Speaking/reasoned Yes/No
Whether Reportable Yes/No