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

\+ W.P.(C) 654/2013

SRIJAN ARCHITECTS PVT LTD THROUGH ITS DIRECTOR ..... Petitioner

Through: Mr Ajay Singh and Mr Manish Pratap Singh, Advocates.

versus

THE CHAIRMAN-CUM-MANAGING DIRECTOR, ENGINEERING PROJECTS (INDIA) LTD & ORS. ..... Respondents

Through: Mr Sarat Chandra with Mr Sachin Chandra, Advocates for R-1 to 5.
Mr Udit Seth, Advocate for R-6.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% **28.08.2017**

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 14.08.2012, black listing the petitioner on the allegation that the petitioner had submitted a forged experience certificate. It is the petitioner's case that he had not forged any certificate and the allegation made against him is incorrect. The petitioner has also produced TDS Certificates in support of his contention that Enarch Consultants Pvt. Ltd. (the entity which had issued the certificate in question) had also paid certain amounts for the work done by the petitioner.

2. It is seen that by the impugned order, the petitioner has been black listed for a period of 15 years. Plainly, this is a harsh punishment and ought

to have been imposed after considering all relevant facts. In ***Kulja Industries Ltd. v. Chief General Manager, Western Telecom Project BSNL & Ors: AIR 2014 SC 9***, the Supreme Court had set out the facts that are necessary to be borne in mind by the authority while passing an order for black listing. The relevant extract of the said decision is set out below:

> "The guidelines also stipulate the factors that may influence the debarring official's decision which include the following:
>
> (a) The actual or potential harm or impact that results or may result from the wrongdoing.
>
> (b) The frequency of incidents and/or duration of the wrongdoing.
>
> (c) Whether there is a pattern or prior history of wrongdoing.
>
> (c) Whether the contractor has been excluded or disqualified by an agency of the Federal Government or has not been allowed to participate in State or local contracts or assistance agreements on the basis of conduct similar to one or more of the causes for debarment specified in this part.
>
> (d) Whether and to what extent did the contractor plan, initiate or carry out the wrongdoing.
>
> (f) Whether the contractor has accepted responsibility for the wrongdoing and recognized the seriousness of the misconduct.
>
> (g) Whether the contractor has paid or agreed to pay all criminal, civil and administrative liabilities for the improper activity, including any investigative or administrative costs incurred by the Government, and has made or agreed to make full restitution.
>
> (h) Whether the contractor has cooperated fully with the government agencies during the investigation and any court or

> administrative action.
>
> (i) Whether the wrongdoing was pervasive within the contractor's organization.
>
> (j) The kind of positions held by the individuals involved in the wrongdoing.
>
> (k) Whether the contractor has taken appropriate corrective action or remedial measures, such as establishing
>
> ethics training and implementing programs to prevent recurrence.
>
> (l) Whether the contractor fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the debarring official."

3. This Court is of the view that the said factors have not been considered in this case.

4. The impugned order also plainly proceeds on the basis that the certificate provided by the petitioner were found to be false. The material placed by the petitioner in this petition to substantiate the genuineness of the certificate was admittedly not placed before the concerned authority which had passed the black listing order.

5. In the given circumstances, this Court is of the view that the respondents should decide afresh after taking into account the contentions advanced by the petitioner and after having regard to the factors as listed out by the Supreme Court in the ***Kulja Industries*** (*supra*).

6. Accordingly, the impugned order dated 14.08.2012 is set aside and the matter is remanded to the respondents to decide afresh in view of the

observations as made above and after giving the petitioner an opportunity of being heard.

7. It is clarified that this Court had not expressed any opinion as to the merits of the controversy and in particular as to the allegations made against the petitioner and nothing stated in the order should be construed as such.

8. The petition and the pending application are disposed of with the aforesaid observations.

VIBHU BAKHRU, J

AUGUST 28, 2017
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