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

% Judgment delivered on: 20.02.2017

+ W.P.(C) 1422/2017

M/S CDM SMITH INDIA PRIVATE LTD. Petitioner

versus

NATIONAL HIGHWAYS & INFRASTRUCTURE
DEVELOPMENT CORPORATION LIMITED Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. C.D. Mulherkar and Ms. Anushka Arora, Advocates.

For the Respondent : Mr. Amit Mishra, Mr. Abhijeet Sinha, Ms. Devna Arora
and Mr. Kabir Bose, Advocates

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

20.02.2017

SANJEEV SACHDEVA, J. (ORAL)

CM No.6539/2017 (exemption)

Allowed, subject to all just exceptions.

W.P.(C) 1422/2017 & CM No.6538/2017(interim relief)

1. The petitioner impugns letter dated 09.11.2016, whereby, *inter alia*, the petitioner has been debarred from participating in future projects of the National Highways & Infrastructure Development Corporation Limited with immediate effect.

2. Learned counsel for the petitioner submits that prior to the impugned letter, no show-cause was issued to the petitioner, putting the petitioner to notice that petitioner is likely to be debarred from participating in any of the projects.

3. It is submitted that no opportunity of hearing was granted to the petitioner and further the petitioner has been debarred for an unspecified period.

4. Learned counsel for the petitioner submits that insofar as issue of suspension or termination of contract is concerned, he is not impugning the same in this petition. It is contended that petitioner had already terminated the Contract prior to the issuance of the impugned letter, so, there is no question of respondent suspending or terminating the Contract. However, he submits that this petition is restricted to the issue of debarment. He submits that insofar as the suspension or termination of contract is concerned, the petitioner would be taking such remedies, as may be available in law.

5. Learned counsel for the respondent submits that the order dated 09.11.2016 was passed in terms of Clause 7.4.2 of the General Conditions of Contract (GCC). He however submits that since the petitioner is raising a technical objection with regard to the issue of debarment of the petitioner, to the effect that, it was passed without affording an opportunity of hearing, to

overcome the technical objection raised by the petitioner, a show-cause notice would be issued to the petitioner and thereafter, an opportunity of hearing would be granted and an appropriate order in accordance with law would be passed.

6. In view of the stand of the respondent, the order dated 09.11.2016, insofar as it relates to the debarment of the petitioner, is set aside.

7. It is clarified that the respondent would be at liberty to issue a show-cause notice to the petitioner with regard the proposed action of debarment. If such a show-cause notice is issued, the petitioner would also be afforded an opportunity of personal hearing.

8. It is clarified that the setting aside of the order dated 09.11.2016 is restricted solely to the debarment of the petitioner and this order does not, in any manner, comment upon the action taken by the respondent of suspension and termination of the contract, which is left open to be considered by the appropriate forum, if any, proceedings are initiated in respect thereof.

9. The Writ Petition is disposed of in the above terms.

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

SANJEEV SACHDEVA, J

FEBRUARY 20, 2017
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