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

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Judgment delivered on : 12th April, 2017

+ **W.P.(C) 5617/2014 & CM No.13908/2014**

INSTALACIONES INABENSA S.A. & ANR

..... Petitioners

Through : Mr.Ashish Dholakia, Mr.Ashish
Bhan, Mr.Gautam Bajaj, & Mr.Pallav
Shukla, Advocates.

versus

RAILWAY ELECTRIFICATION (PROJECTS) & ANR

..... Respondents

Through : Ms.Geetanjali Mohan, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE YOGESH KHANNA

S. RAVINDRA BHAT, J (Oral)

1. This writ petition was filed challenging the show cause notice dated 22.07.2014 issued by the first respondent i.e. the Railway Board. The show cause notice required the petitioner to explain and answer as to why action be not taken against them for the bank guarantees furnished by the joint venture of which they are the constituent(s) together with Instalaciones Inabensa S.A. and Protech Galvanisers & Fabricators Private Limited.

2. The allegations were the bank guarantee, said to have been issued by the Dena Bank was in fact a forged document for which the JV was responsible. The entire petition is premised upon the

distinctiveness of the Spanish Corporation business entity i.e. the present petitioner Instalaciones Inabensa S.A. The respondent - Railway Board relied upon the clause No.12.2(A) (xiii) of the tender document is as follows:-

“Joint and several liability- The members of the JV firm to which the contract is awarded, shall be jointly and severally liable to the Employer (Railways) for execution of the project in accordance with General and Special Conditions of the Contract. The JV members shall also be liable jointly and severally for the loss, damages caused to the Railways during the course of execution of the contract or due to non-execution of the current part thereof.”

3. Likewise, clause No.65.12.1 of the Indian Railways Standard General conditions of Contract’ (GCC) July is 2013 also relevant and read as under:-

“Clause 65.12.1 of ‘Indian Railways Standard General Conditions of Contract’ (GCC) July 2013 also states that, "Joint And Several Liability - Members of the JV Firm to which the contract is awarded, shall be jointly and severally liable to the Employer (Railways) for execution of the project in accordance with General and Special Conditions of Contract. The JV members shall also be liable jointly and severally for the loss, damages caused to the Railways during the course of execution of the contract or due to non-execution of the contract or part thereof. Therefore in connection with all matters relating to the contract, all individual members of the JV are jointly and, severally responsible.”

4. It is contended that the petitioner could not have been put to prejudice in the manner that the Railway Board did eventually. During the pendency of these proceedings, on 05.03.2015 the ban on

future business between Railway Board and the constituent of the JV including the petitioner for five years from its date of issue was imposed. However, previous orders of this Court which continued from time to time have kept the order dated 05.03.2015 in abeyance.

5. The petitioner's original proceeding was a challenge to the show cause notice. Eventually, this Court permitted the final action by way of an order that resulted in the ban upon the petitioner and the other constituent of the concerned JV. The Court has kept that order in abeyance.

6. Having considered the materials and the submissions, this Court is of opinion that since there is no formal challenge to the ban, which has been kept in abeyance by orders of Court, it would be appropriate that representation of the petitioner against it be first considered, both on merits as well as to proportionality; in the event of any adverse order is made by the Railway Board, the petitioner should be granted opportunity to challenge that order. At the same time, status quo with respect to the ban may continue till the period during which the representation is under consideration and a week after the issuance of the order upon such representation thereon. This course commends itself to the Court, because the challenge to the show cause notice has become academic, due to later events.

7. In these circumstances, the Court directs that in the event the petitioner represents to the respondent / Railway Board within two weeks from today, its representation shall be duly considered by the

Board which shall grant suitable opportunity before making a reasoned order. Such order shall be directly communicated to the petitioner. The order dated 05.03.2015 shall be kept in abeyance for the period the matter remains under consideration by the Railway Board and if any adverse order is passed (pursuant to these directions), for another one week beyond the said order to enable the petitioner to seek legal recourse.

8. The petition and pending application are disposed of in above terms.

S. RAVINDRA BHAT, J

YOGESH KHANNA, J

APRIL 12, 2017

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