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

+ **W.P.(C) 6964/2017 & CM No.28907/2017**

WOODHILL INFRASTRUCTURE LTD Petitioner

Through: Ms Sadiqua Fatma, Mr Sagar Mittal
and Mr Akash Singh, Advocates.

versus

UOI AND ANR Respondents

Through: Mr Kirtiman Singh, Mr Vikramaditya
Singh, Mr Prateek Dhanda and Mr
Waize Ali Noor, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **31.08.2017**

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 03.07.2017 (hereafter 'the impugned order'), whereby the petitioner was debarred from participating in any tender or Request for Proposal (RFP) issued by respondent no.1 for a period of two years with effect from 28.03.2017.

2. The respondents invited bids for execution of a project for "*Reconstruction with geometric improvement of existing single lane to two lane with paved configuration from existing km 163.00 to km 194.800 of NH-125 (Tanakpur-Pithoragarh) in the State of Uttrakhand on EPC mode*" by a notice (NIT) dated 23.02.2017. Pursuant to the aforesaid NIT, the petitioner submitted its bid on 27.03.2017, along with the Bid Security of ₹223.74 lakhs in the form of Bank Guarantee.

3. A review meeting of the State Level Technical Committee was held on 11.05.2017, wherein it was observed that the petitioner had concealed the information that contract for one of the projects awarded to the petitioner had been terminated. In this view, the Committee decided to reject the petitioner's bid and also to take appropriate action against the petitioner. This was also reiterated by the Screening Committee in its meeting held on 12.05.2017.

4. Thereafter, the respondents invoked the bank guarantee. This was followed by the impugned order dated 03.07.2017.

5. Concededly, no separate show cause notice had been issued to the petitioner prior to issuing the impugned order.

6. Mr Kirtiman Singh, learned counsel appearing for the respondents pointed out that the petitioner was forwarded minutes of the State Level Evaluation Committee and minutes of the Screening Committee, under cover of a letter dated 16.05.2017. He also handed over a copy of the said minutes, which indicate that the State Level Evaluation Committee and Screening Committee had rejected the petitioner's bid and also decided to take further action. Mr Singh further submitted that in view of the above, the petitioner was aware of the proposed action to debar the petitioner, however, no representation against the proposed action was submitted by it. He submitted that thereafter the petitioner had sent a letter dated 30.06.2017 but, in that letter also, the petitioner had not made any submission as to why the petitioner should not be blacklisted. He submitted that therefore, the petitioner had sufficient opportunity to show cause prior to issuance of the

impugned order, but had not availed of the said opportunity.

7. This Court is not persuaded to accept the contentions advanced by Mr Kirtiman. It is clear that no show cause notice had been issued to the petitioner informing him of the proposed action to debar him from participating in future tenders. A careful reading of the minutes of the Evaluation Committee and the Screening Committee indicates that the decision to take action had already been taken even though, the impugned order was issued subsequently. Thus, the question of the said minutes serving as the purpose of a show cause notice does not arise. Even if it is accepted that the said Committee(s) had only decided to initiate action for blacklisting the petitioner, no response was elicited from the petitioner. Thus, the letter dated 16.05.2017, cannot by any stretch be accepted as a substitute for a show cause notice.

8. The question whether a show cause notice is required to be issued prior to blacklisting a party was authoritatively settled by the Supreme Court in *M/s Erusian Equipment & Chemicals Ltd v. State of West Bengal & Anr: AIR 1975 SC 266*. This was reiterated by the Supreme Court in *Gorkha Security Services v. Govt. (NCT of Delhi) and Others: (2014) 9 SCC 105*.

9. In view of the above, the impugned order cannot be sustained. The petition is allowed. The impugned order dated 03.07.2017, whereby the petitioner was debarred from participating in any tender or RFP for a period of two years with effect from 28.03.2017, is set aside. It is clarified that the respondents would not be precluded from taking any such action after

issuing the show cause notice and after considering the petitioner's response to the same.

AUGUST 31, 2017
pkv

VIBHU BAKHRU, J