

21

\$~

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

W.P.(C) 91/2017 & CM APPLs. 501/2017 AND 9945/2017

DEVYANI HOSPITALITY PVT LTD Petitioner

Through: Mr. Rishi Kapoor, Advocate with
Mr. Sunil Malhotra, Advocate.

versus

UNION OF INDIA AND ORS

..... Respondents

Through: Mr. Rajat Malhota, Advocate for
respondents No.3 and 4.

%

Date of Decision: 28th March, 2017

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present writ petition has been filed challenging the order dated 04th October, 2016 passed by respondent No.4 wherein the Award of Licence for Food Plaza at Vijaywada Railway Station was withdrawn, earnest money deposit forfeited and petitioner was debarred from participating in the future projects of IRCTC for one year.

2. After some arguments, learned counsel for petitioner does not challenge the impugned order on merits, but confines his argument to proportionality of punishment. He states that petitioner is at the moment running a number of food and beverage outlets at the Terminals 1, 2 and 3 of Delhi Airport, Mumbai International Airport, Hyderabad Airport, Yamuna Expressway Delhi to Agra,

DPS Schools and Malls. He emphasises that debarment of the petitioner for a period of one year is excessive.

3. Learned counsel for respondent-IRCTC states that the petitioner's contention with regard to reduction of period of debarment should only be considered if the petitioner is willing to accept the award of licence for Food Plaza at Vijaywada Railway Station. He states that this is imperative as a subsequent tender floated by IRCTC for Vijaywada Railway Station has been unsuccessful.

4. At this stage, learned counsel for petitioner states that petitioner is willing to accept the Award of Licence dated 01st August, 2016 for the Food Plaza at Vijaywada Railway Station.

5. The concept of proportionality of punishment is not unknown to law. The Supreme Court in ***Kulja Industries Limited vs. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited & Ors., (2014) 14 SCC 731*** has held as under:-

"26. In the case at hand according to the respondent BSNL, the appellant had fraudulently withdrawn a huge amount of money which was not due to it in collusion and conspiracy with the officials of the respondent Corporation. Even so permanent debarment from future contracts for all times to come may sound too harsh and heavy a punishment to be considered reasonable especially when (a) the appellant is supplying bulk of its manufactured products to the respondent BSNL, and (b) the excess amount received by it has already been paid back."

6. A Coordinate Bench of this Court in ***M/s. Sai Consulting Engineers Pvt. Ltd. Vs. Rail Vikas Nigam Ltd. & Ors., 198 (2013) DLT 507*** has held as under:-

"32. As far as ban of 5 years on the basis of second show-cause notice is concerned, this court is of the view that the same is

imposed for larger period in view of peculiar facts of the present case and particularly earlier ban on the basis of first show-cause for only one year and the same was already spent by the petitioner. Considering the overall facts and circumstances of the present case, I reduce the period of ban from five years to two years with effect from 30th June, 2011."

7. Keeping in view the aforesaid mandate of law and the fact that petitioner is willing to abide by the letter of award dated 01st August, 2016 as stated by it in its last communication dated 08th November, 2016, this Court reduces the punishment of debarment in the peculiar facts of the present case to the period already undergone.

8. The petitioner is directed to deposit the security deposit for the Vijaywada Food Plaza on or before 31st March, 2017. It shall be open to respondent-IRCTC to accept the petitioner's offer within three weeks of deposit.

9. In the event, the petitioner's offer is not accepted by IRCTC, the security deposit shall be refunded. However, if the petitioner's offer/bid for Food Plaza at Vijaywada is accepted, then the terms and conditions stipulated in the letter of award shall run from the date the petitioner's offer is accepted.

10. It is clarified that since in the present case the petitioner had neither conveyed its acceptance for licence nor deposited the security deposit within the stipulated time, the impugned action of respondent-IRCTC shall not be construed as expulsion or termination, but as a recession of the offer.

11. With the aforesaid directions and conclusion, present writ petition and applications stand disposed of.

MANMOHAN, J

MARCH 28, 2017

js