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

+ **W.P.(C) 8911/2017**

M/S. ASIAN CARGO MOVERS

..... Petitioner

Through Mr Sunil K. Mittal, Advocate with
Mr Pradeep Mahajan, Mr Anshul Mittal,
Advocates.

versus

CONTAINER CORPORATION OF INDIA LTD. Respondent
Through Mr Rishi Kr. Awasthi, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **11.10.2017**

1. The petitioner has filed the present petition, inter alia, impugning an order dated 23.09.2017 (hereafter 'the impugned order'), whereby the petitioner has been banned/blacklisted from conducting any business with the respondent (hereafter 'CONCOR') for a period of two years.
2. The petitioner alleges that the impugned order to be "*arbitrary, unjust and absolutely unfair*". It is seen that the said action has been taken by CONCOR on an allegation that the petitioner had submitted forged registration certificates pertaining to certain vehicles deployed by the petitioner.
3. CONCOR had sent a letter dated 12.07.2017 to the petitioner, *inter alia*, observing as under:-

"Kindly refer to your letter dated 03.07.2017. On perusal of the Registration Certificates furnished by your, it is observed that you have submitted copies of registration Certificates of your vehicles bearing no. HR 55 E 8288 and HR 55 E 8289 as 2008 at the time of taking over of contract in 2012 to meet the vintage criteria as per the contract conditions. However, on verification with the laminated original Registration Certificates submitted by your Representative on 03.07.2017 at DCT/Okhla, it has been found out that these vehicles pertain to the earlier year, i.e. 2007. It has also been observed that you have inducted Vehicle No. HR 55 E 8286 pertaining to the year 2006.

The other original documents viz. Fitness Certificate, Pollution under Control Certificate, Insurance, etc. for all the 35 vehicles deployed under the said contract are also yet to be submitted. As you have submitted forged registration certificates and kept on deploying the vehicles which were not meeting the vintage criteria for the vehicles, you are therefore called upon to show cause within 7 days from the date of receipt of this letter as to why your company should not be blacklisted and further restraining you from participating in future tenders of CONCOR."

3. Although, the petitioner had responded to the said letter and had given various explanations but the fact that forged registration certificates had been submitted was not specifically traversed. During the course of arguments Mr Mittal, learned counsel appearing for the petitioner was pointedly asked whether the allegation that forged registration certificate(s) as alleged had been submitted was correct or not. Although, he contended that there were various other issues which were relevant, however, the fact that forged registration certificates had been submitted by the petitioner was not disputed.
4. Mr Mittal earnestly contended that the contract awarded to the

petitioner had been duly performed and in view of the petitioner's satisfactory performance the term of the contract had been extended for a period of one year. It is just two months prior to completion of the extended term that the allegations were made against the petitioner. He further submitted that although a show cause notice had been issued, the petitioner had not been given any opportunity of being heard. He also states that the vehicles in question (the registration certificates of which have been questioned) were also replaced in 2012 and, therefore, no loss had been caused to CONCOR. He has also submitted that the impugned order debarring the petitioner had been ante dated. He states that this was evident from the fact no submissions to the effect that an order had already been passed was made at the hearing held on 18.09.2017.

5. I have heard the learned counsel for the parties.

6. The undisputed fact remains that certain forged certificates had been submitted by the petitioner in respect of certain vehicles. In ***Patel Engineering Ltd v. Union of India (2012) 11 SCC 257*** the Supreme Court had observed as under:

“12. It follows from the above judgment that the decision of State or its instrumentalities not to deal with certain persons or class of persons on account of the undesirability of entering into contractual relationship with such persons is called blacklisting. State can decline to enter into a contractual relationship with a person or a class of persons for a legitimate purpose. The authority of State to blacklist a person is a necessary concomitant to the executive power of the State to carry on the trade or the business and making of contracts for any purpose, etc. There need not be any statutory grant of such power. The only legal limitation upon the exercise of such an authority is that State is to act fairly and rationally without in any way being arbitrary - thereby such a decision can be taken for some legitimate purpose.

What is the legitimate purpose that is sought to be achieved by the State in a given case can vary depending upon various factors”

7. In the facts of the present case, where undisputedly, forged certificates were submitted to CONCOR, its action in debarring the petitioner for a period of two years cannot be faulted. The contention that the punishment imposed is highly harsh and onerous is also unpersuasive. In this view this Court is not inclined to entertain the present petition.

8. At this stage, Mr Mittal further requests that it be clarified that the impugned order would not have affect on the ongoing contract (other than the one that has already been terminated). In this regard it is clarified that in the event CONCOR seeks to terminate any ongoing contract, it would give a specific notice to the petitioner in this regard and take an informed decision after hearing the petitioner. It is further clarified that all remedies of the parties in relation to that contract are open.

9. The petition is dismissed.

VIBHU BAKHRU, J

OCTOBER 11, 2017

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