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

+ **W.P.(C) 9637/2017**

MONA GENERATOR SERVICES PRIVATE LTD..... Petitioner

Through: Mr Raman Kapur, Sr. Advocate with
Mr Hemant Gupta, Advocate.

versus

UNION OF INDIA & ANR Respondents

Through: Mr Manish Mohan with Ms Manisha
Saroja, Advocates for R-1.
Ms Mala Narayan and Ms Neha
Dawar, Advocates for R-2/IOCL.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **31.10.2017**

CM No.39221/2017

1. Allowed, subject to all just exceptions.

W.P.(C) 9637/2017 & CM No.39220/2017

2. The petitioner has filed the present petition, *inter alia*, praying as under:-

- “i) Quash the illegal e-mail termination letter dated 25.09.2017 being arbitrary, unreasonable, unfair, unjust, perverse and illegal.
- ii) Quash the Show Cause Notice dated 04.10.2017 being offshoot of the illegal termination letter dated 25.09.2017 as also being arbitrary, unfair, against the principles of natural justice.
- iii) Issue an order/ direction thereby staying the proceedings pursuant to the Show Cause Notice

dated 04.10.2017 during the pendency of present petition.”

3. Respondent no.2, Indian Oil Corporation Limited (hereinafter ‘IOC’) had floated a tender in February, 2017 for supply, installation, testing & commissioning of DG sets, power cum Motor control centre, cables, earthing, yard poles, etc. The petitioner submitted quotation in response to the aforesaid invitation, which was accepted and IOC issued a Work Order dated 19.06.2017. The said Work Order was terminated by an e-mail dated 25.09.2017, which is impugned in the present petition.

4. Thereafter, IOC had also issued a show cause notice dated 04.10.2017 calling upon the petitioner to show cause as to why the petitioner’s name should not be put on a ‘holiday list’ and he be debarred from entering into contracts with IOC. IOC alleged that a work order dated 17.02.2012 and a completion certificate dated 27.08.2012 furnished by the petitioner to establish his eligibility criteria were forged and fabricated.

5. Mr Raman Kapoor, learned senior counsel for the petitioner submits that the work order as well as the certificate, which are alleged to be forged, are genuine inasmuch as the works mentioned in the work order in question, were executed and accepted by the employer (SRE Hitech Pvt Ltd.) He admitted that the said certificate and work order were antedated by SRE Hitech Pvt. Ltd. at the request of the petitioner so as to evidence the performance of the work done by the petitioner for the said entity; however, he contended that there is ample evidence on record to show that the said work was done and payments of the same were received.

6. He further submitted that the petitioner had responded to the show

cause notice by a letter dated 18.10.2017 but the letter of termination has not been recalled.

7. The petitioner also impugns the termination of contract on the ground that the Senior Manager of IOC - who had issued the email terminating the contract - was not authorized to terminate the said contract.

8. Insofar as the issue of termination of the contract between the petitioner and IOC is concerned, it is noticed that the General Conditions of Contract (hereinafter 'the GCC') expressly provides that courts at Mumbai would have the jurisdiction in all matters under the tender. The relevant clause of the GCC is set out below:-

“65.0 At all places in the GCC enclosed with the tender document, OWNER shall mean INDIAN OIL CORPORATION LIMITED, MARKETING DIVISION, MAHARASHTRA STATE OFFICE, with its office at Indian Oil Bhavan, Plot No C-33, G Block, Bandra-Kurla Complex, Bandra (East) Mumbai 400051. The court of jurisdiction for all matters under the tender shall be at MUMBAI.”

9. In addition, the learned counsel for the parties point out that there is also an arbitration agreement (arbitration clause) between the parties. In view of the above, no interference with the impugned order (email dated 25.09.2017) is called for in these proceedings and the petitioner would be at liberty to institute such proceedings as may be advised.

10. Insofar as the show cause notice regarding blacklisting (placing the petitioner on Holiday List) the petitioner is concerned, it is seen that the petitioner has already responded to the said show cause notice and,

therefore, no interference at this stage would be called for. The concerned authority would consider the petitioner's response and pass a reasoned order after affording the petitioner an opportunity to be heard in accordance with law and having regard to the decision of the Supreme Court in ***Kulja Industries Ltd. v. Chief General Manager, Western Telecom Project BSNL & Ors.: AIR 2014 SC 9.***

11. No further orders are required to be passed in this petition.

12. The petition is, accordingly, disposed of with the aforesaid observations.

VIBHU BAKHRU, J

OCTOBER 31, 2017
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