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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 10012/2017**

MR. TRIYOGI NARAYAN SINGH Petitioner
Through: Mr Sudhir Nandrajog, Senior
Advocate with Mr D.
Bhattacharya, Mr Piyush
Sharma and Ms Sakshi Jain,
Advocates.

versus

**CONTAINER CORPORATION OF INDIA
LIMITED AND ORS.** Respondents
Through: Mr Rishi K. Awasthi, Advocate
for R-1.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
% **14.11.2017**

CM No. 40866/2017

1. Exemption is allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 10012/2017 and CM No. 40865/2017

3. Issue notice. The learned counsel for the respondents accepts notice. With the consent of the learned counsel for the parties, the petition is finally heard.
4. The petitioner has filed the present petition, *inter alia*, impugning an order dated 26.09.2017 (hereafter 'the impugned order'), whereby the petitioner has been debarred from participating or bidding in future invitations to tenders that may be issued by respondent no. 1 (hereafter 'CONCOR') for a period of one year with effect from 26.09.2017 either directly or indirectly.

5. The learned counsel for the petitioner contended that the said order has been passed without issuance of any show cause notice and without affording the petitioner sufficient opportunity to be heard.

6. The principal allegation against the petitioner is that it had participated in the bidding process for contracts by wrongly claiming benefits as available to Micro and Small Enterprises; that is, waiver of Earnest Money Deposit (EMD). The impugned order indicates that it is passed in reference to the Show Cause Notice (SCN) dated 21.08.2015 (relating to open tender of Terminal Transportation of Loaded/Empty containers at ICD/Tughlakabad) and SCN dated 11.04.2016 (bearing no. CON/NR/H&T-PNP & Baddi Show Cause/2015 dated 11.04.2016).

7. A plain reading of the notice dated 21.08.2015 does not indicate that the petitioner was called upon to respond as to why the petitioner ought not to be debarred from participating in future tenders. In fact, the said notice has been incorrectly termed as a show cause notice in the impugned order as the same was a notice for withdrawal/cancellation of the Letter of Intent dated 04.08.2015. The notice itself is not captioned as a Show Cause Notice and the subject of the said notice reads as *“Notice for Withdrawal/Cancellation of Letter of Intent dated 04.08.2015 with immediate effect.”*

8. Mr Awasthi, the learned counsel appearing for CONCOR pointed out that the said notice dated 21.08.2015 expressly states that *“Further, the debarring process has been initiated against you and you shall not be able to participate in any future bid by CONCOR for a period of 1 to 3 years”*. However, the above statement cannot be

read as calling upon the petitioner to show cause as to why such action of blacklisting ought not to be taken. Thus, the impugned order proceeds on an erroneous basis that the said notice was a Show Cause Notice.

9. Although, the impugned order refers to a SCN dated 11.04.2016, it is seen that the same was only a reminder to the petitioner to respond to an earlier SCN issued on 20.02.2016.

10. Admittedly, by a SCN dated 20.02.2016, the petitioner had been called upon to show cause as to: (a) why penalty should not be imposed on the petitioner; and (b) why the petitioner should not be debarred from participating in any future bid of CONCOR.

11. The aforesaid SCN was issued in relation to an open e-tender floated by CONCOR on 15.05.2015 for Handling & Transportation of containers/cargo at ICD Badarpur, Panipat and ICD/Baddi. After the issuance of the said SCN, CONCOR sent a reminder dated 11.04.2016 once again calling upon the petitioner to show cause why penalty should not be imposed and why the petitioner should not be debarred from participating in future bids by CONCOR.

12. The petitioner responded to the said SCN by a letter dated 09.07.2016 providing its explanation. Concededly, the petitioner's response was considered by CONCOR and by a letter dated 25.11.2016, CONCOR closed the matter by issuing a warning to the petitioner. This is apparent from the last paragraph of the said letter which reads as under:-

“This is the first instance trying to mislead CONCOR, therefore, you are hereby warned that such type of fault

should not be repeated in future and in case it is found otherwise, CONCOR shall be entitled to initiate due process of law for debarring and other lawful action against you, the notice.’’

13. In view of the above, the impugned order cannot be sustained as there was no outstanding SCN pursuant to which such action could be taken. The learned counsel for the petitioner also states that there is no allegation that the petitioner has violated terms of any tender document or done any act that would warrant any punitive measure after 25.11.2016.

14. In view of the above, the impugned order, having been issued without a prior Show Cause Notice, cannot be sustained (See: *Erusian Equipment & Chemicals Ltd. v. State of West Bengal & Anr: AIR 1975 SC 266* and *Gorkha Security Services v. Govt. (NCT of Delhi) & Ors: (2014) 9 SCC 105*). Accordingly, the impugned order is set aside. It is clarified that this would not preclude CONCOR from initiating fresh proceedings, if warranted, in accordance with law. It is further clarified that all rights and contentions of the parties are open and this includes the contention of the petitioner that the matter had been finally brought to closure by the letter dated 25.11.2016.

15. The petition and application are disposed of.

VIBHU BAKHRU, J

NOVEMBER 14, 2017/pkv