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

+ **W.P.(C) 10002/2017 & CM APPL. 40831-40832/2017**

M/S T C CONSTRUCTION

..... Petitioner

Through

**Mr. Ajay Baury and Mr. Anil Kulhari,
Advs.**

versus

DELHI DEVELOPMENT AUTHORITY & ANR Respondents

Through

**Mr. Pawan Mathur, Standing Counsel
for DDA with Mr. D.B. Singh, Asstt.
Engineer (CRB).**

CORAM:

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

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13.11.2017

Petitioner is aggrieved of the order no.85/2017 dated 11.9.2017 passed by Contractor's Registration Board, whereby, the petitioner, who is a contractor of the respondent, has been debarred from further tendering in DDA for a period of three years from the date of issuance of the order. The impugned order has come to be passed in pursuance of a show cause notice dated 19.7.2017 issued to the petitioner, which is, as under :

It has been intimated to this office by CE(Dwarka)/DDA regarding subject cited above. It is informed that the Agency habitually litigious in nature and have indulged in many litigations/arbitration with the Department which is violation of Clause 23.1 (C) of Enlistment Rule as well as Agency is habitually in making baseless allegations against officials of DDA and finding slackness in commencement of work after award.

Therefore, I served up to you to Show Cause why disciplinary action as laid down Under Rule 23 of The

Enlistment Rule of DDA should not taken against you.

Your reply should reach this office within 15 days from the date of issue of this letter, If No reply is received from you or the reply is not found satisfactorily, action as deem fit shall be taken against you without further notice.”

While the show cause notice by itself does not elaborate/give the basis to form an opinion for the petitioner being habitual in making baseless allegations and his slackness in commencement of work after award, the impugned order by itself, is a non-speaking order. As per the averments made in the petition, which are supported by an affidavit, the petitioner had responded to the show cause notice and given a reply running into almost ten pages, but, the impugned order cryptically disposed it off vide the impugned order.

In (2014) 9 SCC 105 **Gorkha Security Services Vs. Government (NCT of Delhi) and others**, it has come to be held, as under :

“21) The Central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of Show Cause Notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the defaults/ breaches complained of are not satisfactorily explained. When it comes to black listing, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action.

22) The High Court has simply stated that the purpose of show cause notice is primarily to enable the noticee to meet

the grounds on which the action is proposed against him. No doubt, the High Court is justified to this extent. However, it is equally important to mention as to what would be the consequence if the noticee does not satisfactorily meet the grounds on which an action is proposed. To put it otherwise, we are of the opinion that in order to fulfil the requirements of principles of natural justice, a show cause notice should meet the following two requirements viz:

- i) The material/ grounds to be stated on which according to the Department necessitates an action;**
- ii) Particular penalty/action which is proposed to be taken. It is this second requirement which the High Court has failed to omit.**

we may hasten to add that even if it is not specifically mentioned in the show cause notice but it can be clearly and safely be discerned from the reading thereof, that would be sufficient to meet this requirement.”

In view of the ratio of the judgment (supra), show cause notice dated 19.7.2017 and the impugned order no.85/2017 dated 11.9.2017 are set aside. Liberty is however, reserved to the respondent-DDA to issue fresh show cause intimating the reasons to form an opinion for the issuance of the show cause notice for debarment/blacklisting and then, pass a speaking order, having given an opportunity of reply and personal hearing, if, called for. Petition and the pending applications are disposed off accordingly.

Dasti under the signatures of the Court Master.

A. K. CHAWLA, J

NOVEMBER 13, 2017

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