

\$~21

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

+ W.P.(C) 10613/2017

JKM-NKC (JV)

..... Petitioner

Through: Mr Tanmay Mehta, Mr Nitesh Jain
and Mr Abhinav Mukhi, Advocates.

versus

NHAI

..... Respondent

Through: Mr S.K. Maniktala and Mr Nikhil
Ramdev, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

%

29.11.2017

CM No. 43476/2017

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

W.P.(C) 10613/2017 and CM No. 43477/2017

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

“a. Issue a writ of Certiorari or any other appropriate writ, order of directions thereby quashing order passed by the Respondent Organization thereby terminating the contract dated 30.09.2011 vide its letter dated 06.01.17 & 10.03.2017 since the project stands frustrated; and

b. Issue a writ Mandamus or any other appropriate writ,

order or directions against the Respondent thereby directing the Respondent not to debar the Petitioner from participating in the bidding process of their PPP and EPC projects till the final adjudication of all the disputes between the Petitioner and the Respondent qua the contract dated 30.09.2011.”

4. As far as the issue regarding termination of the contract dated 30.09.2011 is concerned, the same is the subject matter of contractual disputes and this Court is informed that the arbitration clause has already been invoked and the arbitration proceedings have commenced.

5. Mr Mehta, learned counsel appearing for the petitioner also informs this Court that an application under Section 9 of the Arbitration and Conciliation Act, 1996 has also been filed seeking interim relief with regard to the termination of the contract in question, which is pending consideration.

6. In view of the above, the petitioner’s prayer to quash the communications terminating the contract in question cannot be entertained in these proceedings.

7. Insofar as the prayer regarding a direction to respondent not to debar the petitioner from participating in the bid process till the final adjudication of the disputes between the petitioner and respondent is concerned, Mr Maniktala, learned counsel appearing for the respondent states that no order debarring the petitioner has been passed.

8. It is trite law that no order for blacklisting can be passed without prior notice to the party concerned (See: *Erusian Equipment & Chemicals Ltd. v.*

State of West Bengal and Anr.: AIR 1975 SC 266 and Gorkha Security Services v. Govt. (NCT of Delhi) and Ors: (2014) 9 SCC 105).

9. In view of the above statement made by Mr Maniktala, this Court is not inclined to entertain the said prayer - prayer (b) - at this stage.

10. The petition and pending application are, accordingly, disposed of.

VIBHU BAKHRU, J

**NOVEMBER 29, 2017
RK**