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

+ **W.P.(C) 10765/2017 & CM No.44109/2017**

M/S HOSPITECH MANAGEMENT CONSULTANTS
PVT. LTD.

..... Petitioner

Through: Mr P. S. Bindra, Ms Rishika Arora
and Ms Savi Abbot, Advocates.

versus

THE ENGINEER-IN-CHIEF'S BRANCH FOR
MES WORKS, E2 (DESIGN) INTEGRATED HQ
OF MOD (ARMY)

..... Respondent

Through: Mr Arjun Mitra, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER
13.12.2017

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VIBHU BAKHRU, J

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

- “(i) CERTIORARI for removing the Petitioner's name from consolidated list of banned enlisted consultants for MES work issued by Lt. Col. Offg. Dir (DES) of Respondent in which Petitioner's name is mentioned at Serial No. 3 and also for Quashing purported Banning Order dated 30.12.2014 (Copy whereof has never been given to the Petitioner) referred to in aforesaid list.
- (ii) Grant such other, further relief in the facts and circumstances of the case as this Hon'ble Court may deem just and proper in favour of the Petitioner.”

2. The petitioner claims to be in the business of providing Consultancy for planning and development of hospitals, Super-speciality hospitals,

medical colleges, etc. The petitioner states that somewhere in the year 2009, the respondent had invited tenders for appointment of a Consultant for assistance in establishment of the Command Hospital at Pune. Pursuant to the aforesaid notice inviting tenders (NIT), the petitioner submitted its bid and was selected to provide services for establishment of the Command Hospital at Pune.

3. The respondent issued a letter dated 24.07.2009 accepting the petitioner's tender. The total value of the work was estimated ₹1,69,00,000/- The petitioner states that in terms of the NIT, the petitioner also submitted a bank guarantee for a sum of ₹8,45,000/- as a performance security towards due performance of the contract.

4. The petitioner raised number of bills, but was paid only a sum of ₹92,00,000/- and the balance of ₹77,00,000/- was withheld. Admittedly, the contract was delayed. The petitioner claims that the same was solely on account of reasons attributable to the respondent.

5. The respondent on the other hand alleges that the petitioner had delayed the work and had failed to perform the same.

6. The learned counsel for the respondent has handed over a copy of the letter dated 28.11.2014, whereby the respondent had alleged that physical progress of the work at the Command Hospital at Pune was suffering due to poor response from the petitioner and had put the petitioner to notice that in the event this state of affairs continued beyond 15.12.2014, the contract awarded to the petitioner would be terminated.

7. A copy of the said letter was also made to other offices with a noting

that no further consultancy tenders be issued to the petitioner.

8. Subsequently, the petitioner's name was put on the list of "Banned Enlisted Consultants for MES". The said list indicates that the petitioner was banned from award of further consultancy works pursuant to a letter dated 30.12.2014 on account of poor performance reported by HQ CE Pune Zone and HQ CE Delhi Zone. The aforesaid letter dated 30.12.2014 is not on record and the respondent has also not produced the same.

9. The principal grievance of the petitioner is that he has been blacklisted without any show cause notice or without any prior intimation. The petitioner claims that it became aware of the fact that its name had been put on the list of banned consultants only when the petitioner's bid for works at Haryana Vishwakarma Skill University at Dudhola, Palwal, Haryana was rejected on the ground that the petitioner had been banned for undertaking the work of consultancy for MES works.

10. Mr Bindra, learned counsel for the petitioner also points out that the petitioner has already invoked the arbitration in relation to the contract awarded to the petitioner for consultancy in relation to the Command Hospital at Pune and the said disputes are pending.

11. Mr Mitra, the learned counsel for the respondent submits that in terms of the "Standard Operating Procedure (SOP) for enlistment of Engineering Consultants for MES", the enlistment of consultants can be cancelled for poor performance. Clause 17 of the said SOP is set out below:-

"17. The enlistment of consultant shall be cancelled in case of their poor performance, abandoning of the allotted work, abnormal delay in completion of work, bankruptcy

and for activities detrimental to the interest of MES department. While attempt will be made to seek views of the concerned firm/consultant as far as possible with regard to any such shortcomings/observations, the decision of enlisting authority in this regard shall be final and binding on the consultant.”

12. On the strength of the aforesaid clause, Mr Mitra submitted that no separate notice was required to be issued to the petitioner for placing the petitioner’s name in the list of banned consultants.

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

14. The law in relation to the black listing is now well settled. In the case of *Erusian Equipment & Chemicals Ltd. v. State of West Bengal and Anr.:* **AIR 1975 SC 266**, the Supreme Court had considered the issue and held as under:-

“20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist.”

15. The aforesaid view was reiterated by the Supreme Court in a latter decision in *Raghunath Thakur v. State of Bihar & Ors.:* **(1989) 1 SCC 229**, wherein the Supreme Court observed as under:

“4.It has to be realised that black-listing any person in respect of business ventures has civil consequence for the future business of the person concerned in any event. Even if the rules do not express so, it is an elementary principle of natural justice that parties affected by any order should have

right of being heard and making representations against the order.”

16. In *Gorkha Security Services v. Govt. (NCT of Delhi) and Others.*: (2014) 9 SCC 105 the Supreme Court reiterated that a specific notice was required to be issued to a person before the said person could be blacklisted. The relevant extract of the said decision reads as under:-

“16. It is a common case of the parties that the blacklisting has to be preceded by a show cause notice. Law in this regard is firmly grounded and does not even demand much amplification. The necessity of compliance with the principles of natural justice by giving the opportunity to the person against whom action of blacklisting is sought to be taken has a valid and solid rationale behind it. With blacklisting many civil and/ or evil consequences follow. It is described as “civil death” of a person who is foisted with the order of blacklisting. Such an order is stigmatic in nature and debars such a person from participating in Government Tenders which means precluding him from the award of Government contracts.

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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.”

17. In view of the above decisions, the contention that no separate notice was required to be given to the petitioner before blacklisting the petitioner is unmerited.

18. Blacklisting a person has severe adverse consequences and also casts a stigma on the concerned person. In *Erusian Equipment & Chemicals Ltd. (Supra)* the Supreme Court had observed as under:

“15.The blacklisting order involves civil consequences. It casts a slur. It creates a barrier between the persons blacklisted and the Government in the matter of transactions. The blacklists are “instruments of coercion”.

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Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction.”

19. In *Kulja Industries Ltd. v. Chief General Manager, Western Telecom Project BSNL & Ors.: AIR 2014 SC 9*, the Supreme Court had further held that blacklisting cannot be for an indefinite period. The Supreme Court has also listed the factors to be taken into account by the concerned party while determining the period of black listing.

20. In view of the aforesaid observations, it would have been apposite for the respondent to have issued a specific show cause notice informing the petitioner of the proposed action of blacklisting and to have passed a speaking order after hearing the petitioner.

21. In view of the above, it is directed that the petitioner's name be deleted from the list of banned enlisted consultants. The respondent would be at liberty to initiate appropriate proceedings for blacklisting against the petitioner by issuing an appropriate show cause notice. The respondent may pass an appropriate order after affording the petitioner an opportunity to be heard.

22. The petition and the application are disposed of with the aforesaid directions.

23. Order *dasti* under signatures of the Court Master.

DECEMBER 13, 2017
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VIBHU BAKHRU, J

