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

Judgment pronounced on: 6 February 2018

+ **W.P. (C) 1085/2018**

WOODHILL INFRASTRUCTURE LTD. Petitioner

Through : Ms. Sadiqua Fatima and
Mr. Akash Singh, Advs.

versus

STATE OF UTTARAKHAND AND ANR. Respondents

Through : Mr. Dev P. Bhardwaj, CGSC
with Mr. Satya Prakash Singh
and Mr. Surender Kumar, Advs.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SHAKDHER

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RAJIV SHAKDHER, J. (ORAL)

1. Issue notice. Mr. Dev P. Bhardwaj, CGSC accepts notice on behalf of the respondents.
2. Mr. Bhardwaj, CGSC submits that he does not wish to file a counter affidavit on behalf of the respondents and that he would want to argue the matter based on the record as presently available.
3. This is a second round of litigation. First round of litigation ended with the order dated 31.8.2017, passed by this court in WP(C)No.6964/2017. In that round, the writ petitioner challenged the order dated 3.7.2017, whereby, the petitioner was debarred from

participating in any tender or Request for Proposal (in short 'RFP') issued by respondent no.1 for a period of two years with effect from 28.03.2017.

4. This court set aside the order dated 3.7.2017 on the limited ground that no show cause notice had been issued to the petitioner. The Court however, clarified that the respondents would not be precluded from taking any action in accordance with law after issuing a show cause notice to the petitioner.

4.1 Consequently, on 1.11.2017, a show cause notice was issued to the petitioner. As required, the petitioner filed a reply to the show cause notice. Reply filed by the petitioner is dated 7.11.2017.

4.2 Pursuant to the reply, respondent no.1 has passed the impugned order dated 14.12.2017.

5. Ms. Sadiqua Fatima, learned counsel for the petitioner says that the impugned order is flawed for the reason that the show cause notice proceeds on a basis different from that which is reflected in the impugned order.

5.1 Learned counsel has elaborated upon this submission by drawing my attention to the show cause notice which alleged that the petitioner had written '*NIL*' in the subject bid tendered in Serial No.5(d) of Appendix 1A. The learned counsel went on to say the impugned order, however, found fault with the fact that the petitioner had not furnished information against Serial No. 6 in Annexure I

6. The only argument thus advanced is that the petitioner was not put to notice that it had to answer as to why information as sought for against Serial No.6 in Annexure I of Appendix 1(a) was not provided.

7. I have perused the show cause notice. The show cause notice has several recitals included in it. A close perusal of the show cause notice would show that while there is a reference to the fact that the petitioner had apparently written NIL against information sought for in Serial no. 5 (d) Annexure I, of appendix 1A, there is a separate recital which adverts to the termination of a contract that the petitioner executed with another entity.

The description of the contract which was terminated and the source of information was also disclosed by way of a separate recital. For the sake of convenience the same is extracted here after.

“ Tamenglong-Khongsang Road (NH-137) in the state of Manipur, MORT&H sought facts from NHIDCL vide letter no.-NH-12014/90/2016-UR/Chardham/NH-II dated 13.04.2017. NHIDCL vide letter No.-NH-12014/02/2014/MN/NH-8/NHIDCL – (Vol.-II)/117 dated – 26.04.2017 informed MORT&H about the facts.

8. It is not in dispute that against Serial No.6 of Annexure I of Appendix 1A, the petitioner had not furnished the information that its contract qua the aforementioned works had been terminated.

8.1 The termination of the contract occurred on 9.5.2016. The bid in respect of the contract in issue was, concededly, filed by the petitioner on 27.3.2017. Therefore, clearly the petitioner was required

to furnish the requisite information against Serial No.6, Annexure I of Appendix 1A.

8.2 Insofar as the information which was sought against Serial No.5(d) in Annexure 1 of Appendix 1A was concerned, the petitioner had, in fact, stated ' NA' and not ' Nil'. However, so far as this information was concerned, the petitioner has taken the stand, which in my view is correct that since the debarment order came to be passed after the subject bid was tendered there was no way the said information could be furnished at the time of filing the bid. To be noted the debarment order was passed on 2.8.2017, while the subject bid was tendered, as noted above, on 27.3.2017. Having said so, this defence clearly does not apply to the information sought against Serial No.6, Annexure 1, of Appendix 1A.

8.3 The record shows that the debarment order dated 2.8.2017 was pivoted on a fraudulent bank guarantee submitted by the petitioner.

8.4 Therefore, the argument advanced on behalf of the petitioner that the impugned order was not premised on what was put to the petitioner in the show cause notice dated 1.11.2017 according to me is an argument which is completely untenable. A fair and holistic reading of the show cause notice would show that the petitioner was in fact put to notice that it had not furnished the requisite information against Serial No.6, Annexure 1 of Appendix 1A.

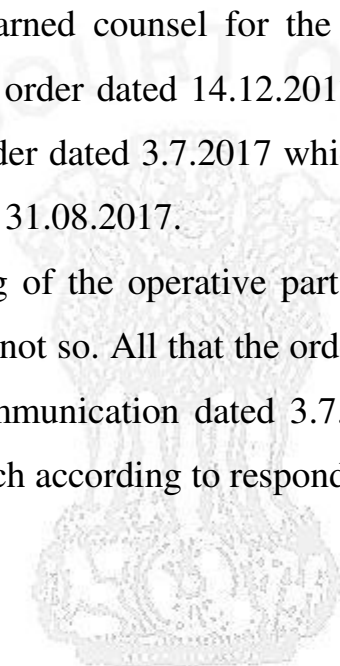
9. In view of the aforesaid, I am not inclined to interfere with the impugned order. The debarment order in my view appears to be in order.

10. The writ petition is, accordingly, disposed of. The pending application being CM No.4529/2018 shall consequently stand disposed of.

11. At this stage, learned counsel for the petitioner says that by virtue of the impugned order dated 14.12.2017, the respondents have in fact reiterated the order dated 3.7.2017 which was set aside by this court vide a order dated 31.08.2017.

12. A careful reading of the operative part of the impugned order would show that this is not so. All that the order states is that the facts stated in its earlier communication dated 3.7.2017 was justified and grounded in events which according to respondent no. 1 were correct.

13. No costs



RAJIV SHAKDHER, J

FEBRUARY 06, 2018

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