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

\+ W.P.(C) 1143/2018

WADIA TECHNO ENGINEERING SERVICES LTD. ..... Petitioner

Through: Mr Anna Malhotra and Ms Aditi Singhal, Advocates.

versus

NATIONAL HIGHWAYS AND INFRASTRUCTURAL DEVELOPMENT CORPORATION LIMITED AND ORS. ..... Respondents

Through`: Ms Geeta Luthra, Sr. Advocate with Mr Kabir Shanker Bose, Ms Deepa Sinha, Ms Akansha Kwatra and Mr Prateek Yadav, Advocates for R-1 to R-3.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% 07.02.2018

1. Issue notice.

2. The learned counsel appearing for the respondents accepts notice.

3. The petitioner has filed the present petition, *inter alia*, impugning an order dated 20.11.2017, whereby the petitioner was debarred for a period of three years from participating in any contract or tender floated by respondent no.1 (National Highway and Infrastructure Development Corporation Ltd – hereafter ‘NHIDC’).

4. On a representation made by the petitioner, the said period of

debarment was reduced to two years by an order dated 23.01.2018 (which is also impugned in the present petition).

5. Although, the petitioner has made several other prayers, however, the learned counsel appearing for petitioner has restricted the present petition to only seek quashing of the order blacklisting/debarring the petitioner from participating in any contracts / tenders for a period of two years (orders dated 23.01.2018 and 20.11.2017).

6. The aforesaid punitive measure was taken against the petitioner on the ground that the details of one of the key personnel mentioned in the tender were fabricated. In fact, the said person had not uploaded his details and a false email id had been created.

7. The petitioner does not dispute that the tender submitted by it contained false information; however, contends that the petitioner should not be held responsible for the same as its associate had admitted that false information had been provided by the petitioner's associate and the petitioner was unaware of the same.

8. In view of the admitted position that an incorrect statement had been made in the bid submitted by the petitioner, no interference with the decision of respondent no.1 to impose a punishment on the petitioner, is warranted. Even if it is accepted that the petitioner was not aware of any incorrect statement, the petitioner was nonetheless responsible for the same as expressly indicated by the petitioner in the bid submitted by the petitioner. The petitioner had expressly stated "*that the information submitted in INFRACON is true and correct to the best of my knowledge and I would be personally responsible for any mis-representation in this regard*."

9. The only question that remains to be considered is regarding the quantum of punishment. The learned counsel appearing for the petitioner submitted that the punishment is imposed on the petitioner is highly disproportionate as it would effectively mean that the petitioner's business would come to a standstill for a period of two years. She submits that the nature of business is such that if one entity debars the petitioner, the petitioner would be precluded from participating in tenders floated by any other entity as well.

9. Although this Court is not inclined to interfere with the impugned orders, it is apparent from the impugned orders dated 20.11.2017 and 23.01.2018 that the concerned authority had not taken into account the relevant factors - as articulated by the Supreme Court in the case of ***Kulja Industries Limited v. Chief General Manager, Western Telecom Project BSNL & Ors.: AIR 2014 SC 9*** - while determining the quantum of punishment.

10. The punishment imposed on the petitioner has three components: (i) the rejection of the petitioner's bid; (ii) the invocation of bank guarantee; and (iii) the period of debarment. In so far as the rejection of bid and the invocation of bank guarantee are concerned, the learned counsel appearing for the petitioner has not advanced any contentions. She had limited her plea for quashing the punishment of debarment/blacklisting.

11. In ***Kulja Industries*** *(supra)*, the Supreme Court had summarised the factors which are required to be considered while imposing punitive measures such as blacklisting and/or excluding a person from participating in contracts awarded by the State. The relevant extract of the said decision is

as under:-

> “22. The guidelines also stipulate the factors that may influence the debarring official’s decision which include the following:
>
> (a) The actual or potential harm or impact that results or may result from the wrongdoing.
>
> (b) The frequency of incidents and/or duration of the wrongdoing.
>
> (c) Whether there is a pattern or prior history of wrongdoing.
>
> (d) Whether the contractor has been excluded or disqualified by an agency of the Federal Government or has not been allowed to participate in State or local contracts or assistance agreements on the basis of conduct similar to one or more of the causes for debarment specified in this part.
>
> (e) Whether and to what extent did the contractor plan, initiate or carry out the wrongdoing.
>
> (f) Whether the contractor has accepted responsibility for the wrongdoing and recognized the seriousness of the misconduct.
>
> (g) Whether the contractor has paid or agreed to pay all criminal, civil and administrative liabilities for the improper activity, including any investigative or administrative costs incurred by the Government, and has made or agreed to make full restitution.
>
> (h) Whether the contractor has cooperated fully with the government agencies during the investigation and any court or administrative action.
>
> (i) Whether the wrongdoing was pervasive within the contractor’s organization.
>
> (j) The kind of positions held by the individuals involved in the wrongdoing.
>
> (k) Whether the contractor has taken appropriate corrective action or remedial measures, such as establishing ethics training and implementing programs to prevent recurrence.
>
> (l) Whether the contractor fully investigated the

> circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the debarring official."

12. As noticed above, it appears that the concerned authority has not considered the above factors in determining the period of blacklisting. In view of the above, the impugned orders are set aside and the matter is remanded to the concerned authorities to consider the quantum of punishment imposed on the petitioner having regard to the decision of the Supreme Court in ***Kulja Industries Limited*** *(supra)*.

13. The petition is disposed of with the aforesaid directions.

VIBHU BAKHRU, J

FEBRUARY 07, 2018
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