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

+ **W.P.(C) 7930/2018**

M/S SARR FREIGHT CORPORATION

..... Petitioner

Through Mr Akshay Makhija, Ms Kriti Agnihotri,  
Advocate Mr Vikas Bhadauria, Advocates.

versus

ENGINEERS INDIA LIMITED AND ANR.

..... Respondents

Through Ms Neelam Rathore, Ms Pooja Sharma,  
Mr Shantanu Devansh, Mr Zuber Ali Khan,  
Advocate for R1.

**CORAM:**

**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**ORDER**

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**31.07.2018**

**VIBHU BAKHRU, J**

1. Issue notice. The learned counsel appearing for respondent no.1 accepts notice. The petition is taken up for final hearing.
2. The petitioner has filed the present petition, *inter alia*, impugning an order dated 25.06.2018 (hereafter 'the impugned order') passed by respondent no.1 (hereafter 'EIL'). By the impugned order, the petitioner has been debarred from participating in any contract or entering into any transaction for a period of three years from the date of the impugned order.

3. The impugned order was premised on a finding that the petitioner had submitted a false certificate dated 15.02.2017 purportedly issued by the Indian Register of Shipping. The said certificate (Interim Certificate of Class Preview) dated 15.02.2017 bearing no. CAL16F001 (hereafter 'the Certificate') was purportedly issued by the Surveyor to Indian Register of Shipping. However, issuance of the said certificate is not reflected on the website of the concerned authority. The enquiries made by EIL indicated that the Certificate was forged/fabricated. In view of the above, the petitioner was issued a Show Cause Notice dated 21.08.2017. The petitioner responded to the said notice by a letter dated 28.08.2017, whereby it asserted that the Certificate furnished by the petitioner was correct but had expired. The petitioner also sought further time to submit documentary proof in support of its claim.

4. Thereafter, the petitioner was afforded an opportunity to be heard in a meeting held on 19.09.2017 before a committee of two officers of EIL. The petitioner's Managing Director appeared before the said committee and sought further time to take up the matter with the Indian Register of Shipping Authority, Kolkatta. The said request was granted; however, the petitioner failed to submit any clarification or proof as required. On 17.10.2017, the petitioner once again requested for four weeks additional time to seek the clarification from the Indian Register of Shipping Authority on account of the festive season. This request too was granted. However, the petitioner failed to submit any material to establish the authenticity of the Certificate furnished by it.

5. In view of the aforesaid, EIL has passed the impugned order debarring the petitioner from participating in any tender.

### ***Submission***

6. Mr Makhija, the learned counsel appearing for the petitioner has sought to assail the impugned order, essentially, on three grounds. First, he submitted that the Certificate (which is alleged to be forged) was furnished as a part of the bid documents submitted for a project floated by respondent no.2 (hereafter 'BPCL') and, therefore, the petitioner could not be blacklisted by EIL. He earnestly contended that EIL was only acting as an agent for BPCL and, thus, any grievance regarding any incorrect or forged document, which formed a part of its tender, could be raised only by BPCL/respondent no.2.

7. Second, he submitted that the Notice Inviting Tender (NIT) did not specifically include any provision for blacklisting a bidder on account of furnishing any incorrect Certificate. Lastly, he submitted that the procedure adopted to blacklist the petitioner is contrary to the policy of EIL. He referred to the "Procedure for Suspension/Banning of Business Dealings" published on the website of EIL, which specifically requires that if the party concerned requires an oral hearing, the same would be afforded by the sub-committee for SCEC-I which comprises of ED (SCM), ED (Projects), GM/CGM (Construction), GM (Planning), HOD (Legal) as members and HOD (PDD) as the convener.

### ***Reasons and Conclusion***

8. The petitioner's contention that the action of EIL in blacklisting the petitioner is not sustainable, as the Certificate in question was submitted pursuant to a bid floated by BPCL, is unmerited. The principal consideration is not whether the petitioner had submitted a bid for a contract with EIL, but

whether it had dealings with EIL during the course of which this Certificate was furnished. And, more importantly, whether EIL had acquired knowledge of the misconduct on the part of the petitioner. Plainly, the Certificate in question was considered by EIL in course of its appointment as a consultant to BPCL and, thus, EIL was well within its right to refrain from entering into any transaction or dealing with the petitioner in future.

9. Insofar as the contention that the punitive measure of blacklisting is not provided in the NIT is concerned, the said contention is unmerited as well. First of all the NIT include several documents including the Special Conditions of Contract (SCC) is applicable to the contract in question. Article 65 of the SCC includes a specific provision with regard to fraudulent practices. The relevant sub-clause (d) of Article 65.1 of the SCC clause reads as under:-

“d) Further, such bidder/contractor shall be put on Blacklist/Holiday/Negative List of OWNER/EIL debarring them from future business with Owner & EIL for a time period, as per the prevailing policy of OWNER & EIL.”

10. Mr Makhija had contended that the said clause would not be applicable as the said contract has not been signed. This contention is also unpersuasive, as the SCC were included as a part of the tender documents and any contractor bidding for the same had expressly agreed to abide the same. However, even if it is accepted – which this Court does not – that a specific condition for blacklisting a contractor was not indicated as a part of the tender conditions; nonetheless, any authority would have an inherent right to refrain from dealing with the said contractor who is found to have indulged in unacceptable practices.

11. In *Patel Engineering Limited v. Union of India & Another: (2012) 11 SCC 257*, the Supreme Court had observed as under:-

“The State can decline to enter into a contractual relationship with a person or class of persons for legitimate purpose. The authority of the State to blacklist a person is necessary concomitant to the executive power of the State to carry on the trade or the business and making of contracts for any purpose etc. There need not be any statutory grant of such power. The only legal limitation upon the exercise of such an authority is that the State is to act fairly and rationally without in any way being arbitrary - thereby such a decision can be taken for some legitimate purpose”

12. The contention that EIL has not followed its own policy as declared on the website appears to be merited inasmuch as it is not disputed that the petitioner was not afforded an opportunity by the sub-committee constituted in accordance with the said policy. Ms Rathore, the learned counsel appearing for EIL submitted that the Supplier Contractor Evaluation Committee – I (SCEC-I) had recommended the imposition of the punitive measure as has been imposed on the petitioner. The said recommendation was initially considered by SCEC-II in the meeting held on 06.03.2018 and the matter was deferred. This recommendation was reiterated by SCEC-I and was accepted by SCEC-II at a meeting held on 14.06.2018. She also produced the extracts of the minutes of the said meeting. However, it is not disputed that a hearing was not afforded to the petitioner by SCEC-I or the sub-committee as constituted in terms of the policy (procedure for suspension/banning of business dealings). Ms Rathore submits that there would be no difficulty in providing the petitioner a hearing before SCEC-I or a sub-committee constituted in terms of the policy and considering the

matter of blacklisting the petitioner afresh.

13. In view of the above, the impugned order is set aside. EIL is at liberty to take such action as it deems fit, after affording the petitioner an opportunity to be heard before SCEC-I or the sub-committee as constituted in terms of its policy. It is clarified that EIL is not required to issue a fresh show cause notice. However, the petitioner would be at liberty to produce any material that the petitioner so desires in support of its explanation at the time of hearing or prior thereto. The SCEC-I/ sub-committee shall also consider the petitioner's case having regard to its policy and the decision of the Supreme Court in *Kulja Industries Ltd. v. Chief General Manager, Western Telecom Project BSNL & Ors: AIR 2014 SC 9*.

14. The petition is disposed of in the above terms.

15. Order *dasti* under the signature of Court Master.

**VIBHU BAKHRU, J**

**JULY 31, 2018**

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