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

+ W.P.(C) 8654/2018 & C.M. No. 33242/2018

CENTRAL ELECTRONICS LTD Petitioner
Through: Mr Paritosh Budhiraja and Mr
Ashwani Ahuja, Advocates.

versus

AMARWANT SINGH Respondent
Through: Mr J.K.Nayyar, Advocate alongwith
respondent in person.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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20.09.2018

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 02.05.2018 passed by the Central Information Commission (hereafter 'the CIC'), directing the petitioner (respondent therein) to provide information as sought for by the respondent (the appellant therein). The respondent had filed an application under the Right to Information Act, 2005, (hereafter 'the RTI Act'), *inter alia*, seeking the following information:-

“(A) Kindly provide me Test Reports of Electric Cables got tested by the Central Electronics Limited, Sahibabad from any Govt. Laboratory during 2013 and details of payments testing charges made.

(B) Kindly provide me Test Reports of Electric Cables got tested by the Central Electronics Limited, Sahibabad

from any Govt. Laboratory during 2014 and details of payments of testing charges made.”

2. It is relevant to note that the respondent is a constituent partner of a firm, M/s Friends Cable Industries, which had supplied the cables to the petitioner pursuant to a tender floated by the petitioner on 14.02.2012.
3. On 14.02.2012, the petitioner had invited tenders for procurement of “*Cable 24/0.2 ATC Braided 2 Core(Red, Black) PVC Insulated PVC Sheathed(Grey) Shielded Cable 650v grade Cables OD dia 7.2mm to 7.88mm*” (hereafter ‘the Cables’). M/s Friends Cable Industries (hereafter ‘the Vendor’) submitted its bid pursuant to the said invitation and the same was accepted.
4. On 22.05.2012, the petitioner issued a Purchase Order (Purchase Order bearing no.36051 dated 22.05.2012 for supply of 42000 meters of cable) conforming to the specifications as stated in the tender notice. The Vendor supplied the 41.03 kms. of the cables in three lots. Concededly, the Cables supplied were initially inspected and acceptance test was conducted. The petitioner states that, subsequently, in the month of December, 2012, certain cracks were observed in the sheath of the Cable near the neck of around 45 Web Detectors (from a total of 728) manufactured from the Cable and supplied by the Vendor. The petitioner states that, thereafter, it subjected the Cables to a physical inspection and found the same to be defective. Several communications were sent to the Vendor calling upon it to replace the said Cables and to compensate the losses allegedly suffered by the petitioner in the manufacture of 728 Web Detectors from the defective Cables supplied by the firm. The said disputes could not be resolved and

were referred to the sole arbitrator appointed by the Allahabad High Court. The arbitral proceedings are continuing.

5. In the meanwhile, on 26.09.2017, the respondent filed an application seeking information as noted above.

6. The Public Information Officer of the petitioner responded to the said application by a letter dated 10.10.2017, which reads as under:

“The information sought in (A) and (B) are of commercial confidence and trade secret and no public interest is involved. Hence, denied under section 8(1)d of the RTI act 2005.”

7. Aggrieved by the aforesaid response by the denial of information, the respondent preferred an appeal under Section 19 of the RTI Act before the First Appellate Authority (FAA). The FAA concurred with the CPIO and rejected the appeal by an order dated 04.12.2017.

8. Aggrieved by the same, the respondent preferred a second appeal under Section 19(3) of the RTI Act, which has been allowed by the impugned order dated 02.05.2018.

9. In the aforesaid facts, the only question to be considered is whether the information as sought for by the respondent was exempt from disclosure under clause (d) of section 8(1) of the RTI Act. The said clause reads as under:-

“8. Exemption from disclosure of information.—

(1) Notwithstanding anything contained in this Act, there shall be no obligation to give any citizen,-

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(d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information.”

10. Clearly, the information as sought for by the respondent was not a trade secret or an intellectual property. The contention that it was a information of commercial confidence, the disclosure of which would harm the competitive position of a third party is also wholly unsustainable. There is no third party involved in the preset petition. The information that was sought by the respondent related to the test reports conducted at the instance of the petitioner in respect of products supplied by the respondent’s firm (the Vendor) and, therefore, the disclosure of any such information could not possibly harm the competitive position of any third party.

11. Such information had no bearing on the competitive position of the petitioner as well. On the contrary, this information is relevant to the dispute between the parties. This Court is unable to accept that disclosure of such information could harm the competitive position of any party.

12. This Court is of the view that denial of information to the respondent was wholly unjustified. Before proceeding to deny information under any of the provisions of section 8(1) of the RTI Act, it is necessary for the Public Authority/ the CPIO to apply its mind whether the disclosure of the particular information is exempt from disclosure under the relevant

provision. Merely citing a clause of Section 8 of the RTI Act, without examining the import of the same would, undoubtedly, be constructed as obstructing the supply of information under the RTI Act.

13. This Court is also of the view that the present petition should be dismissed with costs, as this Court finds the stand of the petitioner to be completely unsustainable. This Court is also of the view that the said ground has been taken only with a view to delay the information as sought by the respondent. Accordingly, the petition is dismissed with costs quantified at ₹10,000/-. The costs shall be paid to the respondent within a period of one week from today.

14. It will also be open for the respondent to file a complaint under Section 18 of the RTI Act before the CIC in this regard.

15. The pending application is also disposed of.

16. Order *dasti*.

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VIBHU BAKHRU, J

SEPTEMBER 20, 2018
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