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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ LPA 573/2018 & CM. Nos. 42055/2018 and 42056/2018
M/S SHIVALIK HYDRO PVT LTD. & ANR.

..... Appellant
Through: Mr. Praveen Chaturvedi, Adv. with
Mr. F.S. Diman, Ms. Jyoti Chaturvedi
& Ms. Addya Mishra, Advs.

versus

BHARAT HEAVY ELECTRICAL LTD

..... Respondent
Through: Ms. Priya Singh, Adv.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER
% **09.10.2018**

CM. No. 42056/2018

Exemption allowed subject to all just exceptions.

Application stands disposed of.

LPA 573/2018

1. This petition has been filed by the appellant challenging the order dated August 28, 2018 in W.P.(C) No. 8975/2018, wherein a challenge was laid to the order dated February 20, 2018 whereby the respondent has suspended the petitioner's business dealing; banning across BHEL for a period of three years.

2. The grounds of challenge to the impugned order dated February 20, 2018 before the learned Single Judge was on two grounds, the first one being that the action taken by the respondent BHEL is harsh, burdensome and disproportionate. The appellant relied upon the judgment of this Court in *Avinash Em Projects Pvt. Ltd. v. GAIL (India) Limited W.P.(C) No. 2041/2014 decided on February 06, 2015*; the second submission being that the General Instruction to Tenderers provides for a mechanism for resolving such an issue. He referred to Clause 1.4.1(v) of the General Instruction to tenderers and submitted that in case of omission of quoting any rate, the notional rates could have been supplied by BHEL. The appellant had also relied upon decision of the Supreme Court in the case of *Kulja Industries Limited v. Chief General Manager, W.T. Proj. BSNL & Ors. (2014) 14 SCC 731* wherein the Supreme Court had laid certain guidelines while imposing punishment of blacklisting any person.

3. Suffice to state, the learned Single Judge rejected all the grounds raised by learned counsel for the appellant, inasmuch as on the first ground, the learned Single Judge has referred to the guidelines issued by BHEL and held that the action is in accordance with the same. Even during submissions before us, it is not the case of the appellant that the guidelines does not

prescribe that in such an eventuality, the BHEL cannot impose suspension / banning for a period of three years. In the absence of such a submission, it must be held that the suspension / banning imposed for a period of three years, is justified. The learned Single Judge has also distinguished the judgment of the Supreme Court in *Kulja Industries Limited (supra)* by holding that the said case was related to a matter where there are no guidelines available for blacklisting the contractor and the Supreme Court had observed that each organization should issue specific guidelines. In the present case, the learned Single Judge held that in the case in hand, BHEL has framed specific guidelines clearly indicating the measures that would be taken in case where a supplier withdraws / varies its bid.

4. The learned Single Judge has also held that the judgment in the case of *Avinash Em Projects Private Limited (supra)* is also distinguishable.

5. The learned counsel for the appellant has made similar submissions as was made before the learned Single Judge. According to him, the impugned order dated February 20, 2018 has very drastic consequences and clearly disproportionate. According to him, it is not the case of the respondent that the appellant has committed any fraud or any other malpractices but only sought to withdraw its bid.

6. Having heard the learned counsel for the appellant, we find the submissions as made before us were the submissions made before the learned Single Judge and they have been dealt with appropriately by the learned Single Judge, with which conclusion we concur.

7. We do not see any merit in the appeal. The same is dismissed.

CM. No. 42055/2018 (for stay)

Dismissed as infructuous.

CHIEF JUSTICE

V. KAMESWAR RAO, J

OCTOBER 09, 2018/ak