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

+ **W.P.(C) 13729/2018**

**BHARAT MINERAL AND CHEMICAL
INDUSTRIES**

..... Petitioner

Through: Mr Bhaskar Mishra, Ms Namita
Choudhary and Ms Kritika Khurana,
Advocates.

versus

UNION OF INDIA & ANR

..... Respondents

Through: Ms Monika Arora, CGSC with Mr
Harsh Ahuja, Mr Kushal Kumar and
Ms Prabhleen Kaur Singh, Advocates
for R-1/UOI.
Mr Rajesh Gogna, with Mr Upendra
Sai, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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19.12.2018

CM No. 53573/2018

1. Allowed, subject to all just exceptions.

W.P.(C) 13729/2018 & CM No. 53572/2018

2. The petitioner has filed the present petition, *inter alia*, impugning an order dated 20.09.2018 passed by respondent no.2, whereby the petitioner has been blacklisted and debarred from participating in any tender floated by respondent no.2 for a further period of two years. In addition, respondent no.2 has also forfeited the Performance Bank Guarantee furnished by the petitioner and has also decided to withhold the payments claimed by the

petitioner for supply of the products.

3. The petitioner had participated in an open tender floated by respondent no.2 for procuring the supply of insecticides “Alphacypermethrin (5% WP)”. The principal allegation against the petitioner is that the products as supplied by the petitioner were not upto the specifications and of the requisite quality. According to the respondent, the samples drawn by respondent no.2 from the consignees established the same. A show cause notice in this regard was issued to the petitioner on 15.01.2018 calling upon the petitioner to show cause why the action in terms of the relevant clauses of the contract including blacklisting not be taken against the petitioner. It is stated that the petitioner responded to the said show cause notice and also replaced the batches of the insecticides that were found to be not as per the specifications.

4. It is alleged that, thereafter, samples of products supplied by the petitioner were drawn by joint teams from various locations and all the said samples failed to meet the specification. It is also alleged that despite the petitioner being informed of the same, the petitioner failed to replace the said batches of the product.

5. It is the petitioner’s case that the said samples were not drawn in accordance with the contract between the parties. The learned counsel appearing for the petitioner further states that the same were not drawn in the presence of the petitioner.

6. It is contended on behalf of the petitioner that no show cause notice was issued to the petitioner after 15.01.2018 and the petitioner, therefore, had no opportunity to respond to the allegations pertaining to the samples that were drawn, thereafter.

7. The allegations against the petitioner are serious and this Court is of the view that petitioner ought to be provided full opportunity to meet the same. Since, no fresh show cause notice had been issued to the petitioner in respect of the samples that were drawn after 15.01.2018, this Court considers it apposite to direct that a fresh opportunity be granted to the petitioner to meet the allegations. In this view, it is directed that the impugned order be treated as a show cause notice in respect of the allegations stated therein. The petitioner may respond to the said show cause notice within a period of one weeks from today. The concerned authority shall take an informed decision within a period of two weeks, thereafter, after affording the petitioner an opportunity of being heard. In the meanwhile, the petitioner would not participate in any tender floated by respondent no.2 for a period of three weeks, hereafter.

8. Insofar as the issue regarding withholding of payments and invocation of the Bank Guarantee is concerned, the same are contractual disputes and it is not apposite to entertain such claims in these proceedings. This Court is informed that the petitioner has already taken steps for redressal of its grievance in regard to the aforesaid disputes.

9. The petition is disposed of in the aforesaid terms. The pending application is also disposed of.

10. It is clarified that this Court has not expressed any opinion on the merits of the allegation made in the present petition.

VIBHU BAKHRU, J

DECEMBER 19, 2018
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