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

\+ W.P.(C) 13736/2018

M/S JAGDAMBA SALES CORPORATION ..... Petitioner

Through: Mr J. P. Sengh, Sr. Advocate with Mr K. G. Sharma, Ms Manisha Mehta, Ms Mrigna Shekhar and Mr Shashi Pratap Singh, Advocates.

versus

STATE (GNCT OF DELHI) AND ORS. ..... Respondents

Through: Mr Gautam Narayan, ASC with Mr Chirayu Jain and Ms Mahamaya Chatterjee, Advocates.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

<u>O R D E R</u>

% 19.12.2018

<u>CM No.53586/2018</u>

1. Allowed, subject to all just exceptions.

<u>W.P.(C) 13736/2018 & CM No. 53585/2018</u>

2. The petitioner has filed the present petition, *inter alia*, impugning an order dated 04.12.2018 (hereafter 'the impugned Order'), whereby the petitioner has been blacklisted from participating in any business activity for a period of three years with effect from 22.12.2017.

3. The respondents had floated a public notice for auction of 5000 quintals of Mustard De-oiled cake (*khal*) and 15000 numbers of empty gunny bags from Central Jail Factory, Central Jail No.2, Tihar, New Delhi.

4. The petitioner had participated in the aforesaid auction and being the

highest bidder was awarded the rate contract for lifting of Mustard De-oiled cake on 05.08.2016.

5. The contract was valid till 30.06.2017 and was extendable by a period of three months with stipulation that the petitioner would be obliged to lift a further quantity of 350 quintals of cake on a monthly basis. The contract also provided for levy of penalty @ 2.5% of the value per week subject to maximum of 10 weeks in case the petitioner failed to perform its obligation. The petitioner commenced lifting of the Mustard De-oiled cake from October, 2016 onwards and lifted approximately 714 quintals of Mustard De-oiled cake till 07.11.2016.

6. It is the petitioner's case that its entire business came to a standstill on account of the government's decision to demonetize high value currency with effect from 08.11.2016. Admittedly, the petitioner was unable to lift the quantity of Mustard De-oiled cake as agreed and the petitioner could only manage to lift 1515 quintals of Mustard De-oiled cake till June, 2017.

7. In view of the aforesaid default, the respondents passed an order dated 19.01.2018, *inter alia,* blacklisting the petitioner for an indefinite period. Aggrieved by the same, the petitioner filed a writ petition (being W.P.(C) 2660/2018) impugning the blacklisting order dated 19.01.2018. The said writ petition was allowed. The blacklisting order was set aside and the matter was remanded to the respondents to pass a fresh order after considering the submissions of the petitioner.

8. Thereafter, the concerned authority passed an order dated 25.09.2018, *inter alia*, blacklisting the petitioner for a period of five years. Aggrieved by the same, the petitioner filed another writ petition (W.P.(C) 1433/2018). The said petition was disposed of on 23.10.2018 with the direction to the

concerned authority to pass a fresh order considering the principles set out by the Supreme Court in ***Kulja Industries Ltd. v. Chief General Manager, BSNL: AIR 2014 SC 9***. Thereafter, the concerned authority has passed the impugned Order.

9. It is relevant to note that the petitioner had resisted the imposition of any punitive action, essentially, on four fronts. First, the petitioner submitted that it had met with an unprecedented situation created by demonetization and, therefore, the default was beyond its control. Second, it was stated that the petitioner had been duly performing other contracts and, therefore, had an unblemished record in the past which ought to be considered. Third, it was contended that the blacklisting order would adversely affect the petitioner in other contracts, which was unwarranted. Lastly, it was submitted that the respondents had withheld the monies due to the petitioner in respect of other contracts and, therefore, the petitioner was effectively disabled to lift the Mustard De-oiled cake due to the cash crunch faced by the petitioner.

10. It is seen that the concerned authority of the respondent had considered the aforesaid contentions. Insofar as the petitioner's contention that there was an unprecedented situation created on account of the demonetization of the high value currency, the respondent authority had noted that the petitioner had consistently failed to lift Mustard De-Oiled Cakes upto 22.06.2017, which is several months after the high value currency were demonetized. It is pointed out that even as on 22.06.2017, 3484.70 quintals (out of 5000 that the petitioner had agreed to lift) remained to the lifted. The concerned authority has reasoned that the lifting pattern indicated the conduct of the petitioner was irresponsible apart from being in

violation of the terms of the contract. It is also pointed out that the failure on the part of the petitioner to lift Mustard De-oiled cake has resulted in a significant area of the jail being used as storage for a Mustard De-oiled cake. Further, the respondents had also lost value on account of loss in weight of the product in question (Mustard De-oiled cake) on account of dryness.

11. In order to explain its failure, the petitioner also contended that imposition of the GST regime had adversely affected the petitioner. Plainly, such commercial difficulties, if any, do not provide any excuse to the petitioner.

12. The concerned authority has also noted that repeated notices were given to the petitioner to lift the remaining quantity of Mustard De-oiled cake but despite such opportunities, the petitioner had failed to do so.

13. It is apparent from the plain reading of the impugned Order that the concerned authority has not only acted on the ground that that the petitioner has failed to perform the contract but has determined that the such failure was wilful and indicated the sense of irresponsibility.

14. This Court finds no infirmity with the aforesaid order.

15. Mr Sengh, learned senior counsel appearing for the petitioner had contended that the respondent authority has not considered the factors as mentioned in ***Kulja Industries Ltd. v. Chief General Manager, BSNL: AIR 2014 SC 9*** while determining the quantum of punishment.

16. The said contention is also unpersuasive, as a plain reading of the impugned Order does indicate that the concerned authority has also taken into account various factors while determining the quantum of blacklisting including the conduct of the petitioner.

17. The scope of judicial review on the present petition is limited and this

Court is unable to accept that there are any such grounds for exercise of such jurisdiction. The impugned order has been passed after following the principles of natural justice and due application of mind. The said decision cannot be considered as perverse or unreasonable so as to fail the *Wednesbury* test. Further, indisputably, the respondents are entitled to pass the impugned decision (See: ***Patel Engineering Limited v. Union of India & Another : (2012) 11 SCC 257***).

18. It is also seen that by the impugned Order the respondent has directed forfeiture of the performance security as well as withholding of the funds from other contracts. It is clarified that this Court has not examined the said controversy and it is open for the petitioner to avail of its remedies in respect of its contractual disputes. This Court is informed that the petitioner had already instituted an action in regard to the invocation of the performance security.

19. In addition, the petitioner is also aggrieved with regard to withholding of payments in other contracts and cancellation of pending contracts. This Court has not examined the controversy in that regard as well. The said action relates to separate contracts and the petitioner would be at liberty to take such steps in regard to those contractual disputes as may be otherwise available in law.

20. In view of the above, the petition is dismissed. The pending application is also disposed of.

VIBHU BAKHRU, J

DECEMBER 19, 2018
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