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

+ W.P.(C) 1412/2019

M/S MUBARAK OVERSEAS PVT. LTD. Petitioner

Through: Mr Jai Sahai Endlaw and Mr Gaurav
Aggarwal, Advocates.

versus

UNION OF INDIA Respondent

Through: Mr Ripu Daman Bhardwaj, CGSC for
UOI/R-1.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **12.02.2019**

CM No.6468/2019

1. Allowed, subject to all just exceptions.

W.P.(C) 1412/2019 & CM No. 6467/2019

2. Issue notice. Learned counsel for the respondent accepts notice. With the consent of the parties, the petition is taken up for final hearing.

3. The petitioner has filed the present petition impugning an order dated 20.11.2018 (hereafter 'the impugned order'), whereby the petitioner has been debarred from participating in any tender invited by the Army Purchase Organisation (APO).

4. Mr Endlaw, learned counsel appearing for the petitioner, assails the impugned order, essentially, on three fronts. First, it is contended that the blacklisting is for an indefinite period and the same is contrary to the decision of the Supreme Court in *Kulja Industries Limited v. Chief General*

Manager, Western Telecom Project BSNL & Ors.: (2014) 14 SCC 731.

5. Second, he submits that the impugned order has been passed in violation of the principles of natural justice, inasmuch the company was neither issued any show cause notice nor afforded any opportunity to be heard and is therefore, liable to be set aside. He relies on the decision of the Supreme Court in ***Gorkha Securities Services v. Government of NCT of Delhi and Ors.: (2014) 9 SCC 105*** in support of the aforesaid contention.

6. Third, it is submitted that the principal ground on which the petitioner has been blacklisted is a subject matter of dispute, which is pending adjudication before an Arbitral Tribunal. It is submitted that in view of the disputes, the respondent cannot blacklist the petitioner till a final decision has been rendered by the Arbitral Tribunal. Mr Endlaw, relies on the decision of the Coordinate Bench of this Court in ***Prakash Atlanta JV & Ors. v. NHAI & Ors.: 2010 SCC OnLine Del 471***, in support of his contention.

7. The learned counsel appearing for the respondent, is unable to counter any of the aforesaid submissions. Plainly, the concerned authorities have not considered the aforesaid aspects.

8. This Court is also of the view that blacklisting for an indefinite period is impermissible in view of the decision of the Supreme Court in ***Kulja Industries Limited (supra)***. The impugned order is also unsustainable as the same has been issued, without any show cause notice, and without affording the petitioner any opportunity to be heard.

9. In view of the above, the impugned order is set aside. However, it is clarified that this would not preclude the concerned authority from issuing any show cause notice and deciding afresh in accordance with law after

affording the petitioner full opportunity to be heard. All rights and contentions of the parties are reserved.

10. The petition is allowed in the aforesaid terms. The pending applications are also disposed of. The parties are left to bear their own costs.

VIBHU BAKHRU, J

FEBRUARY 12, 2019
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