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

+ W.P.(C) 1695/2019 & CM No. 7759/2019

**PROGILITY TECHNOLOGIES PRIVATE
LIMITED**

..... Petitioner

Through: Mr Tushar, Advocate.

versus

**SOFTWARE TECHNOLOGY PARKS OF INDIA
AND ANR.**

..... Respondents

Through: Mr Dev P. Bhardwaj, CGSC for
UOI/respondent.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **09.04.2019**

1. The petitioner has filed the present petition impugning a letter dated 04.09.2018, whereby respondent no.1 had debarred the petitioner from providing any services to respondent no.1 (STPI). The said punitive measure was taken by STPI, on the ground that the petitioner had been deficient in providing the services as required to be provided, in terms of the work order dated 27.09.2017.
2. Admittedly, STPI had invited bids for comprehensive annual maintenance contract of video conferencing equipment at its headquarters. The petitioner submitted its bid in response to the aforesaid notice, which was accepted. Accordingly, the contract for the said work was awarded to the petitioner by the Work Order dated 27.09.2017 (Work Order no.189).
3. It is STPI's case that the petitioner failed to provide the services as

agreed and, accordingly, the respondent had imposed a penalty of liquidated damages, equal to the amount of AMC payable for the first two quarters of the contract. Further, STPI had forfeited the performance contract guarantee in the sum of ₹93,158/- and terminated the contract on account of default.

4. In addition, STPI has also debarred the petitioner from participating in any further contracts, in terms of the impugned letter dated 04.09.2018.

5. Concededly, no prior show cause notice was issued regarding blacklisting/debarring the petitioner, and the petitioner had no opportunity to address its submissions with respect to the said action. It is also seen that the petitioner has been permanently debarred, which is not permissible.

6. The Supreme Court in the case of ***Gorkha Security Services v. Govt. (NCT of Delhi) and Others: (2014) 9 SCC 105*** had expressly held that a specific show cause notice, clearly indicating the proposed action of blacklisting is required to be issued prior to taking such action. Further, in ***Kulja Industries Limited v. Chief General Manager, Western Telecom Project BSNL & Ors.: AIR 2014 SC 9***, the Supreme Court had also held that blacklisting/debarring is recognized and often used as an effective method for disciplining deviant suppliers/contractors who may have committed acts of omission and commissions or frauds. It is never permanent and the period of debarment would depend upon the nature of the offence committed by the erring contractor.

7. In view of the above, the impugned order dated 04.09.2018 is set aside. STPI is directed to remove any information or reference regarding blacklisting or debarring the petitioner, as put up on its website.

8. It is clarified that the STPI is not precluded from issuing a show cause notice or taking any other action, as otherwise permissible in law.

9. Insofar, as other actions taken by the STPI in imposing liquidated damages, forfeiting the performance bank guarantee and terminating the service are concerned, this Court is not inclined to examine the petitioner's grievance in this regard as the same relates to a dispute regarding the performance of a contract, and it would not be apposite for this Court to entertain such controversy in this petition. It is, however, clarified that the petitioner is not precluded from instituting an appropriate action for adjudicating of the disputes, in regard to the aforesaid actions.

10. The petition is disposed of in the aforesaid terms. The pending application stands disposed of.

VIBHU BAKHRU, J

APRIL 09, 2019
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