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

\+ **W.P.(C) 2178/2018 CM Nos. 8998/2018, 6586/2019 and 11277/2019**

CARETEL INFOTECH LTD. ..... Petitioner

Through: Mr Sanjeev Sagar and Ms Nazia Parveen, Advocates.

versus

UNION OF INDIA ..... Respondent

Through: Mr Anurag Ahluwalia, CGSC for UOI.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% **12.03.2019**

VIBHU BAKHRU, J

1. The petitioner has filed the present petition impugning an order dated 22.02.2018 (hereafter 'the impugned order'), whereby the petitioner has been debarred from participating in any tender process of the Ministry of Agriculture and Farmers Welfare, Government of India (the respondent), for a period of two years from the date of the said order. The aforesaid punitive measure was imposed on the petitioner on an allegation that it had submitted incorrect information with regard to the Call Centers, which were claimed to be functional at Jaipur, Ahmedabad, Hyderabad and Jabalpur.

2. On 30.05.2017, the respondent floated an e-tender inviting bids for selection of Kisan Call Centers (KCC) for providing services to the Department of Agriculture, Cooperation and Farmer Welfare. The petitioner submitted its bid in consortium with M/s Life Digital Private

Limited) on 19.06.2017. Along with its bid the petitioner also submitted details of the Call Centers which were being operated by the petitioner, indicating the number of seats operated at different locations. The said list also included Call Centres at Jaipur, Ahmedabad, Hyderabad and Jabalpur.

3. The Technical Bid Evaluation Committee examined the petitioner's technical bid, which was found to be qualified. Accordingly, the Technical Bid Evaluation Committee recommended that the petitioner's financial bid be processed. The petitioner had indicated that it was operating Call Centers from eleven locations and in terms with the evaluation criteria, the maximum score was awarded to the petitioner for operating in more than ten locations.

4. The petitioner's financial bid was opened on 18.08.2017 and the same was found to be compliant. It is stated by the respondent that on the same date, a complaint was received that the petitioner's Call Centers stated to be operating in Jaipur, Ahmedabad, Hyderabad and Jabalpur were not functional.

5. In view of the aforesaid complaint, the respondent appointed separate teams to inspect the Call Centers claimed by the petitioner to be functional at the aforesaid locations. The reports submitted by the said teams indicated that the call centers were not functional.

6. In view of the above, the respondent sent a letter dated 04.09.2017 calling upon the petitioner to provide various documents for verifying whether it was operating the call centers as claimed by it

in the bid documents. The petitioner responded to the said letter on 05.10.2017, however, it did not provide the documents as sought for by the respondent.

7. In view of the above, the respondent sent a reminder dated 08.09.2017, again requesting the petitioner to submit the documents as requested earlier. The petitioner responded to the same by a letter dated 13.09.2017, suggesting that the request for documents was not in conformity with the tender conditions.

8. On 18.09.2017, the concerned Committee constituted for evaluating the bids recommended inviting fresh tenders. This was done because the concerned committee found that the details provided by the petitioner along with its bid documents were misleading.

9. Thereafter, on 05.12.2017, the respondent issued a show cause notice calling upon the petitioner to show cause why suitable action for blacklisting the petitioner should not be initiated. The petitioner responded to the said notice on 09.12.2017, *inter alia*, stating that it had a valid license and its call centers were operational in more than three locations and, therefore, the petitioner duly satisfied the tender conditions. However, the petitioner declined to share any documents with regard to the four call centers that were alleged to be non-functional.

10. The response submitted by the petitioner was not found to be satisfactory and, accordingly, the respondent passed the impugned order.

11. Mr Sanjeev Sagar, learned counsel appearing for the petitioner assailed the impugned order on two fronts. First, he contended that the order was passed in violation of principles of natural justice as the petitioner was not afforded any opportunity of being heard. Second, he submitted that the punishment imposed on the petitioner was highly disproportionate as the respondent had not suffered any loss.

12. The contentions advanced on behalf of the petitioner are unmerited. It is apparent that the petitioner has been provided adequate opportunity to respond to the aforesaid allegations. In the first instance, the petitioner was called upon to submit documents which would establish that it was operating call centers at eleven locations as claimed by it in the tender documents. The petitioner's response dated 05.09.2017, clearly evaded the issue. The petitioner suggested that it was not required to submit any documents since the same was not a part of the tender requirement. Plainly, the documents were not sought by the respondent as a part of the tender documents but to verify whether the facts as stated by the petitioner in its tender were correct. On 07.09.2017, the petitioner was once again given a reminder to submit the necessary documents. However, the petitioner did not do so and insisted that the letter of intent / purchase order be issued before the petitioner submits any document.

13. It is in the aforesaid context that the respondent issued a show cause notice dated 09.12.2017, calling upon the petitioner to show cause why it should not be blacklisted. It is relevant to note that in its response, the petitioner claimed that it had a valid licence and its call

centers were operational in more than three locations. This was materially different from its claim in the tender documents that it was operational at eleven locations.

14. It is material to note that the petitioner neither sought any oral hearing nor provided any document to contest the allegations made against it. In this view, the contention that principles of natural justice have been violated, is wholly unmerited.

15. The contention that the punishment imposed on the petitioner is disproportionate, is also unpersuasive. The petitioner has been debarred from participating in a tender for a period of two years in the context of allegation that it had made false claims in the bid documents. As a result of the wrong claims, the tender process was frustrated. The contention that the incorrect particulars had no material effect since the petitioner duly fulfilled the minimum criteria of operating Call Centers in more than three locations, is also erroneous. The petitioner was awarded a higher score on account of its claim that it was operating call centers at eleven locations and, therefore, had derived benefit from its claims.

16. In view of the above, this Court finds no reason to interfere with the impugned order. The petition is unmerited and is, accordingly, dismissed. All the pending applications are also disposed of.

VIBHU BAKHRU, J

MARCH 12, 2019/RK