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

+ CRL.M.C. 3426/2016

CENTRAL BUREAU OF INVESTIGATION Petitioner

Through: Ms. Rajdipa Behura, SPP with Mr.
Philoman Kani, Advocate with Insp. Dharmender,
CBI

versus

NARESH KUMAR GUPTA & ORS. Respondents

Through: Dr. A.K. Gautam, Mr. Ravi Mehrotra
and
Mr. Puneet Gaba, Advocates for R-1 to 5

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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08.01.2019

The six respondents herein were summoned by the Special Judge (Prevention of Corruption Act), by his order dated 03.10.2015, whereby he also took cognizance of offences punishable under Sections 120B of Indian Penal Code, 1860 (IPC) read with Sections 420, 471 IPC and Section 13(2) read with Section 13(1)(d) of Prevention of Corruption Act, 1988, on the basis of the material submitted with the report (charge-sheet) under Section 173 of the Code of Criminal Procedure, 1973 (Cr. PC) dated 20.08.2015, presented upon conclusion of investigation into first information report (RC no.DA1/2013/A0004/CBI/ACB/New Delhi). After due

compliance with the requirements of Section 207 Cr. PC, the Special Judge considered the question of charge, the respondents (excluding fourth respondent) having also moved applications seeking discharge. By order dated 19.04.2016, the Special Judge concluded that no case had been made out for putting any of the respondents on trial and, thus, directed they to be “*discharged*”, the said order having been challenged by Central Bureau of Investigation (CBI), by the present petition, under Section 482 Cr. PC.

The respondents have entered appearance upon notice and resist the plea of the CBI that charge is made out.

The learned Special Public Prosecutor for CBI as also the learned counsel for the respondents have been heard at length and the trial court record has been perused.

During the course of hearing, it was conceded fairly by the counsel for the respondents that the Special Judge fell into error in not appreciating the contentions on both sides in proper light by failing to take note of the General Financial Rules, 2005, which were being referred to by the defence, as also the Central Public Works Department (CPWD) Manual on which the prosecution places reliance. It was also fairly conceded that in view of the fact that the contract in question entailed expenditure over Rs.30 Lakh, the provision contained in Rule 126 of General Financial Rules would require compliances to be made, including as to constitution of a Quality Assurance Cell comprising of professionals having necessary technical skills and experience in terms of the CPWD manual. The

defence also fairly conceded that the Special Judge has failed to take note of the report of Mr. Pratap Singh, Assistant Engineer on which reliance was placed in the charge-sheet, it being part of the documents (D-48) submitted therewith. Though it does appear that there is nothing on record of the trial court to show that the said witness Mr. Pratap Singh would have “inspected” the works done, nonetheless the report prepared by him on the basis of DSR Rates, 2010 requires consideration.

Crucially, the evidence placed before the Special Judge included substantive material to show that the refund of earnest money deposited by lowest bidder (rejected) and third lowest bidder (also rejected) was in the form of demand drafts which were credited into the account of sixth respondent, second lowest bidder, to whom work was awarded, indicating the process of tender *prima facie* to be sham, giving support to the case of CBI about existence of criminal conspiracy. It is a matter of concern that the Special Judge glossed over this aspect as well.

The learned defence counsel, in above light, conceded that while the petition of the CBI may be allowed and the impugned order may be set aside, their request is that the matter concerning framing of charge may be kept open to be considered afresh on the basis of the material submitted by CBI in entirety by the Special Judge. The learned Special Public Prosecutor for CBI agrees to this request of the defence.

In the above facts and circumstances, the petition is allowed. The impugned order dated 19.04.2016 of the Special Judge discharging the respondents is set aside. The proceedings in the criminal case arising out of the aforementioned FIR shall stand revived on the file of the Special Judge, who shall take it up for further proceedings, in accordance with law, on 07.02.2019, on which date the respondents shall be obliged to remain present with their respective counsel.

The question of charge or discharge shall be considered afresh by the Special Judge, hopefully with better assistance from both sides, after taking into consideration the evidence / material submitted with the charge-sheet in entirety.

Nothing in the order which has been set aside or in the present order shall, however, be construed as final expression of opinion on merits or contentions of either side.

The respondents, needless to add, shall be duty bound to furnish fresh bail bonds to regulate their presence before the Special Judge in further proceedings.

The petition is disposed of in above terms.

The trial court record shall be returned forthwith alongwith a copy of this order.

R.K.GAUBA, J

JANUARY 08, 2019

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