

\$~A-18

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

%

Date of decision: 21.01.2020

+ W.P.(C) 4847/2019

M/S MACHINE TOOLS (INDIA) LTD.

..... Petitioner

Through Mr.Jayant Mehta, Mr.Rajiv Agrawala,
Mr.Karan Luthra, Ms.Megha Benjani,
Ms.Drishti Harpalani and Mr.Ankit
Banati, Advs.

versus

UNION OF INDIA AND ANR.

..... Respondents

Through Mr.Jagjit Singh, Sr.Standing Counsel
for Railways with Mr.Preet Singh,
Adv.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.(ORAL)

1. This Writ Petition is filed by the petitioner seeking a direction to set aside the impugned letter dated 19.12.2018 and also to set aside the consequential letters dated 21.2.2019 and 4.4.2019.
2. The case of the petitioner is that he entered into an international distributorship agreement dated 17.1.1990 with Lincoln Electric Company to sell the latter's products pan India directly as well as through stock and sale. On 7.5.2015, respondent No.2 issued a Notice Inviting Tender. The petitioner, being an authorised dealer of Lincoln Electric Company, participated in the tender for supply of Flux. The Tender Committee, however, found that the authorisation letter dated 9.4.2015 submitted by the petitioner is invalid. In the meantime, on 6.7.2015, the agreement of the

petitioner with Lincoln Electric Company was extended for an additional period of one month. It is stated that some employees had alongwith the tender documents filed some fake authorisation letter from Lincoln Electric written to the petitioner Company. On 12.11.2015, a show cause notice was issued by the respondent in view of the fake letter filed by the petitioner. A reply was sent on 25.11.2015. On 19.12.2015, the Dy.CME/Plant of respondent No.2 vide internal circular dated 19.12.2015 delisted the petitioner company and banned the supply of Lincoln Electric Company products by the petitioner for a period of two years from the date of the circular. In the meantime, another distributorship agreement was entered in 2016 between the petitioner and Lincoln Electric Company.

3. Subsequently, on 26.4.2016, a second Show Cause Notice was issued to the petitioner for a proposed ban of five years. On 19.12.2018, respondent No.1 issued a letter blacklisting the petitioner in respect of any business with respondent No.1 for a period of five years w.e.f. 19.12.2018.

4. I have heard learned counsel for the parties. Learned counsel for the petitioner has pleaded that for the same facts and for the same alleged offence the petitioner has been served two show cause notices and two separate punishments. The first Show Cause Notice was issued on 12.11.2015 which was followed by an order of 19.12.2015. Thereafter, another Show Cause Notice was issued on 26.4.2016 which was followed by a letter blacklisting the petitioner for five years w.e.f. 19.12.2018. It is pleaded that the delisting order dated 19.12.2015 was for a period of two years and came to an end by efflux of time on 19.12.2017. Thereafter one year later the respondent has again blacklisted the petitioner for a period of five years. Learned counsel for the petitioner has relied upon the judgment

of the Punjab and Haryana High Court in the case ***Omax Engineering Works through its partner Ramesh Kumar vs. State of Haryana and Others***, 2016 SCC Online P&H 1768 to support his plea.

5. Learned senior standing counsel Mr.Jagjit Singh appearing for the Railways has denied the contentions of the petitioner. It has been strongly submitted that the first punishment, namely, delisting order dated 19.12.2015 is only an action in the nature of suspension of the petitioner pending inquiry and final punishment. It is only after completion of inquiry that final punishment on 19.12.2018 has been issued. He has also pointed out that on the effect of the order dated 19.12.2015 by which delisting was done, the petitioner was not barred from participating in the tender of the Railways. It is pleaded that the petitioner was free to make his bids pursuant to any tender enquiry from Railways. The only handicap to the petitioner was that he had to give security and earnest deposit charges which a listed company need not give. Reliance is also placed on Standardised Code for Suppliers by Railways including Rule 1110/1108.

6. A perusal of the two show cause notices dated 12.11.2015 and 26.4.2016 shows that they repeat substantially the same allegations. The Show Cause Notice dated 12.11.2015, states, that the authorisation letter submitted by the petitioner is a fake/forged one. The authorisation letter allegedly issued by the Lincoln Electric Company was attached to the notice and the said Lincoln Electric Company, USA has confirmed that the letter submitted by the petitioner has not been issued by them. A similar allegation is made in the second Show Cause Notice dated 26.4.2016. The statement of charge in the said show cause notice states that forged/fake authorisation allegedly issued by Lincoln Electric Company was filed alongwith tender

documents. Based on the said common allegations the first penalty/order was passed against the petitioner on 19.12.2015. The order states that the firm is being delisted from M&P vendor list for supply of Lincoln products for two years from the date of issue of the said letter. The period of two years expired on 19.12.2017. The second order for blacklisting was issued on 19.12.2018. This order imposes a ban on business dealings with the petitioner for a period of five years w.e.f. the date of issue of the letter. It is clear that for the same act of the petitioner, the respondents have chosen to impose consecutively two different punishments by two different orders against the petitioner.

7. I may now deal with the contention of the learned counsel for the respondents that the first order passed by the respondent dated 19.12.2015 cannot be termed to be a punishment but is only an order which can be termed in the nature of a suspension. For the said purpose learned counsel for the respondent has relied upon the provisions of the Standardised Code for Suppliers. The relevant provision is, namely, clause 1108 and 1110 which read as follows:-

“1108. Certain Clarifications:

- (i) In respect of a firm which is registered for more than one item, orders regarding removal on account of reasons mentioned at (c) and (d) of para 1106 above shall apply in respect of all items but in the case of reasons (a) and (b), however, orders regarding removal may be made applicable in respect of one or more items, as may be relevant.
- (ii) Once removed, the name of a firm may not be registered on the approved list unless it satisfies the normal registration requirements and the Competent Authority is satisfied that the firm should be registered.

- (iii) Tenders received from a firm, whose name has been removed from the list of approved suppliers, may be given the same consideration as is given to tenders from unregistered parties.

.....
1110. Suspension:

Suspension of business may be ordered where pending full inquiry into the allegations; it is not considered desirable that business with the firm should continue. Such an order may be passed:

- (i) If the firm is suspected to be of doubtful loyalty to India;
- (ii) If the Central Bureau of Investigation or any other investigation agency recommends such a course in respect of a case under investigation;
- (iii) If Ministry/Department is prima-facie of the view that the firm is guilty of an offence involving moral turpitude in relation to the business dealings which if established, would result in business dealings with it being banned.”

8. I may look at the first order dated 19.12.2015. The same reads as follows:-

“ An investigation has been carried out against M/s.MTI, Mumbai/Kolkata for committing irregularities in a stores tender. The irregularities made by the firm found true.

In view of above, the firm is being delisted from M&P vendor list for supply of Lincoln products for two years from the date of this letter.

This has got approval of CME.

Necessary actions may be taken up for the compliance of the above.”

9. In my opinion the above order cannot be termed as a suspension order

pending full enquiry as pleaded by learned counsel for the respondent. The following aspects persuade me to conclude as above:

(i) A perusal of the said first order clearly shows that it does not in any manner indicate that the same is in the nature of suspension or a case of temporary ban. If it was a suspension order it would have said so.

(ii) The said order clearly states that the irregularities have been found true i.e. a final finding of fact is given. Clearly, no further enquiry is proposed as claimed.

(iii) If order dated 19.12.2015 was in the form of a temporary suspension, there would have been no need to even issue a second Show Cause Notice as was done on 26.4.2016 before issuing the blacklisting order dated 19.12.2018. Issue of two show causes followed by two different punishments shows that the pleas of the respondent are without merit.

10. Learned counsel for the petitioner has confirmed that no tenders were filled by the petitioner after issue of the first punishment and no contract was issued to the petitioner after delisting of the petitioner.

11. The Punjab and Haryana High Court in Omax Engineering Works through its partner Ramesh Kumar Vs State of Haryana, 2016 SCC Online P&H 1768 which related to a matter with somewhat identical facts held as follows:-

“15. The petition, however, must succeed on another ground. As we mentioned earlier, the petitioners had been served with the first show cause notice dated 08.11.2013 which was replied to by them and was disposed of by the order dated 12.08.2014. By the first notice the petitioners were called upon to show cause also against black-listing. The order, however, did not black-list the petitioners. The second show cause notice dated 02.09.2014 was in respect of the identical allegations and called upon the petitioners once again

to show cause why they ought not to be black listed. There is nothing on record that warranted a second show cause notice being served for the same alleged offence, on the same grounds and evidence and proposing to levy the same penalty, namely, blacklisting. The respondents have furnished no cogent explanation for issuing the second show cause notice. They have not indicated any change in the circumstances warranting the issuance of a second show cause notice. It is not their contention that any act on the petitioners' part prevented them from deciding the first show cause notice effectively.

.....

17. The question that falls for consideration, therefore, is whether it is permissible for a second show cause notice to be issued in respect of the same offences based on the identical facts and proposing the same penal/punitive action as in an earlier show cause notice."

12. In view of the above, in my opinion, the impugned order dated 19.12.2018 suffers from legal infirmities. The same tantamount to double punishment, namely, punishing the petitioner on the same ground for the same alleged irregularities twice. This is clearly not permissible. The petitioner cannot be made to suffer twice for the same alleged irregularities.

13. Accordingly, the said order dated 19.12.2018 is quashed. All consequential benefits will flow to the petitioner. All consequential communications also stand quashed.

JAYANT NATH, J.

JANUARY 21, 2020/n