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

+ **W.P.(C) 5808/2020**

AROON AVIATION SERVICES PVT. LTD.Petitioner

Through: Mr Manish Mohan and Mr Akshit
Mago, Advocates.

versus

UNION OF INDIA & ORS. Respondents

Through: Mr Jagjit Singh, Standing Counsel for
UOI/RailwaysR-1 to 3 with Mr Preet
Singh Advocate.

**CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI**

ORDER
% **31.08.2020**

The hearing was conducted through video conferencing.

CM APPL. 21008/2020 (Exemption)

1. Allowed subject to all just exceptions. The application stands disposed-off.

W.P.(C) 5808/2020 & CM APPL. 21007/2020 (stay)

2. Issue notice.
3. The learned Standing Counsel named above accepts notice on behalf of the UOI/Railways/R-1 to 3.
4. At joint request of the learned counsels for the parties, the petition is taken up for disposal.
5. The petitioner is aggrieved by the termination notice dated

18.08.2020, passed by R-2/Senior Divisional Commercial Manager (Coaching), Northern Railway, terminating the contract for comprehensive cleaning (mechanized cleaning of platform and rag picking of coaching yard), of a designated area of Moradabad Railway Station. The contract was valid for a period of four years. According to the petitioner, the impugned order is non-speaking and without basis. The impugned notice was passed, pursuant to the expiry of the 7 days prior notice period. The petitioner has been debarred from participating in future bids/contracts for any work being tender by the Railways and by extension by other PSUs. The notice intimates the petitioner of the Performance Guarantees ('PGs') also being encashed/forfeited. The petitioner preferred an appeal on 25.08.2020, which is yet to be heard. The impugned order reads as under:

Office of the
Sr. Divisional Commercial Manager
Northern Railway, Moradabad



कार्यालय
वरिष्ठ मण्डल वाणिज्य प्रबन्धक
उ० रें० मुरादाबाद

ANNEXURE-P-1

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No. 9-Sanitation-MC-RP-MB-19.c

Date: 18.08.2020

TERMINATION NOTICE

(Without Prejudice)

To,

AROON AVIATION SERVICES PVT. LTD.,

Regd. Off, : A-113, Road No. 2,
Mahipalpur Extn., New Delhi – 110037

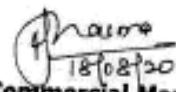
Dear Madam/Sir,

Contract Agreement No. MORADABAD DIVISION-COMMERCIAL/9-MC/RP/Work/MB-19.c dated 06.08.2019.

In connection with: TENDER FOR COMPREHENSIVE CLEANING (MECHANIZED CLEANING OF PLATFORM AND RAG PICKING OF COACHING YARD) OF DESIGNATED AREA OF MORADABAD RAILWAY STATION FOR A PERIOD OF FOUR YEARS.

1. Seven days (7 days) notice was given to you under this office letter of even no. 9- Sanitation – MC-RP-MB-19.c, dated 11.08.2020; but your performance has not improved/ you have taken no action to commence the services / improve the quality of the services to the specified standards.
2. Since the period of 7 days' notice has already expired, the above contract stands rescinded in terms of Clause 7.4 of General Conditions of Contract and the balance services under this contract will be carried out independently without your participation. Your participation as well as participation of every member/partner in any manner as an individual or a partnership firm is hereby debarred from participation in the Bid for executing the balance services and your Performance Guarantee shall also be encashed/ forfeited.
3. In addition, your participation as well as participation of every member/partner in any manner as an individual or a partnership firm is hereby debarred from participation in the bid for executing any work being tendered by the said Railway division for a period of two years from the date of issue of this latter.

Kindly acknowledge receipt.


18/08/20
Sr. Divisional Commercial Manager (Coaching),
Northern Railway, Moradabad

TRUE COPY

6. At the outset, Mr Jagjit Singh, the learned counsel for the Railways refutes the contention that the order is without basis. He refers to Railway's communications dated 13.06.2020 and 21.06.2020 regarding the non-performance of the contract. They read as under:

"...No. H/SAN/46/19

Dt. 13.6.2020

*Office of Chief Health Inspector
Northern Railway, Moradabad.*

To,

*M/s Arun Aviation Services Pvt. Ltd.,
New Delhi.*

Sub: Regarding irregularities in the salary of workers for the month of May and for production of attendance register.

Sir,

A complaint was made by some of the safai workers working in your company on 13.6.2020 in which they have stated that their salaries of 2-3 days have been deducted by you from their salaries in the month of May, 2020. Thereafter inquiries in this regard were made from the Manager and the Supervisor of your Company and the attendance register of the workers for the month of May, 2020 maintained by your company was also demanded from them. But your Manager has failed to provide/supply the attendance register of the workers in the office of the undersigned till date.

You are, therefore, called upon to immediately produce the attendance register of the month of May, 2020 of the workers of your company so that the grievances/complaints raised by your workers regarding non-payment of full salaries to them could be resolved. You are also called upon to explain the irregularities committed in the salaries to workers.

Copy to:

- 1. Sr. DCM/MB for information.*
- 2. SS/MB for information.*

*Sd/- Illegible
Chief Health Inspector,*

Northern Railway,
Moradabad Station.

xxx

“No. H/SAN/46/19
Dt. 21.6.2020

Office of Chief Health Inspector
Northern Railway, Moradabad.

To,

M/s Arun Aviation Services Pvt. Ltd.,
New Delhi.

Sub: Regarding imposition of fine due to failure to maintain
machines in working condition.

Sir,

Machines deployed by you for work of cleanliness were
thoroughly inspected by the officials today i.e. on
21.6.2020 and following is the report of their functioning

-

1. HP Water Jet - 3 Nos. - Not found to be in
working condition.
2. Walk Behind Scrubber - 01 - Not found to be in
working condition.

Therefore a fine of Rs.1,800/- i.e. Rs.1200 (400X3) for
the HP Water Jet + Rs.600/- for the Walk Behind
Scrubber, is being imposed on you. You are also called
upon to immediately get the above said machines
repaired immediately so that these machines could be
productively used for the cleaning of the station
premises.

Copy to:

1. Sr. DCM/MB for information.
2. SS/MB for information.

Sd/- Illegible
Chief Health Inspector,
Northern Railway, Moradabad Station”

7. Para 2 of the impugned notice dated 18.08.2020, debars the petitioner from carrying out the balance services of the terminated contract, the petitioner has no objection to the same, subject however, to the outcome of the appeal. In other words, the remaining work can be carried out by a third party to whom the remainder contract may be awarded by the Railways. The said part of the notice reads as under:

“...2. Since the period of 7 days' notice has already expired, the above contract stands rescinded in terms of Clause 7.4 of General Conditions of Contract and the balance services under this contract will be carried out independently without your participation. Your participation as well as participation of every member/partner in any manner as an individual or a partnership firm is hereby debarred from participation In the Bid for executing the balance services and your Performance Guarantee shall also be encashed/forfeited,,,”

8. The petitioner apprehends that in terms of the impugned order the PGs would be encashed/forfeited right away, thereby causing prejudice to his rights. Albeit, the impugned notice does allude this, however, it does not fix any date on which the PG will be so encashed. Therefore, encashment of the said PGs/(FDRs) shall be kept in abeyance till the first date of listing/hearing of the petitioner's appeal before the Railways.
9. Since the petitioner's appeal is pending, it would be fair that its debarment from participation in future bids/tenders be kept in abeyance till the disposal of its appeal. In the circumstances, it is

expected that the appeal of the petitioner may be disposed-off by the Railways as early as possible.

10.The petition, along with pending application, is disposed-off, in terms of the above.

11.The order be uploaded on the website forthwith. Copy of the order be also forwarded to the counsels through email.

NAJMI WAZIRI, J

AUGUST 31, 2020/*rd*