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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 22nd April, 2021.

+ **W.P.(C) 4908/2021 & CM APPL.15075/2021**

M/S INSTAPOWER LTD. Petitioner

Through: Mr. Ashish Dholakia, Sr. Advocate
with Mr. Mudit Gupta, Mr. Aman
Panwar, Mr. Harsh Gattani and Mr.
Akash Panwar, Advocates.

versus

AIRPORTS AUTHORITY OF INDIA Respondent

Through: Mr. Digvijay Rai, Advocate with Mr.
Aman Yadav, Advocate.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through video conferencing.
2. The Petitioner challenges the impugned black listing order dated 16th March, 2021 issued by Respondent - Airports Authority of India (*hereinafter, 'AAI'*). By the said order, the Petitioner has been black listed and debarred from participating in AAI's future tenders for a period of three years from the date of said order.
3. The brief background is that the Petitioner had submitted its bid in response to a Notice issued by AAI dated 25th December, 2015 inviting E-Tenders. The tender was in respect of '*Replacement of conventional tube lights with retrofitted LED tube lights for the New Terminal Building at SGRDJ International Airport, Amritsar*'. The bid was submitted by the Petitioner on 12th January, 2016 and was thereafter, accepted for a total contractual value of Rs. 17,55,000/-. The work order was issued to the

Petitioner by AAI and the entire work was also completed by the Petitioner. It is the Petitioner's case that even after the defect liability period was over, it continued to replace defective parts. The Respondent then issued letter dated 16th November, 2018, asking the Petitioner for its electricity license for the purpose of verification. The same was responded to by the Petitioner and finally resulted in a show cause notice dated 1st June, 2020 issued to the Petitioner by AAI. The show cause notice was issued on the basis that the Petitioner did not hold valid license for the period of 11th October, 2014 to 16th December, 2016, i.e., during its submission of its bid for the tender called by AAI.

4. This period when the Petitioner allegedly did not hold the valid license, was amended by a second show cause notice dated 22nd June, 2020 issued by AAI to 11th October, 2014 to 16th December, 2015. The Petitioner submitted its reply vide letter dated 22nd July, 2020. However, vide impugned order dated 16th March, 2021, AAI came to the conclusion that the Electrical License submitted by the Petitioner was a forged license and accordingly, black listed the Petitioner for three years.

5. The submission of Mr. Dholakia, Id. Sr. counsel appearing for the Petitioner is that the ground in the show cause notices dated 1st June, 2020 and 22nd June, 2020 issued by AAI, are in variance with the final ground on the basis of which the Petitioner has been blacklisted. The issue of forgery was never raised in the show cause notices and hence, could never be responded to by the Petitioner. Thus, there is a breach of the principles of natural justice. He further submits that for the period during which the contract was executed, the Petitioner had a valid electrical license and hence, no prejudice has been caused to AAI. The blacklisting would result in

enormous prejudice to the Petitioner who will be affected, not only in the tenders of AAI, but also in other governmental tenders as well.

6. Mr. Digvijay Rai, Id. Counsel for the Respondent, assisted by Mr. Aman Yadav, Id. counsel has taken the Court to page 131 of the pleadings, which contains the letter dated 16th November, 2018 of the AAI, wherein a copy of the license originally submitted by the Petitioner was attached. As per the said license, the period of debarment was 17th February, 2015 to 8th February, 2016. This, according to the Respondent, was in complete variance with the licenses submitted later by the Petitioner. Considering that there were some doubts which were raised in the Respondent's mind, a letter dated 16th November, 2018, was also written calling upon the Petitioner to provide a copy of its original contractor licence for the purpose of verification. In response thereto, the Petitioner simply stated that the electrical license has been misplaced. However, the same was thereafter submitted. A comparison of the finally submitted document and the license originally submitted with the bid showed that the same did not match and there was a variance in respect of the period. Hence, the blacklisting order is justified.

7. Heard the Id. Counsels for the parties and perused the record.

8. The show cause notices definitely raised an issue in respect of the license not being valid for a certain period. Though in the first show cause notice the period was mentioned as 11th October, 2014 to 16th December, 2016, it was thereafter amended to 11th October, 2014 to 16th December, 2015 in the second show cause notice. Going by the license which was finally filed, the license was valid during the period when the tender was being executed and was cancelled for the period 11th October, 2014 to 16th

December 2015. However, insofar as the discrepancy between the originally submitted documents at page 131 of the pleadings and the documents shown at page 142 of the pleadings, the same do not match and there is a difference in the dates of validity of license concerned. The Petitioner is liable to explain the mismatch between the copy of the license submitted with the bid and the copy finally submitted. The show cause notices issued by AAI, however, did not raise the allegations of forgery against the Petitioner. This Court is thus, of the opinion that the Petitioner ought to be given an opportunity to explain the variation in the two documents. Accordingly, considering the overall facts and circumstances, the following directions are issued:-

- i. Copy of the originally submitted bid, along with all the annexures, shall be supplied to the Petitioner within two weeks. Along with said documents, a proper notice shall be served upon the Petitioner seeking an explanation in respect of the alleged forgery, as per AAI.
 - ii. The Petitioner shall be given one week's time to respond to the same.
 - iii. A hearing shall be held by the appropriate authority of AAI. If the hearing cannot be held physically, the same shall be held via video conferencing.
 - iv. The hearing shall be fixed on or before 25th May, 2021 and an order shall be passed in respect thereof, by 30th May, 2021.
9. The above time schedules have been fixed in view of the submission of Mr. Digvijay Rai, ld. counsel submits that he is suffering from Covid-19.

10. With these observations, the present petition, along with all pending applications, is disposed of. It is however, made clear that since there is debarment/blacklisting of the Petitioner, if the order is not passed within the above time period, the Petitioner is given liberty to approach the Court by filing an application.

**PRATHIBA M. SINGH
JUDGE**

**APRIL 22, 2021
MR/AP**

