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

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Judgment delivered on: 20.12.2021

+ W.P.(C) 7512/2019 & CM APPL. 31299/2019

M/S LORD KRISHNA ELECTRONIC INDUSTRIES..... Petitioner

versus

NEW DELHI MUNICIPAL COUNCIL

..... Respondent

Advocates who appeared in this case:

For the Petitioner: Mr. Amit Mahajan and Mr. Dhruv Pande, Advocates.

For the Respondent: Mr. Akshay Chandra, Add. Standing Counsel for NDMC.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Petitioner impugns order dated 09.07.2019 whereby the petitioner firm has been debarred from further tendering in NDMC for a period of three years with immediate effect.

2. Learned counsel for the petitioner submits that the petitioner had furnished certain documents to show fulfilment of the eligibility criterion, however, later it transpired that erroneously petitioner had furnished the documents which did not show him eligible and after the bid submission date a further document was submitted which showed

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the bid of petitioner as compliant, however, as the document was submitted late, petitioner's bid was rejected.

3. Learned counsel submits that a show cause notice was issued on 05.04.2019 which was duly replied to. He further submits that error was committed by the officers of the petitioner in submitting documents which did not show petitioner eligible, however, none of the documents were forged or fabricated which could have entailed the punishment of debarment. He submits that when this was pointed out instead of withdrawing the show cause notice petitioner has been debarred for a period of three years.

4. Learned counsel appearing for the respondent submits that a vigilance enquiry was conducted into the documents submitted and the enquiry report showed that the documents were false and accordingly the action of debarment has been taken.

5. Further it is contended that petitioner has the remedy of approaching the Independent External Monitors and as such the petition is not maintainable.

6. Respondents had issued an E-procurement tender notice. The eligibility criterion for qualification in the said tender was that the tenderer should have successfully executed three similar supply orders, each of value not less than 40% of the estimated cost put to

tender or two similar supply orders of value not less than 60% of the estimated cost or one similar supply order of value not less than 80% of the estimated cost put to tender, during the-last seven years and should submit scanned copies in support of their claim, through e-tendering system.

7. Petitioner had submitted copies of three supply orders along with the bid document. However, the three orders had not been successfully executed. It is the case of the petitioner that when this error was noticed one more supply order was provided which was more than 80% of the estimated cost of the tender which would have shown the petitioner as duly qualified.

8. Petitioner does not impugn the rejection of the bid but is only aggrieved by the debarment of the petitioner for a period of three years.

9. The show cause notice dated 05.04.2019 enlists the grounds for proposed action as under:-

“Whereas NDMC team has also enquired about the aforementioned purchase orders and as per there visit at the address of M/s Electra Fusion Technologies, 70, Sukh Vihar, New Delhi-110051, the team met Smt. Krishna Sabharwal, W/o Late. Sh. Joginder Sabharwal, an Ex NDMC Employee, who; informed that she is not aware of the existence and trade of above the said company. The team cited that M/s Electra Fusion Technologies, may be a fictitious company as per version

of Smt. Krishna Sabharwal and so supply order dated 07/07/2013 seems false.

The NDMC team also visited the M/s Vivek Electricals, C-203, West Vinod Nagar, Delhi-92, where Sh. Raj Kumar Singh (9911993889) was contacted. He told that he had contacted M/s Lord Krishna Electronic Industries for supply of cast iron poles but deal was not fruitful, Hence team cited that Ms. Vivek Electricals fails to supply order dated 06/03/2014.

The NDMC team also visited the M/s Raj Electricals, Electrical, Mechanical Engineer & Govt. Contractors, Shop No. 47, Ground Floor Keshav Bhawan, Kureni, Narela, Delhi-46, where the shop was found locked. On local enquiry, it was come into that the above shop usually remained locked, initially the shop owner has started an Education tuition Centre but it was closed after few months. It seems that order dated 22/08/2013 is false and there is no response on mobile No. 9868659101 and 9717661760 which were contracted several times.

As per NIT terms & conditions, you had to submit the successfully executed three similar orders of decorative cast iron poles of 4 mtrs. Height, but it seems that you had provided incorrect information/documents, which is not as per provisions of pre-contract integrity pact.

Whereas, it appear that your firm did not give correct documents to NDMC therefore, you are requested to clarify within 10 days regarding above failing which it will presumed that you have nothing to say in this matter and further action shall be taken against your firm on account of IEM Pre-Contract

Integrity Pact by department to debar your firm from participation in future bidding process in NDMC.”

10. In response to the said show cause notice petitioner replied as under:-

(A) *M/s. Electra Fusion Technologies was a firm run by, Mr. Joginder Sabharwal as a proprietor who unfortunately expired sometime in the year 2013. The purchase order was placed by Mr, Joginder Sabharwal on our firm on 07.07.2013. The firm Electra Fusion Technologies was also registered with East Delhi Municipal Corporation. (Copy enclosed for your consideration). Since Mr. Joginder Sabharwal expired, his wife, who is a homemaker, does not have any knowledge of the said purchase order having been placed on our firm.*

(B) *With regard to M/s. Vivek Electricals, it is an admitted position, as mentioned, in your letter, that the purchase order was, in fact, placed on our firm which however was not finalised. The firm M/s. Vivek Electricals is also registered as Electrical contract of as on date with East Delhi Municipal Corporation. (Copy enclosed for your consideration).*

(C) *With regard to M/s, Raj Electricals, it is mentioned in your letter that the premises were found closed and locked and that the shop owner has started an education tuition centre. It is also mentioned in your letter that, no response on mobile numbers mentioned has been received. In this regard. It is submitted that M/s. Raj Electricals was in the business of Electrical Contractor and is still continuing the same business activities from the same, address mentioned in your letter. The said M/s.*

Raj Electricals is also registered as Electrical contractor as on date from the Government of NCT of Delhi. (Copy enclosed for your consideration). Even the mobile number mentioned in the purchase order is working.

After receiving your letter, we ourselves contacted the proprietors of the above/two firms, who have specifically given certificate to the effect that the said purchase orders were, in fact, placed on our firm.

We hope that the above facts would clarify the issue raised in your letter.”

11. The vigilance committee report with regard to verification of the bid of the petitioner records as under:-

“The consultant team comprising of Sh. Rajender Singh Sheel, Sh. Chandra Bhan, Sh. Harpal Singh and Sh. Ashok Kumar Sisodia visited the M/s Illuminators & Circuiteers Electrical, Mechanical Engineers & Govt. Contractors, H- 50/C, Shakarpur; Delhi-92. where Mr Sandeep Bhandari (9811100208) was found present, he told that he used to deal with M/s Lord. Krishna Electronic Industries, 23-24, Krishna Kunj Ext.,-Part-1, Laxmi Nagar, Delhi-92, He takes electric articles to supply Govt, Departments on 09/04/2018 from above company and purchased 267 cast iron poles @ 57,64,530/- (Rs, 21,590/- per pole). He also appreciated the trading of M/s Lord Krishna Electronic Industries.

The consultant team also visited the M/s Vivek Electricals, C-203, West Vinod Nagar, Delhi-92 where Sh. Raj Kumar Singh (9911993889) was contacted. He told that he had contacted M/s Lord Krishna Electronic

Industries for supply of cast iron poles but deal was not fruitful. Hence, M/s Vivek Electricals fail to supply order, dated 06/03/2014.

The consultant team visited the M/s Electra Fusion Technologies, 70, Sukh Vihar, New Delhi-51 where Smt. Krishna Sabharwal found present, she, told that her husband Sh. Joginder Sabharwal who was retired, from NDMC employee as Head Assistant who had already expired on 21/02/2018. She does not know about the above said company M/s Electra Fusion Technologies because her husband never disclosed in his life to her about the existence and trade of above company with any companies. It seems that M/s Electra Fusion Technologies may be a fictitious company as per version of Smt. Krishna Sabharwal. So supply order dated 07/07/2013 seems false.

The consultant team alongwith Beldar Subodh; E Code 14631 visited the M/s Raj Electricals: Electrical, Mechanical Engineer & Govt. Contractor's, Shop. No, 47, Ground Floor Keshav Bhawan, Khureni, Narela, Delhi-40 where the shop was found locked. On local enquiry, it was come into notice that the above shop usually remained locked, initially the shop owner had started an Educational tuition Centre but it was closed after, few months. It seems that order dated 22/08/2013 is false and there is no response on mobile No, 9868659101 and 9717661760 which were contacted several times.

The consultant team also visited M/s Lord Krishna Electronic Industries, 23-24, Krishna Kunj Extn., Laxmi Nagar, Delhi-91 where Mr. Praveen Mishra & his brother Mr Pankaj Mishra were found present. They told that they had not deal with the following three companies:

1. *M/s. Vivek Electricals, C-203, West Vinod Nagar, Delhi-92,*
2. *M/s Raj Electricals Electrical, Mechanical-Engineer & Govt. Contractors, Shop No. 47, Ground-Floor Keshav Bhawan, Khureni, Narela, Delhi-40.*
3. *M/s Electra Fusion Technologies, 70, Sukh Vihar, New Delhi-51.*

but they had-supplied 267 cast iron poles to M/s Illuminators & Circuiteers, Electrical, Mechanical Engineers & Govt. Contractors on dated 09/04/2018. They had also produced Tax invoice No. 22 on a-letter pad of M/s Lord Krishna Electric industries alongwith letter Vide Ref. No. 2018-18/04 dated 20/07/2018 of M/s Illuminators & Circuiteers, Electrical, Mechanical. Engineers & Govt.' Contractors therein M/s Illuminators Circuiteers: Electrical, Mechanical, Engineers & Govt. Contractors confirmed about purchased & supply of 267 cast iron poles which are enclosed herewith at page No 5 to 6. They had received Rs. 20 lakh out of Rs. 57,64,530/- remaining payment is due., They further told that the proprietor/owner of their company is their mother Smt. Shakuntla Mishra but they did not get contact with consultant team despite of repeated requests and they fail to supply Adhar Card, Election Card or any other documents of their mother.

Conclusion:

1. *As per interaction with Mr. Praveen Mishra & Pankaj Mishra, the three companies (1) M/s Vivek Electricals, C-203, West Vinod Nagar, Delhi-92, (2) M/s Raj Electricals, Electrical, Mechanical Engineer & Govt.*

Contractors, Shop-No, 47, Ground Floor Keshav Bhawan, Khureni Narela, Delhi-40, (3) M/s Electra Fusion Technologies, 70, Sukh Vihar, New Delhi-51 have not dealt with M/s Lord Krishna Electronic Industries and M/s Lord Krishna Electronic Industries had transacted. with M/s Illuminators-& Circuiteers, Electrical, Mechanical Engineers & Govt. Contractors.

2. But it is also revealed on enquiry and scrutinized the attached purchase orders of three companies (1) M/s Vivek Electricals, C-2.03, West Vinod Nagar, Delhi-92, at Page No.,2 (2) M/s Raj Electricals, Electrical, Mechanical Engineer & Govt. Contractors, Shop No. 47, Ground Floor Keshav Bhawan, Khureni, Narela, Delhi-40, at Page No. 3 (3) M/s Electra Fusion Technologies, 70 Sukh Vihar, New Delhi-51 at Page No. 4, M/s Illuminators & Circuiteers, Electrical, Mechanical Engineers & Govt: Contractors had overcharged amount per-cast iron poles as @ Rs.-21,590/- at Page No. 1, three companies including M/s. Illuminators & Circuiteers had offered rate of cost per pole as given below: -

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|---|---------------------|
| <i>1. M/s Vivek Electricals</i> | <i>Rs. 14,790/-</i> |
| <i>2. M/s Raj Electricals</i> | <i>Rs. 14,500/-</i> |
| <i>3. M/s Electra Fusion Technologies</i> | <i>Rs. 16,900/-</i> |
| <i>4 M/s Illuminators & Circuiteers</i> | <i>Rs. 21,590/-</i> |

All above three companies/firms had submitted the proposed purchased order from Lord Krishna Electronic Industries. It seems that tender/supply order to M/s Illuminators & Circuiteers Electrical Mechanical Engineers & Govt. Contractors was given Illegally after

overlooking the rates of above three companies, as per COS rules/Govt. orders lowest rate bidder tender company is preferred/for supplying the proposed tender items, so appropriate legal action may please be, initiated against concerned department as well as the company ,and the issue of suspicious firm raised by T0(C-1), Vigilance branch, NDMC on note sheet is substantiated

12. The impugned order records that the reply has not been found to be satisfactory by the competent authority. The impugned order records that petitioner had admitted that the eligibility documents were not available at that point of time.

13. There is no finding or reason mentioned in the debarment order dated 09.07.2019 as to why the reply given by the petitioner was not believable or found to be satisfactory.

14. The show cause notice is based on the report of the vigilance committee. The report of the vigilance committee deals with four sets of Purchase Orders. One with M/s. Illuminators & Circuiteers which is the fourth Purchase Order that petitioner had submitted after the bid submission date. The contact person at M/s. Illuminators & Circuiteers has certified that the purchase order from petitioner was duly completed and he appreciated the trading with the petitioner.

15. The above referred Purchase Order is not relevant for the purposes of the present petition for the reason that the said Purchase

Order was furnished after the bid submission date and in any even petitioner is not seeking to impugn the rejection of his bid but is only impugning the debarment of the petitioner.

16. With regard to the purchase order of M/s. Vivek Electricals, the vigilance report states that the contact person had stated that the deal with the petitioner was not fruitful. This cannot be read as “*no dealing with the petitioner*”. A deal which was not fruitful does not in any manner mean that the document was forged or fabricated. On the other hand it confirms that the Purchase Order is genuine but the work was not successfully executed.

17. With regard to the Purchase Order of M/s. Electra Fusion Technologies, the vigilance report mentions that the said concern was owned by Mr. Joginder Sabharwal who had expired on 21.02.2018. His wife when contacted by the officers of the respondent stated that she was a housewife and did not know anything about the business of her husband who had since expired and he had not mentioned to her about any business. The concerned Purchase Order is dated 07.07.2013 and Mr. Joginder Sabharwal expired on 21.02.2018. Accordingly, there is nothing on record to show that the Purchase Order was forged or fabricated.

18. With respect to the fourth Purchase Order of M/s. Raj Electricals, the enquiry report simply states that the shop usually

remained locked and initially the shop owner had started educational tuition centre but it was closed after a few months. Thereafter the report records that “*it seems*” the Purchase Order is false. There is no concrete material on record to show that any of the Purchase Orders were false or fabricated.

19. Further the enquiry report mentions that Mr. Praveen Mishra and Pankaj Mishra (the sons of the proprietor of the petitioner) were contacted, who admitted that they have not dealt with any of the concerns whose Purchase Orders had been supplied.

20. There is no written document on record to show that any such acknowledgement was made by them or that they confirmed that they had not dealt with any of the three concerns.

21. On the other hand, along with the reply to the show cause notice, petitioner had furnished the registration certificates of the three concerns and also furnished the confirmation letters from M/s. Raj Electricals and Vivek Electricals confirming the said purchase orders.

22. Accordingly, there is no material on record to show that petitioner had furnished any false or fabricated document making the petitioner liable for the drastic punishment of debarment.

23. Respondents have passed the impugned order of debarment on a mere assumption. The drastic step of debarment, which amounts to a

civil death of a concern, has to be taken only on availability of cogent evidence and not on mere assumptions.

24. In case a bidder submits documents that do not satisfy the eligibility criterion, the consequence that would follow is rejection of the bid of the bidder and not debarment unless the rules so specifically provide.

25. No rule has been pointed out which stipulates that in case a bidder submits a non compliant bid the bidder shall face the punishment of debarment.

26. Coming to the argument of learned counsel for the respondent that since there are Independent External Monitors provided, petitioner should be relegated to the remedy of approaching the Independent External Monitors.

27. Special condition 15(3) of the bid document provides that the bid shall become invalid if the bidder is found ineligible.

28. The power to debar is part of the Pre Contract Integrity Pact, which in Clause 5 stipulates the sanctions for violations. Clause 5.1 stipulates that any breach *of the aforesaid provisions* by the bidder/contractor or any one employed by it or acting on its behalf, shall entitle the NDMC to take all or any one of the following actions. One of the actions is to debar the bidder or contractor from

participating in future bid tenders.

29. The sanction for violations as mentioned in Clause 5 refers to the *breach of the aforesaid provisions* in the Pre Contract Integrity Pact which, in Clause 3 contains the *Commitments of Bidder or Contractor*.

30. Perusal of commitments 3, 3.1 to 3.13 shows that the same relate to corrupt practices, unfair means and illegal activities during the stage of pre bid, during any pre contract or post contract stage.

31. The provisions breach, which entails sanction, do not refer to submission of a non-compliant bid as one of the conditions which would entail the sanction of debarment.

32. The Independent External Monitors have been appointed for the purposes of reviewing independently and objectively; whether and to what extent the parties comply with the obligations under the said Pre Contract Integrity Pact. The obligations under the Pre Contract Integrity Pact do not stipulate filing a compliant bid.

33. Accordingly, a non-compliant bid, in the facts and circumstances of the case and particularly in view of the tender conditions, would merely lead to rejection of the bid and not debarment.

34. The right to approach the Independent External Monitors under the Pre Contract Integrity Pact is also available only in respect of a decision taken by the NDMC in respect of breach of the provisions of the Pact which clearly is not applicable to the facts and circumstances of the present case.

35. In my view the impugned order of debarment is not sustainable. Accordingly, the impugned order dated 09.07.2019 is quashed with all consequential benefits flowing in favour of the petitioner.

36. Petition is allowed in the above terms.

37. Since a copy of the Debarment Order was forwarded to several organisations and entities, in addition, respondents shall, within a period of three weeks, send a copy of this order to the organisations and entities to which the impugned debarment order dated 09.07.2019 was communicated, clarifying that the impugned debarment order has been set aside.

38. Order *Dasti* under signatures of the Court Master.

SANJEEV SACHDEVA, J.

DECEMBER 20, 2021
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