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

Date of decision: 09.08.2023

+ **W.P.(C) 666/2023**

CCS COMPUTERS PVT. LTD. Petitioner
Through: Mr.Rajat Joneja, Mr.Anmol
Kumar, Advs.
versus

TELECOMMUNICATIONS CONSULTANTS INDIA LTD.
& ANR. Respondents
Through: Mr.Amit Meharia, Mr.Abinash
Agarwal, Advs. for R-1.
Mr.Vijay Joshi & Mr.Mohit
Joshi, Advs. for R-2.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed by the petitioner challenging the Letter dated 05.01.2023 issued by the respondent no.1 to the petitioner, *inter-alia* taking the following actions against the petitioner:

“Whereas, TCIL constrained to take the following action as mentioned below due to violation of the agreed contractual terms and conditions between parties:

- *LOI dated 01.05.2018, MSA dated 04.01.2019 & PO dated 29.11.2018 issued to M/s CCS Computers Ltd stand terminated.*
- *Performance Bank Guarantee submitted by CCS Computers to TCIL of amount Rs.14,97,818/- valid till 10/10/2023 against PO No. TCIL/2018-19/S&TC/EMS_BSED dated 29/11/2018 for this work is being*



forfeited.

• The work as per tender, LOI, PO & MSA which was your contractual obligation shall be carried at the risk and cost of M/s CCS Computers Ltd.”

2. The petitioner was awarded the work of Supply, Installation, Commissioning and Maintenance of Event Management System (EMS) for Bihar Local Area Development Agency, Planning and Development Department, Govt. of Bihar (hereinafter referred to as the ‘BLADA’) by the respondent no. 1 vide Letter of Intent (in short ‘LOI’) dated 01.05.2018.

3. It is the case of the petitioner that the petitioner duly delivered the hardware and software components to BLADA on 16.05.2018 vide challan No. CCS/S108, and requested for release of 40% of the contract value in accordance with the terms of the LOI. The petitioner further claims that after petitioner had carried out the implementation and commissioning of the work within the stipulated timeline, the respondent No. 1 had received the requisite signoff from its end customer, that is, Bihar State Electronics Development Corporation Ltd. (hereinafter referred to as the ‘BSEDC’) on 11.09.2018. The petitioner, therefore, called upon the respondent no.1 to release its outstanding dues, vide letters dated 28.11.2018 and 03.12.2018. The respondent no.1, in turn, addressed communications dated 14.01.2019 and 06.12.2021 to BSEDC, acknowledging that the installation and commissioning work has been completed and signoff documents have been submitted.

4. The petitioner claims that as in spite of various reminders, the payment was not released to the petitioner by the respondent no.1, the



Micro, Small and Medium Enterprises Development Act, 2006 (in short, 'MSMED Act') before MSE Facilitation Council, South-East, Delhi (hereinafter referred to as the 'Council') on 26.03.2022. The Council was pleased to issue notice of the reference to the respondent no.1 on 26.03.2022.

5. The petitioner claims that only as a counter blast, the respondent no.1 vide letter/show-cause notice dated 14.06.2022 alleged that the petitioner had failed to complete the work as the Go-Live of System is not accepted by the client with the remarks that the service support needs to be improved. It was further alleged that the client has not accepted the system and has not issued the Final Acceptance Test Certificate. The respondent no.1 alleged that the petitioner was in breach of Clause 4 of the Agreement, which provides for back-to-back payment from the respondent no.1 to the petitioner on receipt thereof from the client, by invoking its remedies under Section 18 of the MSMED Act and therefore, due to such a violation, action of termination of LOI, debarment, forfeiture of the performance bank guarantee, and other actions in terms of the contract were proposed to be taken against the petitioner.

6. By a subsequent letter dated 15.07.2022, the respondent no.1 advised the petitioner to submit a reply to the Show-Cause Notice dated 14.06.2022.

7. The petitioner duly submitted its reply to the Show Cause Notice, on 28.07.2022, *inter-alia* contending therein that the work under the LOI had been successfully completed and all tasks to be performed had been duly performed by the petitioner. The petitioner further claimed that the due sign-off documents have already been



provided. The petitioner requested the respondent no.1 to take up the matter with the ultimate client for closure of the project and for making payment which was due.

8. The respondent no.1 by a cryptic reply dated 05.09.2022, however, alleged that the reply submitted by the petitioner was neither satisfactory nor in terms of the Show Cause Notice. The respondent no.1 called upon the petitioner to submit a better reply. I may reproduce the said letter as under:

“Dear Sir,

This is with reference to our Show Cause Notice dated 14.06.2022 & reminder notice dated 15.07.2022 issued to M/s CCS Computers, wherein we had called upon to show cause as to why action should not be taken against you. We have received a reply from you on same dated 28.07.2022, however, reply is not satisfactory and not in terms of our show cause notice. Now, therefore you are once again given the final opportunity and called upon to give your proper reply positively within 15 days after receipt of this letter, failing which TCIL shall be constrained to take necessary action as below due to violation of the agreed contractual terms and conditions between parties:

- Termination of LOI/MSA & PO dated 29.11.2018 issued to M/s CCS Computers Ltd. (Clause 15 of MSA dated 04.01.2019)*
- Debar/Blacklist M/s CCS Computers for future business with TCIL/ Participating in tenders*
- Forfeit Performance Bank Guarantee submitted to TCIL for this work*
- Any other action by TCIL as per terms & conditions of the contract or under relevant laws.*

This notice/ letter is without prejudice to any other rights of TCIL which may be available to it under the terms of the said purchase orders / law.”

(Emphasis supplied)

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Signing Date: 11.08.2023

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9. The petitioner again by its letter dated 13.09.2022, reiterated that it had successfully completed all the tasks awarded to it, and, in fact, has no role in ensuring the release of the payment from the ultimate client.

10. The respondent no.1, however, by the Impugned Letter decided to not only terminate the Contract, invoke the Performance Bank Guarantee, but also ban the petitioner for a period of two-years with effect from the date of the Impugned Letter.

11. Aggrieved thereof, the petitioner has filed the present petition.

12. This Court by its *interim* order dated 19.01.2023, stayed the operation of the Impugned Letter insofar as it imposed a ban of two years on the petitioner. The remaining measures taken by the respondent no.1 by the Impugned Letter were not interfered with.

This Court further observed as under:

“10. The letters, which are placed on record prima facie shows that for various reasons the client has not made the payment to Respondent No.1. However, it cannot be argued by Respondent No.1 that raising of a claim for recovering its dues, could result in 2 years’ ban. Prima facie, there is no breach of contractual terms which justify imposition of a 2 years’ ban, have been set out in the impugned letter. Moreover, it is the settled position in law that blacklisting and debarment orders result in civil death of a company and ought not to be resorted to in a casual or a regular manner.”

13. The learned counsel for the petitioner reiterates that the impugned action has been taken against the petitioner only because the petitioner has chosen to exercise its remedy under the MSMED



Act for seeking recovery of the payment due to it as per the contract. He submits that, in any case, the dispute between the petitioner and the respondent no.1 is a contractual dispute, which has already been referred for adjudication through arbitration by the MSMED. He submits that there was no occasion for the respondent no.1 to ban the petitioner for a period of two years which would in fact amount to a civil death of the petitioner.

14. On the other hand, the learned counsel for the respondent no.1 submits that the petitioner has not completed the work to the satisfaction of the ultimate client. He submits that the ultimate client has not issued the final Acceptance Test till date and, therefore, assertion of the petitioner that it has performed the contract cannot be accepted. In spite of the same, and knowing fully that Clause 4 of the Agreement provides for the back-to-back payment to be made by the respondent no.1 to the petitioner, the petitioner has invoked the jurisdiction of the MSMED, thereby acting in breach of the terms of the Agreement. He submits that, in any case, the dispute between the parties is a contractual dispute and the remedy for the petitioner would be by moving an appropriate application under Section 9 or 17 of the Arbitration and Conciliation Act, 1996.

15. I have considered the submissions made by the learned counsels for the parties. The Impugned Letter reads as under:

“WHEREAS, LOI/MSA/PO cited above was issued to M/s CCS Computers for Supply, Installation, Commissioning & Maintenance of Event Management System for Planning and Development, Government of Bihar. As per the deliverables and timelines of the NIT, all the work should be completed within 4 weeks from the date of Award of Work.



WHEREAS, Show cause notice no. TCIL/S&TC/EMS_BSEDC/SCN/2022/01 dated 14.07.2022 and reminder dated 15.07.2022 & 05.09.2022 were issued to you for explanation of why action should not be taken against you for breach of back-to-back payment terms for both supply and commissioning as per clause no.4 of PO agreed between the parties.

Whereas, inspite of giving the reasonable opportunity to you in this regard by TCIL, suitable justification has not been received from your side.

Whereas, in spite of the clear and unambiguous contractual terms which were agreed to by M/s CCS Computers at the time of award of work and communications from TCIL in this regard as mentioned above, M/s CCS Computers have raised the claims which are beyond the contractual terms parties.

Whereas after reviewing the case under extant guidelines of TCIL, it is hereby informed that the competent authority of TCIL has imposed a ban on CCS for period of 2 yrs from the date of issue of ban order i.e., 05.01.23, for doing any business across TCIL for all items/work/services.

Accordingly, M/s CCS Computers Ltd. will not be eligible to participate in any tender/EOI from future.

Whereas, TCIL constrained to take the following action as mentioned below due to violation of the agreed contractual terms and conditions between parties:

- *LOI dated 01.05.2018, MSA dated 04.01.2019 & PO dated 29.11.2018 issued to M/s CCS Computers Ltd stand terminated.*
- *Performance Bank Guarantee submitted by CCS Computers to TCIL of amount Rs.14,97,818/- valid till 10/10/2023 against PO No. TCIL/2018-19/S&TC/EMS_BSEDC dated 29/11/2018 for this work is being forfeited.*

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• *The work as per tender, LOI, PO & MSA which was your contractual obligation shall be carried at the risk and cost of M/s CCS Computers Ltd.*

The above action is without prejudice to any rights of TCIL which may be available to it under the contracts and/or law.”

(Emphasis supplied)

16. A reading of the Impugned Letter would show that the primary concern of the respondent no.1 is that, in spite of having agreed for a back-to-back payment, the petitioner has chosen to exercise its legal remedy for claiming the payments due to the petitioner by invoking the jurisdiction of MSMED. The Impugned Letter though refers to the Show Cause Notice dated 14.07.2022, and reminder letters dated 15.07.2022 and 05.09.2022, it does not refer to the replies that were given by the petitioner under cover of its letters dated 28.07.2022 and 13.09.2022. The Impugned Letter, in a very cryptic manner, states that “suitable justification has not been received from your side”. The Impugned Letter is, therefore, in fact, an unreasoned letter.

17. Even earlier, on receipt of the reply dated 28.07.2022, the respondent no.1 by a cryptic letter dated 05.09.2022, which has been reproduced hereinabove, rejected the representation of the petitioner, merely stating that “reply is not satisfactory and not in terms of our Show Cause Notice”. The reason for this finding is not disclosed in the said letter.

18. Even otherwise, mere invocation of a legal remedy by the petitioner cannot be ground for imposition of a ban of two years on the petitioner, which in fact amounts to a civil death of the petitioner. Clause 4 of the Purchase Order relied upon by the respondent no. 1 in

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Show cause notice dated 14.06.2022 is reproduced herein below:



“Clause 4: Payment terms - Back to Back terms (as applicable to TCIL)”

- a) *The terms and other terms and conditions between TCIL and CCS Computers will be on back to back basis i.e TCIL will release payment to CCS computers only after receiving the same from client.*
- b) *Payments terms are according to the conditions of relevant clauses of the TCIL NIT.”*

19. Further, the parties have already been referred to arbitration. Pending adjudication of the disputes, in the facts of the present petition, the impugned order imposing the ban of two years on the petitioner is completely unjustified, disproportionate and arbitrary and cannot be sustained.

20. The plea of the respondent no. 1 that the remedy of the petitioner is only in form of an application under Section 9 or Section 17 of the Arbitration and Conciliation Act, 1996 also cannot be accepted. The respondent no. 1 has exercised its executive power to impose the ban of two years on the petitioner. Once the same is found to be without giving reasons, and disproportionate and arbitrary, the remedy of the petitioner under Article 226 of the Constitution of India should not be denied to the petitioner.

21. In view of the above, I find that the Impugned Letter dated 05.01.2023, insofar as it bans the petitioner for a period of two years, cannot be sustained and is accordingly set aside. There shall however, be no bar on the respondent no.1 from initiating action against the petitioner depending upon the result of the arbitration proceedings or otherwise and in accordance with law. It is further made clear that any observation of this Court shall not bind the learned Arbitral Tribunal in adjudicating the *inter se* disputes between the petitioner and the



respondent no. 1.

22. The learned counsel for the petitioner complains that the Impugned Letter banning the petitioner was uploaded on the website of the respondent no.1. He submits that many of petitioner's clients are apprehensive of dealing with the petitioner due to the same, and need clarification on the status of the banning order. Accordingly, it is directed that the respondent no.1 shall upload on its website the information that the Impugned Letter banning the petitioner has been set aside by this Court.

23. The petition is allowed in the above terms. There shall be no order as to costs.

NAVIN CHAWLA, J

AUGUST 9, 2023/Arya/rp