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

\+ **W.P.(C) 1931/2023, CM APPL. 7354/2023, CM APPL. 7355/2023**

Date of Decision: 15.02.2023

IN THE MATTER OF:

LEOTRONIC SCALES PVT. LTD. ..... Petitioner
Through: Mr. G.D. Mishra, Advocate.

versus

MUNICIPAL CORPORATION OF DELHI ..... Respondent
Through: Mr. Manu Chaturvedi, Advocate.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J. (ORAL)

1. By way of present petition filed under Articles 226/227 of the Constitution of India, the petitioner has assailed order dated 09.01.2023 passed by the Executive Engineer (E&M-I), MCD thereby blacklisting the petitioner from further tendering with the respondent for a period of one year from the date of issuance of impugned order.

2. Learned counsel for the petitioner submits that the premise of the disputes lies with NIT No. 03 EE (E&M)-I/SDMC/2021-22/D-57 dated 23.06.2021 whereby bids were invited for *"supply, installation, testing and commissioning (SITC) of electronic weighbridge alongwith requisite civil work and portable electronic weight scale alongwith annual maintenance contact (AMC) at different location under South Delhi Municipal Corporation (SDMC)"*. It is stated that the petitioner

participated in the said bid and was awarded the tender after expiry of the tender bid on 07.01.2022. A letter of intent was issued on 31.01.2022.

Learned counsel further points out that the validity of the tender having expired on 07.01.2022 before the issuance of letter of intent on 31.01.2022, the rates of tender were valid only for 180 days. He has contended that though proceedings were held thereafter, neither any show cause notice was issued nor any proceedings were held with respect to passing of the impugned order blacklisting the petitioner for a period of one year.

3. Mr. Manu Chaturvedi, learned counsel for the respondent/Corporation, on the other hand, submits that the petitioner submitted a bid security declaration wherein it agreed that in case it withdraws from the tender, it would be suspended for a period of one year and would not be eligible to bid for SDMC (now MCD) tenders from the date of issuance of the suspension order. Learned counsel has further placed reliance on speaking order dated 20.05.2022 to submit that a personal hearing was granted to the petitioner.

4. It is worthwhile to note that the Supreme Court in UMC Technologies Private Limited *v.* Food Corporation of India & Another reported as (**2021) 2 SCC 551**, while reiterating settled principles, has highlighted the severe consequences of blacklisting orders and the stigmatization that accrues to the person/entity being blacklisted. Relevant excerpt from the said decision reads as follows:

> *"**14.** Specifically, in the context of blacklisting of a person or an entity by the State or a State Corporation, the requirement of a valid, particularised and unambiguous show-cause notice is particularly crucial due to the severe consequences of blacklisting and the stigmatisation that accrues to the person/entity being blacklisted. Here, it may be gainful to describe the concept of*

blacklisting and the graveness of the consequences occasioned by it. Blacklisting has the effect of denying a person or an entity the privileged opportunity of entering into government contracts. This privilege arises because it is the State who is the counterparty in government contracts and as such, every eligible person is to be afforded an equal opportunity to participate in such contracts, without arbitrariness and discrimination. Not only does blacklisting take away this privilege, it also tarnishes the blacklisted person's reputation and brings the person's character into question. Blacklisting also has long-lasting civil consequences for the future business prospects of the blacklisted person.

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16. *The severity of the effects of blacklisting and the resultant need for strict observance of the principles of natural justice before passing an order of blacklisting were highlighted by this Court in Erusian Equipment & Chemicals Ltd. v. State of W.B. [Erusian Equipment & Chemicals Ltd. v. State of W.B., (1975) 1 SCC 70] in the following terms: (SCC pp. 74-75, paras 12, 15 & 20)*

> *"12. ... The order of blacklisting has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who is on the approved list is unable to enter into advantageous relations with the Government because of the order of blacklisting. A person who has been dealing with the Government in the matter of sale and purchase of materials has a legitimate interest or expectation. When the State acts to the prejudice of a person it has to be supported by legality.*
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> *15. ... The blacklisting order involves civil consequences. It casts a slur. It creates a barrier between the persons blacklisted and the Government in the matter of transactions. The blacklists are "instruments of coercion".*
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> *20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned*

should be given an opportunity to represent his case before he is put on the blacklist.”

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25. *The mere existence of a clause in the bid document, which mentions blacklisting as a bar against eligibility, cannot satisfy the mandatory requirement of a clear mention of the proposed action in the show-cause notice. The Corporation's notice is completely silent about blacklisting and as such, it could not have led the appellant to infer that such an action could be taken by the Corporation in pursuance of this notice. Had the Corporation expressed its mind in the show-cause notice to blacklist, the appellant could have filed a suitable reply for the same. Therefore, we are of the opinion that the show-cause notice dated 10-4-2018 does not fulfil the requirements of a valid show-cause notice for blacklisting. In our view, the order of blacklisting the appellant clearly traversed beyond the bounds of the show-cause notice which is impermissible in law. As a result, the consequent blacklisting order dated 9-1-2019 cannot be sustained.*”

5. While observing that *“he who hears must decide”,* a Co-ordinate Bench of this Court in Kamlesh Engineering Works *v.* Delhi Jal Board, Govt. of N.C.T. of Delhi, **W.P.(C) 10052/2021** had also found fault with the blacklisting as in the said case the respondent had not granted any opportunity of either personal hearing by the Managing Director or CEO of the Board, or opportunity to challenge the recommendations of the Executive Engineer, the Superintendent Engineer or the Debarment Committee.

6. Thus, it is a settled law that before taking extreme action of blacklisting the entity has to be put to notice for the same so that it can answer. In any given case, personal hearing also needs to be granted.

7. In the present case, a reading of the speaking order dated 20.05.2022 would show that it nowhere speaks of the action of blacklisting which was subsequently taken against the petitioner by the

respondent. As before taking the action of blacklisting, no show-cause notice or opportunity of personal hearing was granted to the petitioner in that regard, this Court is of the opinion that the impugned action was taken in violation of the principles of natural justice.

8. Accordingly, the petition is allowed and the impugned order is set aside. Miscellaneous applications are disposed of as infructuous.

9. Needless to state, the respondent shall be at liberty to initiate necessary action against the petitioner after following due process of law.

10. Appeal is disposed of in the above terms.

(MANOJ KUMAR OHRI)
JUDGE

FEBRUARY 15, 2023
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