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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 18th April, 2023

+ **W.P.(C) 11723/2021 and CM APPL. 36235/2021**

MOHINI ELECTRICALS LIMITED Petitioner

Through: Ms. Anusuya Salwan, Mr. Bankim
 Garg & Mr. Rachit Wadhwa,
 Advocates (M- 9999897128)

versus

DELHI JAL BOARD Respondent

Through: Ms. Sangeeta Bharti, Standing
 Counsel, DJB with Ms. Malvi Balyan,
 Advocate.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through hybrid mode.
2. This is a petition filed by the Petitioner - M/s Mohini Electricals Limited challenging the impugned circular dated 17th August, 2021 issued by the Respondent - Delhi Jal Board (DJB). By the said circular, the Petitioner has been debarred from participating in any tenders of the DJB for a period of one year or till sufficient progress is achieved. The relevant portion of the circular is set out below:

"The work of "Construction of 37.10 ML capacity master balancing reservoirs (MBR)/BPS at Palla" was awarded to the contractor firm M/s SNS Techno Corp Pvt. Ltd (30% share) in. Joint Venture with M/s Mohini Electricals Ltd. (70% share).

The progress of Palla UGR work, awarded on 15.10.2018 having completion period of 24 months i.e. date of completion 30.09.2020 extended to 30.04.2021 due to Covid-19, is still not satisfactory. Present progress of the work is only 33% (approx.). Though,

there were some initial delays due to change in the drawing to avoid tree cutting, ban on construction activity from NGT, restriction due to Covid-19 etc. yet the slow execution of work and progress by the agency has been major contributor in delay of Palla UGR work. Agency was served Show Cause Notice vide letter dated 04.08.2020 and reply submitted by the firm vide letter dated 11.08.2020 was not satisfactory. Agency was again asked vide CE (W) Project-I letter dated 23.06.2021 to expedite the progress of the work and submit revised bar chart to expedite the work which was replied by the agency vide letter dated 02.07.2021. However, the agency has not been adhering to its own given bar chart and progress of work is still very slow.

Hon'ble Minister (Water) also inspected the Palla UGR site on 09.07.2021 along, with Member (WS) and other senior officers. The progress of work was still not satisfactory. Agency has further been served Notices on 15.07.2021 under clause 10 of Contract Agreement for levy of compensation for the delay in work and under clause-11 for rescinding of work.

Considering above facts including the replies of the Agency on record, it has been decided that M/s SNS Techno Corp Pvt. Ltd and M/s Mohini Electrical Ltd should not be allowed to bid in future tenders of Delhi Jal Board for a period of one year or till sufficient progress is achieved in Palla MBR work, whichever is later.

This is issued with the approval of competent authority.”

3. The Petitioner was awarded a tender floated by the DJB for “Construction of 37.10. ML capacity Master Balancing Reservoir (MBR)IBPS at Palla” vide NIT No 02(2017-18) on 15th October, 2018.
4. An agreement between the parties was executed on 29th October, 2018 with a period of completion of 24 months for execution, three months

for trial run and a ten years' period for operations and maintenance of the project. The completion date in terms of the agreement was 29th October, 2020. However, admittedly, there were delays in the execution of the project. According to the DJB, various notices were issued to the Petitioner to expedite the work. However, the same was not executed within time. Thereafter, the impugned circular dated 17th August, 2021 was issued to the Petitioner.

5. More than 18 months have passed since the issuance of the impugned circular. Today, Ms. Bharti, Id. Counsel submits that the project is almost reaching completion and since the debarment was only for a period of one year or till sufficient progress is achieved, the debarment order has run its course.

6. Ms. Salwan, Id. Counsel for the Petitioner submits that the case of the Petitioner is that no show cause notice was issued for the debarment/blacklisting and therefore that the debarment is itself contrary to law. It is further submitted that the drawings which were to be given to the Petitioner were given after the date for completion was over. However, this position is disputed by Ms. Bharti Id. Counsel for DJB.

7. Mrs. Salwan, Id. Counsel submits that the Petitioner is a registered MSME and relies upon the office memorandum dated 11th April, 2023 issued by the Ministry of Finance, Government of India wherein in the case of MSME, if the period of completion fell between 19th February, 2020 and 31st March, 2020, debarment would stand revoked.

8. The Court has perused the said office memorandum. Though the same was issued by the Central Government, the DJB being a government entity, shall also consider the same in view of the fact that during the said period

COVID-19 pandemic had brought the work of MSMEs to a halt and their businesses had suffered immensely. The relevant part of the Office Memorandum dated 11th April, 2023 is as under:

“2. The following parameters will determine eligibility for benefit under this scheme:

SN	Parameter	Eligibility condition
.....		
iii.	Nature of the supplier/contractor eligible for the scheme	Registered as a Medium, Small or Micro Enterprise (MSME) as per prevalent scheme of Ministry of MSME on the date of claim by supplier/contractor. MSME may be registered for any category of Goods and Services.
iv.	Eligible contracts in case of for feature of performance security or imposed of Liquidated Damages (LD) or the damages levied under “Risk Purchase” (RP) or debarment action.	Where original delivery period/ completion period stipulated in contract was between 19.02.2020 and 31.03.2022 (both dates are inclusive). In case of risk purchase, the original delivery period of the main contract (and not the risk purchase contract) should be between 19.02.2020 and 31.03.2022.
v.	Eligible tenders in case of forfeiture of Bid security (Earnest Money Deposit) or debarment action.	Tenders, where date of closing of the tender was between 19.02.2020 and 31.03.2022 (both dates are inclusive).

3. The following amount shall be refunded by the procuring entities as a relief under this scheme after determining eligibility as per para 2 as above:

SN	Cause of Action	Amount/ extent of relief
i.	Performance security forfeited by the procuring entities for failure to execute contracts by the contractors.	95% of the performance security forfeited by the procuring entity.
ii.	Imposition of Liquidated damages (damages deducted for late deliveries) or the risk purchase.	95% of the Liquidated damages (LD) deducted or 95% of the risk purchase amount realised by the procuring entities from the MSME
iii.	Bid security (Earnest Money Deposit) forfeited.	95% of the Bid security (Earnest Money Deposit) forfeited.
iv.	Debarment of the contractor due to default in execution of eligible contract / eligible tenders under the scheme.	<u>Revocation of debarment</u> by issue of an appropriate order by the procuring entity. The date of revocation shall be the date of such order. However, in case a firm has been ignored for placement of any contract due to debarment in the interim period (i.e. date of debarment and the date of revocation under this order), no claim shall be entertained.

9. The written submissions filed on behalf of the DJB also show that notices were repeatedly issued to the Petitioner for completion of the work. However, the admittedly no notice was issued prior to the blacklisting. As per the settled legal position laid down by the Hon'ble Supreme Court in

Gorkha Security Services v. Government of (NCT of Delhi) & Ors. [2014 9 SCC 105] it has been clearly laid down that prior to blacklisting or debarment, a show cause notice would be mandatory. The relevant part of the same is as under:

“17. It is a common case of the parties that the blacklisting has to be preceded by a show cause notice. Law in this regard is firmly grounded and does not even demand much amplification. The necessity of compliance with the principles of natural justice by giving the opportunity to the person against whom action of blacklisting is sought to be taken has a valid and solid rationale behind it. With blacklisting many civil and/or evil consequences follow. It is described as "civil death" of a person who is foisted with the order of blacklisting. Such an order is stigmatic in nature and debars such a person from participating in Government Tenders which means precluding him from the award of Government contracts. Way back in the year 1975, this Court in the case of Erusian Equipment and Chemicals Ltd. v. State of West Bengal and Anr. MANU/SC/0061/1974 : (1975) 1 SCC 70, highlighted the necessity of giving an opportunity to such a person by serving a show cause notice thereby giving him opportunity to meet the allegations which were in the mind of the authority contemplating blacklisting of such a person.

.....
18. Thus, there is no dispute about the requirement of serving show cause notice. We may also hasten to add that once the show cause notice is given and opportunity to reply to the show cause notice is afforded, it is not even necessary to give an oral hearing. The High Court has rightly repudiated the Appellant's attempt in finding foul with the impugned order on this ground. Such a contention was specifically repelled in Patel Engineering (supra).”

10. In any event, the completion date in the present case, fell during the pandemic period and the debarment itself having been issued without notice,

would not be tenable. The period of the debarment has also been completed and the project is also nearing completion.

11. Keeping all the above facts and circumstances in mind as the blacklisting has run its course, the impugned debarment circular dated 17th August, 2021 is set aside.

12. The Petition is allowed in the above terms and the same is disposed of. All pending applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

APRIL 18, 2023

Rahul/KT



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