IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: **20-12-2024**

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THE HONOURABLE MR JUSTICE A.A.NAKKIRAN

Arb Appln No. 538 of 2024

and

O.A No.633 of 2024

Talisma Corporation Private Limited
Ground Floor, Phoenix Magnifica, Vijinapura, Mahadevapura
Ward, Old Madras Road, Dooravaninagar, Bangalore,
Karnataka, India

Applicant in both the applications

Vs

Tamil Nadu eGovernance Agency
Rep.by its Chief Executive Officer, Having Registered office
at No.807, P.T.Lee Chengalvarayan Naicker Maligai, Anna
Salai, Chennai 600 002 Tamil Nadu, IndiaGround Floor,
Phoenix Magnifica, Vijinapura, Mahadevapura Ward, Old
Madras Road, Dooravaninagar, Bangalore, Karnataka, India

Respondent in both the applications.

For Applicant:

M/S.Anish Gopi
Velpula Audityaa
Karthikeyen Shankar
R.Pravesh

For Respondent(s):

Mr. R. Siddharth, For Govt. Advocate For Respt. - Vak. Not Filed

Batta Not Filed Dt. 20/09/2024

Counter Affidavit D.No.41169,dt 24.10.2024

COMMONORDER

(i) Arbitration Application No. 538 of 2024:

Arbitration Application No.538 of 2024 is filed directing the respondents to de-list the applicant from the blacklist and refrain from prohibiting the applicant from participating in any future tenders floated by the respondent pending the disposal of the arbitration proceedings between the parties.

(ii) Original Application No.633 of 2024:

Original Application No.633 of 2024 is filed to pass an interim order of injunction restraining the respondents from encashing/invoking the Performance Bank Guarantee dated 09.08.2019 bearing Guarantee Ref.No.009GT0219221001 drawn on HDFC Bank, KIADB Industrial Area Branch to the tune of Rs.5,22,400/- furnished by the Applicant in lieu of the Request for Proposal of TNeGA/OT/TNSDC/2019-20 pending disposal of the arbitration proceedings between the parties.

2. Both applications have been taken up for final disposal since they are interlinked each other.

3. The learned counsel for the applicant submitted that the Applicant had co[illegible]e development of all modules sought for by the Respondent as early as on November 2021 despite the issues faced due to the COVID-19 pandemic. Independent third-party auditors engaged by the Respondent and TNSDC had cleared the software developed by the Applicant and issued a 'Safe to Host Compliance Report. However, the amounts due and pending to be paid to the Applicant were not disbursed by the Respondent who conveniently shifted the blame on TNSDC.

4.It has been further submitted that on 22.01.2024, the Respondent herein had issued a communication to TNSDC requesting for the release of funds in view of the Applicant having completed all deliverables. The dispute between the parties arose only at the time of exit management after completion of the project. Even though the Respondent contends that the Applicant had not complied with the mandates of the exit management clauses in the Tender due to not handing over the complete source code to them, the email dated 22.02.2024 issued by the Respondent to TNSDC makes it abundantly clear that any gaps found in the source code was only due to the proprietary software of the Applicant being removed therefrom. Therefore, the respondent has admitted that the applicant has shared any and all material concerning the project to the respondent.

5. The learned counsel for the applicant further submits that without addressing the concerns raised by the Applicant regarding the pending payments, even after all compliances as per the exit-clauses, the Respondent issued a Show-Cause notice dated 07.05.2024 to the Applicant. In reply dated dated 17.05.2024, the Applicant had clearly addressed all issues raised by the Respondent. However, despite receipt of the same, the Respondent acted in an arbitrary manner and black-listed the Applicant without giving due regard to the contentions raised by the Applicant. Hence, the Arbitration proceedings were initiated by the Applicant by way of a notice dated 25.06.2024. The Respondent had admitted that there existed a dispute amongst the parties in the reply communication dated 09.07.2024. The continued blacklisting of the Applicant has caused severe hardship and irreparable damage to the Applicant's reputation and goodwill as well as business operations. The arbitrary decision of the Respondent to blacklist the Applicant has effectively barred the Applicant from participating in any tenders, thereby stalling the growth and sustenance of the Applicant's business. In support of his argument, he relies on a dictum of a Division Bench of Three Judges of the Hon'ble Supreme Court in ***Blue Dreamz Advertising Pvt. Ltd. & Anr. v.Kolkata Municipal Corporation & Ors. repored in 2024 SCC Online SC 1896.***Hence, he prays to allow the applications.

6. On the other hand, the learned counsel for the respondent submitted that the TNSDC (Tamil Nadu Skill Development Corporation) department was facing portal related issues daily from its stakeholders such as Training Partners, Training Centers, Candidates, Assessment agencies, inspection officers, Finance department etc., The issues have not been satisfactorily resolved by the applicant due to various reasons. There was no adequate attention received from the applicant team whenever required to address critical issues, some of which have had financial impacts to the stakeholders, department and/or the government.

7.It has been further submitted that reports were unable to be downloaded from the portal which caused escalations for the department to the government's higher officials for not being able to submit data on time. Further, the PowerBI (Power Business Intelligence) solution provided by the System Integrator was not coping up with the daily needs of TNSDC as the server was down most of the times daily, which the applicant's technical team were unable to sort out. In this connection, TNeGA issued a Show Cause Notice to the applicant on 30.03.2022 which was not satisfactorily responded by the applicant herein. Since the Exit Management has not been completed successfully, the Contract Period is not considered as successfully completed. The purpose of collecting the

Security Deposit is to hold the Bidder responsible for proper completion of the [obscured by QR code] in all respects. If the Successful Bidder fails to act upon to the tender conditions or backs out from the contract, the Security Deposit mentioned above will also be forfeited by TNeGA". Hence, it is lawful to forfeit the Security Deposit.

8.It has been further submitted that upon analysis of the situation by TNeGa, it was found that the Knowledge Transfer Sessions for Technical Transition provided to the TNSDC was insufficient and incomplete from the applicant. Further, TNeGa gave instructions to M/s.Tailsma Corporation to provide a resolution before 17.04.2024 followed by a multiple reminder over telephone and email on 22.02.2024, 05.04.2024 and 15.04.2024. However, till date there was no positive response from the System Integrator. Under such circumstances, TNeGa reserves the right to blacklist the Successful Bidder from taking part in any of the procurement operations of TNeGA for a minimum period of three years from the date of blacklisting or failure to carry out supply in time or according to the quality and quantity prescribed or any such similar reasons. Such bidders would be automatically banned for 3 years from taking part in TNeGA's Tenders. Such, TNeGA was forced to initiate the forfeiture of the Security Deposit of Rs.5,22,400/- @ 5% of the Contract Value furnished by the applicant towards this project and the applicant herein was blacklisted from participating in any f TNeGA for a period of 3 years on 05.06.2024.

9. He further submitted that if any issue arises between the parties, the matter will be referred to a Sole Arbitrator to be appointed by the CEO, Tamil Nadu e-governance Agency (TNeGA) under the "Arbitration and Conciliation Act 1996". In this regard, the applicant accepted the terms and conditions in the RFP and signed the contract dated 12.08.2019 that the Arbitrator shall be appointed by CEO, TNeGA. Hence, he prays for dismissal of the present applications.

10. Heard both sides and perused the materials available on record.

11. On perusal of the records, it is seen that both the parties are making allegations against each others. However, the issue involved in this case is to be decided in the Arbitration proceedings only. Having perusal of citation in the case, "***Blue Dreamz Advertising Pvt. Ltd. & Anr. v.Kolkata Municipal Corporation & Ors. reported in 2024 SCC Online SC 1896, the Supreme Court"*** has observed as follows:

> *"26.In other words, where the case is on an ordinary breach of contract and explanation offered by the person concerned raises a bonafide dispute,*

blacklisting/debarment as a penalty ought not be resorted to. Debarring a person albeit for a certain number of years tanamounts to civil death inasmuch as the said person is commercially ostracized resulting in serious consequences for the person and those who are employed by him.

27.Too readily invoking the debarment for ordinary cases of breach of contract where there is a bona fide dispute, is not permissable. Each case, no doubt, would turn on facts and circumstances thereto.

42.we set aside the impugned judgment of the Division Bench dated 21.06.2017 passed in M.A.T. No. 277 of 2017 and restore the judgment of the learned Single Judge. The result will be that the Writ Petition No. 6616(W) of 2016 filed by the appellant before the High Court at Calcutta would stand allowed and the order of blacklisting dated 02.03.2016 would stand set aside. The Appeal is, accordingly, allowed. No order as to costs."

12.Having considered the facts and circumstances of the case, it is seen that Judgment relied by the applicant is squarely applicable to the present case and in the interest of Justice, this Court is inclined to allow the Arbitration Application No.538 of 2024 till the disposal of Arbitration proceedings.

13. In the result, the Arbitration Application No.538 of 2024 stands allowed [illegible]e aforesaid application is allowed, O.A No.633 of 2024 becomes infructuous. Accordingly, O.A. No.633 of 2024 is dismissed as infructuous.

20-12-2024

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A.A.NAKKIRAN,J

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