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

% *Date of decision: 19.03.2024*

\+ **LPA 81/2023 and CM APPL. 5135/2023**

NTPC LIMITED ..... Appellant

Through: Mr Chetan Sharma, ASG with Mr Puneet Taneja, Mr Amit Gupta, Mr Saurabh Tripathi, Mr Vikramaditya Singh, Mr Manmohan Singh Narula and Mr Amit Yadav, Advocates.

versus

M/S SURYA DAY PRIVATE LIMITED ..... Respondent

Through: Mr Ravi Prakash with Mr Siddhant Sekhri, Advocates.

CORAM:
HON'BLE MR JUSTICE RAJIV SHAKDHER
HON'BLE MR JUSTICE AMIT BANSAL
[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

1. This appeal is directed against the judgment dated 13.12.2022 passed by the learned Single Judge.

2. What ails the appellant i.e., NTPC is the operative directions contained in paragraph 16 of the impugned judgment. It is the submission of Mr Chetan Sharma, learned Addl. Solicitor General, who appears on behalf of the appellant/NTPC, that although the learned Single Judge has returned a finding

that the suspicion entertained by the NTPC was valid, she has reduced the period of ban to the period already suffered by the respondent.

2.1 For convenience, the operative directions contained in the impugned judgment are set forth hereafter:

> *"16. In these facts and circumstances, the Court is of the opinion that while the conduct of the Petitioner is not completely above board, the banning of three years would not be justified. Accordingly, the banning order is restricted to the period which has already elapsed. The banning order shall, however, not be construed as a result of fraudulent practice or misrepresentation of facts. It would also not act as an impediment in the Petitioner's future bids for other contracts of PSUs, Govt. Departments, etc.*
> *17. Insofar as bank guarantees are concerned, the Petitioner's remedies, if any, are left open."*

3. Notably, the respondent has not come up in appeal against the observations made by the learned Single Judge, *inter alia,* in paragraph 16 that its conduct was "not completely above board." What is, however, in dispute is the fact that three-year period i.e., the period during which the ban would operate vis-à-vis the respondent, will run its course by 21.05.2024.

4. What is also significant is Mr Sharma's submission made at the Bar, based on instructions received from Mr Puneet Taneja, Advocate, that after 21.05.2024, NTPC will entertain the respondent's bid placed against tenders floated by it after the said period.

5. Given this position, both sides have agreed, at this juncture, that it would be an academic exercise for the court to delve on the issue raised on behalf of

NTPC by Mr Sharma that there is a dissonance between the observation made in the earlier part of the judgment, which is suggestive of the fact that the suspicion entertained by the NTPC was in order, with the observations made in the latter part that the three years ban period stipulated by it was not justified.

6. Given the statement made by Mr Sharma that the respondent's bid would be entertained concerning tenders floated after 21.05.2024, counsel for the respondent says that he is agreeable to the appeal being closed.

6.1 It is ordered accordingly.

7. The appeal is disposed of in the aforesaid terms.

8. Pending application shall also stand closed.

RAJIV SHAKDHER, J

AMIT BANSAL, J

MARCH 19, 2024 / tr