



2024:DHC:1066-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **LPA 97/2024 and CM APPL. 6810/2024, CM APPL. 6811/2024,
CM APPL. 6812/2024, CM APPL. 7759/2024**

NBCC INDIA LIMITED

..... Appellant

Through: Ms. Aishwarya Bhati, ASG with Mr. Shreeyash U. Lalit, Mr. Himanshu Vats, Mr. Abhinav Aggarwal, Mr. Krishnagpal Abhay and Ms. Runjhun Garg, Advocates.

versus

RAMACIVIL INDIA CONSTRUCTIONS PRIVATE LIMITED

..... Respondent

Through: Mr. Jayant K. Mehta, Senior Advocate with Mr. Avinash Trivedi, Mr. Anurag Kaushik, Ms. Ritika Trivedi, Mr. Ritika Trivedi and Mr. Rhythm Nagpal, Advocates.

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Date of Decision: 09th February, 2024.

**HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA**

JUDGMENT

MANMOHAN, ACJ: (ORAL)

CM APPL. 6811/2024 (for exemption)

1. Allowed, subject to all just exceptions.
2. Accordingly, the application is disposed of.



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LPA 97/2024 and CM APPL. 6810/2024, CM APPL. 6812/2024 & CM APPL. 7759/2024

3. This Letters Patent Appeal has been filed challenging the impugned order dated 17th October, 2023, passed by the learned Single Judge in W.P.(C) 11935/2021, disposing of CM APPL. 54158/2023 with a direction to the Appellant to remove the name of Respondent herein i.e., Ramacivil India Construction Pvt. Ltd., from the list of blacklisted/holiday entities of the Appellant.

3.1. The writ petition was filed by the Respondent herein challenging the banning order dated 17th February, 2021 ('first debarment order'), passed by the Appellant herein, blacklisting the Respondent for a period of two (2) years from the date of issuance said order. The Court did not grant any stay on the operation of the said debarment order. Accordingly, the said debarment order operated for the entire period of two (2) years and lapsed on 16th February, 2023, due to efflux of time. This fact was duly recorded by the Court in its order dated 21st March, 2023. However, the Respondent's name continued to be shown in the Holiday List published on Appellant's website. In these circumstances, the Respondent herein filed the CM APPL. 54158/2023 in the writ proceedings, seeking direction to the Appellant herein to remove the Respondent's name from the Holiday List being displayed on its website. The impugned direction has been passed against the Appellant in the aforesaid application.

4. Learned ASG states that it is undisputed that the first debarment order, issued by the Appellant was for a period of two (2) years and the said period came to an end on 16th February, 2023; however, the Ministry of



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Housing and Urban Affairs ('MoHUA') vide its separate order has debarred the Respondent for a period of two (2) years with effect from 29th March, 2023 ('second debarment order'). She states that the Respondent's name continues to be reflected in the Holiday List of the Appellant in pursuance to the second debarment order.

4.1. She states that though the operation of the second debarment order dated 29th March, 2023, has been stayed by the Court vide order dated 28th April, 2023, in a separate writ petition i.e., W.P.(C) No. 5467/2023, however, since the said second debarment order has not been set aside by the Court, the Appellant is bound to continue reflecting the Respondent's name in the Holiday List available on the Appellant's website. She states that the Appellant cannot remove the name of the Respondent from the Holiday List without specific written instructions from the concerned Ministry i.e., MoHUA.

5. In reply, learned Senior Counsel for the Respondent states that as per the Manual of Procurement of Works, 2022, issued by the Appellant, an entity cannot be debarred from participating in any procurement process for a period exceeding two (2) years. He states that the Respondent herein has already suffered the period of two (2) years from 17th February, 2021 till 16th February, 2023, in pursuance to the first debarment order dated 17th February, 2021.

5.1. He states that the operation of the second debarment order has been admittedly stayed by the Court vide order dated 28th April, 2023, in W.P.(C) No. 5467/2023, and therefore, the Appellant has no cause for continuing to include the Respondent's name in the Holiday List. He states that the



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Respondent has been unable to participate in new tenders with government entities and this act of the Appellant is in teeth of the stay granted by the Court.

5.2. He states that the impugned order was passed on 17th October, 2023 and subsequently, the Appellant herein represented before the learned Single Judge on 29th November, 2023, that the said order dated 17th October, 2023 will be complied with expeditiously. He states that therefore, the filing of the present appeal belatedly is contrary to the representations made before the learned Single Judge.

6. We have heard Ms. Aishwarya Bhati, learned ASG appearing on behalf of the Appellant and Mr. Jayant K. Mehta, learned senior counsel appearing on behalf of the Respondent.

7. It is undisputed that the first debarment order dated 17th February, 2021 has worked itself out. Thus, admittedly, the name of the Respondent does not appear on the Holiday List published by the Appellant on account of the said order.

8. It is also undeniable that the operation of the second debarment order dated 28th April, 2023 issued by the MoHUA has been stayed in W.P.(C) No. 5467/2023 vide order dated 28th April, 2023; and the said order is subsisting. The effect of the stay order is that the second debarment order is not in operation and consequently, the Respondent is not debarred from participating in bids with government entities. The Appellant, therefore, has no basis for continuing to show the name of the Respondent on the Holiday List.

9. The adverse effect of the Appellant's action in continuing to include



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and display the Respondent's name in the Holiday List effaces the effect of the stay order granted by this Court in W.P.(C) No. 5467/2023, as is evident from the letters of rejection and queries received by Respondent from tendering authorities. The Appellant by continuing to include the name of the Respondent in the Holiday List is acting in contravention of the stay order dated 28th April, 2023.

10. This Court finds no merit in the submission of the Appellant that it is powerless to remove the name of the Respondent from the Holiday List unless so instructed by the MoHUA. The Appellant is bound by the effect of the stay order dated 28th April, 2023 passed in W.P.(C) No. 5467/2023 after it has been brought to its notice in the writ proceedings. Further, with the issuing of the directions in the impugned order dated 17th October, 2023, the doubt, if any, which the Appellant entertained in this regard should have been put to rest.

11. The Appellant by continuing to include the name of Respondent in the Holiday List has set at naught the effect of the stay order dated 28th April, 2023 granted by the Court. Consequently, the second debarment order dated 29th March, 2023, has remained in operation till date due to the arbitrary refusal of the Appellant to remove the name from the Holiday List, which is publicly accessible. The action of the Appellant is unreasonable and arbitrary and cannot be sustained in view of the order dated 28th April, 2023.

12. In this regard, it is also relevant that though the impugned order was passed on 17th October, 2023, yet, the same has been challenged belatedly on 30th January, 2024 i.e., with a delay of 75 days, which is not justified. The Appellant held out held out before the learned Single Judge on 29th



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November, 2023, that the directions for removing the Respondent from the Holiday List shall be duly implemented. Instead of complying with the statement made on 29th November 2023, the present appeal has been filed as afterthought. In these facts, we are of the considered opinion that no sufficient cause has been shown for seeking condonation of delay in CM APPL. 6810/2024.

13. Accordingly, the present appeal is dismissed on the grounds of delay and merits. Pending applications are dismissed.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

FEBRUARY 9, 2024/msh/aa

Click here to check corrigendum, if any