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

Date of decision: 14th MARCH, 2024

IN THE MATTER OF:

+ **W.P.(C) 3290/2024 & CM APPL. 13573/2024**

CURRYMIA FOODS LTD.

..... Petitioner

Through: Mr. Ravikesh K. Sinha, Advocate.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Anurag Ahluwalia, CGSC with
Mr. Kaushal Jeet Kait, GP and Mr. A.
Kchhawary, Col., ST-5, HQ Army.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. The Petitioner has approached this Court challenging an Order dated 29.02.2024 passed by Respondent No.4/ Quartermaster General's Branch, Integrated Headquarters of MoD (Army), rejecting an appeal dated 22.02.2024 filed by the Petitioner herein, who claims to be a successor-in-interest of Ahmednagar District Goat Rearing and Processing Cooperative Federation Limited (*hereinafter referred to as the 'Federation'*).
2. The said order which is impugned herein affirms the Order dated 07.11.2023 which removed the name of the predecessor-in-interest of the Petitioner, i.e. the Federation, from the approved list of contractors issued by Directorate General of Supplies and Transport for supplying meat dressed in chilled/frozen state as a part of the entitled free ration of the armed forces to



Eastern Command.

3. The facts as narrated in the writ petition reveals that the Federation which was registered as a sole proprietorship of one Minal Ashok Kale, had been registered as a Registered Contractor for supply of meat and broiler in chilled/frozen state to the Army. The said Federation was supplying meat to the Army from the year 2016.
4. Material on record reveals that the Petitioner was incorporated under the Companies Act for the purpose of taking over the business and assets of the Federation. Material on record also indicates that the intimation that the Petitioner had taken over the work of the Federation was intimated to the Respondents only on 19.09.2023, i.e., after 11 months of getting approval of slump sale from Joint Sub Registrar-2, Ahmednagar on 04.10.2022.
5. Admittedly, the company was fulfilling the obligations of the Federation. It is pertinent to mention here that Minal Ashok Kale, the sole proprietor of the Federation is 25.71% shareholder of the Petitioner company. It is also undisputed that the Petitioner has filed an application for being registered with Respondent No.2 for the supply of meat and the application was made only in September, 2023.
6. *Vide* Order dated 07.11.2023, the Federation was removed from the list of approved ASC Contractors for the supply of meat. The effect of the removal is that the Petitioner would not be able to participate in further tenders for the purpose of supply of meat to the Army. The said order was challenged by the Petitioner by filing W.P.(C) 2359/2024 before this Court and since there was an alternate appellate remedy available to the Petitioner, this Court disposed of the writ petition by directing the Petitioner to avail the remedy of appeal. This Court did not permit the Petitioner to participate in



the tender pending appeal. The said order was challenged by filing an LPA being LPA No.153/2024 which was dismissed Order dated 23.02.2024.

7. By the impugned order herein the appellate authority has dismissed the appeal of the Petitioner. The relevant portion of the impugned order dated 29.02.2024 reads as under:-

“2. The representations as made vide your e-mail mentioned at Paragraph 1 (c) above have been considered by the QMG. Based on the facts of the case, the competent authority has directed the following:- (a) Your request for registration forwarded vide application dated 01 November 2023 cannot be accepted in immediate timeframe due to the under mentioned reasons:-

(i) The firm M/s Ahmednagar District Goat Rearing and Processing Co-op Fed Ltd participated in tenders for FY 2023-24 despite no longer being in existence and having transferred its assets and liabilities by way of slump sale to M/s Currymia Foods Ltd as approved by the Joint Sub Registrar-2, Ahmednagar on 04 October 2022. In the aforesaid process, the firm M/s Ahmednagar District Goat Rearing and Processing Co-op Fed Ltd failed to intimate the registering authority as well as Competent Financial Authority responsible for processing of contracts, about the change in its status until informed only on 19 September 2023.

(ii) Smt Minai Ashok Kale has full responsibility for the aforesaid being the sole proprietor of M/s Ahmednagar District Goat Rearing and Processing Co-op Fed Ltd and she is now the largest stakeholder in the new firm M/s Currymia Foods ltd holding a total of 25.71% shares.



(iii) *The registration of the firm M/s Currymia Foods Ltd will be considered by the registering authority after a period of one year from the date of removal of the old firm M/s Ahmednagar District Goat Rearing and Processing Co-op Fed Ltd subject to meeting the other requisite criteria for registration in terms of Administrative Instructions issued vide QMG Branch, Integrated Headquarters of Ministry of Defence (Army), New Delhi letter Number 01084/Contracts/01 (B) dated 29 August 2017.*

(b) *Status Quo be maintained on the orders for removal of the firm M/s Ahmednagar District Goat Rearing and Processing Co-op Fed Ltd issued vide DGST, Integrated Headquarters of Ministry of Defence (Army), New Delhi letter Number 63060/Q/ST-5 dated 07 November 2023.*

(c) *M/s Currymia Foods Ltd is not eligible to participate in the ongoing tendering process for supply of Meat Dressed Chilled/Frozen since the firm is not registered as approved ASC contractor as on date in terms of Paragraph 4 of Administrative Instructions issued vide QMG Branch, Integrated Headquarters of Ministry of Defence (Army), New Delhi letter Number 01084/Contracts/Q1(B) dated 29 August 2017.”*

8. The Petitioner has approached this Court by filing this writ petition with the following prayers:-

“a. Pass an appropriate writ, order or direction setting aside the impugned order dated 29.02.20224 passed by the Respondent No.4 (although the original order duly signed by the said Appellate Authority has not been supplied) on the appeal dated 22.02.2024 filed by the successor-in-interest of (Ahmednagar District Goat Rearing and Processing Cooperative Federation), the



Petitioner herein as per direction and order dated 19.02.2024 passed by a Ld. Single Judge of this Hon'ble Court in Writ Petition (C) no. 2359 of 2024 read with order dated 23.02.2024 passed by a Division Bench of this Hon'ble Court in LPA No. 153 of 2024;

b. Pass an appropriate writ, order or direction holding that the impugned order dated 29.02.2024 passed by the Respondent No. 4 is against the principles of natural justice and set aside the same;

c. Pass an appropriate writ, order or direction so that the Petitioner may be allowed to participate in the tender dated 24.01.2024 and all subsequent tender of the Respondents;

d. Pass an appropriate writ, order or direction holding that the Petitioner is deemed included in the list of approved contractor in view of the facts and circumstances of the case especially in view of the fact the Petitioner has been undertaking the supply of product namely Meat Dressed / Chilled /Frozen as part of entitled free ration of armed forces not only on behalf of its predecessor-in-interest (Ahmednagar District Goat Rearing and Processing Cooperative Federation) but also that the Petitioner has been supplying the same product on account of default committed by those contractors who have defaulted in supply of this product notwithstanding the contract was awarded by the Respondents including in the stations of Respondent No. 3 and in the station of Southern Command Headquarters on behalf of those defaulting contractors as has been mentioned in the present petition;

e. In the alternative to above prayer (d), pass an appropriate writ, order or direction commanding the Respondents especially the Respondent No. 2 to



expedite its registration when admittedly all the documents and necessary technical and hygiene inspection has been carried out by the Respondents and/or under aegis of the Indian Army with respect to the entire processing unit I facilities of the Petitioner's predecessor-in-interest (Ahmednagar District Goat Rearing and Processing Cooperative Federation) while permitting the Petitioner to participate in the existing tender dated 24.01.2024 of the Respondent No. 3;

f. Pass an appropriate writ, order or direction holding that the purpose of passing the impugned order has a hidden agenda of not allowing the Petitioner to participate in the tender direct the Respondents to compensate the Petitioner for any consequential damages / loss of profit for prohibiting the Petitioner in participating in the tender without any rhyme or reason; and

g. pass any other and/or grant further relief to the Petitioner management as his Hon'ble Court may deem fit and proper in the circumstances of the present case."

9. With the consent of the parties, the writ petition is being disposed of at the admission stage itself.
10. Heard learned Counsel for the Petitioner and learned Counsel for the Respondents and perused the material on record.
11. Learned Counsel for the Petitioner contends that the company was incorporated only to take over the entire running business of the Federation and, therefore, there is no change in the entity and the Order dated 07.11.2023 removing the Federation from the approved list of ASC contractors is unsustainable in law. It is stated that the purpose of permitting



only registered persons to participate in the tender is to ensure that only persons who time tested and recognized participate in the bid to ensure regular supply of meat to the Army.

12. Learned Counsel for the Petitioner states that the Petitioner has only taken over the running business of the Federation and, therefore, the erstwhile contractor could not have been removed and the application for registration of the Petitioner ought to have been considered and approved by this time so that the entity which continues to remain the same should be permitted to bid in its new *avatar*.

13. Learned Counsel for the Petitioner submits that any business entity either a company, a Society, proprietary firm/partnership firm go for restructuring or merger/amalgamation/demerger etc., to efficiently continue to do the existing business and the same is duly recognized way of doing business. He places reliance on the judgment passed by the Apex Court in Saraswati Industrial Syndicate Ltd. v. Commissioner of Income Tax, 1990 (Supp) SCC 676 and more particularly Paragraphs No.5 and 6 of the said judgment, which reads as under:-

“5. Generally, where only one company is involved in change and the rights of the shareholders and creditors are varied, it amounts to reconstruction or reorganisation of scheme of arrangement. In amalgamation two or more companies are fused into one by merger or by taking over by another. Reconstruction or ‘amalgamation’ has no precise legal meaning. The amalgamation is a blending of two or more existing undertakings into one undertaking, the shareholders of each blending company become substantially the shareholders in the company which is to carry on the blended undertakings. There may be amalgamation either by the transfer of two or more



undertakings to a new company, or by the transfer of one or more undertakings to an existing company. Strictly 'amalgamation' does not cover the mere acquisition by a company of the share capital of other company which remains in existence and continues its undertaking but the context in which the term is used may show that it is intended to include such an acquisition. See : Halsbury's Laws of England (4th edition volume 7 para 1539). Two companies may join to form a new company, but there may be absorption or blending of one by the other, both amount to amalgamation. When two companies are merged and are so joined, as to form a third company or one is absorbed into one or blended with another, the amalgamating company loses its entity.

6. In General Radio and Appliances Co. Ltd. v. M.A. Khader [(1986) 2 SCC 656] the effect of amalgamation of two companies was considered. M/s General Radio and Appliances Co. Ltd. was tenant of a premises under an agreement providing that the tenant shall not sub-let the premises or any portion thereof to anyone without the consent of the landlord. M/s General Radio and Appliances Co. Ltd. was amalgamated with M/s National Ekco Radio and Engineering Co. Ltd. under a scheme of amalgamation and order of the High Court under Sections 391 and 394 of Companies Act, 1956. Under the amalgamation scheme, the transferee company, namely, M/s National Ekco Radio and Engineering Company had acquired all the interest, rights including leasehold and tenancy rights of the transferor company and the same vested in the transferee company. Pursuant to the amalgamation scheme the transferee company continued to occupy the premises which had been let out to the transferor company. The landlord initiated proceedings for the eviction on the ground of unauthorised sub-letting of the premises by the transferor company. The transferee



company set up a defence that by amalgamation of the two companies under the order of the Bombay High Court all interest, rights including leasehold and tenancy rights held by the transferor company blended with the transferee company, therefore the transferee company was legal tenant and there was no question of any sub-letting. The Rent Controller and the High Court both decreed the landlord's suit. This Court in appeal held that under the order of amalgamation made on the basis of the High Court's order, the transferor company ceased to be in existence in the eye of law and it effaced itself for all practical purposes. This decision lays down that after the amalgamation of the two companies the transferor company ceased to have any entity and the amalgamated company acquired a new status and it was not possible to treat the two companies as partners or jointly liable in respect of their liabilities and assets. In the instant case the Tribunal rightly held that the appellant company was a separate entity and a different assessee, therefore, the allowance made to Indian Sugar Company, which was a different assessee, could not be held to be the income of the amalgamated company for purposes of Section 41(1) of the Act. The High Court was in error in holding that even after amalgamation of two companies, the transferor company did not become non-existent instead it continued its entity in a blended form with the appellant company. The High Court's view that on amalgamation there is no complete destruction of corporate personality of the transferor company instead there is a blending of the corporate personality of one with another corporate body and it continues as such with the other is not sustainable in law. The true effect and character of the amalgamation largely depends on the terms of the scheme of merger. But there cannot be any doubt that when two companies amalgamate and merge into one the transferor



company loses its entity as it ceases to have its business. However, their respective rights or liabilities are determined under the scheme of amalgamation but the corporate entity of the transferor company ceases to exist with effect from the date the amalgamation is made effective.”

14. It is submitted that subsequent to the merger and taking over of the entire business of erstwhile Cooperative Federation, the Petitioner applied for all the relevant certification required by it to continue the same business and the same was issued in the name of the Petitioner and the Petitioner after obtaining all the necessary certification and approvals from the competent authorities, applied afresh for grant of registration in the name of the Petitioner with Respondent No.2 which is pending since 01.11.2023 and there is no reason not to register the Petitioner as a contractor and carry on the business of the Federation which it had taken up. He states that the act of the Respondents in not registering the Petitioner is arbitrary. It is further stated that there has been no default on the part of the Petitioner who was carrying on with the business of the erstwhile Federation, and therefore, the Petitioner is fully competent to participate in the tender.

15. *Per contra*, learned Counsel for the Respondents draws the attention of this Court to the affidavit given by the Federation at the time when the contract was given. He states that the affidavit categorically specifies that if the Federation failed to notify of the subsequent amalgamation with another contractor or firm, then their name would be removed from the list of contractors. He states that the Petitioner had taken over the running on 04.10.2022, and the information was given only after 11 months and, therefore, the Federation had already incurred the liability of being removed.



Learned Counsel for the Respondent also states that once a firm is removed, then it will not be considered for registration.

16. Learned Counsel for the Respondents also submits that the firm can be reinstated only after a period of two years. He further states that since the Petitioner has not yet been approved as a contractor, he is not entitled to participate in the tender. It is also stated that Clause 43 of the Regulations governing the field stipulates that if the contractor is the sole proprietor then on the death of the proprietor, the name of the firm shall be removed from the list of approved ASC contractors by the DGST and the legal heir(s) had to apply afresh and on that analogy the Petitioner has to apply afresh since the sole proprietor has ceased to be in existence..

17. This Court has given its consideration to the contentions raised by the parties and has perused the material on record.

18. At this juncture, it is necessary to reproduce certain paragraphs of the instructions regarding the procedure for registration and re-verification of contractors and conclusion of the ASC Contractors for meat dsd/broiler dsd in chilled/frozen state, the relevant portion of the same read as under:-

“4. Meat dsd/broiler dsd in chilled/frozen state required for consumption by troops and to be supplied by ASC, will be procured from ASC Contractors registered for supply of meat and broiler in chilled/frozen state.

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15. (a) In case, the applicant or any of the partners (if a firm) has been removed/banned/suspended to do business with any Government Department, he/she (or the firm) will not be considered for registration. This decision will also apply in those cases where any



partner of the applicant firm may have been a partner of a firm, which has been removed/banned/suspended. The MGASC will immediately info the Dte Gen of Sup & Tpt in writing bringing to notice the exact details of removal/banning/suspension.

xxx

28. Reinstatement of Removed Contractors. Once removed, the name of a firm/contractor may not be restored on the approved list unless it/he satisfies the normal registration requirement and the Competent Authority is satisfied that the firm/Contractor should be registered. In no case, however, the reinstatement shall be effected within two years from the date of firm's/Contractor's removal from the approved list.

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43. Furthermore, the deceased contractor or such a sole proprietor firm shall be removed from the list of approved ASC contractors by the DGST and legal heir(s) be advised to apply for fresh regn, if he/she/they so desire. However, since such a removal is not for the conditions laid down in Para 19 of Gol, MOD letter No PC/RAKSHA/63060/Q/3633/D(QS) dt 26 Sep 06, no penal clauses like forfeiture or debarment of two years for seeking fresh registration will be applied in such a case."

19. It is also necessary to reproduce the affidavit given by the Federation at the time of grant of tender in its favour, which reads as under:-

"(a) I/We am/are Coop federation in the name of Ahmednagar District Goat Rearing and Processing Co-op Fed Ltd registered with IHQ of MoD (Army) as an approved ASC Contractor for the supply of Meat dsd Frozen/Chilled .



(b) I/We certify that I/We am/are neither working in any capacity, either paid or otherwise, for any other firm/individual on the approved list of ASC Contractors, nor I/We will take up such an assignment so long as I/We remain on the list of approved ASC Contractors.

(c) I/We clearly understand that if it should be found that I/We have given a false certificate or that I/We fail to notify the fact of my/our subsequent amalgamation with another Contractor or firm, my/our name will be removed from the list of approved Contractors, and any contract that I/We may be holding at the time is liable to be rescinded.

(d) In consideration of my/our being registered as approved ASC Contractor, I/We hereby agree that we shall not withdraw, amend or attach any condition or conditions to my/our tender(s) submitted to the military authorities before the date mentioned in the said tender(s) for acceptance, and if I/We do so, Government shall be entitled to forfeit my/our earnest money deposited along with the said tenders and remove me/us from the approved list of ASC Contractors, without prejudice to any other right or remedy of Government for such breach on my/our, part.”
(emphasis supplied)

20. The Federation was a registered contractor. The Petitioner company was incorporated for the purpose of taking over the business of the Federation. The sole proprietor of the Federation, i.e., Minal Ashok Kale, is 25.71% shareholder of the Petitioner company. The Federation was, therefore, well aware of the fact that it had to inform the Respondents regarding the fact that the running business of the Federation has been taken



over by the Petitioner company and a decision is necessary whether the Respondents would continue with the amalgamated entity or not. The affidavit given by the Federation has been clearly violated and since it has been taken over by the Communication dated 04.10.2022 and the intimation has been given after 11 months. The Federation has been removed from the list of approved ASC Contractors. The Petitioner, which is the successor interest, has yet not been registered with the Respondents. The fact that Minal Ashok Kale, who was the sole proprietor of the Federation, is 25.71% shareholder of the Petitioner company does not mean that the Petitioner is the new *avatar* of the new Federation. Further, on the business being taken over by the Petitioner as the erstwhile contractor has ceased to exist, the Petitioner has to reapply to be enlisted as a contractor applying the analogy of Regulation 43, as mentioned above.

21. The Petitioner is a company incorporated under the Companies Act, and therefore, is an independent juristic person which has a distinct identity, which is a sole proprietorship. It cannot be, therefore, legally said that the Petitioner and the Federation are the same. The Petitioner was carrying on with the obligations of the Federation does not mean that the Petitioner gets automatically entitled to supply meat to the Army.

22. Even if this Court accepts the argument of the learned Counsel for the Petitioner that the Petitioner is only the new avatar of the Federation, once the name of the Federation has been removed from the list of approved ASC Contractors, then it cannot be re-registered immediately in terms of Clause 15(a). The application of the Petitioner is still pending. Clause 4 mandates that meat will be procured only from ASC Contractors registered for supply of meat. Till now, the Petitioner is not registered as the ASC Contractors.



The Petitioner, therefore, cannot insist on participating in the tender on the ground that the Federation which was registered contractor has been taken over by the Petitioner company.

23. As stated earlier, this is a case where a sole proprietorship has been taken over by a company which is an independent juristic personality. Viewed in this light, the judgment of the Apex Court in Saraswati Industrial Syndicate Ltd. v. Commissioner of Income Tax, 1990 (Supp) SCC 675 would not apply.

24. In that case, the brief facts were that Saraswati Industrial Syndicate was a limited company carrying on business of sugar and machinery for sugar mills and other industries and another company namely, Indian Sugar and General Engineering Corporation which was also manufacturing machinery parts for sugar mills got amalgamated with Saraswati Industrial Syndicate.

25. The question that arose for consideration was whether the expenditure of Rs.58,735/- which had been allowed to Indian Sugar and General Engineering Corporation on accrual basis in its earlier assessment could be claimed by Saraswati Industrial Syndicate or not. The facts in the present case and the issue which arises in the present case are entirely different. The purpose of Clause 4 is only to permit only a registered contractor to supply meat. A sole proprietorship under the name of Cooperative Federation was the registered contractor. That registered contractor has lost its existence. The Petitioner company which has taken over the business of the Federation cannot continue as a registered contractor because the Petitioner company being an independent juristic entity has to register afresh.

26. In that view of the matter, the impugned order which has rejected the



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appeal does not require any interference.

27. The Respondent is directed to consider the application of the Petitioner forthwith in accordance with law, preferably within a period of three weeks from today. The Respondents are directed to decide the said application on its own merits without being influenced by the decision of this Court.

28. The petition is dismissed along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

MARCH 14, 2024

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