



2024:DHC:1671-DB



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

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Date of decision: 28.02.2024

+ **LPA 132/2020 & CM 9475/2020, CM 39343/2021**

M/S VAIDYA INDUSTRIES

..... Appellant

Through: Mr Praveen Chandra, Advocate.

versus

GOVT E MARKETING & ORS

..... Respondents

Through: Ms Shweta Bharti, Ms S. Akshata and
Mr Upamanyu Ganguly, 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 02.12.2019 passed by the learned Single Judge.
2. The appellant i.e., the writ petitioner, approached this Court as it is aggrieved by the decision of the learned Single Judge whereby, the order passed by respondent nos. 1 & 2, in effect, the Government E-Marketing [in Short, "GEM"] portal, disabled the appellant from accessing the said portal.
3. We may note that while the writ petition was pending, GEM was directed by the Court, *via* order dated 01.11.2019, to hear the disputants i.e., the appellant/ writ petitioner and respondent no.3.
4. The record shows that after according hearing to the parties, GEM passed an order on 08.11.2019. The net effect of the order dated 08.11.2019





was that the period for which “disablement” was operating *qua* the appellant/writ petitioner was reduced from one year to 90 days, commencing from the date when the initial order was passed.

4.1 The record shows that in the first instance, the disablement was ordered *via* communication dated 14.10.2019, which kicked in retrospectively, i.e., from 11.10.2019.

5. On behalf of the appellant, it was pointed out that respondent no.3 i.e., the buyer, filed an incident report with the GEM only on 05.11.2019. The argument advanced on behalf of the appellant is that by then, the order of disablement had already been passed by the GEM.

6. We may note that in rebuttal, Ms Shweta Bharti, learned counsel, who appears on behalf of the respondent nos. 1 and 2, says that the written communication, however, was sent by respondent no.3 i.e., the buyer, which is dated 04.10.2019.

7. Be that as it may, it is not in dispute that in so far as the appellant i.e., the writ petitioner and respondent no.3 i.e., the buyer are concerned, they are having their inter se disputes adjudicated before an arbitral tribunal.

8. Ninety (90) days for which the appellant was disabled from accessing the portal has already expired.

9. The concern of the appellant today is that the observations made by the learned Single Judge and those made by GEM in its order dated 08.11.2019 should not come in the way of its right and contentions in the pending arbitration proceedings.

10. It is also the concern of the appellant that the order dated 08.11.2019 passed by the GEM and the order passed by the learned Single Judge should not be construed as being stigmatic as it would affect its business dealings





with third parties.

11. Ms Bharti says in no uncertain terms that firstly, the order passed by GEM, as referred to above, was an order of disablement and not blacklisting/ debarment. Secondly, Ms Bharti says that it is an unequivocal stance of GEM that its order is not stigmatic.

12. Thus, given the stand taken by Ms Bharti on behalf of the GEM, in our view, the concerns of the appellant stand addressed.

13. We may also note that respondent no.3 i.e., the buyer, did not participate in the proceedings, either before the learned Single Judge or this Court.

14. Therefore, the appeal is disposed of with the following directions:-

- i. The observations made by the learned Single Judge in the impugned judgment will not, in any manner, come in the way of the appellant asserting its rights and contentions in the pending arbitration proceedings.
- ii. The order dated 08.11.2019 passed by GEM will be construed only as an order of disablement, and not as an order of blacklisting/debarment.
- iii. The order dated 08.11.2019 passed by GEM or the order of the learned Single Judge will not be construed as casting a stigma on the appellant.

15. Pending applications shall also stand disposed of.

16. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J.
(JUDGE)

AMIT BANSAL, J.
(JUDGE)

FEBRUARY 28, 2024/rt

