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

Date of Decision: 27th November, 2024

+ **W.P.(C) 11440/2022 & CM APPL. 33773/2022**

TR CHADHA AND CO. LLP

.....Petitioner

Through: Mr. Amit Sibal, Senior Advocate with
Ms. Samapika Biswal, Mr. Vinamra
Kopariha, Ms. Soumya Sannidhanam
and Mr. Aman Kumar Yadav, Mr.
Ankur Vyas, Advocates.

versus

REC LIMITED

.....Respondent

Through: Mr. Atul Shanker Mathur, Mr. P.
Mehrotra, Mr. Subhankar, Mr.
Umang Katakiya, Advocates

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. The Petitioner, a limited liability partnership, engaged in the profession of Chartered Accountancy, was appointed as Lender's Financial Advisor for 660 MW coal based Thermal power project which was being set up by M/s Ind-Barath Energy (Madras) Ltd.,¹ in Tamil Nadu. This work was awarded by Power Finance Corporation Ltd² *vide* engagement letter dated

¹ "IBEML"

² "PFC"



23rd February, 2011 as amended by letter dated 02nd May, 2016.³

2. The Respondent, REC Limited, is a significant player in the power financing sector and became part of the consortium of lenders that had sanctioned a term loan facility to IBEML in November 2014. However, the Petitioner emphasizes that their contractual relationship was solely with PFC, and there was no direct privity of contract between the Petitioner and the Respondent.

3. The Petitioner challenges the impugned order dated 7th July, 2022⁴ issued by REC Limited blacklisting them from entering into contracts with the Respondent for a lifetime. The Petitioner contends that the order is unsustainable on several grounds, including the violation of Principles of Natural Justice. They argue that the Respondent did not issue any show cause notice or provide an opportunity for the Petitioner to respond to the allegations before passing the blacklisting order. The impugned order is unreasonable and lacks application of mind, as it does not disclose the basis or rationale for the severe action taken. The lifetime blacklisting is excessively harsh and infringes upon the Petitioner's right to participate in public contracts, affecting its livelihood and reputation. The order is entirely based on a 'Self-Contained Note' by the Central Bureau of Investigation (CBI), which was not provided to the Petitioner, impeding their ability to respond effectively.

4. The Respondent, on the other hand argue that the blacklisting order was initiated based on the "Self-Contained Note" enclosed with the CBI communication dated 31st December, 2021. The CBI had conducted an

³ Collectively referred to as "the assignment"

⁴ "Impugned order"



investigation revealing that one of the partners of the Petitioner firm was involved in fraudulent activities related to the project. They further emphasise that since the CBI called upon the Respondent to take appropriate action against the Petitioner, in light of the investigation carried out by them, it was imperative for them to take the impugned action.

5. The Respondent further contends that in cases where a detailed investigation by a competent authority, like the CBI, has established involvement in fraudulent activities, issuing a prior show cause notice is not necessary. The chargesheet filed by the CBI is an outcome of the detailed investigation conducted by them. Moreover, in the final report filed by CBI, one of the partners of the Petitioner's firm-Mr. Pravin Kumar Jabade is named as an accused. Since, CBI has undertaken a detailed investigation and directed them to take appropriate action against the Petitioner, the blacklisting order without prior show cause notice is not against the Principles of Natural Justice as the allegations and findings raised by the Petitioner are found on sufficient grounds. They also invoke the 'doctrine of empty formality,' suggesting that affording the Petitioner any opportunity to respond would not alter the outcome.

6. Regarding the Petitioner's contention on the lack of privity of contract, the Respondent argues that the Petitioner was appointed as the Lead Financial Advisor (LFA) on behalf of a consortium of lenders. As a member of this consortium, the Respondent assert that they have the right to decide whether to engage with the Petitioner in future contracts, particularly in view of the developments uncovered during the CBI investigation.

7. On the issue of proportionality, the Respondents rely on the Revised Procurement Guidelines, 2016, to contend that the misrepresentation of facts



and misleading reporting by a partner of the Petitioner's firm, who has been named as an accused in the chargesheet warrants stringent action. They argue that the guidelines permit the indefinite blacklisting of firms under such circumstances, asserting that the Respondents were well within their rights to impose a perpetual blacklisting against the Petitioner.

Analysis and Findings

8. The Court has deliberated on the aforementioned contentions of the Respondents. Considering the fact that blacklisting is a serious action that has severe repercussions on the conduct business and affects its reputation of any entity, the foremost concern in the instant case, is the violation of Principles of Natural Justice. Here, the impugned order of blacklisting stems from the action of a CBI case being registered against specified individuals mentioned in the note. The Impugned order is extracted hereinbelow:

"Dear Sir,

- 1. Whereas M/s TR Chadha & Co was engaged as lenders Financial Advisor (IFA) for the regular monitoring /review of financial progress of the 1X600 MW Coal based Thermal Power Project at Sasthavinallur & Pallakurichi Village, Sathankulam Taluk, Tuticorin, Tamil Nadu of M/s Ind Bharat Power (Madras) Limited.*
- 2. Whereas a regular case has been registered by CBI on 29/4/2019 u/s 120B r/w 420 and 406 of IPC against accused's (1) M/s Ind Bharat Power (Madras) Limited (2) Shri K. Raghu Rama Krishna Raju, (3) Shri Madhusudan Reddy, both directors of M/s Ind Bharat Power (Madras) limited (4) M/s Ind Bharat Power infra limited, Hyderabad (5) Axis Bank limited, CBB Hyderabad & other unknown persons.*
- 3. Whereas you had been appointed for regular review of financial progress of the project. The investigation conducted by the CBI in the case revealed that your firm in respect of the above Project has given misleading reporting and in furtherance of the criminal conspiracy with the accused wilfully did not perform the duties as per the scope of work assigned to him and thereby facilitated IBPML of the fraud. Therefore you had failed to discharge your duties with due diligence as per work order.*
- 4. Whereas the Competent Authority prima facie considered the*



findings of CBI are of serious nature and it is not in the interest of the REC Ltd to continue business dealing with your firm for life time and therefore you are hereby blacklisted for entering into contracts with REC Ltd.

5. This order shall have the following effects: a. In cases where tenders have already been issued to you and price bids are yet to be opened, the Price Bid submitted by you shall not be opened and BGIEMD, if any, submitted by you shall be returned.

b. During the period of Blacklisting, no Business Dealing shall be held with your firm. No Enquiry/ Bid/ Tender shall be issued to your firm nor will the bids submitted by your firm be entertained.”

9. However, the Respondents’ reliance on the CBI’s ‘Self-Contained Note’ without providing a copy to the Petitioner significantly undermines the principles of natural justice. The absence of a show-cause notice and the failure to disclose the specific allegations or the evidence forming the basis of the decision have effectively deprived the Petitioner of an opportunity to respond. This deprived the Petitioner an opportunity to put forth an effective defence or offer explanation to the charges. This procedural lapse vitiates the fairness of the process. Furthermore, the Respondent appears to have acted solely on the basis of the CBI’s communication, without conducting an independent assessment or verification of the allegations against the Petitioner firm. The Competent Authority considered the findings of the CBI to be of a ‘*prima facie*’ serious nature and concluded that it was not in the interest of REC Limited to continue business dealings with the Petitioner’s firm. While such a conclusion might justify initiating a blacklisting process, it cannot serve as the sole basis for punitive action without adhering to due process. A ‘*prima facie*’ assessment necessitates that the concerned party be given an opportunity to respond to the allegations before any definitive action is taken.

10. It is pertinent to note that the Petitioner is a Limited Liability



Partnership (LLP) and was not named as an accused in the FIR registered by the CBI. Only one of the partners of the Petitioner firm has been implicated in the chargesheet filed by the CBI not the LLP as a whole. While it is acknowledged that firms can, under certain circumstances, be held liable for the actions of their partners, such liability must be established through due process and cannot be presumed. In the absence of any *prima facie* findings or evidence suggesting the firm itself was complicit in the alleged misconduct, or that the misconduct was carried out with the knowledge or approval of the other partners, holding the entire firm liable appears to be unjust. The principles natural justice demand that the Petitioner should have been afforded an opportunity to present its case and respond to the allegations before such a drastic measure as blacklisting was imposed. Therefore, the Respondent ought to have issued a show cause notice and allowed the Petitioner to provide an explanation prior to taking the action of blacklisting.

11. It is pertinent to note that the Petitioner had completed its terms of engagement in 2016, and the impugned action was initiated six years later based on certain facts that surfaced during a criminal investigation. The blacklisting is based entirely on the investigation conducted by the CBI. The Respondent did not, on its own, find any wrongdoing on the part of the Petitioner LLP. Instead, they proceeded solely on the basis of the CBI report and concluded that, in respect of the project in question, the Petitioner had provided misleading reports and, in furtherance of a criminal conspiracy with the accused, wilfully failed to perform duties as per the scope of work assigned, thereby facilitating IBEML fraud. While the CBI report may serve as valid ground to blacklist, in the facts of the present case, the Petitioner



should have been given an opportunity to explain its position before such a drastic measure as blacklisting is imposed. Denying the Petitioner this opportunity violates fundamental principles of due process.

12. The impugned blacklisting order has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. Blacklisting orders have been viewed by this Court as a drastic remedy and the orders passed have been subjected to judicial scrutiny. The fact that a disability is created by the order of blacklisting requires objective satisfaction. The exceptions to the principles of natural justice are few and must be applied cautiously. The doctrine of empty formality applies only in cases where, granting an opportunity to be heard would make no difference to the outcome. In the present case, providing a hearing could have allowed the Petitioner firm to clarify its position, present exculpatory evidence, or suggest remedial measures, especially in light of the fact that it is one of the partners who has been accused in the chargesheet and not the firm in itself.

13. Further, while blacklisting is fundamentally a business prerogative enabling an entity to steer clear of future contractual associations, the gravity and repercussions of such a decision demand strict adherence to established legal principles. It must also adhere to the doctrine of proportionality, ensuring that the measure taken is fair, reasonable, and commensurate with the alleged misconduct. The period of debarment must always correspond to the nature and gravity of the offence attributed to the erring party. In the present case, the decision to impose a perpetual blacklisting on the Petitioner is an extreme measure akin to 'civil death.' Such indefinite exclusion from commercial participation inflicts far-reaching



consequences not only on the firm but also on its employees. Therefore, determining the Petitioner's integrity in commercial dealings ought to have been preceded by a detailed inquiry, affording the Petitioner a fair opportunity to defend itself.

14. Thus, without going to the merits of the charges levelled against the Petitioner, since there are procedural infirmities in the impugned action, the petition deserved to be allowed and accordingly, following directions are issued:

- (a) Impugned order dated 7th July, 2022 is set aside.
 - (b) Respondents, if so advised, shall issue a fresh show cause notice to the Petitioner within a period of six weeks from today, detailing all the facts and the proposed action against the Petitioner affording them adequate opportunity to put forth their stand.
15. On consideration of such response from the Petitioner, Respondent shall take appropriate action in accordance with law.
16. All rights and contentions of the parties are left open.
17. The present petition is disposed of along with pending application(s).

SANJEEV NARULA, J

NOVEMBER 27, 2024/ab