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* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ W.P.(C) 11156/2024 & CM APPLs. 46101-46103/2024

AURIONPRO SOLUTIONS LIMITED .....Petitioner

Through: Ms. Manasi Chatpalliwar, Mr. Pranav Proothi and Mr. Aditya Singh, Advocates.

versus

GOVERNMENT OF NCT OF DELHI .....Respondent

Through: Mr. Tushar Sannu and Mr. Sahaj Karan Singh, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **13.09.2024**

1. The present petition assails order dated 07th June, 2024,[1] passed by the Respondent terminating the Master Services Agreement[2] dated 01st October, 2020, which was executed for implementing the Automatic Fare Collection System[3] in cluster buses for NCT of Delhi. The said order was passed consequent to alleged non-compliance of conditions of the said Agreement. The main grievance of the Petitioner is that a show cause notice informing of the alleged breach ought to have been given before the termination order was passed. In such circumstances, the Petitioner seeks the following reliefs:

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[1] "the termination order"
[2] "MSA"
[3] "AFCS"

"A. *Call for the records of the Respondent relating to the subject matter of the captioned Writ Petition;*

B. *Allow the present Writ Petition;*

C. *Issue a writ of certiorari and/or such appropriate writ quashing the Impugned Termination Order bearing reference no. 039/PCO/DTC Sectt./13/364/33340 and dated 07.06.0224, issued by the Respondent and declare the termination of the Master Services Agreement dated 01.10.2020 (subsequently amended by way of an amendment agreement dated 1.09.2021 Annexure 21 Page no. 381-387) by the Respondent as improper, untenable and without cause;*

AND/OR

D. *Till there is an adjudication of the Petitioner's default/material breach under the Master Services Agreement dated 01.10.2020 (subsequently amended by way of an amendment agreement dated 1.09.2021 Annexure 21 Page no. 381-387), if any, by a competent court or forum, issue a writ of mandamus directing that the Impugned Termination Order shall only operate/be inter-party, i.e., between the Petitioner and the Respondent in terms of the Master Services Agreement dated 01.10.2020 (subsequently amended by way of an amendment agreement dated 1.09.2021) and shall not constitute a termination or operate as a disqualification or qualifying bar for purposes of any other RFP/tender/bid/contract with any other party; OR*

E. *Issue a writ of mandamus directing that the Impugned Termination Order shall only operate against the Petitioner, in relation to RFPs/Tenders of similar work and similar nature, i.e., for Automatic Fare Collection Systems and similar digitization of fare collection systems for buses, and shall not constitute a termination or operate as a disqualification or qualifying bar for the purposes of any other RFP/tender/bid/contract with any other party for any other nature of work for which the Petitioner is otherwise technically/financially qualified;*

F. *Issue a writ of mandamus directing the Respondent to deposit the amount of INR 2,95,21,600/- forfeited towards the Performance Bank Guarantee with the Hon'ble High Court during the pendency of the writ proceedings"*

2. Ms. Manasi Chatpalliwar, counsel for Petitioner, apprises the Court that on 14th August, 2024, the Petitioner has commenced arbitral

proceedings by issuing a notice under Section 21 of the Arbitration and Conciliation Act, 1996. While acknowledging that the Petitioner is prepared to address their grievances before the arbitral tribunal, she submits that the Court should consider granting relief specifically under Clause (E). She argues that failing to grant this relief would severely prejudice the Petitioner, effectively rendering them ineligible for participating in similar future tenders for AFCS and similar digitization projects for buses. Furthermore, Ms. Chatpalliwar emphasizes that the termination order should not be interpreted as a debarment or blacklisting order, which would preclude the Petitioner from future opportunities. She asserts that this specific relief—clarifying the scope and impact of the termination order—cannot be effectively obtained through arbitration. Therefore, judicial intervention is necessary to prevent undue prejudice to the Petitioner.

3. On this issue, the Court has heard the counsel for the parties. The Petitioner has already initiated arbitral proceedings to resolve the disputes arising from the termination of the MSA. Arbitration is the appropriate forum to adjudicate the issues of breach, performance, and other contractual disputes between the parties. However, the relief sought under clause (E) is beyond the scope of an arbitral tribunal, as it pertains to the future implications of the termination rather than the dispute itself. Concededly, at present, there is no debarring or blacklisting order against the Petitioner. Therefore, the termination must not be construed beyond its intended scope so as to lead to an unwarranted debarment. Thus, considering the potential for prejudice against the Petitioner in future tenders, the Court has considered Petitioner's prayer.

4. The Respondent has invoked Clause 15.1 of the MSA, to terminate

the Agreement. The Petitioner's challenge to the validity of this termination hinges on interpretation of the termination clause, which is predicated on alleged uncured material breaches by the Petitioner. The issue of whether such material breaches occurred, or whether they were left uncured by the Petitioner, is a matter that falls squarely within the domain of the arbitral tribunal. It involves a detailed analysis of the contractual obligations, the facts surrounding the alleged breaches, and the parties' respective performances under the MSA. In the opinion of this Court, delving into these aspects at this stage would not only be premature but could also prejudice the arbitration proceedings that have already been initiated by the Petitioner. Consequently, the Court must exercise restraint and refrain from examining the validity of the termination on the merits, leaving this determination to the arbitral tribunal.

5. Nonetheless, the Court considers it appropriate to address Petitioner's concern. The termination order, as presently worded, is specific to the MSA dated 01st October, 2020, and cites breaches related to that particular contract. There is nothing in the termination order that explicitly states it is intended to serve as a blanket debarment or blacklisting order against the Petitioner. Thus, in the absence of any express stipulation to the contrary, the Court finds it appropriate to clarify that the termination order should not be construed as a debarment, blacklisting, or disqualification of the Petitioner from participating in any future contracts or tenders for works of a different nature or with any other party, provided that the works are not related to the AFCS or similar digitization of fare collection systems for buses.

6. Further, it must be observed that the Respondent has issued the

termination order with the caveat that it is “without prejudice to their rights and contentions” under the MSA. Thus, it must be clarified that the Court has not delved into the merits of these rights or the validity of the Respondent’s termination action, leaving that all rights and contentions to that effect are left open.

7. The present petition, along with the pending applications, if any, is disposed of.

SANJEEV NARULA, J

SEPTEMBER 13, 2024/as