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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 5060/2023 and CM APPL. 19756/2023, 19757/2023**

M/ S SURAJ CABLES

..... Petitioner

Through: Mr. Shreeyash Lalit, Mr. Sinha Shrey
Nikhilesh, Mr Nayan Dubey, , Mr.
Swastik Verma, Mr. Faraz Khan,
Advocates. (M:8447355352)

versus

M/S INDIAN OIL CORPORATION .LTD THROUGH THE
DIRECTOR REFINERY

..... Respondent

Through: Appearance not given.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **21.04.2023**

1. This hearing has been done through hybrid mode.

CM APPL. 19757/2023 (for exemption)

2. Allowed, subject to all just exceptions. Application is disposed of.

W.P.(C) 5060/2023 & CM APPL. 19756/2023(for stay)

3. The present petition has been filed by M/s Suraj Cables challenging the orders passed by the Indian Oil Corporation ('IOCL ') both at the initial stage and the appellate stage whereby the Petitioner has been put on a holiday list and debarred from entering into any contracts with IOCL for a period of three years from 5th January, 2022 to 4th January, 2025.

4. The Petitioner had supplied certain electrical cables to IOCL. The allegation of IOCL is that a fire incident took place sometime in May-June, 2021 as the cables were defective. The Petitioner was thus put on the holiday list.



5. Ld. counsel for the Petitioner submits that the cables were supplied pursuant to a purchase order dated 11th June, 2019 and the warranty period of the cables had expired. Thus, beyond the warranty period, the Petitioner cannot be held responsible.

6. However, Id. Counsel for the Respondent submits that in the minutes of meeting dated 7th June, 2021 the Petitioner accepts that there was a manufacturing defect in the cable of feeder pillar 17A.

7. The other issue which has been raised by Mr. Shreeyash Lalit, Id counsel, is that a cryptic order has been passed by the appellate authority. The submission in this regard is that the impugned order was also passed by the DGM (Materials) and the impugned appellate order has also been passed by the DGM (Materials) and that this would be contrary to the principles of natural justice and fairness as also contrary to the holiday listing guidelines of the IOCL.

8. Having examined the matter it is seen that in the minutes of the meeting dated 7th June, 2021, the Petitioner/vendor does admit that there were manufacturing defects in the cable. In view thereof, the issue that the Court is inclined to consider in the present case is the question of proportionality of the period for which the Petitioner is put on the Holiday List, in terms of '**Kulja Industries Limited v. Chief Gen. Manager W.T. Proj. BSNL and Ors.**'[AIR2014SC9].The operative portion of the same is set out below-

“17. That apart the power to blacklist a contractor whether the contract be for supply of material or equipment or for the execution of any other work whatsoever is in our opinion inherent in the party allotting the contract. There is no need for any such



power being specifically conferred by statute or reserved by contractor. That is because 'blacklisting' simply signifies a business decision by which the party affected by the breach decides not to enter into any contractual relationship with the party committing the breach. Between two private parties the right to take any such decision is absolute and untrammelled by any constraints whatsoever. The freedom to contract or not to contract is unqualified in the case of private parties. But any such decision is subject to judicial review when the same is taken by the State or any of its instrumentalities. This implies that any such decision will be open to scrutiny not only on the touchstone of the principles of natural justice but also on the doctrine of proportionality. A fair hearing to the party being blacklisted thus becomes an essential pre-condition for a proper exercise of the power and a valid order of blacklisting made pursuant thereto. The order itself being reasonable, fair and proportionate to the gravity of the offence is similarly examinable by a writ Court. The legal position on the subject is settled by a long line of decisions rendered by this Court starting with Erusian Equipment and Chemicals Ltd. v. State of West Bengal and Anr. MANU/SC/0061/1974 : (1975) 1 SCC 70 where this Court declared that blacklisting has the effect of preventing a person from entering into lawful relationship with the Government for purposes of gains and that the Authority passing any such order was required to give a fair hearing before passing an order blacklisting a certain entity. This Court observed:

20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play



require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist.

24. Suffice it to say that 'debarment' is recognised and often used as an effective method for disciplining deviant suppliers/contractors who may have committed acts of omission and commission or frauds including misrepresentations, falsification of records and other breaches of the Regulations under which such contracts were allotted. What is notable is that the 'debarment' is never permanent and the period of debarment would invariably depend upon the nature of the offence committed by the erring contractor.

9. Issue notice. Considering the fact that almost 16 months of the holiday listing period has already gone-by, the interim relief that the Court grants at this stage is that the impugned Holiday listing of the Petitioner would not bar the Petitioner in participating in other third party tenders, so long as the disclosure relating to the impugned placement in the Holiday list is duly disclosed including the fact that almost one and a half years has already elapsed. To this extent , the Petitioner is permitted to participate in tenders relating to third parties.

10. Let the counter affidavits be filed within six weeks. Rejoinder, thereto, be filed within four weeks.

11. List before Registrar on 13th July, 2023.

12. List before Court on 17th October, 2023.

PRATHIBA M. SINGH, J.

APRIL 21, 2023

dj/rp