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

\+ W.P.(C) 9893/2024

CREST DIGITEL PRIVATE LIMITED .....Petitioner

Through: Mr. Sandeep Sethi and Mr. Jayant Mehta, Senior Advocates with Mr. Sahil Narang, Mr. Madhavam Sharma, Mr. Ayushman and Mr. Priyanshu Jain, Advocates.

versus

TELECOMMUNICATIONS CONSULTANTS INDIA LIMITED .....Respondent

Through: Mr. KPS Kohli, Advocate with Mr. Kartik Mittal, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

O R D E R

% **22.07.2024**

C.M. APPL. 40629/2024 *(seeking exemption)*

1. Exemption is granted, subject to all just exceptions.

2. The Petitioner shall file legible and clearer copies of exempted documents, compliant with practice rules, before the next date of hearing.

3. Accordingly, the application stands disposed of.

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4. Issue notice. Mr. KPS Kohli, counsel for Respondent, accepts notice.

5. Counter affidavit be filed within four weeks from today. Rejoinder thereto, if any, be filed within two weeks thereafter.

6. Re-notify on 11th November, 2024.

<u>C.M. APPL. 40628/2024</u> *<u>(seeking stay of impugned letter dated 19th June, 2024)</u>*

7. The Petitioner, Crest Digitel Private Limited, has filed the present petition assailing the impugned letter dated 19th June, 2024[1], issued by the Respondent, Telecommunications Consultants India Limited. Through this letter, the Petitioner and its subsidiaries have been banned from participating in future works and tenders of the Respondent for a period of five years. The Petitioner contends that this ban is arbitrary, lacks a justifiable basis, and violates principles of natural justice.

8. The Petitioner specializes in providing in-building solutions (IBS), which include ensuring mobile coverage in locations where a mobile network would not ordinarily be able to penetrate, such as underground tunnels and large multi-storey buildings. The Petitioner has a long-standing relationship with the Respondent, and is empanelled as a partner through a Memorandum of Understanding dated 19th February, 2021[2]. This MoU was signed pursuant to Expression of Interest No. TCIL/16/323/01/2020-21, dated 19th February, 2021[3]. As a third-party service provider, the Petitioner collaborates with the Respondent to deliver IBS and related telecom infrastructure services at various government sites.

9. On 10th September, 2021, the Respondent entered into an agreement with Delhi Metro Rail Corporation (DMRC) for the installation and operation of IBS services at various tunnel sections and underground

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[1] "Impugned Letter"
[2] "MoU"
[3] "EoI"

stations within the Delhi Metro network. On the same day, this work was awarded to the Petitioner through a subsequent agreement dated 10th September, 2021[4]. This Agreement outlined the specific responsibilities of the Petitioner in providing the necessary IBS infrastructure and services to ensure seamless mobile coverage throughout the designated areas of the Delhi Metro network.

10. Subsequently, the Respondent issued a communication dated 10th April, 2024, seeking confirmation regarding the Petitioner's compliance with Office Memorandum (OM) dated 23rd July, 2020, issued by the Ministry of Finance[5], in terms of Rule 144(xi) of the General Finance Rules, 2017. The 2020 OM, at Paragraph No. 11, precludes contractors from sub-contracting works to any other contractor from a country which shares a land border with India, unless such contractor is registered with the Competent Authority. Further, the Respondent queried the Petitioner regarding their compliance with Section 4 Clause (m) of the EoI, whereby network elements must be tested and approved as per government norms.

11. The Petitioner responded on 26th April, 2024, assuring that their actions were in accordance with the 2020 OM. It was specifically pointed out that while the Petitioner may have procured certain equipment from countries sharing a land border with India, they had not contravened the 2020 OM in light of clarifications issued on 8th February, 2021[6], which state as follows:

"3. In this context following is hereby clarified:

i A bidder is permitted to procure raw material, components, subassemblies etc. from the vendors from countries which shares a land border with

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[4] "the Agreement"
[5] "2020 OM"
[6] "Clarificatory OM"

India. Such vendors will not be required to be registered with the Competent Authority, as it is not regarded as "sub-contracting".

ii *However, in case a bidder has proposed to supply finished goods procured directly/ indirectly from the vendors from the countries sharing land border with India, such vendor will be required to be registered with the Competent Authority."*

12. The Respondent then issued a letter dated 2nd May, 2024, alleging that the Petitioner had violated Clauses 2.2(o) and 10.20 of the Agreement. Pertinently, in terms of Clause 17.2 of the Agreement, the Respondent granted time to the Petitioner to rectify/ cure any and all defects. The Petitioner responded on 9th May, 2024, denying all the allegations levelled against them. Nevertheless, at Paragraph No. 8 of their response, the Petitioner, without prejudice to their rights and contentions, indicated a willingness to discuss any alleged defaults and undertake remedial actions in terms of the Agreement.

13. Thereafter, pursuant to the Respondent's letter dated 15th May, 2024, the Petitioner carried out an inspection of the DMRC sites to assess whether the IBS infrastructure installed by them was in compliance with the 2020 OM as well as the National Security Directive on Telecom Sector[7]. In their letter dated 1st June, 2024, the Petitioner identified some components procured from one Prose Technologies India Private Limited[8], a subsidiary of Prose Technologies Co. Ltd. Hong Kong, China. Although the Petitioner maintained that this equipment was in compliance with the aforementioned Clarificatory OM, they nonetheless offered to replace the components at their own cost and expense in consultation with the Telecom Service Providers (TSPs) who own the active equipment used at the sites.

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[7] "NSDTS"

[8] "Prose India"

14. Despite Petitioner's offer to carry out the replacement, the Respondent proceeded to issue the Impugned Letter, blacklisting the Petitioner for a period of five years from doing business with the Respondent. The blacklisting order was founded on: (a) violation of the 2020 OM on account of procurement of finished goods from Prose India, and (b) deployment of equipment in violation of Government of India's NSDTS. Further, the Impugned Letter also directed the Petitioner to replace all the non-compliant equipment within a period of eight weeks from the date of the Impugned Letter, i.e. till 15th August, 2024. The Respondent further warned that failure to comply within the stipulated period would result in additional punitive actions. In view of the above background, the Petitioner has approached this Court through the present writ petition, challenging the Impugned Letter.

Analysis and Directions

15. The Court has considered the aforenoted facts and circumstances. At this interim stage, the Court is limiting the scope of its inquiry to assessing whether the Impugned Letter, which imposes a five-year ban on the Petitioner from doing any business with the Respondent, is proportionate to the allegations levied against the Petitioner.

16. The 2020 OM prohibits the subcontracting of any work to contractors from a country sharing a land border with India unless they are registered with the Competent Authority. The Clarificatory OM permits bidders to "*procure raw material, components, subassemblies, etc., from vendors from countries which share a land border with India*" without requiring these vendors to be registered with the Competent Authority, as this procurement

is not regarded as "sub-contracting". The Petitioner has contended that the equipment procured from Prose India, being passive components, falls within this exemption. This argument has been consistently and repeatedly emphasised by the Petitioner in their communications with the Respondent. However, the Impugned Letter issued by the Respondent fails to address this contention. There is no assessment of whether the components procured from Prose India constitute passive equipment, nor any reasoning provided as to why the Clarificatory OM would not apply in this case as argued by the Petitioner. This omission indicates a lack of thorough consideration of the Petitioner's explanations by the Respondent.

17. The Respondent, in its letter dated 2nd May, 2024, and in the Impugned Letter, acknowledged that the allegedly non-compliant equipment is capable of being replaced and afforded the Petitioner time to make such replacements. The Petitioner, in good faith and without prejudice to their rights and contentions, has offered to replace any non-compliant equipment, as stated in their letters dated 9th May, 2024, and 1st June, 2024. Mr. Sandeep Sethi, Senior Counsel for the Petitioner, has reaffirmed this commitment, pointing out that the Petitioner has already placed a purchase order for the replacement equipment. Moreover, he has stated that the Petitioner is willing to undertake an extensive inspection of the DMRC sites to identify and replace any other potentially non-compliant equipment in a timely manner.

18. Additionally, as per the recitals of the Agreement, it *prima facie* appears that the Petitioner is only engaged in providing passive infrastructure. Concurrently, from a reading of Paragraphs No. 3 (a) and (b) of the NSDTS guidelines, it appears that the same are applicable to TSPs, which in the present case is Reliance Jio. Consequently, the Court finds

substantial merit in Mr. Sethi's argument that the NSDTS guidelines, which are cited as the basis for alleging non-compliance by the Petitioner, do not actually apply to the Petitioner. This factor significantly undermines the Respondent's justification for the punitive action taken.

19. In light of the above, in the opinion of the Court, the five-year ban on the Petitioner has significant repercussions, affecting their business operations and reputation. Such a severe measure should be reserved for clear and egregious violations, substantiated by incontrovertible evidence. Considering the Petitioner's readiness to collaborate with the Respondent to replace the non-compliant equipment as well as cure any other defects that may have taken place, the penalty imposed by the Impugned Letter whereby the Petitioner has been blacklisted for a period of five years, is seemingly harsh and disproportionate to the allegations levied against them. Accordingly, till the next date of hearing, the operation of the Impugned Letter shall remain stayed.

20. However, it must be noted that the assessment of the equipment at the DMRC sites has only been carried out by the Petitioner. Accordingly, as agreed by Mr. Sethi, it is directed as follows:

20.1. The parties shall undertake a comprehensive joint inspection of equipment deployed by the Petitioner at all the concerned DMRC sites in order to determine whether the same is compliant with the 2020 OM, as well as in accordance with any other applicable regulatory compliances.

20.2. In the event that any non-compliant equipment is identified, the Petitioner shall take steps to expeditiously replace the same.

20.3. Let such an inspection be carried out before the next date of hearing, and an affidavit of compliance be filed to that effect.

21. Re-notify on 11th November, 2024.

SANJEEV NARULA, J

JULY 22, 2024
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