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

+ **W.P.(C) 3426/2022**

MEP INFRASTRUCTURE DEVELOPERS LTD. Petitioner

Through **Dr. Abhishek Manu Singhvi and
Mr. Sandeep Sethi, Senior Advocates
with Mr. Rajiv Shankar, Dvivedi,
Mr. Sushant Kumar Sarkar, Mr.
Rishabh Jain, Mr. Sushant Kumar
Sarkar, Advocates.**

versus

SOUTH DELHI MUNICIPAL CORPORATION AND ORS.

..... Respondent

Through **Mr. Garima Prashad, Senior Advocate
and Mr. Sanjay Vashishtha, Standing
Counsel for respondents.**

CORAM:

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

ORDER

07.03.2022

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CM. APPL. 10019/2022

Exemption is allowed, subject to all just exceptions.

W.P.(C) 3426/2022 & CM. APPL. 10017-18/2022

1. Petitioner impugns order dated 04.10.2021, passed by the respondent/Corporation directing that the petitioner is blacklisted for five years and would not be allowed to participate either itself or as a part of a joint venture in any tender for work under any municipal contract in Delhi of East Delhi Municipal Corporation, North Delhi



Municipal Corporation and South Delhi Municipal Corporation.

2. Learned senior counsel for the petitioner submits that the impugned blacklisting order is an order passed to coerce the petitioner in making payment to the Corporation of demands which are in dispute and which arise purely out of a contract.

3. Learned senior counsel submits that the impugned order itself records that the competent authority reserves its right to revoke or reduce the period of blacklisting before the expiry of period of five years upon payment of its dues by the petitioner. It is contended that this clause clearly shows that the blacklisting order has not been passed on account of any alleged conduct of the petitioner but has been passed solely to force the petitioner to succumb to the demands of the Corporation and not to agitate its claim or defend the claims of the respondent in any forum.

4. Learned senior counsel submits that not only has the petitioner been debarred from participating in the contracts of the municipal corporations at Delhi but the order has been further forwarded to several entities with which petitioner has dealings with i.e., National Highways Authority of India, Government of Maharashtra and Government of Gujarat. It is submitted that this has been done so as to prejudice the petitioner in its other contracts.

5. Learned senior counsel for the petitioner further submits that because of the debarment order, petitioner is precluded from participating in any of the tenders invited by any of the government



entities.

6. Learned senior counsel submits that petitioner had earlier filed a petition before this Court being W.P. (C) 2241/2020, which was disposed of by judgment dated 09.04.2021, holding that the disputes raised by the petitioner were civil in nature and had to be adjudicated before appropriate civil forum.

7. Learned senior counsel submits that the appellants have filed an appeal against the said judgment being LPA 145/2021 and the appeal is pending before the Division Bench. He submits that petitioner had prayed before the Division Bench to refer the parties to arbitration. However, respondents refused to accede to the request of the petitioner stating that since there is no arbitration agreements between the parties, there can be no reference to arbitration.

8. Learned senior counsel submits that respondents have not initiated proceedings before any civil forum for the adjudication of its disputes, but have initiated coercive steps *inter alia* of attachment properties for recovery of its alleged dues.

9. Learned senior counsel further submits that the show cause notice dated 29.06.2021, pursuant to which the impugned order has been passed, was duly replied to on 12.07.2021 and several disputed questions were raised by the petitioner. However, in the impugned order, the grounds and disputes raised by the petitioner have not been clearly dealt with, apart from merely stating that the reply to the show cause notice has been considered and found to be meritless.



10. Learned senior counsel further submits that no personal hearing or opportunity of hearing was granted to the petitioner.

11. Learned senior counsel further submits that respondents had also filed a petition before the National Company Law Tribunal seeking initiation of insolvency proceedings against the petitioner. However, the National Company Law Tribunal by its judgment dated 08.10.2021 also held that disputes inter-se have to be adjudicated in civil proceedings before appropriate forum.

12. Learned senior counsel relies on the decision of the Supreme Court in *B.S.N. Joshi and Sons Ltd. Vs. Nair Coal Services Ltd. & Ors.*, (2006) 11 SCC 548 to contend that when a demand is made, if the person concerned raised a bona fide dispute with regard to the claim, so long as the dispute is not resolved, he may not be declared to be a defaulter.

13. Learned senior counsel submits that without there being any adjudication on the bonafide disputes raised by the petitioner, impugned order has been passed, which virtually amounts to civil death of the petitioner.

14. Issue notice. Notice is accepted by learned counsel for respondents.

15. Learned senior counsel for respondents disputes the contentions of learned senior counsel for the petitioner. She submits that the response given by the petitioner to the show cause notice was duly



considered and found to be without any merit.

16. Learned senior counsel for the respondent further submits that for the recovery of its dues, respondent has already initiated attachment proceedings. She submits that said attachment proceedings have been challenged by the petitioner before the High Court of Judicature at Bombay and as such petitioner is precluded from raising the disputes before this Court.

17. Learned senior counsel for the respondent further submits that it was open to the petitioner to raise its dispute before an appropriate forum, however, till date petitioner has not initiated any proceedings and there is no interdict on the respondent in proceeding in accordance with law for recovery of its dues.

18. Learned senior counsel further submits that even though the contract does not provide for specific a condition for debarment, respondents in the facts and circumstances of the case have the right to take such steps as are available in law including the debarment for wilful/persistent default and non-payment of dues of the respondents.

19. Learned senior counsel for respondent No.1 submits that petitioner is also guilty of misconduct and malpractices. She relies on the decision of the Supreme Court in *Patel Engineering Ltd. Vs. Union of India & Anr.* (2012) 11 SCC 257 to contend that no personal hearing is required, in case sufficient opportunity to respond to the show cause notice has been granted.



20. Advocate on record for respondents prays for time to file counter affidavit. Let the same be filed within three weeks. Rejoinder within three weeks thereafter.

21. Prima facie from the reading of paragraph 34 of the impugned order, it appears that the blacklisting order has been issued solely for the purpose of ensuring that payment is made by the petitioner to the respondent and that is why the order records that in case of payment being made by the petitioner, the competent authority would be entitled to revoke or reduce the period of blacklisting.

22. List on 25.04.2022.

23. In the meantime, operation of impugned order dated 04.10.2021 shall remain stayed.

24. Learned senior counsel for the petitioner under instructions undertakes that the petitioner shall not submit any bid in any of the tenders invited by any of the three municipal corporations in Delhi.

25. It is clarified that this interim protection shall be without prejudice to the proceedings pending inter-se the parties before any other forum.

26. Order *dasti* under signatures of the Court Master.

SANJEEV SACHDEVA, J

MARCH 7, 2022/NA