

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO. 4328 OF 2018

Kam-Avida Enviro Engineering	}	
Pvt. Ltd.	}	Petitioner
versus		
Municipal Corporation of Greater	}	
Mumbai and Ors.	}	Respondents

Mr.Gaurav Joshi-Senior Advocate with Mr.Pradeep Thorat, Mr.Kazan Shroff and Mr.Dharmesh Jain i/b. Anil Agarwal for the petitioner.

Mr.J.F.Reis-Senior Advocate with Ms.Rupali Adhate for the Municipal Corporation.

Mr.Dushyant Kumar-AGP for respondent no.4 (State).

Mr.Nitin Parab-Executive Engineer, i/c. Solid Waste Management present.

**CORAM :- S. C. DHARMADHIKARI &
G. S. PATEL, JJ.**

DATED :- AUGUST 27, 2019

P.C. :-

1. Having considered the rival contentions, we are of the *prima facie* opinion that this writ petition raises arguable questions. *Prima facie*, the power to blacklist vesting in terms of the contractual stipulations or otherwise in a public body like the Municipal Corporation of Greater Mumbai is not disputed, but the manner of exercise of that power, in this petition, raises several

arguable questions.

2. Hence, Rule. Respondents waive service.

3. Heard both sides on the point of interim relief.

4. By the impugned order, the Municipal Corporation has proceeded to impose the punishment of blacklisting. Now, the power vesting in the Municipal Corporation, in terms of the clauses in the contract, may permit taking recourse to this step. However, what one finds is that the original order was passed by the Chief Engineer on 25th July, 2018. That is partially amended and the period of blacklisting for three years is now reduced to two years. In the same breath, it is said that the petitioner has already suffered financial embargo from May, 2014. The bank guarantee furnished by the petitioner has already been encashed. There is no question of the parties giving up their stand or contentions with regard to fulfillment of the terms and conditions of the contract. Once there is a reference in the impugned order itself to the steps taken, including reimbursing the Municipal Corporation to a substantial extent and keeping alive its contractual rights, then, all the more we do not think that the order should continue and run its course of two years. *Prima facie*, the contractual dispute should not lead to such drastic

action.

5. The petitioner has made out a case for grant of interim relief. The balance of convenience is also in its favour. The petitioner will suffer irreparable harm and injury in the event the order continues to operate for other public bodies may rely on it and deny the petitioner right to participate in other contracts.

6. In the light of the fact that the order passed in the notice of motion moved in this petition has been implemented by the Municipal Corporation, we grant interim relief in terms of prayer clause (d), which reads as under:-

“(d) That pending the hearing and final disposal of this petition this Hon’ble Court, be pleased to pass an order of injunction staying the operation and/or implementation of the Orders dated 25th July, 2018 and 30th November, 2018 (being Exhibit A and A-1 to the Petition) passed by Respondent Nos.2 and 3.”

(G.S.PATEL, J.)

(S.C.DHARMADHIKARI, J.)