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

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Reserved on 25th March, 2021

Decided on 26th March, 2021

+ **LPA No.56/2021**

NATIONAL HIGHWAYS AUTHORITY OF INDIA Appellant
Through: Mr. Tushar Mehta, Solicitor General of
India with Mr. Dayan Krishnan, Sr.
Adv. along with Ms. Padma Priya,
Mr. A.P. Singh, Mr. Dhruv Nayar &
Mr. Sukrit Seth, Advs.

versus

THEME ENGINEERING SERVICES PRIVATE LTD.
& ORS. Respondents
Through: Mr. Amit Sibal, Sr. Adv. with Ms.
Nanda Devi Deka, Mr. Sudhir Yadav,
Mr. Suryajyoti Singh Paul & Mr.
Savyasachi Rawat, Advs.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE JASMEET SINGH

JUDGMENT

JASMEET SINGH, J

LPA 56/2021 & CM APPL. 12166/2021-STAY

1. The present Letters Patent Appeal has been filed by the appellant (Original respondent in the writ petition W.P (C) No. 1173/2021) being aggrieved by the order dated 01.02.2021 passed in WP(C) No. 1173/2021

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titled as Theme Engineering Services Private Ltd. & Anr. Vs. National Highways Authority of India & Ors.

2. By virtue of the impugned order, the learned Single Judge was pleased to stay prospectively the order of debarment dated 12.01.2021.

3. The learned Senior Counsel appearing for the appellant has contended that the learned Single Judge has gone purely on the premise that the order of debarment has been passed under Clause 3.7 (ix)(b) section 2 of Appendix 'L' as the information given by two key personnel in their CVs were found to be fake.

4. The learned senior counsel for the appellant has stated that a bare perusal of Annexure-VI would show that the incorrect information in CVs was not the only ground but there were other grounds which were set out in Annexure-VI. The learned senior counsel argued for the appellant that the Review Committee after due consideration of the representations as well as the charges set out in Annexure-VI was pleased to pass an order of debarment for a period of 6 months.

5. The learned senior counsel appearing for the appellant has relied upon on NHAI Vs. Neeraj Upadhyay¹

6. The learned senior counsel appearing for the respondent on the other hand has submitted that the order of debarment dated 12.01.2021 is a penal order and none of the grounds mentioned in Annexure-VI have been made out. The learned senior counsel has drawn our attention at Clause 3.7 (ix)(b) which reads as under:-

Clause 3.7 *"The Technical Proposal should provide the following information*

¹ Civil Appeal No. 2732 of 2014 decided on 21.02.2014

using but not limited to the formats attached in Section 4:

ix) *Requirement for submission of CVs.*

- b. Key information should include years with the firm and degree of responsibility held in various assignments. In CV format, at summary, the individual shall declare his qualification & total experience (in years) against the requirements specified in TOR for the position (Ref. Annexure- I, II & III of TOR). If any information is found incorrect, at any stage, action Including termination and debarment from future projects upto 2 years may be taken by Employer on the personnel and the Firm.*

to contend that if there is any violation, action, may be taken against the personnel.

7. The learned senior counsel for the respondent has further taken us through 4.5(c) to contend that only 4 personnels were replaced and not 6 as stated in Annexure-VI. The learned senior counsel for the respondent further stated that even the ground of not extending the validity of additional bank guarantee up to 25.05.2024 is incorrect as the same was duly extended the respondent.

8. Lastly, the learned senior counsel for the respondent has relied on the judgment dated 19.04.2017 passed in L.N. Malviya Infra Projects Pvt. Ltd. & Anr Vs. National Highways Authority of India ² by the learned Single Judge of this Hon'ble Court, judgment dated 09.07.2018 passed by the Division Bench of this Hon'ble Court in National Highways Authority of India Vs. L.N. Malviya Infra Projects Pvt. Ltd. & Anr.³ to contend that order

² W.P. (C) 3326/2017

³ LPA 660/2017

of blacklisting has serious civic and economic consequences and results in loss of reputation, goodwill and damages.

9. We have heard the learned counsel for the parties and perused the records.

10. In the present case, the learned Single Judge has passed the impugned order dated 01.02.2021 on the premise that the only reason for passing the order of debarment dated 12.01.2021 was giving of false CVs of two personnels.

11. We are unable to agree.

That the order of the debarment, especially in para 10 categorically states as under:-

“Having considered the explanations and other relevant material submitted by Supervision Consultant, more particularly, set out in Annexure-VI, the Review Committee after due consideration of representations of Consultant and facts, is of the view that the same are not tenable for the reasons recorded therein. The Review Committee, therefore, reject all the contentions raised by Supervision Consultant. As regards the debarment period of 2 years, the Review Committee is of the view that it would be just and fair to reduce to 6 months and to give opportunity to the consultant to improve the quality of its services.”

12. The bare perusal of the above shows that the Review Committee categorically considers all the allegations set out in Annexure-VI and after due consideration passed the order of blacklisting of the respondent for the period of 6 months.

13. The order of debarment dated 12.01.2021 is not simpliciter is an order of debarment under order of 3.7(ix)(b) but for all the charges set out in Annexure-VI.

14. The learned Single Judge while passing the impugned order, has granted final relief to the respondent. We are of the view that since the impugned order dated 01.02.2021 visits the respondent herein with civil and evil consequences, it would be desirable if the writ petition is completely heard by the learned Single Judge and disposed off, expeditiously.

15. The said approach has found favour with the Hon'ble Supreme Court in National Highways Authority of India Vs. Neeraj Upadhyay supra.

16. In this view of the matter, we hereby set aside the order of the learned Single Judge passed in W.P.(C) 1173/2021 dated 01.02.2021. We further request the learned Single Judge to decide the writ petition expeditiously after completion of pleadings. We may note that we have not commented on the merits of contempt petition bearing No. 182/2021.

17. In view of the discussion above, the LPA is allowed.

The next date fixed in the case i.e. 08.04.2021, shall stand cancelled.

JASMEET SINGH, J

CHIEF JUSTICE

MARCH 26, 2021

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