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

% *Date of Judgment: 24th May, 2019*

+ **W.P.(C) 892/2019 & CM APPL.4055, 11615 & 6378/2019**

MADHUCOM PROJECTS LTD.

..... Petitioner

Through: Mr. Amitabh Chaturvedi, Mr. Sumit
K. Shukla, Advocates

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA Respondent

Through: Mr. Gourab Banerji, Sr. Advocate
with Ms. Padma Priya, Mr. Mukesh
Kumar, Mr. Syed Abdul Haseen, Ms.
Raka Chatterjee & Mr. Mohit Pandey,
Advocates

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. (ORAL)

1. The petitioner has filed the present writ petition under Article 226 of the Constitution of India. Primarily two reliefs are being sought.
2. The first relief arises out of the letter issued by the respondent dated 18.01.2019 and uploaded on the website on 21.01.2019 disqualifying the petitioner from participating in the tender process and in turn declaring the bid of the petitioner as non-responsive on the basis of policy circular dated 02.01.2017 issued by the respondent to the effect that the petitioner shall not be considered for award of any project in the respondent/NHAI till the petitioner achieves the committed targets in a pending project, known as NT project.

3. The second relief is sought in relation to a tender invited by the respondent where the petitioner had participated.

4. As far as the second relief is concerned, learned counsel Mr. Chaturvedi very fairly submits that since the petitioner is L-9, no relief in this regard is required to be pressed.

5. As far as the first relief is concerned, Mr. Chaturvedi has drawn the attention of the Court to a statement made in a writ petition filed by the petitioner being W.P.(C) 2470/2018 decided on 10.04.2018, more particularly, the statement as detailed below:

“3.2 Mr. Chhibber has returned with instructions. He says that the impugned Policy Circular does not amount to blacklisting and/or debarment of the petitioner. However, he says that on account of the decision being taken at the meeting held on 08.12.2016, at which the petitioner was represented, it was agreed that the petitioner would not be considered for any other project till it achieved the physical milestone set out in the subject contract.

3.3 Mr. Chaturvedi, on the other hand, submits that while the petitioner's representative participated in the meeting dated 08.12.2016, no such agreement was reached as is put forth by Mr. Chhibber. It is the petitioner's contention that it was a unilateral decision taken by the respondent/NHAI.

3.4 Be that as it may, Mr. Chaturvedi says that he is satisfied with the statement of Mr. Chhibber that the impugned Policy Circular dated 2.1.2017 does not constitute blacklisting or debarment of the petitioner.

4. Having regard to the aforesaid facts and circumstances, the statement made by Mr. Chhibber is taken on record.

5. Accordingly, the writ petition is disposed of.”

6. Learned counsel submits that despite a categorical statement having been made and on the basis of the statement, the writ petition having been disposed of, the respondent has rejected the tender on the same very ground,

which was the subject matter of the earlier writ petition. He thus argues that the circular dated 02.01.2017 be quashed.

7. Mr. Gourab Banerji, learned senior counsel, on instructions, submits that the circular dated 02.01.2017 will not stand in the way of the petitioner in participating in any future tender invited by the NHAI. However, he submits that it may be left open to the respondent to evaluate the tender of the petitioner on any other ground, which may be available to them. Mr. Banerji further submits that in case the respondent wishes to blacklist the petitioner or declare him as a non-performer, they would follow due process of law.

8. The petitioner is satisfied with the stand taken by the learned senior counsel appearing for the NHAI.

9. The NHAI shall remain bound by the stand so taken and in view thereof, as prayed, the writ petition is disposed of.

10. Interim order stands vacated. NHAI is free to award the tender as per the decision taken.

11. The writ petition is disposed of in the above terms.

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G.S.SISTANI, J

JYOTI SINGH, J

MAY 24, 2019

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