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राइट्स लिमिटेड
(भारत सरकार का प्रतिष्ठान)
रेलवे मंत्रालय
RITES LIMITED
(A Govt. of India Enterprises
Ministry of Railway)

No: RITES/PU-Ranchi/PVUNL/2023/481
Date: 30.10.2023

M/s Mehrotra Buildcon Pvt. Ltd. (MBPL)
Registered Office at 9, Rewa
Industrial Area Road,
Satna, MP- 485001

Sub: Intimation of order of Appellate Authority.

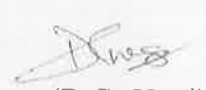
Ref: Appeal to Appellate Authority for withdrawal of Banning of Business dealings vide letter no. MBPL/RITES/23-24/10335 dated 25.08.2023.

Dear Sir,

Please find enclosed herewith an Order of Appellate Authority of RITES Limited on appeal preferred by you.

Yours faithfully,

Encl.
(Page 1 to 4)


(D.S. Negi)
General Manager/C
(Engineer-in-charge)

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**IN THE MATTER OF APPEAL FILED BY M/S MEHROTRA BUILDCON PVT. LTD
UNDER CLAUSE 9 OF THE GUIDELINES ON BANNING OF BUSINESS DEALINGS
AGAINST THE ORDER DATED 03.08.2023 OF THE COMPETENT AUTHORITY**

This Appeal is filed by Mehrotra Buildcon Pvt. Ltd., (hereinafter referred to as MBPL) vide letter dated 25.08.2023 against the Order dated 03.08.2023 of the Competent Authority under the Guidelines on Banning of Business Dealings banning the business dealing with RITES Ltd., for a period of 2 years w.e.f. 08.02.2023.

1. The brief facts of the Appeal:

- 1.1. The tender for the subject work was invited by RITES Ltd. for & on behalf of Patratu Vidyut Utpadan Nigam Ltd. (PVUNL) through E-tendering system vide Tender Notice No. 12/OT/RITES/RPO-RNC/CIVIL/PVUNL/2021 dated 04.09.2021. Bids were submitted by various bidders, including HCPL-MBPL JV (JV), wherein MBPL was among one of the two partners of the JV, with the lead member Hardev Construction Pvt. Ltd., (hereinafter referred to as HCPL). Being the lowest bidder, the work was awarded to the JV vide LoA dated 08.04.2022.
- 1.2. During the execution of the project, the Central Bureau of Investigating (CBI) registered an FIR (FIR No.RC0242022A0003 dated 02.06.2022) on the allegation of criminal conspiracy, demand of undue advantage by a public servant and bribing of a public servant under Section 120B of IPC and Sections 7 & 8 of the Prevention of Corruption Act, 1988. Subsequently, the CBI has also filed a chargesheet bearing Chargesheet No.01/2022 before Special Judge CBI vide letter dated 30.07.2022 and another chargesheet No.02/2022 before Special Judge CBI vide letter dated 29.12.2022. Based on the action of CBI, RITES issued a letter dated 08.02.2023 to MBPL suspending future business dealings with them for a period of 6 months w.e.f. 08.02.2023.
- 1.3. Thereafter, under clause 8 the Guidelines on Banning of Business Dealings. A show cause notice was issued vide letter No. RITES/PU-Ranchi/PVUNL/2023/52 dated 09.02.2023, to MBPL. In response to the same, MBPL submitted a reply vide letter dated 28.02.2023 wherein MBPL refuted the allegations made in the FIR/Chargesheet and contended that the allegations made therein are yet to be established as the matter is *subjudice* before the court with a further contention that the allegations so made are only against the employees of RITES and HCPL and the circumstances do not warrant or justify any unilateral action, including banning of business dealings.
- 1.4. After consideration of the submissions and upon the recommendation of the Banning Committee, the Competent Authority decided to ban all business dealings with MBPL for a period of 2 years w.e.f. 08.02.2023, the date on which the letter of suspension of business dealings was issued and the same was communicated to MBPL vide letter No. RITES/PU Ranchi/PVUNL/2023/322 dated 03.08.2023.

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- 1.5. Challenging this order of banning, MBPL has filed the instant appeal and has raised its objections against the order dated 03.08.2023 passed by the Competent Authority, on the grounds enumerated in the appeal and the same is not being reiterated again for the sake of brevity.
- 1.6. However, MBPL in the appeal has stated that the letter of banning of business dealing dated 03.08.2023 was not issued by an officer empowered under the applicable provision of the contract. They have further submitted that despite a clean chit given by the investigation agency and in the absence of any incriminating report against MBPL, action under clause 6 of the RITES Guidelines providing for Banning of Business Dealings cannot be invoked against them. It has also been contended by MBPL in its appeal that the notice dated 03.08.2023 banning is arbitrary, against the terms of the agreement, premature, illegal and unwarranted considering the fact that in the light of the categorical finding that MBPL had neither had any knowledge nor any involvement in the alleged offence and there are no findings of any investigation report of CBI or Police against MBPL.
- 1.7. MBPL has also referred to the supplementary final report submitted by CBI to the Ld. Special Judge, CBI Cases, Ranchi, Jharkhand vide letter dated 29.12.2022 wherein it has been mentioned that role or involvement of MBPL has not been made out and CBI has completely exonerated MBPL.
- 1.8. MBPL has also cited its engagement with RITES for the last many years wherein a number of prestigious projects have been completed satisfactorily with a consistent impeccable track record with all its client and government departments complying contractual and financial obligations and banning shall affect future projects of the company without any of its faults resulting into financial losses in addition to loss of reputation since MBPL shall be precluded from participating the future tender consequently affecting all its employees and workers associated with the company.
- 1.9. In this regard, M/s MBPL was also given an opportunity for personal hearing before me at my office at RITES Ltd. Corporate Office, 6th Floor, Shikhar, Plot No.1, Sector-29, Gurugram-122001, Haryana on 01.09.2023 wherein the matter through its representative was heard in detail.
2. On going through the contentions raised by MBPL along with the documents on record, the following facts are noted:
- 2.1. There is no illegality or procedural error in the issuance of the letter dated 03.08.2023 intimating the banning of business dealings by the Engineer in Charge, as the Guidelines on Banning of Business Dealings do not explicitly provide that the same should be communicated under the signature of the competent authority. In the instant case, the Engineer in-charge has only signed the letter communicating the decision taken by the

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Competent Authority on the banning of business dealings, as the Engineer in-charge is the one who has signed the contract agreement and issued the show cause notice to MBPL vide letter No. RITES/PU-Ranchi/PVUNI/2023/52 dated 09.02.2023. In view of the foregoing, the contention made by MBPL in this regard is not valid and hence unsustainable.

- 2.2. The contract i.e., Clause 2.4 (vii) of NIT (Section- 1 of Technical Bid) clearly stipulates that all partners/members of the JV shall comply with the provisions in the Integrity Pact and any violation of the Pact by any partner/member shall be construed as a violation by the JV. Further, as per Clause 2.4 (iv) of NIT (Section- 1 of Technical Bid), all the partners of the Joint Venture shall be liable jointly and severally for the execution of the contract in accordance with the contract terms. In this matter as per the FIR and Charge sheet filed by CBI, it is clearly established that HCPL has breached the terms and conditions of the tender document. MBPL being a partner in JV is also liable, jointly and severally, for violation of the terms and conditions of the contract. In this regard, the relevant para of JV (The 2nd para of JV agreement) entered into between HCPL & MBPL is reproduced herein below:

"That all the partners shall be jointly and severally legally liable to the employer in the discharge of all the obligations and liabilities as part of contract with the employer and severally and jointly responsible for the satisfactory/successful execution/completion of the work in all respect and in accordance with the terms and conditions as specified in the JV agreement. All the partners shall be jointly and severally liable and responsible for fulfilling the obligations of the tender/bid document"

- 2.3. From the combined reading of paras 2 and 5 of the JV Agreement dated 17.09.2022, submitted by the JV, it is evident that both JV Partners are jointly and severally responsible for all the benefits and obligations, rights and liabilities in connection with the execution of the project. Therefore, any action by one of the partners of the JV shall result in consequences and equal liability and responsibility for the other partner also.
- 2.4. That in the instant case, the Banning Committee constituted to examine and make recommendations to the Competent Authority has after due deliberations, observed that the allegations made in the FIR and chargesheet are serious in nature and during the execution of the project, the JV and lead partner have been involved in unlawful acts including committing criminal offences under Prevention of Corruption Act thereby promoting corruption in the public system.
- 2.5. Further, the OM dated 02.11.2021, issued by Department Expenditure, Ministry of Finance on 'Guidelines on Debarment of firms from Bidding' at para 19 states that *".....In case of joint venture/ consortium is debarred all partners will also stand debarred for the period specified in Debarment Order. The names of partners should be clearly specified in the Debarment Order"*.

- 2.6. Considering all the above, I find no reason for not concurring with the view taken by the Competent Authority that one of the partners of the JV is squarely involved in unlawful acts and committing an offence of such serious nature, which will erode the trust and confidence of the entire system and furthermore such acts clearly fall under the purview of sub-clause 6.3 and 6.9 of the Guidelines for Banning of Business.
- 2.7. That though in the supplementary final report submitted to the Ld. Special Judge, CBI Cases, Ranchi, Jharkhand vide letter dated 29.12.2022 by the CBI Authority it has been mentioned that the role or involvement of MBPL in the alleged crime has not been made out, it cannot be ignored that MBPL being a partner in JV with HCPL is liable for the consequences of the illegal acts of its partner in the JV and therefore is to be fastened with consequences as per the guidelines. However, it is also not to be ignored that MBPL is a minor partner of the JV and in the supplementary final report submitted by CBI to the Ld. Special Judge, CBI Cases, Ranchi, Jharkhand vide letter dated 29.12.2022, it has been mentioned that role or involvement of MBPL has not been made out and CBI has completely exonerated MBPL. Hence, as far as the test of proportionality is concerned in relation to the banning of business dealing both MBPL and HCPL and JV cannot be penalized similarly, as their degree of involvement in unlawful act is different. Therefore, the ban of two years to MBPL appears to be excessive in nature and the same needs to be reduced.

3. ORDER

In view of what has been discussed above and after hearing the matter personally at length, I am of the considered view that upon perusal of CBI's charge sheet dated 30.07.2022 and supplementary charge sheet dated 29.12.2022, no direct involvement of MBPL has been found out, however, being a partners/members of the JV with HCPL and signatory with the provisions in the Integrity Pact wherein any violation of the Pact by any partner/member may be construed as a violation by the JV. Accordingly, in order to safeguard the trust and confidence of the entire system, the appeal preferred deserves to be disposed of as partially allowed by reducing the time span of the banning of business to the extent of 1 year w.e.f. 08.02.2023, the date on which the letter of suspension of business dealings was issued to MBPL. Accordingly, I as the Appellate Authority partially modify the earlier banning order dated 03.08.2023 providing for the banning of business dealings for 2 years and reduce it to 1 (one) year.

Dated this the 2nd day of October 2023

Appellate Authority & CMD RITES Ltd


29/10/2023
(Rahul Mithal)