

(2022) 12 DEL CK 0144

In the Delhi High Court

Case No : Civil Writ Petition No. 17456 Of 2022, Civil Miscellaneous Application No. 55644 Of 2022, 55645 Of 2022

DEFSYS Solutions Private Limited

APPELLANT

Vs

Union Of India & Anr

RESPONDENT

Date of Decision : 23-12-2022

Acts Referred:

Citation : (2022) 12 DEL CK 0144

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Sandeep Sethi, Rajshekhar Rao, Pawan Sharma, Nirvikar Singh, Aditya Chatterjee, Rishabh Sharma, Kirtiman Singh, Vidhi Jain, Waize Ali Noor, Kurjala Bhardwaj, Madhav Bajaj, Amarnath Sinha

Judgement

Prathiba M. Singh, J

1. This hearing has been done through hybrid mode.
2. The present petition has been filed by the Petitioner - M/s. Defsys Solutions Pvt. Ltd., challenging the impugned order dated 9th December, 2022 bearing No.MoD ID No. 312013/1/2016-D(VIG.)/Vol. II (Et.), passed by the Respondents - Ministry of Defence, Union of India. By the impugned order, the Respondents have suspended business dealings with the Petitioner, for a period of one year or until further orders, based on the parameters set forth in paragraph C and paragraph D of the Guidelines of the Ministry of Defence for Penalties in Business Dealing, dated 21st November, 2016 (hereinafter, "Guidelines").
3. The grievance of the Petitioner is that it has been doing business with the Union of India and has been a regular supplier of various defence equipment and parts, since the year 2007. The Petitioner has several ongoing contracts with the Respondents - Ministry of Defence, and has also submitted its bids in response to the various Request for Proposal ("RFPs"). The details of the same have been specified in paragraph 20 of the present petition.

4. It is the case of the Petitioner that the impugned order dated 9th December, 2022 has come as a complete surprise to the Petitioner, as it learnt of the impugned order from the media. He further submits that no notice was issued to the Petitioner prior to the said suspension. In addition, it is submitted that the reason given for the Respondents' action was an alleged "intimation from the CBI regarding ongoing investigation against the [Petitioner] in relation to the Agusta Westland VVIP Helicopter case." As per the Petitioner, the said intimation also seems to be incorrect inasmuch as the Petitioner has no connection to the Agusta Westland case. Mr.Sethi, Id. Senior Counsel appearing for the Petitioner, submits that the Petitioner is neither an accused, nor has it ever been called for investigation in the said case. Accordingly, it is submitted that the impugned order dated 9th December, 2022 is liable to be stayed.

5. The matter was listed before this Court yesterday i.e., on 23rd December, 2022. After a preliminary hearing, the following order was passed by this Court:

"1. This hearing has been done through hybrid mode.

2. The Petitioner-M/s DEFSYS Solutions Pvt. Ltd. challenges the impugned order dated 9th December, 2022 bearing no.MoDIDNo.312013/1/2016-D(VIG.)/Vol. II (Et.) issued by the Ministry of Defence, Government of India, by which the Petitioner has been suspended for a period of one year or until further orders, with regard to any business dealings with the Respondents.

3. It is submitted by Mr. Sethi, Id. Sr. Counsel appearing for the Petitioner, that the Petitioner did not receive any notice of suspension or debarment. The Petitioner learnt from press reports on 9th December, 2022 that all business dealings have been suspended with it, due to an alleged involvement in the Agusta Westland case. It is ironical according to Id. Senior Counsel that M/s. Augusta Westland has itself not been debarred and the Petitioner is being suspended. It is submitted that the said investigation in the Augusta Westland case is several years old and, in fact, the Petitioner was not aware of any valid reason for it being suspended in this manner. He submits that the Petitioner has not received any notice from the Central Bureau of Investigation (CBI) nor is under investigation in the Augusta Westland case.

4. Mr Sethi, Id. Sr. Counsel, also highlights to the Court that the Petitioner is a regular supplier to the Ministry of Defence, Government of India. He further submits that the Petitioner has been found to be a valid bidder in various Request for Proposals (RFPs) issued by the Ministry of Defence.

5. On the other hand, Mr. Kirtiman Singh, Id. CGSC appearing on behalf of the Respondent submits that under the Guidelines of the Ministry of Defence for Penalties in Business Dealings with Entities dated 21st November, 2016, issued by the Ministry of Defence, (hereinafter "Guidelines"), if the Respondents receive an intimation from any agency such as the CBI regarding initiation of criminal investigation or enquiry against any entity, the competent authority can suspend business dealings with such entites. He relies upon Clause D.2 of the said

Guidelines for this submission.

6. The Court has enquired from Id. Counsel for the Petitioner as to whether there are any ongoing contracts which may be affected by the impugned order. Id. Sr. Counsel for the Petitioner seeks to place the list of certain ongoing contracts before the Court. Let the list of such ongoing contracts be communicated to Id. CGSC by 8:00 P.M. today, i.e., 22nd December, 2022. Id. CCGSC shall seek instructions in this regard to enable him to make submissions on the next date.

7. List on 23rd December, 2022.”

6. Today, Mr. Sandeep Sethi, Id. Senior Counsel appearing for the Petitioner submits that the list of ongoing contracts have been submitted to Id. CGSC. In addition, as of last evening, the bankers have also put on hold and suspended all remittances and other dealings in respect of the Petitioner, in view of the impugned order dated 9th December, 2022.

7. On the other hand, Mr. Kirtiman Singh, Id. CGSC, under instructions from Mr. Amar Nath Sinha, Director (Air-II), Ministry of Defence, submits that insofar as the existing contracts of the Petitioner which are already ongoing with the Ministry of Defence are concerned, the same would not be affected by the impugned order dated 9th December, 2022.

8. On merits, Mr. Singh submits that as per the Guidelines, in case of intimation received from an investigation agency, suspension can be ordered, even without notice, especially in cases involving national security, in terms of Clauses C.1(d) and Clause D of the Guidelines, including the procedure for penal action prescribed thereunder.

9. In view of the fact that the suspension order merely mentioned the intimation from the CBI, the Court queried as to the basis of the said intimation. Id. CGSC submitted that the same would be placed on record by way of an affidavit within a week. However, for the time being, the original files of the Ministry were placed before the Court, considering that the writ petition was listed for the first time only yesterday.

10. Heard Id. Senior Counsels for the Petitioner, as also, the Id. CGSC. This Court has also perused the original files handed over by the Id. CGSC, including the intimation received from the CBI by the Ministry of Defence. In view thereof, let a short affidavit be filed by 10th January 2023, in response to the stay application.

11. In the meantime, based on the submissions made, the following directions are issued, till the next date of hearing:

i. Insofar as the existing contracts are concerned, the Ministry of Defence has already clarified that the ongoing contracts would not be affected. The said statement is taken on record. In view of the said statement made by the Ministry of Defence, the impugned order dated 9th December, 2022 would not take effect

insofar as it relates to existing on-going contracts including offset contracts, executed prior to 9th December 2022. Further, bankers of the Petitioners shall not, in any manner, cause impediments in the day-to-day functioning of the Petitioner qua the said existing contracts.

ii. Insofar as the contracts which are listed in paragraph 20 of the present petition are concerned, it is submitted by Id. CGSC that a perusal of paragraph 20 itself shows that the same are still in the initial stages. Accordingly, if any of the said contracts mentioned in paragraph 20 of the present petition are likely to be concluded with any third-party, the Petitioner is permitted to approach this Court.

12. List on 17th January, 2023 for further hearing on the stay application.