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

+ LPA 320/2022 & CM APPL. 22739-40/2022

M/S SATISH CHAND RAJESH KUMAR PVT. LTD Appellant
Through: Mr.Sanjay Bansal, Adv.

versus

NEW DELHI MUNICIPAL COUNCIL & ANR. Respondents
Through: Mr.Karan Sharma, ASC for NDMC
with Mr.Abhishek Singh, Adv.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

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12.05.2022

1. The present appeal is directed against the judgment dated 29.04.2022 rendered by the learned Single Judge in W.P. (C) 8559 of 2021, whereby the writ petition preferred by the appellant/petitioner to assail the decision dated 04.08.2020 of the respondent no. 1 and the communication dated 06.11.2020, debarring the petitioner/appellant from participating for a period of three years in the NDMC tenders with effect from the date of the decision, i.e., 04.08.2020, has been dismissed.
2. The petitioner in the writ petition was awarded the work in question. It appears that disputes have arisen between the parties. Admittedly, the work under the contract was not completed in its entirety. While the respondent claims that the appellant/petitioner was responsible for the breach of the contract, whereas the appellant/petitioner claims that the respondent was responsible for the same.



3. Clause 15 of the Special Conditions of the Contract provides as follows:-

“15. If the contractor does not start work or does not perform the assigned work properly and/ or in time, it shall be dropped from the list of approved/ shortlisted agencies and their deposits including, performance guarantee etc. shall be forfeited such contractor shall be debarred for tendering for a period of three years.”

4. It appears that the respondent sought to invoke the Performance Guarantee in respect whereof the appellant/petitioner preferred a petition under Section 9 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as ‘the Act’). Thereafter, the respondent communicated the decision dated 04.08.2020, debarring the appellant/petitioner for a period of three years. On this occasion, rather than invoking the remedy available under the Act, *inter alia*, under Sections 9 and/or 17 of the Act, the appellant/petitioner preferred the aforesaid writ petition. The ground taken by the appellant/petitioner was that the appellant was not put to prior notice before issuance of the debarment order.

5. The learned Single Judge has refused to entertain the said writ petition since the arbitration already stands invoked; an Arbitrator is in place; and it is open to the appellant to invoke the remedy under Section 17 of the Act. The submission of the appellant that the debarment order gives a separate cause of action to the appellant and the plea with regard to the non-compliance with the principles of natural justice, had been rejected by the learned Single Judge by observing that the debarment has taken place in terms of the aforementioned contractual clause, i.e., Clause 15 of the Special Conditions of the Contract .



6. Before us, the submission of the learned counsel for the appellant is that the debarment ought to have been preceded by a Show Cause Notice.

7. We have heard the learned counsel and do not find any merit in this appeal. The appellant has an efficacious alternate statutory remedy of moving the learned Arbitrator. The appellant cannot maintain two separate parallel proceedings for the same relief, as the same could lead to conflicting opinions, which may prejudice the case of either party. Moreover, the debarment is a consequence flowing from Clause 15 of the Special Conditions of Contract. To grant any interim relief in respect of the said debarment, it would be necessary to examine, *prima facie*, the merits of the case of either party. Since the learned Arbitral Tribunal is already seized of the matter, it is only proper that the appellant should approach the Arbitral Tribunal for the said relief.

8. We, therefore, dismiss this appeal, leaving it open to the appellant to move the Arbitral Tribunal to seek an interim relief in respect of the impugned debarment. We have no doubt that if such an application is moved, the Tribunal shall examine the same at its earliest convenience.

9. The appeal stands disposed of in the above terms.

VIPIN SANGHI, ACJ

NAVIN CHAWLA, J

MAY 12, 2022/rv/AB