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

+ **W.P.(C) 6986/2024**

**TRANSYS CONSULTING PVT LTD.**

..... Petitioner

Through: Mr. Joy Basu, Sr. Advocate with Mr. Sridhar Potarajau, Sr. Advocate along with Ms. Ritwika Nanda, Ms. Petal Chandhok, Ms. Shruti Gupta and Mr. Anoop George, Advocates.

versus

**NATIONAL HIGHWAY AUTHORITY OF INDIA ..... Respondent**

Through: Mr. Santosh Kumar, Standing Counsel with Mr. Devansh Malhotra, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD**

**ORDER**

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**15.05.2024**

**CM APPL. 29075/2024 (Exemption)**

Allowed, subject to all just exceptions.

**W.P.(C) 6986/2024 & CM APPL. 29074/2024**

1. The Petitioner has approached this Court challenging the Order dated 10.04.2024 whereby Respondent has inflicted a penalty of Rs.3.06 lakhs on the Petitioner and has also debarred the Petitioner for a period of two years from participating in bids and future works of the NHAI.
2. Material on record indicates that the Petitioner was engaged as a DPR consultant for a project on 24.07.2017. The case against the Petitioner is that the Government has suffered substantial loss because of the faulty project report given by the Petitioner. A show cause notice dated 12.07.2023 was



given to the Petitioner. Relevant portion of the said notice reads as under:

*“4. Hence, in view of the above facts and circumstances, the Authority by the way of the present Show Cause Notice seeks a written explanation from the DPR Consultant regarding its failure to fulfil the obligations (as mentioned above) in terms of Clause 3.1.1. (Standard of Performance) of the Consultancy Agreement read with Clauses 3.1, 3.6 (Scope of Services) and 4.11.2.2 (Topographic Surveys) of the ToR of the Consultancy Agreement. In this regard, the DPR Consultant is required to show cause within 15 (fifteen) days from the receipt of this notice as to why an appropriate action, including but not limited to the imposition of a penalty equal to 5% of the Contract value, which amounts to Rs. 80,19,201/- (Rupees Eighty Lakhs Nineteen Thousand Two Hundred and One Only) under Clause 7.3.1(i) of Consultancy Agreement, debarment up to 5 years under Clause 7.4.2 of Consultancy Agreement read with NHAI circulars no. 186/2015 dated 27.11.2015 and no. 97/12 dated 17.04.2012, should not be taken against the DPR Consultant. In case the DPR Consultant fails to submit an explanation within 15 days, it will be presumed that it has nothing to submit in this regard, and the Authority is at liberty to initiate action as deemed appropriate without any further notice to the DPR Consultant.”*

3. A reply to the said Show Cause Notice has been given by the Petitioner on 24.07.2023.
4. Dissatisfied by the reply given by the Petitioner, the impugned Order has been passed by the Respondents.
5. It is stated by the learned Counsel for the Petitioner that the Petitioner has been asked to show cause for one infraction whereas the penalty has been imposed on a different infraction and, therefore, the entire order



imposing penalty and debarring the Petitioner is vitiated. He further states that the Order of debarment has not been passed by the authority which examined the reply to the Show Cause Notice. He, therefore, prays that the impugned Order be set aside.

6. Issue Notice.
7. Learned Counsel for the Respondent accepts notice and seeks time to file a reply.
8. Let the reply be filed within three weeks. Rejoinder thereto, if any, be filed within two weeks thereafter.
9. List on 04.07.2024.

**SUBRAMONIUM PRASAD, J**

**MAY 15, 2024**

*Rahul*