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

% Judgment delivered on: 08.12.2021

+ W.P.(C) 13025/2021 & CM APPL. 41077/2021, 41693/2021 &
41817/22021

ELDYNE ELECTRO SYSTEM PVT
LTD. AND ANR Petitioners
versus

UNION OF INDIA & ORS. Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Aman Sinha, Senior Advocate with Mr. Gaurav Gupta,
Mr. Samyak Gangwal and Mr. Hilal Haider, Advocates.

For the Respondent: Mr. Rakesh Mittal with Ms. Yamini Mittal, Advocates for
Railways/R-1 to R-4.
Mr. Mehmood Alam, Director, Vigilance Research Design
and Standard Organisation, Lucknow

**CORAM:-
HON'BLE MR. JUSTICE SANJEEV SACHDEVA**

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. It is pointed out by learned counsel for the Respondent that in order dated 07.12.2021 the designation of the officer who had produced the sealed cover has been recorded as Director, Research Design and Standard Organisation, Lucknow whereas it was Mr. Mehmood Alam, Director, Vigilance Research Design and Standard

Organisation, Lucknow.

2. The order is corrected. Accordingly, in order dated 07.12.2021, reference to *Director, Research Design and Standard Organisation, Lucknow* shall be read as *Director, Vigilance Research Design and Standard Organisation, Lucknow*.

3. Arguments were partly heard on 02.12.2021 and on 07.12.2021, however a formal notice was not issued. Accordingly issue notice. Notice is accepted by learned counsel appearing for the respondents.

4. With the consent of parties Petition is taken up for final disposal.

5. Petitioner impugns order dated 08.11.2021 whereby petitioner has been delisted for the items (i) Multi Section Digital Axle counter & (ii) Single section digital axle counter.

6. Learned senior counsel appearing for the petitioner contends that no show cause notice as mandated by the guidelines issued by the respondent: Research Design and Standard Organisation i.e. QO-D-8.1-11 ver. 2.0 (hereinafter referred to as the QO-D guidelines) was issued prior to passing of the delisting order.

7. Learned senior counsel submits that a *Temporary Delisting* order was issued on 17.08.2021 which was challenged before the Calcutta High Court, however the said petition was opposed by the

respondent on the ground of lack of territorial jurisdiction and petitioner was non suited on the ground of lack of territorial jurisdiction. He submits that the petitioner has filed an appeal before the Division Bench of the Calcutta High Court and arguments have been heard in the appeal and judgment has been reserved.

8. He submits that the subject proceedings are independent of the *Temporary Delisting* order as there is a separate provision in the guidelines dealing with *Delisting*.

9. Learned senior counsel submits that the impugned order refers to para 4.2.5 of the QO-D guidelines which do not deal with *Delisting* but deals with *Banning of Business*.

10. Learned senior counsel further contends that respondent No. 4 who has issued the impugned order, does not have the power to ban a vendor. He further submits that the procedure as prescribed by the Railway Vigilance Manual particularly para 1026 has not been followed prior to issuance of the banning order.

11. Learned senior counsel submits that the order of *Delisting* in effect amounts to banning the petitioner as the respondents themselves have referred to clause 4.2.5 and it virtually amounts to a civil death of the petitioner and as no prior show cause notice or an opportunity of hearing was granted to the petitioner, same cannot be sustained.

12. Learned counsel appearing for the respondents has opposed the petition on four grounds.

13. Learned counsel submits that this Court would not have the territorial jurisdiction to entertain the subject petition in as much as the impugned order has been passed by respondent No.4 whose office is in Lucknow and not in Delhi and the investigation has been conducted by the Railway Board, Vigilance only in Lucknow and not in Delhi and no part of cause of action has arisen in Delhi.

14. Second ground raised by learned counsel for the respondent is that petitioner has already approached the Calcutta High Court, where admittedly the judgment is reserved by the Division Bench and accordingly the petition is not maintainable before this Court.

15. Thirdly, it is contended that the petitioner is indulging in forum shopping as he has approached different Courts and accordingly this petition will not be maintainable.

16. Fourthly it is contended that the impugned order itself records that in case petitioner is aggrieved he can file an appeal to the Special Director General/Vigilance Department and since the order is appealable this Court should not exercise powers under Article 226 of the Constitution of India

17. Learned senior counsel for the petitioner disputes the

contention that no part of cause of action has arisen in Delhi and submits that the impugned order itself records that an investigation was conducted by the Railway Board, Vigilance, which is situated in Delhi and the impugned order has been passed solely on the basis of the observations and findings of the Railway Board Vigilance.

18. Learned senior counsel further contends that since the enquiry and investigation was initiated in Delhi, part of cause of action accrues in Delhi and accordingly this Court would have the territorial jurisdiction to entertain the petition.

19. For the purposes of satisfying this Court, with regard to the territorial jurisdiction, respondents were directed to produce the investigation report of the Railway Board Vigilance. Said Report was produced on 07.12.2021 in a sealed cover. The report was perused.

20. Perusal of the report shows that a complaint was received with the Railway Board, Delhi and the Railway Board, Delhi then directed an investigation to be conducted by the Railway Board vigilance.

21. Clearly the trigger of the investigation was a complaint which was received in Delhi and the investigation which was directed to be conducted by the Railway Board at Delhi.

22. Entire proceedings commenced with the complaint received and the investigation ordered; both of which happened in Delhi. In view of

the same, clearly a part of the cause of action has arisen in Delhi giving territorial jurisdiction to this Court.

23. Reference may be had to the judgment of the Supreme Court in *Kusum Ingots & Alloys Ltd. vs. Union Of India*, (2004) 6 SCC 254 wherein the Supreme Court has held that even if a small part of cause of action arises within the territorial jurisdiction of the High Court, that Court will have jurisdiction to entertain a petition.

24. For appreciating the contention of learned counsel for the respondent with regard to the proceedings pending in Calcutta High Court and the plea of forum shopping, reference would be required to be had to the provisions of the QO-D guidelines pertaining to Temporary Delisting, Delisting and Banning of Business.

25. Admittedly, the first order which was passed by the respondent on 17.08.2021 was of Temporary Delisting. This order was preceded by a notice dated 21.04.2021. Notice dated 21.04.2021 required petitioner to show cause within 30 days, failing which it was stated that petitioner would be temporarily delisted till such time the legal requisite agreements were provided.

26. Even though respondents, in the impugned order, have not referred to the provisions of Temporary Delisting and Delisting (Paras 4.2.2 and 4.2.3) but only to the provision of Banning of Business (Para 4.2.5), it would be expedient to refer to the same.

27. Para 4.2.2 of the QO-D guidelines *inter-alia* provides as under:-

“4.2.2. TEMPORARY DELISTING

Temporary delisting of vendors can be restored to under the following conditions:

- a) *Cases where repeated failures are noticed in the items supplied*
- b) *Direction from law enforcing agencies*
- c) *If quality audit is refused by the firm or RDSO is not allowed by the firm to perform quality audit, the firm shall be temporarily delisted and shall be removed from the vendor list in the next updation, till such time quality audit is performed.*
- d) *Expiry of ISO 9001 certificate.*
- e) *Deficiencies/non-functioning of major machinery & plants affecting the quality.*
- f) *During a course of time, if the specification is amended and the vendor is not upgrading the additional requirements within a specified timeframe.*
- g) *Major deficiencies found during quality audit/process audit and their non-compliance.*
- h) *The entire factory or part of it is reported closed/shut down/lock out.*
- i) *If change in the name, address, work place and ownership not intimated to RDSO within one month.*
- j) *Any other serious reason.*

4.2.2.1 Notice and time bound reply

Temporary delisting shall be considered after serving a notice on the firm seeking time bound reply of 30 days and considering the response of the firm to the notice. However, under exceptional circumstances, issue of the show cause notice shall be dispensed with. The directorate head shall record the reasons for dispensing with the show cause notice.

*****”

28. Para 4.2.3 provides as under:-

4.2.3 DELISTING

Prerequisites for delisting from ‘List of Approved Vendors’ or ‘List of RDSO Vendors for developmental order’ posted on RDSO website list directly are mentioned in para 4.2.1.1. The action of delisting can be taken considering the seriousness & nature of deficiencies and its effects on quality of products.

4.2.3.1 Notice and time bound reply

Delisting shall be considered after serving a notice on the firm seeking time bound reply of 30 days and considering the response of the firm to the notice...

*****”

29. Perusal of Para 4.2.2 shows that in case of *Temporary Delisting* a show cause notice and time bound reply is mandated as per para 4.2.2.1. The proceedings which are subject matter of the Calcutta High Court are with regard to Temporary Delisting order issued under Para 4.2.2.

30. Para 4.2.3, which pertains to *Delisting* and not *Temporary Delisting*, also mandates issuance of a notice under Para 4.2.3.1. This clearly shows that the action of *Temporary Delisting* and the action of *Delisting* are two distinct actions.

31. A comparison of Para 4.2.2.1 and 4.2.3.1 shows that under Para 4.2.2.1 there is a power of dispensation of the show cause notice, in exceptional circumstances which show cause notice can be dispensed with, for reasons to be recorded. However there is no such power of dispensation of show cause notice in the case of *Delisting*.

32. The maximum period of *Temporary Delisting* is one year whereas in the case of *Delisting* the minimum period is one year.

33. Since, the consequences of *Delisting* are far more serious and graver than the consequences of *Temporary Delisting*, the power of dispensing with the show cause notice has not been provided.

34. This of course is without prejudice to the submission of learned Senior Counsel for the petitioner that in the impugned order, there is no reference to the order of *Temporary Delisting* that is subject matter of challenge before the Calcutta High Court or even reference to the provisions of *Temporary Delisting* or *Delisting* i.e. Paras 4.2.2 or 4.2.3.

35. As Respondents, in the impugned order, have referred to Para

4.2.5 of the QO-D guidelines the same is extracted hereunder:-

“4.2.5 BANNING OF BUSINESS

i) The vendor is black listed/or business dealing is banned by Govt. of India or its offices on communication by Railway Board, in such cases, no show cause notice to the firm is required before delisting.

ii) Whenever proposal for banning of business is sent to board the firm should be DELISTED without mentioning the word permanent delisting/temporary delisting.”

36. Para 4.2.5 is in two parts. Para 4.2.5 (i) comes into play where a vendor is black listed or business dealing is banned by Government of India or its offices, on communication by Railway Board, in which case no show cause notice is required to be issued to the firm before *Delisting*.

37. Sub Para (ii) of Para 4.2.5 stipulates that where proposal for banning of business is sent to the Railway Board the firm is to be delisted without mentioning the word “permanent delisting or temporary delisting”.

38. Learned counsel for the respondent under instructions from Mr. Mehmood Alam, Director, Vigilance, Research Design and Standard Organisation, Lucknow, submits that the no communication has been sent by the Railway Board to the Government of India or its offices for black listing or banning of business with the petitioner. Further, as

per his instructions there is no order communicated to them by Government of India or its offices of banning of business or black listing the petitioner, on a communication by the Railway Board. He further submits that the impugned order is an order only of delisting of two products of the petitioner and not of Banning of Business.

39. Since, the case of the Respondents is that the impugned order is not an order of *Banning of Business*, reference, in the impugned order, to Para 4.2.5, appears to have been made to overcome the requirement of issuance of a show cause notice as is mandated by Para 4.3.2.1.

40. Admittedly, in the present case no show cause notice has been issued to the petitioner for *Delisting* other than the one referred to above, which was for *Temporary Delisting*.

41. It may further be noticed that the Indian Railways Vigilance Manual, 2008 in Para 1026 provides for an elaborate procedure to be followed in the Railway Board's office for suspension/banning of business.

42. It is not the case of the respondents that the procedure as prescribed under para 1026 of the Indian Railways Vigilance Manual has been followed prior to issuance of the impugned order. Even the impugned order does not refer to having followed the procedure prescribed under Para 1026 of the Indian Railways Vigilance Manual.

43. The impugned order extracts the observations and findings of the Railway Board Vigilance and states that the said observations and findings have been re-examined by the competent authority prior to issuance of the impugned order.

44. Clearly, the observations and findings of the Railway Board Vigilance is an input based on which the competent authority has issued the impugned order.

45. The observations and findings of the Railway Board Vigilance do not satisfy the requirement of (i) an order of the Government of India or its offices, on communication by Railway Board, of black listed or banning business dealing or (ii) proposal for banning of business sent to the Railway Board so as to attract the provisions of Para 4.2.5 and warrant an action of *Delisting* without complying with the requirement of a show cause notice as mandated by Para 4.2.3.1.

46. Even the impugned order does not refer to the earlier temporary delisting. The impugned order of *Delisting* does not state that the said order is consequential to the earlier order of Temporary Delisting. Further, the provisions of Para 4.2.3 do not stipulate that *Delisting* will automatically come into force in case of a *Temporary Delisting*.

47. Further, the action of *Temporary Delisting* and the impugned order of *Delisting* are two distinct actions emanating from distinct provisions and give rise to distinct causes of action entitling an entity

to challenge them in independent proceedings.

48. It may also be noted that the objection raised by the Respondents to the Petitioner approaching the Calcutta High Court, is that Calcutta High Court lacks territorial jurisdiction. The Writ Petition challenging the *Temporary Delisting* has been rejected on the ground of lack of territorial jurisdiction and an appeal is pending before the Division Bench.

49. This court clearly would have the jurisdiction to entertain this petition as the two actions are distinct and in terms of Article 226 (2) of the Constitution of India because a part of the cause of action has arisen within the territory to which this Court exercises jurisdiction.

50. Accordingly, I find no merit in the objection raised by learned counsel for the respondent that this petition should not be entertained because petitioner is allegedly indulging in forum shopping or that petitioner has already approached the Calcutta High Court impugning the order dated 17.08.2021 of *Temporary Delisting*.

51. It is an admitted position that no show cause notice has been issued to the petitioner prior to passing of the impugned order dated 08.11.2021.

52. Para 4.2.3.1 mandates issuance of a show cause notice prior to an order of *Delisting*. As noticed hereinabove the comparison of

clause 4.2.2.1 and 4.2.3.1 shows that there is no exemption, under any circumstances, from issuance of a show cause notice prior to passing of an order of *Delisting*. Furthermore, Para 1026 of the Railway Vigilance Manual also mandates issuance of a show cause notice prior to issuing a black listing order.

53. The order of delisting of a registered contractor in effect amounts to banning of business with the said entity for the reasons that once a contractor is delisted, he would not be in a position to do business with the said entity which has delisted the vendor.

54. It is also settled position of law that prior to issuance of any black listing or banning order a show cause notice is mandatory. In *UMC Technologies (P) Ltd. v. Food Corporation of India, (2021) 2 SCC 551* the Supreme Court has held that not only black listing but even where there is down grading of a contractor, a show cause notice is mandatory. Further, the Supreme Court has held that a person against whom any action is sought to be taken or whose rights or interests are being affected should be given a reasonable opportunity to defend himself.

55. In the instant case, because a reasonable opportunity to defend or render an explanation has not been given to the petitioner, the impugned action of *Delisting* cannot be sustained as the same is contrary to the provisions of the QO-D guidelines as well as the

Railway Vigilance Manual.

56. The objection raised by learned counsel for the respondent with regard to existence of an alternative remedy of an appeal also does not have any merit. It may be noted that mere existence of an alternative remedy does not oust the jurisdiction of a High Court under Article 226 of the Constitution of India¹.

57. No doubt this Court, would normally not exercise jurisdiction if there is an alternative remedy but where, *ex facie*, the impugned order is issued contrary to the guidelines of the respondents and also in violation of the principles of natural justice, this is a fit case where powers under Article 226 of the Constitution of India should be exercised.

58. It may further be noted that there is no remedy of appeal provided by the QO-D guidelines against an order passed under Para 4.2.5 or 4.2.3 and mere mentioning in the impugned order that Petitioner can file an appeal against the order would not create the remedy of a right of an appeal.

59. In view of the above, the impugned order dated 08.11.2021, *Delisting* the Petitioner, cannot be sustained and is accordingly quashed.

¹ *Whirlpool Corporation v. Registrar of Trade Marks Mumbai (1998) 8 SCC 1*

60. It is however, clarified that this Court has neither considered nor commented upon the merits of the action of the respondents or the defence of the petitioner to the said action. It would be open to the respondents to initiate a fresh action, in accordance with law, after giving a show cause notice and complying with the principles of natural justice.

61. Petition is allowed in the above terms.

62. Order *Dasti* under the signatures of the Court Master.

DECEMBER 08, 2021/rk

SANJEEV SACHDEVA, J.

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