MES BUILDERS ASSOCIATION OF INDIA (REGD.)

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Ref. No.: MBAI/E-in-C/ 03 / 2026 Dated : 09th February 2026

To

The Engineer-in-Chief
E-in-C's Branch
Integrated HQ of MoD (Army)
New Delhi.

Subject: Representation on behalf of contractors removed from the Approved List under Clause 7(a) of E-in-C's Branch Policy dated 11.03.2025 - Request for examination in light of recent Hon'ble Supreme Court judgments and principles against civil death.

Sir,

Respected Sir,

1. Kindly refer this HQ following letters :-

(a) MBAI/E-in-C/29/2025 dated 27 May 2025
(b) MBAI/E-in-C/34/2025 dated 08 September 2025
(c) MBAI/E-in-C/48/2025 dated 08 November 2025
(d) MBAI/E-in-C/50/2025 dated 12 November 2025
(e) MBAI/E-in-C/54/2025 dated 30 December 2025

This representation is being respectfully submitted on behalf of a large association of enlisted contractors who have been removed or denied renewal of enlistment under Clause 7(a) of the E-in-C's Branch Policy dated 11.03.2025, solely on the basis of past contract cancellations or contractual disputes, notwithstanding the fact that contractual penalties had already been imposed, exhausted and concluded.

We have submitted numerous representations that have been made by affected contractors since August 2025 to your good office highlighting the severe hardship being caused due to removals under Clause 7(a) of the policy. During these interactions we were repeatedly assured that the matter was under consideration and that "minutes were in the final stage", and that an appropriate decision would be taken shortly. However, despite the passage of several months, no redressal action whatsoever has been taken till date, leaving the affected contractors in a state of prolonged uncertainty and continuing hardship.

This prolonged inaction has aggravated the suffering of contractors who are already facing serious financial and professional distress due to removal from the approved list. The absence of any time-bound or reasoned decision, despite repeated assurances, has

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effectively resulted in continued civil and commercial exclusion without any formal adjudication or closure, which is manifestly unfair and arbitrary.

It is also pertinent to point out that the previous enlistment policy did not contain any provision analogous to Clause 7(a) resulting in non-renewal solely on account of past contract cancellation after conclusion of contractual penalties. Under the earlier policy regime, contractors who had deposited the requisite Military Receivable Orders (MROs), whose recoveries had been effected or whose Performance Guarantees/Performance Securities had been encashed or seized, and against whom no recoveries were pending, were granted renewal of enlistment as a matter of course. The settled understanding was that once contractual penalties stood realised and the account was squared, the issue stood closed. It is relevant to note that in the said instances, no disciplinary proceedings are pending against the contractors.

It is respectfully submitted that under the MES contractual and enlistment regime, contractors were never put to notice that cancellation of a contract would operate as a disqualification or adverse factor for renewal of enlistment. Neither the MES Manual, nor the General Conditions of Contract, nor the Enlistment Policy prescribe or contemplate that cancellation of a contract, by itself, would have any bearing on the future eligibility of a contractor for renewal of enlistment. In the absence of any such provision, the denial of renewal on this ground is ex facie arbitrary, dehors the governing policy framework and unsustainable in law.

Under the settled practice and scheme governing MES contracts, contractors legitimately understood that the consequences of cancellation are contract-specific and self-contained, limited to contractual measures such as recovery or forfeiture of performance security, upon which the contractual episode stands concluded. At no stage were contractors informed either by policy, tender condition or statutory instruction that cancellation would entail any collateral penal consequence impacting enlistment or renewal eligibility in future cycles. Any such interpretation introduced retrospectively is contrary to MES policy, violates principles of certainty and fairness in public contracting, and defeats the doctrine of legitimate expectation.

It is respectfully submitted that under the MES Contract Manual, 2020, the Performance Security constitutes the primary and exhaustive contractual safeguard available to the department against any alleged default by a contractor. Upon forfeiture of the Performance Security, the department stands duly compensated, the contractual risk stands neutralised and the contractual consequences stand exhausted. The Contract Manual does not contemplate any further penal or collateral action beyond such forfeiture, unless expressly provided under the governing policy or contract conditions. Further, denial of renewal of enlistment or permanent removal of a contractor, after contractual penalties have already been imposed and exhausted, amounts to double punishment, which is impermissible under the MES contractual and enlistment framework.

In view of the foregoing, denial of renewal of enlistment even after forfeiture of the Performance Security is wholly inconsistent with the MES contractual framework and runs contrary to the enlistment scheme and intent of the Contract Manual itself. Such an approach

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amounts to imposing an additional and disproportionate penalty not envisaged under the Manual or the Enlistment Policy and therefore cannot be sustained in law.

The issue raised herein is not confined to any individual firm, but concerns a common cause affecting numerous contractors across Commands, all over India having serious civil, professional and economic consequences. It is therefore respectfully submitted that the operation and application of Clause 7(a) requires urgent re-examination at the policy level, in light of recent authoritative pronouncements of the Hon'ble Supreme Court governing blacklisting, debarment, proportionality and fairness in public contracts.

I. Nature of the Issue - Civil Death through denial of renewal and removal from Enlistment list

The removal from the approved list of contractors, or denial of renewal of enlistment, effectively results in commercial exclusion across the MES commands all over the country, depriving contractors of livelihood and professional existence built over decades. Such action, in substance and effect, amounts to "civil death", even if not so labelled.

In a large number of cases:

(a) The alleged default relates to ordinary contractual disputes, delays or performance issues;
(b) No finding of fraud, corruption, moral turpitude or bad faith exists;
(c) Contractual penalties, including forfeiture/encashment of performance security and recovery of deposits, have already been fully enforced and concluded; and
(d) Post-cancellation, contractors were often permitted to participate in tenders and awarded further works, which were executed satisfactorily.

Despite this, Clause 7(a) of E-in-C's BR policy bearing no. 66546/P-1/Renewal/2026/08/E8 dated 11.03.2025 is being applied in a manner that results in indefinite or permanent exclusion, which is neither contemplated by the policy nor permissible in law.

II. Supreme Court Law - Blacklisting and Debarment Are Never Permanent

The Hon'ble Supreme Court has, in recent binding judgments, authoritatively settled the law governing blacklisting, removal and debarment. The Hon'ble Apex Court has unequivocally held that:

(a) Blacklisting is a drastic and extreme measure, not a routine administrative consequence;
(b) Debarment can never be permanent or indefinite;
(c) Even time-bound debarment constitutes "civil death" and must be imposed only in exceptional circumstances; and
(d) Ordinary breach of contract or bona fide contractual disputes cannot justify blacklisting or exclusion, unless accompanied by grave misconduct such as fraud, mala fides or intent to cheat.

The Hon'ble Supreme Court has, in recent authoritative pronouncements, conclusively settled the law governing blacklisting, debarment and exclusion of contractors from public

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contracts. In **Blue Dreamz Advertising Pvt. Ltd. v. Kolkata Municipal Corporation (2024 INSC 589)** decided on 07.08.2024 by three judge bench, the Hon'ble Supreme Court undertook a detailed examination of the nature and consequences of blacklisting and held that such action is a drastic and extreme measure requiring strict scrutiny. The Hon'ble Court made a categorical declaration that debarment is never permanent and that the period of debarment must invariably depend upon the nature and gravity of the alleged misconduct. The Hon'ble Apex Court further held that where the issue arises from an ordinary contractual breach or a bona fide dispute, blacklisting or debarment ought not to be resorted to at all. It was emphasised that even a time-bound debarment amounts to "civil death", leading to commercial ostracisation with grave civil consequences. The Hon'ble Court disapproved disproportionate exclusionary action in cases not involving grave or abhorrent misconduct and conclusively held that the very existence of a bona fide contractual dispute militates against invocation of blacklisting powers.

These principles were reaffirmed and further strengthened by the Hon'ble Supreme Court in **M/s Techno Prints v. Chhattisgarh Textbook Corporation (2025 INSC 236)** decided on 12.09.2025. The Hon'ble Supreme Court characterised the alleged lapse as, at best, a breach of contract and squarely examined whether such breach could justify blacklisting. The Hon'ble Court held that the governing test is one of reasonableness and proportionality, namely whether the contractor has committed conduct so gross as to deserve exclusion. Most significantly, the Hon'ble Court held that no contractor can be blacklisted, or even called upon to show cause for blacklisting, unless there exists intent to cheat, take undue advantage or conduct involving moral turpitude or bad faith. Mere non-performance, delay or contractual failure, especially where penalties have already been imposed was held to be legally insufficient to justify such drastic action. The cumulative effect of these binding judgments is that civil or commercial death of contractors on account of ordinary contractual disputes is impermissible and that exclusionary consequences must be finite, proportionate, reviewable and reserved only for exceptional cases of grave misconduct.

III. Clause 7(a) Cannot be Applied as a Backdoor Blacklisting Provision

Clause 7(a) of the Policy, when read harmoniously with the policy as a whole and the Notes appended thereto, does not envisage or authorise permanent removal or perpetual non-renewal of enlistment. On the contrary, the policy framework is inherently corrective, reformative and non-punitive in perpetuity. It expressly recognises that adverse consequences arising from contractual defaults are intended to be finite and reversible, subject to objective parameters such as:

(a) Expiry of a prescribed penalty period, after which renewal is to be considered;
(b) Restoration upon favourable adjudicatory outcomes, including arbitral or judicial findings declaring the earlier action illegal or invalid; and
(c) Reconsideration based on subsequent satisfactory performance, reflecting rehabilitation and continued trustworthiness of the contractor.

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However, the current manner of application of Clause 7(a) has the effect of transmuting concluded contractual penalties into lifelong disqualifications from enlistment. Actions that were contractually penalised, fully enforced and long since closed are being resurrected as permanent barriers to renewal. This approach defeats the very architecture of the policy, renders its corrective safeguards illusory and converts a regulatory provision into a backdoor mechanism for indefinite exclusion, a consequence neither contemplated by the policy nor permissible in law.

IV. Need for Policy-Level Clarification and Corrective Measures

In view of the widespread impact and recurring nature of the issue, it is respectfully submitted that individual appeals alone are insufficient and that a policy-level clarification or corrective direction is urgently required to ensure uniform, lawful and fair application.

It is therefore respectfully suggested that:

(a) Clause 7(a) be clarified to apply only as a temporary, cycle-specific regulatory measure and not as a mechanism for permanent exclusion;
(b) Past contract cancellations where penalties have already been exhausted be treated as closed matters, not grounds for enlistment removal;
(c) Removal or non-renewal be restricted only to cases involving established grave misconduct, supported by reasoned findings; and

Contractors already removed under Clause 7(a) be reviewed and reconsidered in light of Supreme Court principles, with restoration where no such grave misconduct exists.

The sudden and rigid application of policy, without transitional safeguards and in complete departure from long-standing past practice, has resulted in unequal and discriminatory treatment of similarly situated contractors. Contractors who had fully complied with recovery requirements and had no outstanding liabilities are now being denied renewal, despite having been renewed in identical circumstances under the earlier policy. Such a shift, without clear policy clarification or prospective application, has caused grave prejudice and uncertainty across the contracting community. The judgments of the Hon'ble Apex Court have clearly held that in cases of ordinary contractual breach or bona fide contractual dispute, blacklisting, debarment, removal from enlistment ought not to be resorted to at all. The Hon'ble Supreme Court has further emphasised that even a time-bound debarment amounts to "civil death", resulting in commercial ostracisation and carrying grave civil and professional consequences.

In light of the above, it is most respectfully prayed that the competent authority may be pleased to:

(a) Examine the operation and application of Clause 7(a) of the E-in-C's Branch Policy dated 11.03.2025 in light of recent Supreme Court judgments;
(b) Issue appropriate clarifications/guidelines to prevent civil death of contractors on account of ordinary contractual disputes; and
(c) Direct review and restoration of enlistment in cases where removal has been effected without findings of fraud, mala fides or moral turpitude.

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This representation is made with the genuine belief that a fair and balanced approach, consistent with principles, will safeguard public interest as well as the integrity of the MES contracting system. We respectfully submit that immediate intervention is required from your office to address the issues that have arisen due to inconsistent interpretation and application of the policy. In this regard, we would be grateful if a personal meeting could also be granted to allow a meaningful discussion and to work out an appropriate way forward on the matters raised above.

Yours faithfully,

(G.S. Mago)
President, MES BAI

Copy to :-

DG (Works)
E-in-C Branch

Jt. DG (Contracts)
E-in-C Branch

ENCLOSURES:-

Judgement titled as Blue Dreamz Advertising Pvt. Ltd. v. Kolkata Municipal Corporation (2024 INSC 589) decided on 07.08.2024;

Judgement titled as M/s Techno Prints v. Chhattisgarh Textbook Corporation (2025 INSC 236) decided on 12.09.2025.

2024 INSC 589

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2024
(@ SPECIAL LEAVE PETITION (CIVIL) NO. 11682 OF 2018)

THE BLUE DREAMZ ADVERTISING PVT. LTD. & ANR. APPELLANT(s)

VERSUS

KOLKATA MUNICIPAL CORPORATION & ORS. RESPONDENT(s)

J U D G M E N T

K.V. Viswanathan, J.

1. Leave granted.

2. The present Appeal is filed against the judgment and order dated 21.06.2017 passed by the Division Bench of the High Court at Calcutta in M.A.T. No. 277 of 2017. By the said judgment, the High Court allowed the Appeal of the respondents and set aside the judgment of the learned Single Judge. Consequently, the Writ Petition filed by the appellant stood dismissed.

Brief Facts:

3. The respondent no. 1-Kolkata Municipal Corporation

(hereinafter referred to as the 'Corporation') invited bids for allotment of contract for display of advertisement on Street Hoardings (including V Shaped), Bus Passenger shelter and Kiosks within its jurisdiction. Under the tender conditions, the contract was to be awarded for a period of one year, subject to extension of two more years. By an award of 28.05.2014, the appellant who had participated in the tender and quoted the highest rate at Rs. 3,70,00,000/- each for cluster no. I, II, III, VI and VIII was notified as a successful bidder and was requested to confirm the acceptance. On 29.05.2014, the appellant conveyed its acceptance.

4. Thereafter, a series of correspondence ensued with the appellant on matters like, alleged non-receipt of any formal work order (on 11.06.2014); non-receipt of any format of the Bank Guarantee (on 13.06.2014); request for a 'No Objection Certificate' for obtaining new connection from Calcutta Electric Supply Corporation Ltd. (on 26.06.2014); problems with the execution like, non-matching of the unit

code numbers with the hoardings or the non-matching of locations; existence of same unit code for different locations, rendering the commencement of work incapable (letter of 26.06.2014) and existence of lesser hoardings out of the 250 street hoardings (letter of 07.07.2014).

5. The Corporation, by its letter dated 08.07.2014, demanded payment for the month of June. Thereafter, the appellant wrote a letter of 19.07.2014 stating that till date they have identified 200 numbers of street hoardings out of the 250 allotted and sought for a joint inspection to identify the rest of them. At this stage, the Corporation issued a letter of 10.09.2014 stating that there was no reason why the appellant was insisting for the Bank Guarantee Format since Bank Guarantee was not the mode of payment. According to the Corporation, the bills for 5 clusters of Rs. 4,62,67,500/- (for only July to September, 2014) had not been paid in spite of service of the bill on 08.07.2014. The Corporation also mentioned that in the joint inspection the appellant's men failed to

cover all the areas and thereafter, the appellant was asked to submit a list of allotted locations which, according to the Corporation, the appellant had not furnished. The appellant was warned that in case the payment as demanded was not paid, steps as per the tender clauses would be taken.

6. When the matter stood thus, the appellant wrote a letter on 14.11.2014 setting out all the earlier correspondence and the grievances raised by them and ultimately praying that they be granted diminution, reduction and/or adjustment of the license fee. They prayed that their demand for 174 hoardings be confirmed so that they could make the payment. The Corporation served a memo dated 06.12.2014 setting out that already a notice of 20.11.2014 was served demanding payment of 8,16,15,870/- up to December, 2014 but the same has not been cleared. The appellant was asked to appear on 12.12.2014 to show cause why the allotment of hoarding shall not be cancelled. On 28.02.2015, a Show Cause

Notice was issued asking the appellant to show cause why the appellant's allotment be not terminated as dues to the tune of Rs. 10,28,52,918/- plus interest had not been cleared.

7. In this scenario, on 29.07.2015, a notice was published in English Daily "The Times of India" Kolkata stating that the appellant had been blacklisted from participating in any advertisement in the city of Kolkata. However, on a challenge made in Writ Petition No. 960 of 2015, on 04.08.2015, a submission was made to the Court by the learned senior counsel for the Corporation that the decision of the blacklisting of appellant was to be withdrawn and that the Corporation would proceed with the matter in accordance with law after providing opportunity of hearing. The Writ Petition was disposed of.

8. The appellant had earlier filed Writ Petition No. 261 of 2015 challenging the Show Cause Notice of 28.02.2015. The learned Single Judge dismissed the Writ Petition on 04.03.2015. An appeal bearing APOT No. 89 of 2015 was

preferred along with GA No. 782 of 2015. The Appeal and G.A. were disposed of by an order of 24th August 2015 recording the submissions of the Learned Additional Advocate General appearing for the Corporation and disposing of the matter in the following terms:-

> "Due to typographical errors in the show cause notice dated 28th February, 2015, the learned Additional Advocate General very fairly submitted he is not pressing this show cause notice but the appropriate proceedings shall be taken before the Arbitrator."

9. Thereafter, the Corporation issued a Show Cause Notice dated 27.08.2015 to the appellant, stating that as on the said date Rs. 16,84,34,431/- along with interest is due and payable towards license fee/advertisement tax. The Show Cause Notice also alleged that the appellant had failed to execute the agreement for street hoardings, which was issued on 29.11.2014 and failed to submit the bank guarantee which was issued on 27.09.2014 and it also alleged that the appellant had illegally shifted several hoardings without the consent of the authority. The show cause notice asserted that in spite of repeated requests

and/or reminders, the appellant had failed to make payment and refused and/or neglected to perform the obligations as per the terms and conditions of the tender. The Show Cause Notice further clearly alleged as under:

> "In view of the aforesaid breach of the terms and conditions of the tender, you are requested to file a show cause as to why befitting action to blacklist you from participating in any tender process should not be taken all (sic.) you make the outstanding payment and comply with the terms and conditions of the tender. You are required to submit your reply within 15 days from the date of Receipt of this letter, failing which the authority will take appropriate decision in accordance with law."

10. By its reply of 15.09.2015, the appellant responded to the Show Cause Notice. The appellant mentioned therein that the tender document did not empower the Corporation to determine the alleged breach on the part of the company arising out of the contract; that in view of the submission made by the Corporation before the Division Bench, it is only the arbitrator in terms of Clause 18 who can decide the dispute mentioned in the Show Cause Notice of 27.08.2015; that Corporation is a party to the proposed arbitration proceeding and it cannot usurp the

power of the arbitrator; that the decision to blacklist the appellant without recourse to arbitration proceeding is illegal and that any decision to blacklist before the decision of the arbitrator would be prejudging the alleged guilt without deciding the issue. The appellant prayed that the Show Cause Notice be not given effect to till the disposal of the arbitration proceeding.

11. It further appears that by notice dated 05.10.2015, the appellant invoked clause 18 of the tender document and sought reference to the Joint Municipal Commissioner as arbitrator.

Debarment Order:

12. By an order of 02.03.2016, the Corporation debarred the appellant from participating in any tender for a period of five years or till the date of exoneration of the company from the allegation of negligent performance/action and also of nonpayment of huge amount or till the date of payment of entire dues with interest under the direction of any authority/forum/court, whichever is later. The order,

after recording the history of the dispute and after noticing the fact that at the hearing given, the company took the same plea as stated by them in their reply, observed as under:-

> "... .... The company had alleged that it could find only 174 hoarding out of 250 hoardings but the company in their letter dated 14th November, 2014 stated, inter alia, that they were able to find 200 street hoarding including 26-V-shaped. The company cannot take such plea particularly when the display sites/hoardings were specified in the lists under annexure-I, Il & III to the tender notice. The description of works under clause-2 of the tender notice clearly stated that the street hoarding in the annexure would be allotted in "As in where is basis". The company after having understood the scope and effect of the terms and condition of the notice the offers which were accepted by the authorities. The bills for 5 clusters amounting to Rs.4,58,97,360/- had already been served. The company was informed of its failure to pay the sum of Rs.4,58,97,360/- for the period from July 2014 to September 2014. The company paid part amount for 55 nos. of hoarding as against the said demand for the said quarter.
>
> The company failed to mention the unit code on the allotted street hoarding and the company did not adhere to the instruction as made in this respect by writing letters on repeated occasions.
>
> Clause-2.1 as incorporated in the tender notice is redundant in respect of the hoardings already in-existence since such hoardings remain fitted with the provision for supply of electricity. In fact, no

objection certificate is not required from the KMC in respect of the existing hoardings. All that is necessary is for confirmation of the change of the name of the user/agency. It is on record that the company continued to display the advertisement in the hoardings without requiring the no objection certificate from the KMC until 3rd March 2015 when a letter was issued in this respect. There is no document to show that the company applied to the CESC for electric connection and the CESC required no objection certificate from the KMC. It is on record that the contract period commenced from 1st June 2014 and hence there was no cogent reason to write the letter for No Objection Certificate after about 8 months. No application to the CESC in the name of the petitioners for the purpose illuminated street hoarding was submitted to the concerned authorities. The company used the supply of Electricity without requiring to inform the KMC AND EACH AND EVERY HOARDING was found illuminated during inspection failed to obtain the interim order as prayed for preferred the appeal being APOT No. 290 of 2015 and an application being G.A. No. 2374 of 2015 was filed in connection with the said appeal. The Hon'ble appeal court while dismissing the appeal and also the application by an order dated 3rd August 2015 was pleased to observe that there was no urgency in the matter in view of pendency of the writ petition. It was also observed that if the appellants were aggrieved in any manner with respect to the contract it was necessary for them to invoke arbitration clause.

The company earlier filed the writ petition being W.P. No.261 of 2015 relating to the notice to show cause dated 28th February 2015. The company was asked to show cause why the allotment should not be terminated for not clearing the dues amounting to Rs. 10,28,52,918/- as then calculated plus interest to

take defense upon certain facts in the written argument. I am not fully convinced and/or satisfied with the stand and/or explanation for several reasons and/or ground as stated hereinbefore. It appears to me that the company did not have the financial capacity to have the display of advertisement rights in 5 clusters and as such the company started creating problems on one plea to another since after obtaining the allotment of Sites. The company in one hand stopped the KMC to allot the said site to others and on the other hand itself stopped the due payment for 5 clusters. The KMC has thus suffered in both counts. Moreover the company has made an attempt to set up a bad example to others having interest to enjoy the advertisement rights.

That being the position the KMC has no alternative but to blacklist the company for gross negligent action. The company is therefore debarred from participating in any tender to have the award of contract for a period of 5 years or till the date of exoneration of the company from the allegation of negligent, performance/action and also of nonpayment of huge amount or till the date of payment of entire dues with interest under the direction of any authority/forum/court whichever is later."

13. In the meantime, it appears that in August, 2016, the appellant also filed a claim before the arbitrator claiming an award for Rs. 19,81,60,400/-. At the hearing before us, it was submitted that the arbitrator Justice (Retd.) Narayan Chandra Sil, who ultimately heard the matter, passed an award on 26.04.2024 awarding the claimant a

sum of Rs. 2,23,14,565/- after excluding the set off amount of Rs. 78,03,435/- along with interest of 8% per annum from the date of the award till realization. This statement is reiterated in the written submissions. We were also given a copy of the award. The respondent has not disputed the said fact.

Proceedings in the High Court:

14. The appellant also filed a Writ Petition, namely, Writ Petition No. 6616(W) of 2016 challenging the order of 02.03.2016. The learned Single Judge of the High Court while setting aside the order of 02.03.2016 held as under:

> "It is well settled by the above authorities that blacklisting is a civil consequence. The rules of natural justice have to be scrupulously followed. This denotes that proper reasons have to be given. The reasons, should have suggested that public interest would be affected if the writ petitioner was continued to be awarded contracts by the respondent Corporation. Or it was to be established that the writ petitioner was a dishonest business organisation, or irresponsible or wholly lacking in business integrity. The government or a government agency like the respondent-Corporation could not blacklist the writ petitioner without assigning these reasons or reasons akin thereto. There is a civil dispute between the parties. The matter has gone to arbitration. At best, the writ petitioner can be accused of taking the contract, not fully paying for it and not

performing it. The respondent Corporation has a monetary claim against the writ petitioner. It does not appear that the writ petitioner has made payment of any significant part of the contract price. It is astonishing that the respondent Corporation did not terminate the contract within the contract period and award hoardings to another party when the writ petitioner made a breach of the payment condition to pay the quarterly licence fee in advance. It waited till after the expiry of the contract period on 30th June, 2015. Thereafter, they proceeded to show cause the writ petitioner. This shows considerable fault on the part of the respondent Corporation. It also goes to indicate that expressly or impliedly the respondent Corporation had accepted the alleged breach of contract made by the petitioner.

Moreover, the defence of the writ petitioner in their written notes of argument is that 174 hoardings which were awarded to them were "non-lucrative". As the respondent Corporation did not issue a no objection certificate, CESC Limited could not give permission to light the hoardings. The writ petitioner could not put them to any use. If this is the defence raised by the writ petitioner it could not be cast aside as one totally devoid of any merit. Therefore, following the ratio laid down by Mr. Justice Sinha in the case of *B.S.N. Joshi & Sons Ltd. v. Nair Coal Services Ltd and another* reported in (2006) 11 SCC 548 blacklisting proceeding should not have proceeded with because the writ petitioner in my opinion raised a bona fide dispute. Furthermore, blacklisting ought not to have been made until and unless this dispute was resolved.

For all the above reasons, the impugned order dated 2nd March, 2016 is set aside. Only the issue of blacklisting is decided by this order. Any observation regarding any other dispute between the parties is to be taken as tentative."

15. The matter was carried in Appeal by the Corporation and by the impugned order, the High Court has allowed the same by holding that since the appellant was given a hearing and since the order of 02.03.2016 cannot be held to be unreasonable or unfair or disproportionate, there existed sufficient reasons for debarring the appellant. So holding, the Appeal was allowed. The appellant aggrieved is before us in Appeal. This Court while issuing notice in the matter by its order of 27.04.2018 stayed the operation of the impugned judgment.

Contentions:

16. We have heard Mr. P.S. Datta, learned senior counsel for the appellant and Mr. Sujoy Mondal, learned counsel for the respondent. We have also perused the written submissions filed by the appellant. The respondent has not filed any written submissions.

17. The learned senior counsel for the appellant contends that the Corporation could at best have imposed only a 'penalty' for making late payments or in the case of default

of payments under clause 9 and there could not have been blacklisting; that blacklisting can be only made when there was deviation of clauses 2.8, 11 & 14 and that the Show Cause Notice precisely setting out why the blacklisting was to be imposed need to have been given; that the grounds of blacklisting are not the one stated in clauses 2.8, 11 & 14; that the order of blacklisting was passed during the pendency of the arbitration proceedings; that the issues relating to blacklisting were akin to the facts in issue before the arbitration; that the Corporation has failed to prove gross misconduct or irregularities or fraud involving of any element of public interest; that the learned Single Judge was right in setting aside the order of blacklisting; that the Corporation is guilty of having not acted fairly and reasonably by not facilitating the appellant to perform his contractual right; that the Corporation despite the repeated undertaking before the High Court for taking resort to arbitration has deliberately issued the order of blacklisting and that any and every act of alleged breach

of contract would not ensue blacklisting.

18. In support of their submission, the appellant relied on ***B.S.N. Joshi & Sons Ltd. vs Nair Coal Services Ltd. & Ors. (2006) 11 SCC 548***. The appellant also assailed the judgment of the Division Bench by contending that the Division Bench failed to consider that there was no element of violation of public interest involved in the conduct of the appellant and in fact the Corporation was guilty of having not acted fairly and reasonably and that the Division Bench has completely overlooked this aspect. The appellant further contended that the order of blacklisting was disproportionate and contrary to the judgment in ***Kulja Industries Ltd. vs Chief General Manager Western Telecom Project BSNL & Ors. (2014) 14 SCC 731***.

19. The learned counsel for the Corporation defended the order of blacklisting as well as the judgment of the Division Bench and prayed that there was no case for interference by this Court.

20. We have considered the submissions of the learned counsels and perused the record.

Questions for consideration:

21. The following questions arise for consideration:

a. Whether in the facts and circumstances of the case, the order of the Corporation dated 02.03.2016, debarring the appellant for a period of five years is valid and justified in the eye of the law?

b. If so, what reliefs is the appellant entitled to?

Reasons and conclusions:

22. Blacklisting has always been viewed by this Court as a drastic remedy and the orders passed have been subjected to rigorous scrutiny. In ***Erusian Equipment & Chemicals Ltd. vs State of West Bengal & Anr. (1975) 1 SCC 70***, this Court observed that

> "20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction…."

23. In ***Mr. B.S.N. Joshi (supra)***, this Court held that

> "41. … When a contractor is blacklisted by a department he is debarred from obtaining a contract, but in terms of the notice inviting tender when a tenderer is declared to be a defaulter, he may not get any contract at all. It may have to wind up its business. The same would, thus, have a disastrous effect on him. Whether a person defaults in making payment or not would depend upon the context in which the allegations are made as also the relevant statute operating in the field. When a demand is made, if the person concerned raises a bona fide dispute in regard to the claim, so long as the dispute is not resolved, he may not be declared to be defaulter."
>
> (Emphasis supplied)

24. This Court in ***Kulja Industries Ltd. (supra)*** after setting out the legal position governing blacklisting/debarment in USA and UK held that:

> "25. Suffice it to say that "debarment" is recognised and often used as an effective method for disciplining deviant suppliers/contractors who may have committed acts of omission and commission or frauds including misrepresentations, falsification of records and other breaches of the regulations under which such contracts were allotted. What is notable is that the "debarment" is never permanent and the period of debarment would invariably depend upon the nature of the offence committed by the erring contractor.
>
> 26. In the case at hand according to the respondent BSNL, the appellant had fraudulently withdrawn a huge amount of money which was not due to it in collusion and conspiracy with the officials of the respondent Corporation. Even so permanent debarment from future contracts for all times to come may sound too harsh and heavy a punishment to be considered reasonable

> especially when (a) the appellant is supplying bulk of its manufactured products to the respondent BSNL, and (b) the excess amount received by it has already been paid back."

25. What is significant is that while setting out the guidelines prescribed in USA, the Court noticed that comprehensive guidelines for debarment were issued there for protecting public interest from those contractors and recipients who are non-responsible, lack business integrity or engage in dishonest or illegal conduct or are otherwise unable to perform satisfactorily. The illustrative cases set out also demonstrate that debarment as a remedy is to be invoked in cases where there is harm or potential harm for public interest particularly in cases where the person's conduct has demonstrated that debarment as a penalty alone will protect public interest and deter the person from repeating his actions which have a tendency to put public interest in jeopardy. In fact, it is common knowledge that in notice inviting tenders, any person blacklisted is rendered ineligible. Hence, blacklisting will not only debar the person concerned from

dealing with the concerned employer, but because of the disqualification, their dealings with other entities also is proscribed. Even in the terms and conditions of tender in the present case, one of the conditions of eligibility is that the agency should not be blacklisted from anywhere.

26. In other words, where the case is of an ordinary breach of contract and the explanation offered by the person concerned raises a bona fide dispute, blacklisting/debarment as a penalty ought not to be resorted to. Debarring a person albeit for a certain number of years tantamounts to civil death inasmuch as the said person is commercially ostracized resulting in serious consequences for the person and those who are employed by him.

27. Too readily invoking the debarment for ordinary cases of breach of contract where there is a bona fide dispute, is not permissible. Each case, no doubt, would turn on the facts and circumstances thereto.

28. Examining the facts of this case from that perspective,

we find that the appellant, after the award of the tender, has admittedly paid an amount of Rs. 3,71,96,265/-, though, according to the Corporation, the outstanding amount as on the date of the debarment was Rs. 14,63,24,727/-. However, as would be clear from the facts discussed hereinabove, right from the inception there have been issues between the appellant and the Corporation with regard to the fulfilment of the reciprocal obligations in the bid document. There has been exchange of correspondence between the parties with each side blaming the other for not performing the reciprocal obligations. While the appellant had a case with regard to the non-issuance of work orders; non-receipt of formal format of bank guarantee; refusal of No Objection Certificate for obtaining connection from the Calcutta Electric Supply Corporation Ltd.; existence of only 200 out of 250 allotted street hoardings and so on demonstrating breach of obligations by the Corporation, the Corporation had a case that Bank Guarantee was not the mode of

payment and as such there was no reason to insist on Bank Guarantee; that in the joint inspection the appellant's men failed to cover all the areas and thereafter when appellant was asked to submit a list of allotted location, the appellant failed to furnish the same and further there was huge default on the part of the appellant.

29. Even in the order dated 02.03.2016 by which the appellant was debarred for a period of five years, the reason given is that the tender notice had clearly stated that the street hoardings in the annexures would be allotted on 'as is where is' basis; that the company having understood the scope and effect of the terms and conditions of the notice accepted the award; that, 'No Objection Certificate', is not required in respect of the existing hoardings; that there was no document to show that the company had applied to the Calcutta Electric Supply Corporation Ltd. for connection and that it appeared to the Corporation that the company did not have the financial capacity to pay and as such the

company was creating problems on one pretext or the other since obtaining the allotment of sites. The order also stated that the appellant had set up a bad example to others having interest to enjoy the advertisement rights.

30. All these reasons fall far short of rendering the conduct of the appellant in the present case, so abhorrent as to justify the invocation of the drastic remedy of blacklisting/debarment. The appellant very clearly has been subjected to a disproportionate penalty. The Corporation has lifted a sledgehammer to crack a nut. We disapprove of the said course of action on the facts of this case.

31. The exchange of correspondence resulted in invocation of the arbitration and today it is undisputed that by an award of 26.04.2024, the appellant has been awarded after due set off Rs. 2,23,14,565/- with 8% interest per annum under the very same dispute. We are not here concerned with the correctness of the award. What it does signify is that there was a bona fide

contractual dispute between the parties and we hold that the learned Single Judge was right in setting aside the order of debarment on the ground that there was a bona fide civil dispute between the parties.

32. What renders the matter a fortiori is that when APOT No. 89 of 2015 along with GA 782 of 2015 filed against the order of the learned Single Judge dismissing Writ Petition No. 261 of 2015, the counsel for the Corporation had submitted to the Court that the Show Cause Notice was being withdrawn at that stage and appropriate proceeding was to be taken before the arbitrator. In spite of the statement, the Corporation did not invoke arbitration.

33. The appellant invoked arbitration and no doubt a counter claim was filed by the Corporation before the arbitrator. Ultimately, the counter claim was decreed for Rs. 78,03,435/- and the claim was decreed for Rs. 3,01,18,000/- and after ordering set off, an award has been passed for Rs. 2,23,14,565/-.

34. The issues framed by the arbitrator also indicate that

the assertions and counter assertions of the appellant and the Corporation were clearly in the nature of a bona fide civil dispute only to demonstrate that aspect, the issues are extracted herein below:

> "1. Is the arbitral proceeding barred by reasons of accord and satisfaction?
> 2. Did the respondents fail to allot 250 street hoardings in terms of tender document?
> 3. Did the respondents fail and neglect to provide clear sites to the claimants by intervening and removing illegal hoardings for obstructions at the allotted sites?
> 4. Did the respondents issue 'no objection certificate' to the claimants for getting new connections from the CESCP?
> 5. Was there any mis-match of unit code and the location hoardings?
> 6. Was it established and accepted in joint inspection by the KMC that only 200 street hoardings out of 250 could be located?
> 7. Did the claimants fail to deposit the requisite amount in advance under the contract for which the KMC, the respondent, suffered substantial loss in revenue?
> 8. Was there any obligation of the respondents to identify the location of the street hoardings as the agreement was on 'as is where is basis'?
> 9. Did the parties discharge their respective liabilities under the contract and if so to what extent?
> 10. Is the claimant entitled to the claim amount as claimed?
> 11. Are the respondents entitled to the amount of counter-claim as claimed in their statement of counter-claim?
> 12. To what other relief or reliefs the parties are entitled?"

35. The Division Bench has, in our opinion, not appreciated the case in its proper perspective. Merely saying that the blacklisting order carried reasons is not good enough. Do the reasons justify the invocation of the penalty of blacklisting and is the penalty proportionate, was the real question.

36. The Division Bench has observed that blacklisting is a business decision by which the party affected by the breach decides not to enter into any contractual relationship with the party committing the breach. It also observed that between two private parties the right to take any such decision is absolute and untrammeled by any constraints whatsoever. The observations are too sweeping in their ambit and wholly overlook the fact that the respondent-Corporation is a statutory body vested with the duty to discharge public functions. It is not a private party. Any decision to blacklist should be strictly within the parameters of law and has to comport with the principle of proportionality.

37. The Division Bench having noticed the fact that any decision to blacklist will be open to scrutiny on the anvil of the doctrine of proportionality has failed to apply the principle to the facts of the case in the correct perspective. The Division Bench has also failed to correctly appreciate the ratio of the decision in ***B.S.N. Joshi (supra)***.

38. There has been no enquiry by the Division Bench as to whether the conduct of the appellant was part of the normal vicissitudes in business and common place hazards in commerce or whether the appellant had crossed the rubicon warranting a banishment order, albeit for a temporary period in larger public interest.

39. One such case where this Court found the Lakshman Rekha to be breached by the party blacklisted was ***Patel Engineering Limited*** vs. ***Union of India and Another***, (2012) 11 SCC 257. In that case, while upholding the order of blacklisting, this Court recorded the following:

> "33. From the impugned order it appears that the second respondent came to the conclusion that: (1) the petitioner is not reliable and trustworthy in the context of a commercial transaction; (2) by virtue of the

> dereliction of the petitioner, the second respondent suffered a huge financial loss; and (3) the dereliction on the part of the petitioner warrants exemplary action to "curb any practice of 'pooling' and 'mala fide' in future".
>
> 34. We do not find any illegality or irrationality in the conclusion reached by the second respondent that the petitioner is not (commercially) reliable and trustworthy in the light of its conduct in the context of the transaction in question. We cannot find fault with the second respondent's conclusion because the petitioner chose to go back on its offer of paying a premium of Rs 190.53 crores per annum, after realising that the next bidder quoted a much lower amount. Whether the decision of the petitioner is bona fide or mala fide, requires a further probe into the matter, but, the explanation offered by the petitioner does not appear to be a rational explanation.
>
> 36. .... The dereliction, such as the one indulged in by the petitioner, if not handled firmly, is likely to result in recurrence of such activity not only on the part of the petitioner, but others also, who deal with public bodies, such as the second respondent giving scope for unwholesome practices....."

40. Equally so in ***Kulja Industries (supra)***, the party blacklisted was alleged to have fraudulently withdrawn a huge amount of money which was not due to it in collusion and conspiracy with officials of the respondent Corporation.

41. ***Patel Engineering (supra)*** and ***Kulja Industries (supra)*** bring out the contrast between cases of that ilk

and others, like the case in question. It is this distinction the Division Bench has grossly overlooked which, however, the learned Single Judge had rightly brought to the fore.

42. For all the reasons set out hereinabove, we set aside the impugned judgment of the Division Bench dated 21.06.2017 passed in M.A.T. No. 277 of 2017 and restore the judgment of the learned Single Judge. The result will be that the Writ Petition No. 6616(W) of 2016 filed by the appellant before the High Court at Calcutta would stand allowed and the order of blacklisting dated 02.03.2016 would stand set aside. The Appeal is, accordingly, allowed. No order as to costs.

.....J.
[**B.R. GAVAI**]

.....J.
[**SANJAY KAROL**]

.....J.
[**K. V. VISWANATHAN**]

New Delhi
07 August, 2024.

2025 INSC 236

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2025
(Arising out of SLP(C) No.10042/2023

M/S TECHNO PRINTS — APPELLANT(S)

VERSUS

CHHATTISGARH TEXTBOOK CORPORATION & ANR. — RESPONDENT(S)

O R D E R

1. Leave granted.

2. This appeal arises from the judgment and order passed by the High court of Chhattisgarh at Bilaspur in Writ Appeal No.72 of 2023, by which the writ appeal filed by the appellant herein, came to be dismissed and thereby the judgment and order passed by the Learned Single Judge, rejecting the writ petition of the appellant came to be affirmed.

3. The facts giving rise to this appeal may be summarized as under:-

(a) The appellant herein, is in the business of printing past many years.

(b) The appellant company is one of the 30 firms, registered with the Chhattisgarh Text Book Corporation (respondent no.1 herein).

(c) The subject matter of this litigation is the show cause notice that came to be issued by the respondent no.1 to the appellant firm, calling upon the firm to show cause as to why it should not be blacklisted for a period of three years and the EMD of Rs.5,00,000/- (Rupees Five Lakh only), be forfeited. The appellant

firm was also called upon to show cause as to why the loss incurred by the corporation, due to its default in fulfilling its terms of contract, be recovered.

4. Prima facie, it appears that the petitioner firm was declared as L-1 in one of the tenders issued by the corporation i.e. the respondent no.1. According to the respondent no.1, the appellant firm violated few clauses of the tender agreement.

5. The relevant clauses of the tender document/agreement which according to the respondent no.1, have been breached, read thus:-

> ***"16.1 Period of supply of books maximum 90 days as per mentioned in the work order from the date of printing order. It will be imperative upon the bidder to complete the allotted printing & binding work within stipulated time period i.e. maximum 90 days as per mentioned in the work order. In emergency the CGPPN will reduce period for supply of books as per requirements. The 22/52 decision of the Managing Director in this regard will be final and binding on concerned bidder.***
>
> ***xxx xxx xxx***
>
> ***16.3 If the progress of work at any stage is found slower than expected and if the Nigam is convinced that the printer will not be able to complete the work in time, the Nigam shall cancel the contract in full or in part and give it to other printer at the cost and risk of defaulting printer. In the event of such cancellation, the security deposit/EMD of the printer shall be forfeited and the printer will not be entitled to any compensation.***
>
> ***xxx xxx xxx***
>
> ***16.9 If the tenderer is awarded to the lowest rate printer on the basis of L-1 rate of group/groups and Nigam allots the printing works to the tenderer on the basis of his L1 rate (Lowest Tenderer) of group/groups then also if tenderer refuses to do the printing work or work not completed, in this condition Nigam has right to put the tenderer in BLACK LIST for 3 (Three) years and security deposit and EMD will be forfeited."***

6. The show cause notice issued by the respondent no.1 was made a subject matter of challenge, by filing writ petition before the

High Court.

7. The Learned Single Judge rejected the writ petition holding as under:-

> ***"8. Having heard the contention put forth on either side and on perusal of records what is required to be taken note of at this juncture is the opening paragraph of the order of the High Court in WPC No. 1297/2021 (Sharda Offset Printers Pvt. Ltd. v. Chhattisgarh Textbook Corporation & another) and the operative part of the judgment of the said writ petition is reproduced hereinunder for ready reference:***
>
> > ***"1. The challenge in this writ petition is to the order dated 02.01.2021 passed by respondent No.1 whereby the petitioner has been blacklisted for a period of 3 years. 23. Therefore, when the order of blacklisting is compared with the show cause notice, in the instant case, it clearly spells out that the order of blacklisting exceeded the grounds which were given in show cause. The main emphasis was that the petitioner has received paper material in excess of bank guarantee for which the agreement contains measures under Clause 6.1.4. The black-listing was made under Clauses 13.3 & 13.6 of the agreement with respect to furnishing of bank guarantee. Even Clause 3 was not part of the show cause. The show cause notice was only confined to Clause 13.3 & 13.6. Reading of clause 13.3 & 13.6 would show that they are in general terms as Clause 13.3 purports that any failure to fulfill contractual obligations or breach of any provisions of agreement, may render the bidder to be black-listed. Clause 13.6 further purports that if the printer is found to influence any staff of the Nigam in any unauthorised manner will also be blacklisted. In the Statement of Chinta Ram Sahu and in police enquiry against him, nothing was found against the petitioner and omnibus inference cannot be drawn that the petitioner had influenced the staff of the Corporation and had influenced the Police, thereby the petitioner was liable to be blacklisted. 24. Applying the principles laid down by the Supreme Court, I am of the view that the blacklisting order in this case travelled beyond the scope of show cause notice, as such, is liable***

to be quashed. Accordingly the order dated 02.01.2021 is quashed. With the above observations, this writ petition is allowed."

9. The plain reading of the aforesaid order would clearly give an indication that the challenge in the earlier round of litigation was confined to the order of blacklisting. Further that the High Court had only tested the order of blacklisting qua the show cause notice that was earlier issued on 13.04.2020 while deciding the writ petition. The High Court at no point of time had precluded the respondents from conducting an inquiry and proceeding in accordance with law. It had only found the order of blacklisting earlier passed on 02.01.2021 to be bad in law and contrary to the contents of the show cause notice dated 13.04.2020.

10. The plain reading of the averments of the show cause notice would by itself show that the respondents have made certain serious allegations against the petitioner in respect of the lifting of the papers from the respondent-Corporation by material suppression of facts so far as furnishing of the Bank Guarantee is concerned.

11. Only because the earlier order of blacklisting having been quashed by the High Court would not preclude the respondent-Corporation from initiating appropriate proceedings for the irregularity committed by the petitioner, if any, in accordance with law. That it is for this reason that the petitioner has been issued with a fresh show cause notice spelling out the allegations that has been made against him. The petitioner can very well provide all the explanations to the allegations made to the respondents supported with all relevant documents in their support. Upon such explanation being submitted the respondent authorities are duty bound to duly consider the same and after due consideration alone, can they take an appropriate decision to proceed further, if required.

12. Further, what is also reflected from the proceedings is that, subsequent to allowing of the earlier writ petition, the respondents have now issued with a detailed show cause notice to the petitioner on 14.12.2022, which is under challenge in the present writ petition. The notice would clearly give an indication of the details of the papers that the petitioner had collected for the printing and publication purpose at the different point of time from the respondent-Corporation. The core question that needs to be consider is that since there

was no challenge to the show cause notice earlier and that it was order of blacklisting alone which was under challenge, would not preclude the respondents from conducting an inquiry in respect of an allegation as is reflected in the show cause notice against the petitioner.

13. The further question to be considered also is the fact that if at all if the earlier writ petition stands allowed which was exclusively challenging the order of blacklisting would it not amount to the respondents being precluded for all time to come from initiating any action in respect of any illegality which was detected by the respondents in respect of the contract entered into between the petitioner and the respondents. All the contentions and the allegations that the petitioner raises is only trying to establish the fact that the allegations leveled against the petitioner does not stand the test of law as it has already been subjected to test in the earlier round of litigation i.e. in WPC No. 1325/2021. Whereas on the perusal of the order of the earlier writ petition would clearly give an indication that the challenge in the said writ petition was only to the order of blacklisting. That it was only the order of blacklisting which was subjected to scrutiny by the writ Court and it was only the order of blacklisting which has been set aside/quashed. The writ Court in the earlier judgment in WPC No. 1325/2021 has not held that the allegations leveled against the petitioner is not made out. All that it has been held by the writ Court was that the grounds raised for blacklisting, was not reflected in the show cause notice and the order of blacklisting was traveling beyond the scope of the show cause notice.

14. Under the circumstances, the subsequent show cause notice in respect of the same contract would be sustainable and the same cannot be held to be either arbitrary or bad in law at this stage. The petitioner would have all the rights and liberty to put up their explanation so far as the allegations are concerned in their response which they are required to submit to the show cause notice. That upon such reply being furnished the authorities concerned are duty bound to duly consider the same and then take an appropriate decision whether to proceed further on the show cause notice proceedings in the light of the explanation so submitted by the petitioner or not?

15. This view of this Court stands fortified from the order of the Hon'ble Supreme Court in the case of "STATE OF UTTAR PRADESH V. BRAHM DATT SHARMA & ANR." (1987) 2

SCC 179 and "SECRETARY, MINISTRY OF DEFENCE & ORS. V. PRABHASH CHANDRA MIRDHA" (2012) 11 SCC 565. This Court in the recent past in WPC No. 4431/2019 (Kavita Sharma v. State of Chhattisgarh and others) while deciding the matter on an inquiry report that was furnished to the petitioner therein had while deciding the writ petition on 05.12.2019 in paragraphs No. 11 to 14 has held as under:

> *"11. The High Court in exercise of its powers under Article 226 of the Constitution of India would not substitute itself as a fact finding body to ascertain the correctness in respect of the allegations made neither can this Court in exercise of writ jurisdiction conduct a roving enquiry against the allegations which have been levelled against the petitioner.*
>
> *12. The Supreme Court in the case of State of Uttar Pradesh v. Brahm Datt Sharma & Anr. [1987 2 SCC 179] dealing with the scope of judicial interference in disciplinary matters was of the opinion that, "the purpose of issuing show cause notice is to afford an opportunity of hearing to the Government servant and once cause is shown and is open to the Government to consider the matter in the light of the facts and submissions placed by the Government servant, only thereafter a final decision in the matter could be taken. Interference by the Court before that stage would be premature and the Hon'ble Supreme Court went on holding that, the High Court in our opinion ought not have interfered with the show cause notice.*
>
> *13. Again, the Hon'ble Supreme Court in the case of Secretary, Ministry of Defence & Ors. v. Prabhash Chandra Mirdha [2012 11 SCC 565] in paragraph 8, 10 & 12 has held as under:- "8. The law does not permit quashing of chargesheet in a routine manner. In case the delinquent employee has any grievance in respect of the charge-sheet he must raise the issue by filing a representation and wait for the decision of the disciplinary authority thereon. 10. Ordinarily a writ application does not lie against a charge-sheet or show-cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so. A writ lies when some right of a party is infringed. In fact, chargesheet does not infringe the right of a party.*

It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a charge-sheet or show-cause notice in disciplinary proceedings should not ordinarily be quashed by the court. 12. Thus, the law on the issue can be summarised to the effect that the charge-sheet cannot generally be a subject matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the charge-sheet be quashed at an initial stage as it would be a premature stage to deal with the issues.

14. Keeping in view the aforesaid legal pronouncements as is laid down by the Hon'ble Supreme Court and also taking into consideration the fact that the petitioner has also submitted a detailed reply to the show-cause notice, the authorities are yet to take a decision on the show-cause notice. The present writ petition in its present form would not be sustainable. The authorities concerned are expected to take a decision objectively, considering all the submissions that the petitioner has made in the reply to the Show-Cause Notice."

16. Given the said facts, reserving the right of the petitioner to submit a detailed reply to the show cause notice, the writ petition at this juncture stands rejected."

8. The appellant being dissatisfied with the order passed by the Learned Single Judge, rejecting his writ petition went in appeal.

9. The Appellate Court dismissed the appeal, holding as under:-

"4. A careful perusal of the aforesaid part of the notice would show that it is only a show cause notice and appellant's response has been sought to decide the issue and nothing has been adjudicated to say that the respondent has already taken final decision in the matter. The learned Single Judge after detailed hearing has clearly held in paragraphs No.9 to 14 as under:-

"9. The plain reading of the aforesaid order would clearly give an indication that the challenge in

the earlier round of litigation was confined to the order of blacklisting. Further that the High Court had only tested the order of blacklisting qua the show cause notice that was earlier issued on 13.04.2020 while deciding the writ petition. The High Court at no point of time had precluded the respondents from conducting an inquiry and proceeding in accordance with law. It had only found the order of blacklisting earlier passed on 02.01.2021 to be bad in law and contrary to the contents of the show cause notice dated 13.04.2020.

10. The plain reading of the averments of the show cause notice would by itself show that the respondents have made certain serious allegations against the petitioner in respect of the lifting of the papers from the respondent-Corporation by material suppression of facts so far as furnishing of the Bank Guarantee is concerned.

11. Only because the earlier order of blacklisting having been quashed by the High Court would not preclude the respondent-Corporation from initiating appropriate proceedings for the irregularity committed by the petitioner, if any, in accordance with law. That it is for this reason that the petitioner has been issued with a fresh show cause notice spelling out the allegations that has been made against him. The petitioner can very well provide all the explanations to the allegations made to the respondents supported with all relevant documents in their support. Upon such explanation being submitted the respondent authorities are duty bound to duly consider the same and after due consideration alone, can they take an appropriate decision to proceed further, if required.

12. Further, what is also reflected from the proceedings is that, subsequent to allowing of the earlier writ petition, the respondents have now issued with a detailed show cause notice to the petitioner on 14.12.2022, which is under challenge in the present writ petition. The notice would clearly give an indication of the details of the papers that the petitioner had collected for the printing and publication purpose at the different point of time from the respondent-Corporation. The core question that needs to be consider is that since there was no challenge to the show cause notice earlier and that it was order of blacklisting alone which was under challenge, would

not preclude the respondents from conducting an inquiry in respect of an allegation as is reflected in the show cause notice against the petitioner.

13. The further question to be considered also is the fact that if at all if the earlier writ petition stands allowed which was exclusively challenging the order of blacklisting would it not amount to the respondents being precluded for all time to come from initiating any action in respect of any illegality which was detected by the respondents in respect of the contract entered into between the petitioner and the respondents. All the contentions and the allegations that the petitioner raises is only trying to establish the fact that the allegations leveled against the petitioner does not stand the test of law as it has already been subjected to test in the earlier round of litigation i.e. in WPC No. 1325/2021. Whereas on the perusal of the order of the earlier writ petition would clearly give an indication that the challenge in the said writ petition was only to the order of blacklisting. That it was only the order of blacklisting which was subjected to scrutiny by the writ Court and it was only the order of blacklisting which has been setaside/quashed. The writ Court in the earlier judgment in WPC No. 1325/2021 has not held that the allegations leveled against the petitioner is not made out. All that it has been held by the writ Court was that the grounds raised for blacklisting, was not reflected in the show cause notice and the order of blacklisting was traveling beyond the scope of the show cause notice.

14. Under the circumstances, the subsequent show cause notice in respect of the same contract would be sustainable and the same cannot be held to be either arbitrary or bad in law at this stage. The petitioner would have all the rights and liberty to put up their explanation so far as the allegations are concerned in their response which they are required to submit to the show cause notice. That upon such reply being furnished the authorities concerned are duty bound to duly consider the same and then take an appropriate decision whether to proceed further on the show cause notice proceedings in the light of the explanation so submitted by the petitioner or not?""

10. In such circumstances record to above, the appellant is here

before this Court with the present appeal.

11. We have heard Mr. Gaurav Agarwal, the learned senior counsel, appearing for the appellant and Mr. Ankit Mishra, the learned counsel appearing for the respondent nos.1 and 2, respectively.

12. We take notice of the order passed by this Court dated 17.05.2023, the same reads thus:-

> ***"Mr. Priyank Upadhyay, learned Advocate on Record accepts notice on behalf of the respondents. Hence, issue of formal notice to the respondents is dispensed with.***
> ***Objections to the petition, if any, be filed.***
> ***In the meanwhile, there shall be stay of further proceedings pursuant to the notice dated 14.12.2022."***

13. Thus, it appears that by way of interim order, the further proceedings of the show cause notice were stayed.

14. The short point that falls for our consideration in this appeal is whether we should entertain this appeal arising from a challenge to the show cause notice.

15. The second point that falls for our consideration is whether the respondents in the facts of this case more particularly having regard to the nature of violation were justified in calling upon the appellant to show cause as to why they should not be blacklisted for a period of three years.

16. It is true that ordinarily, a Writ Court should not entertain any petition, seeking to challenge a show cause notice unless the Court is convinced that the same has been issued by an authority

having no jurisdiction, or the same is tainted with mala fides.

17. Here is a case where the appellant was assigned a contract of printing books by the corporation. This contract was entered into sometime in 2020. Unfortunately, from mid 2020, the entire country was in the grip of COVID-19 pandemic. It has been fairly accepted by the appellant that the obligation in terms of the contract could not be discharged due to circumstances beyond its control. In other words, the appellant was prescribed to abide by the time period which was prescribed in the tender notice.

18. The aforesaid at best could be said to be a case of breach of contract. The only point is whether such a breach of contract would entail the consequences of getting blacklisted.

19. It is true that the terms of the tender document do provide that if the party is unable to fulfill its terms of agreement, he would be liable to be blacklisted.

20. We do not propose to test the legality and validity of such stipulation in the tender agreement. The inherent power is always there with the party floating the tender. However, we are testing its reasonableness on the basis of the facts which are before us. In other words, has the appellant done something so gross that it deserves to be blacklisted.

21. Mr. Gaurav Agarwal, the learned senior counsel appearing for

the appellant would submit that one cannot blacklist or even be called upon to show cause as to why you should be blacklisted, unless there is an intent to cheat or take undue advantage which is not there in the present case. He would submit that there is nothing to indicate that the appellant deliberately defaulted. In such circumstances, the proceedings instituted against the appellant deserves to be dropped.

22. On the other hand, the learned counsel appearing for the corporation would submit that the action of blacklisting would not depend upon as to whether default of the appellant herein, was deliberate or not, or there was any intention to take undue advantage or to cheat or not. It depends upon the contravention of the contract and the damage caused to the respondents.

23. The show cause notice reads thus:

> ***"Chhattisgarh Textbook Corporation***
> ***Office Complex, Block-B, Sector-24 Atai Nagar, Nava Raipur***
> ***No./2806/PPN/Printing/2020-21 /2022 Raipur on 14/12/2022***
> ***To,***
> ***Techno Prints,***
> ***Behind Banjari Mata Mandir,***
> ***Near Heera Steel,***
> ***Rawanbhata***
> ***Raipur Chhattisgarh.***
>
> ***Subject: Show cause notice.***
>
> ***Ref:-Your letter dated 23.12.2020, 06.01.2021, 03.06.2021, 08.11.2021, 03.12.2021, 15.02.2022 01.04.2022 regarding EMD refund for the academic session 2020-21.***
>
> ***The EMD amount deposited by you in the textbook printing tender for the education session 2020-21***

has been sought through the letters referred to in the subject. In this regard, the factual details of the textbook printing done by you for the education session 2020-21 are presented as follows-

For working on the L1 rates received from you by participating in the issued tender for the printing of textbooks under the education session 2020-21 by the Corporation contract was done on Date 23.12.2019. In paragraph 6.1 of the textbook printing tender issued by the CG Textbook Corporation in the education session 2020-21, the printing capacity of 08 m tonne per day for single web offset machine and 16 m tonne per day for double or more web offset machines was fixed for the printers.

Accordingly, work order for the printing work of about 1267.496 MT of textbooks is provided to you through the referred work orders as per the agreed capacity of double offset machine filled by you in the tender and L-1 in 10 groups details of which are as follows:

Order No. 3776 Date 08.01.2020

GROUP MEMBER	SUB GROUP NUMBER	NAME OF BOOK	CLASS	APPROX PAGE NO.	BOOK NO.	70 GSM PAPER QUANTITY IN M. TONNE	220 GSM COVER PAPER SHEETNO.	L-1
	A	English(SZ)	5	108	236275	55.182	60250	0.2090
	A	English(SZ)	5	108	14208	3.138	3623	0.2090
	B	English(SZ)	6	128	248514	68.789	63371	0.2090
	B	English(SZ)	6	128	13698	3.792	3493	0.2090
13	B	Ganit(SZ)	7	272	2589769	152.326	66037	0.2090
17	A	Hindi(SZ)	2	104	239607	53.888	61100	0.2090
17	A	Hindi(SZ)	2	104	34201	7.692	8721	0.2090
38	A	Hindi Sargujiha-Sanskrit(SZ)	3	160	30295	10.482	7725	0.2090
38	A	Hindi Sargujiha-Sanskrit(SZ)	3	160	5396	1.867	1376	0.2090
38	B	Ganit(SZ)	4	160	214923	74.363	54805	0.2090
Total						431.698	330501	

Order No. 4013 Date 17.01.2020

GROUP MEMBER	SUB GROUP NUMBER	NAME OF BOOK	CLASS	APPROX PAGE NO.	BOOK NO.	70 GSM PAPER QUANTITY IN M. TONNE	220 GSM COVER PAPER SHEETNO.	L-1
	A	Vigyan(SZ)	10	360	234862	182.840	59890	0.2150
	B	English(SZ)	7	144	236402	73.616	60283	0.2090
	B	English(SZ)	7	144	9034	2.813	2304	0.2090
Total						259.269	122477	

ORDER NO. 4460 DATE 18.02.2020

GROUP MEMBER	SUB GROUP NUMBER	NAME OF BOOK	CLASS	APPROX PAGE NO.	BOOK NO.	70 GSM PAPER QUANTITY IN M. TONNE	220 GSM COVER PAPER SHEETNO.	L-1
1	B	Science(SZ)	10	216	16563	7.737	4224	0.20
1	C	Ganit(SZ)	6	244	246729	130.187	62926	0.20
1	A	History and Civics(SZ)	6	128	8717	2.413	2223	0.20
20	B	Paryawaran(SZ)	7	124	239544	64.234	61084	0.2090
20	A	Hindi(SZ)	3	128	240413	66.546	61305	0.2090
20	A	Hindi(SZ)	7	128	8850	2.450	2257	0.2090
	B	Yog Siksha Part -1 (SZ)	1	56	534393	64.715	53481	0.2090
	C	Ganit (SZ)	2	180	209730	81.637	55244	0.2090
	B	Ganit (SZ)	3	196	216645	91.825	38316	0.2150
	A	Shyamala Sanskrit (SZ)	10	192	150260	62.388	1472	0.2150
	A	Shyamala Sanskrit(SZ)	10	192	5772	2.397	478792	0.2150
Total						576.529	478792	

Printing tender clause 16.1 mentions that

16.1 Period of supply of books maximum 90 days as

per mentioned in the work order from the date of printing order. It will be imperative upon the bidder to complete the allotted printing & binding work within stipulated time period i.e. maximum 90 days as per mentioned in the work order. In emergency the CGPPN will reduce period for supply of books as per requirements. The decision of the Managing Director in this regard will be final and binding on concerned bidder.

In the sequence of which the printers who were given the printing work order under the printing work order A, 4460 dated 18.02.2020, were instructed to complete the printing and delivery work within 60 days from the date of issue of the printing order as per the deadline.

In this regard, your letter was received in the office on 05.03.2020, through which you have requested to extend the time period to 90 days, while the corporation had also entered into an agreement with other 24 printers, out of which on the said date Printing work orders were also issued to 09 other printers as per the same time limit. Barring 02 organizations affiliated to you, Ramraja Printers and Pragati Printers, no objection was lodged in relation to the said printing work order by other printers.

Post textbook printing tender, in paragraph 91, provision was made for supply of paper for printing to the printers as follows:-

9.1 After issuance of letter of acceptance the selected bidder shall furnish bank guarantee/FDR valid for one year from any nationalized / schedule bank for 20% of the cost of paper required to complete the work entrusted to him. If bidder is L-1 in more than one group he may furnish bank guarantee/FDR (as mentioned above) for one or more number of groups, and CGPPN will allot the paper double the amount of bank guarantee/FDR deposited by him, for the allotted group/groups. For example- if the bidder deposits bank guarantee/FDR for one group (i.e. 20% of cost of paper required to complete the work of concerned group) than paper required for that particular/single group will be allotted but quantity of paper should not exceed double of the amount of bank Guarantee /FDR. Next allotment of paper will be done strictly after 80% supplies received in concern depot. If the progress of the

printing work is found unsatisfactory then MD CGPPN reserve the right to allot the remaining work of concern group/ remaining group to another printer on L-1 rate according to his capacity.

According to the above provision of the tender, you have to print textbooks by 17.02.20 about 280 MT Reel paper was supplied, against which you have submitted your complaint, in situation of date 11.03.2020, the books were supplied to the depot using only 136 MT of paper.

According to provision of Printing Tender Clause 16.3:-

16.3 If the progress of work at any stage is found slower than expected and if the Nigam is convinced that the printer will not be able to complete the work in time, the Nigam shall cancel the contract in full or in part and give it to other printer at the cost and risk of defaulting printer. In the event of such cancellation, the security deposit/EMD of the printer shall be forfeited and the printer will not be entitled to any compensation.

Accordingly, for the slow pace of printing work, you were issued notice letter No.4825 dated 11.03.2020 by the corporation, after which you sent the letter dated 17.03.2020 to the positive branch of the corporation and gave the printing order No.4480 dated 18.02.2020 due to non-availability of the following textbooks for positive printing, inability, was expressed in the printing work-

GROUP MEMBER	SUB GROUP NUMBER	NAME OF BOOK	CLASS	APPROX PAGE NO.	BOOK NO.	70 GSM PAPER QUANTITY IN M. TONNE	220 GSM COVER PAPER SHEETNO.	L-1
	B	Science (SZ)	6	216	16563	7.737	4224	Techno
	A	Hindi (SZ)	7	128	240413	66.546	61305	Techno
	A	Hindi (SZ)	7	128	8850	2.450	2257	Techno
	A	Shyamla Sanskrit (SZ)	10	192	150260	62.388	38316	Techno
	A	Shyamala Sanskrit (SZ)	10	192	5772	2.397	1472	Techno
Total				421858	141.518	141.518	107574	

According to the approval of the Managing Director, in point A.02 of the printing order No.4480 dated 18.02.2020, the following points were mentioned in relation to the supply of positive / CDs -

2. According to clause 13.3.1 of the tender to the printers by the Corporation As far as possible positive / CD of the books mentioned in the supply order will be given along with the printing order. In case of having only one positive set, the printers will have to take turns (sharing basis) to complete the printing work using the positive set or CD directly. Printing plate will have to be made by CTP and printed. Check the positive/CD as far as possible. After receiving the positives, in case of shortage or damage in any positives, it will be the responsibility of the printer to complete the printing work by creating new positives from the CD supplied by the corporation. Necessary terms and conditions regarding the positive/ CD being supplied are attached.

According to the above paragraph, in the printing work order issued on 18.02.2020, the printing work was completed by other printers using positive/CD on sharing basis. No objection was lodged by him in this. Accordingly, you have clearly violated the provisions of clause 13.3.1 of the tender.

Again by sending a letter to the Corporation on 13.04.2020, you were informed about the closure of the printing press dated 22.03.2020, as well as a request was made to extend the printing and distribution work by 02 months from 17 April 2020 due to the Corona lockdown.

Due to Corona lockdown on behalf of the corporation, the period of printing work has been extended from 17th April 2020 to 17th May 2020 till the date of printing and distribution, till the email letter dated 28.04.2020, out of 1267.496 melons allotted by the corporation as per your printing capacity, only 549.927 melons have been printed. Final consent was given for the printing of while the other printers of the corporation completed the allotted work by continuing the printing work even during the corona lockdown.

According to the report of the NIC branch of the

Corporation, the printing capacity till 22.03.2020, the date of implementation of the Corona Lockdown, by you as per 90 days (in the last 75 days, the printing work allotted by the Chhattisgarh Textbook Corporation was 1267.5 MT, out of which 15213 textbooks of Niton i.e. 11.15 percent Only the printing work was completed.

According to provision of Printing Tender Clause 16.3:-

16.3 If the progress of work at any stage is found slower than expected and if the Nigam is convinced that the printer will not be able to complete the work in time, the Nigam shall cancel the contract in full or in part and give it to other printer at the cost and risk of defaulting printer. In the event of such cancellation, the security deposit/EMD of the printer shall be forfeited and the printer will not be entitled to any compensation.

Printing and distribution work of unprinted 717.569 meter textbooks of your firm by the corporation. Printers had to be supplied and completed. Of the 1267.496 MT allocated by you, only 549.927 MT work was completed as follows:-

GROUP MEMBER	SUB GROUP NUMBER	NAME OF BOOK	CLASS	APPROX PAGE NO.	BOOK NO.	70 GSM PAPER QUANTITY IN M. TONNE	220 GSM COVER PAPER SHEET NO.	L-1
10	A	English(SZ)	5	108	236275	55.182	60250	0.2090
10	A	English(SZ)	5	108	14208	3.318	3623	0.2090
10	B	English(SZ)	6	128	248514	68.789	63371	0.2090
10	B	English(SZ)	6	128	13698	3.792	3493	0.2090
13	B	Ganit(SZ)	7	272	258969	152.326	66037	0.2090
17	A(i)	Hindi(SZ)	2	104	107652	24.211	27451	0.2090
62	C(i)	Hindi(SZ)	2	104	32000	7.197	8160	0.2090
38	A	Hindi Sargujiha-sanskrit(NZ)	3	160	30295	10.482	7725	0.2090
38	A	Hindi Sargujiha-sanskrit(NZ)	4	160	214923	74.363	54805	0.2090

38	*B*	*Ganit (NZ)*	*4*	*160*	*214923*	*74.363*	*54805*	*0.2090*
17	*B*	*English(SZ)*	*7*	*144*	*236402*	*73.616*	*60283*	*0.2090*
17	*B*	*English(SZ)*	*7*	*144*	*9034*	*2.813*	*2304*	*0.2090*
20	*B*	*Paryavaran(SZ)*	*3*	*124*	*239544*	*64.234*	*61034*	*0.2090*
11	*B*	*Science(SZ)*	*6*	*216*	*16563*	*7.737*	*4224*	*0.2090*
Total					*1663473*	*549.927*	*424186*	

It is mentioned in printing tender clause 16.9 that:-

16.9 <u>If the tenderer is awarded to the lowest rate printer on the basis of L-2 rate of group/groups and Nigam allots the printing works to the tenderer on the basis of his 1-1 rate (Lowest Tenderer) of group/groups then also if tenderer refuse to do the printing work or work not completed. In this condition Nigam has right to put the tenderer in BLACKLIST for 3 (Three) years and security deposit and EMD will be forfeited.</u>

<u>Since even after being L-1 in different groups of the tender, due to not completing the allotted textbook printing within the stipulated time period, the Corporation had to get it completed by allotting it to other printers, therefore the tender clause 16.3 and 16.9. Why not recover the said compensation from your security amount and balance deposits as per the provision of clause 16.3 and 16.9</u>?

In the light of the above mentioned facts, you have clearly violated the provisions of section 16.1, 16.3, 13.3.

Why not invoke provision 16.9 against you? In respect of the mentioned facts, give written reply to the show cause notice issued as above within 02 weeks from the date of receipt of the notice.

(Ordered by the Managing Director)

General Manager
Chhattisgarh Textbook
Corporation
Raipur

Page number//PPN/Printing/2020-21/2022Raipur Date //2022
Copy to.

1. Personal Assistant, Honorable President, C.G, Textbook
Corporation Raipur for information.
2. Personal Assistant Managing Director C.G. Textbook
Corporation Raipur for information.

General Manager
Chhattisgarh Textbook Corporation
Raipur"

(Emphasis supplied)

24. Thus, according to the Corporation the appellant herein violated the clauses 13.3, 16.1, 16.3 and 16.9 respectively of the terms of the Agreement. The sum and substance of all these clauses is that if the appellant is unable to complete the work of printing within the stipulated period of time then the consequences would be blacklisting. The Corporation rejected the say of the appellant herein that he was unbale to adhere to the prescribed time limit due to the Covid-19 pandemic.

25. This Court in Kulja Industries Limited v. Chief General Manager Western Telecom Project BSNL & Ors. reported in AIR 2014 SC 9 has made pertinent observations as regards the power of an Authority to blacklist a company on the basis of the terms of the underlying contract. In the said case, Kulja Industries (Contractor) was blacklisted by BNSL (Authority) on the allegations of having obtained fraudulent payments from the Authority. This Court in the said case set aside the order of blacklisting passed by the

Authority as it had the effect of permanently affecting the business of the contractor. This Court identified the limits of powers of statutory authorities to take coercive actions against companies. This Court after examining the terms and conditions prescribed in the tender document relating to disqualification and blacklisting observed that the power to disqualify a contractor was provided for in the tender document and such power could be read as an inherent power and in terms of the same, the Authority would have to show that the supplier:

a. **Habitually failed to supply the equipment in time;**
b. **The equipment supplied by the supplier did not perform satisfactorily or were not of a particular standard; or**
c. **Failed to honour the bid without sufficient grounds.**

26. Undoubtedly, Kulja Industries (supra) looked into the final order of blacklisting passed by the Authority concerned. We are still at the stage of a show cause notice. However, what is important to note, are the aforesaid three guiding situations or grounds on which the Authority may be justified in exercising its power to blacklist the contractor.

27. This Court in The Blue Dreamz Advertising Pvt. Ltd. & Anr. v. Kolkata Municipal Corp. & Ors. reported in 2024 INSC 589 while quashing and set asiding the blacklisting order as affirmed by the High Court in almost identical facts observed as under:

1. **In case there exists a genuine dispute between the parties based on the terms of the contract, blacklisting as a penalty cannot be imposed.**
2. **The penalty of blacklisting may only be imposed when it is necessary to safeguard the public interest from irresponsible or dishonest contractors, and**
3. **The Corporation being a statutory body, have a higher threshold to satisfy before passing such blacklisting order and therefore, the measures undertaken by it should be reasonable.**

28. Again, the aforesaid decision of this Court was rendered in a case where the blacklisting order was already passed.

29. However, what is important for us to say is that when there are guiding principles explained by this Court as to when & in what circumstances a blacklisting order can be passed then, in our opinion such principles should also be borne in mind by the Authority at the time of issuing a show cause notice. We say so because in the facts of a given case like the one on hand, on the face of which it could be said that there was no good reason for the Authority to issue a show cause notice calling upon the contractor why he should not be blacklisted. Why ask the contractor to face the proceedings when applying the aforesaid principles, the issue of show cause notice would be an empty formality. We are saying all this keeping in mind the peculiar facts of this case.

30. Therefore, the Authority is expected to be very careful before issuing a show cause notice. It is expected to understand the facts

well and try to ascertain what sort of violation is said to have been committed by the contractor. As noted above, there is always an inherent power in the Authority to blacklist a contractor. But possessing such inherent power and exercising such power are two different situations and connotations. There may be a power but there should be reasonable ground to exercise such power.

31. To put it by way of an illustration, the Police has the power to arrest but it is not necessary that in all cases arrest must be effected. The Police should know whether at all arrest is necessary.

32. We may put it in a slightly different way. Take for instance, the show cause notice in the present case is the final order of blacklisting. The final order in any case cannot travel beyond the show cause notice. Therefore, we take the show cause notice as the final order. Whether it makes out a case for blacklisting? This should be the test to determine whether it is a genuine case to blacklist a contractor or visit him with any other penalty like forfeiture of EMD, recovery of damages etc. We say so because once an order of blacklisting is passed the same would put an end to the business of the person concerned. It is a drastic step. Once the final order blacklisting the Contractor is passed then the Contractor is left with no other option but to go to the High Court invoking writ jurisdiction under Article 226 of the Constitution and challenge the same. If he succeeds before the Single Judge then it is well and good otherwise he may have to prefer a writ appeal or LPA as the case may be. This again would lead to unnecessary

litigation in the High Courts. The endeavour should be to curtail the litigation and not to overburden the High Courts with litigations of the present type more particularly when the law by and large is very well settled and there is no further scope of any debate.

33. As observed by this Court in Erusian Equipment & Chemicals Ltd. Vs. State of W.B. reported in (1975) 1 SCC 70, an order of blacklisting casts a slur on the party being blacklisted and is stigmatic. Given the nature of such an order and the import thereof, it would be unreasonable and arbitrary to visit every contractor who is in breach of his contractual obligations with such consequences. There have to be strong, independent and overwhelming materials to resort to this power given the drastic consequences that an order of blacklisting has on a contractor. The power to blacklist cannot be resorted to when the grounds for the same are only breach or violation of a term or condition of a particular contract and when legal redress is available to both parties. Else, for every breach or violation, though there are legal modes of redress and which compensate the party like the Corporation before us, it would resort to blacklisting and at times by abandoning or scuttling the pending legal proceedings.

34. Plainly, if a contractor is to be visited with the punitive measure of blacklisting on account of an allegation that he has committed a breach of a contract, the nature of his conduct must be so deviant or aberrant so as to warrant such a punitive measure. A

mere allegation of breach of contractual obligations without anything more, per se, does not invite any such punitive action.

35. Usually, while participating in a tender, the bidder is required to furnish a statement undertaking that it has not been blacklisted by any institution so far and, if that is not the case, provide information of such blacklisting. This serves as a record of the bidder's previous experience which gives the purchaser a fair picture of the bidder and the conduct expected from it. Therefore, while the debarment itself may not be permanent and may only remain effective for a limited, pre-determined period, its negative effect continues to plague the business of the debarred entity for a long period of time. As a result, it is viewed as a punishment so grave, that it must follow in the wake of an action that is equally grave.

36. In the overall view of the matter more particularly in the peculiar facts of the case, we have reached the conclusion that asking the appellant herein to file his reply to the show cause notice and then await the final order which may perhaps go against him, leaving him with no option but to challenge the same before the jurisdictional High Court will be nothing but an empty formality. Even otherwise, issuing of show cause notice if not always then at least most of the times is just an empty formality because at the very point of time the show cause notice is issued the Authority has made up its mind to ultimately pass the final order blacklisting the Contractor. In other words, the show cause notice in most of the cases is issued with a pre-determined mind. It has got to be issued because this Court has said that without

giving an opportunity of hearing there cannot be any order of blacklisting. To meet with this just a formality is completed by the Authority of issuing a show cause notice.

37. We clarify that it shall be open for the respondent Corporation to forfeit the EMD of Rs. 5,00,000/-. However, the show cause notice calling upon the appellant as to why it should not be blacklisted is quashed and set aside.

38. Without saying anything further, we dispose of this appeal in the aforesaid terms.

39. Except the blacklisting part, all other parts of the show cause notice, are remained untouched.

40. Pending application(s), if any, shall stand disposed of.

…….J.
(J.B. PARDIWALA)

…….J.
(R. MAHADEVAN)

NEW DELHI;
FEBRUARY 12, 2025.