

HIGH COURT OF TRIPURA

_A_G_A_R_T_A_L_A_

WP(C) No.271 of 2023

SREI Infrastructure Finance Limited, represented by Mr. Rajneesh Sharma, Administrator (A company under Corporate Insolvency Resolution Process vide order dated October 8, 2021 passed by the Hon'ble National Company Law Tribunal, Kolkata Bench), a company within the meaning of Companies Act, 2013, having its registered office at "VISWAKARMA", 86C, Topsia Road (South), Kolkata – 700 046, West Bengal

..... Petitioner(s)

V E R S U S

1. State of Tripura represented by Director, Urban Development, Government of Tripura.

2. Er. Shyamal Bhaumik, Chief Engineer, Urban Development Department, Government of Tripura.

..... Respondent(s)

For Petitioner(s) : Mr. Jishnu Saha, Advocate,
Mr. Rishiraj Nath, Advocate,
Mr. Rounak Das, Advocate.

For Respondent(s) : Mr. S.S. Dey, Advocate General,
Ms. A. Chakraborty, Advocate,
Ms. N.C. Saha, Advocate.

HON'BLE THE CHIEF JUSTICE MR. APARESH KUMAR SINGH
HON'BLE MR. JUSTICE T. AMARNATH GOUD

_O_R_D_E_R_

29.05.2023

Heard Mr. Jishnu Saha, learned counsel assisted by Mr. Rishiraj Nath and Mr. Rounak Das, learned counsel for the petitioner and Mr. S.S Dey, learned Advocate General assisted by Ms. A. Chakraborty, learned counsel for the respondents-State.

[2] By our order dated 15.05.2023, learned counsel for the State was allowed time to file response positively so far as the question of debarment is concerned. The order reads as under :

“The petitioner approached this Court against the termination of the agreement dated 07.01.2019 vide letter No.7300-04 dated 06.03.2023 (Annexure-44) whereunder not only the agreement has been terminated but the performance security, security deposit both have been forfeited to the full extent and apart from that petitioner has been debarred from participating in any tendering process for any work if further advertised from Government of Tripura and blacklisted.

After hearing learned counsel for the petitioner and the State we are of the prima facie view that the issue of termination of agreement is not required to be gone into in writ jurisdiction as the petitioner has an alternative remedy through arbitration or before the competent Civil Court, more so, for the reason that the adjudication on the subject may involve determination on disputed questions of fact and evidence as may be required to be adduced by the rival parties. However, so far as the debarment of the petitioner is concerned, learned counsel for the petitioner has pointed out that it is without consideration of the reply to the show-cause furnished by the petitioner and also shows complete non-application of mind. The debarment and blacklisting is for indefinite period of time which in effect ousts the petitioner from carrying on trade and business as is guaranteed under Article 19(1)(g) of the Constitution of India. It is also in teeth of the settled decisions of the Apex Court such as *M/s .Erusian Equipment & Chemicals Ltd. versus State of West Bengal and another* reported in (1975) 1 SCC 70 and *Gorkha Security Services versus Government (NCT of Delhi) and others* reported in (2014) 9 SCC 105.

Learned counsel for the State is allowed 10 days time to file response positively so far as the question of debarment is concerned.

Let the matter appear on 29.05.2023.”

[3] Learned Advocate General appears on behalf of the State and submits on instructions that the writ petition can be disposed of at this stage for the respondent-State/employer to take a fresh decision in accordance with law as regards the issue of blacklisting is concerned.

[4] Learned counsel for the petitioner submits that the order of blacklisting is vitiated on both counts. (i) That it was not preceded by any proper show-cause notice as would be revealed by the two show-cause notices at Annexure-37 and Annexure-39 dated 15.12.2023 and dated 23.12.2022. (ii) Both the show-cause notices actually refer to the proposed termination of the contract; imposition of penalty in terms of the liquidated damages clause; forfeiture of performance guarantee in full extent and recovery of amount pay with interest but no reference to any proposed blacklisting. The show-cause notice apparently did not contain any charges as to why the employer proposes to impose the penalty of blacklisting upon the petitioner. The order of blacklisting operates not only *vis-a-vis* the State of Tripura but pan India in respect of any tender where the petitioner could be an eligible participant. As such, it affects the right to carry on business and occupation under Articles 19(1)(g) of the Constitution of India.

[5] Learned counsel for the petitioner refers to paragraphs 21 and 22 of the judgment of the Apex Court in case of ***Gorkha Security Services versus Government (NCT of Delhi) and others*** reported in (2014) 9 SCC 105 and submits that a proper show-cause notice should contain (i) the material/grounds to be stated which according to the department necessitates an action; (ii) particular penalty/action which is proposed to be taken. It is submitted that in the present case both the ingredients of show-cause notice is lacking. However, because of the debarment of the

petitioner and blacklisting, petitioner has already suffered to a great extent by losing the eligibility to participate in tender processes across the country. As such, the impugned order of blacklisting contained in the letter dated 06.03.2023 Annexure-44 issued by Chief Engineer, Urban Development, Department be quashed. Learned counsel for the petitioner has further sought to draw the attention of the Court to the insolvency proceedings being conducted under the aegis of a resolution professional in connection with CP (IB) No.295/KB/2021. As such, petitioner has genuine reasons to explain its position as regards the termination of the agreement by the respondent-State.

[6] Learned Advocate General submits that having regard to the limited issue at hand it would be proper that the matter may be remitted to the competent authority to take a fresh decision as regards the issue of blacklisting.

[7] We have considered the submissions of learned counsel for the parties and taken note of the limited gamut of facts in connection with the impugned order of blacklisting contained in the letter dated 06.03.2023 [Annexure-44]. It appears from a bare perusal of the two show-cause notices at Annexure-37 and Annexure-39 dated 15.12.2023 and dated 23.12.2022 that no notice in the eye of law had been issued upon the petitioner proposing to blacklist him and also indicating the proposed

quantum of penalty of blacklisting. In this regard, it is apposite to quote the ratio rendered by the Apex Court in case of *Gorkha Security Services versus Government (NCT of Delhi) and others* reported in (2014) 9 SCC 105, paragraphs 21 and 22 of which are reproduced hereunder :

“21. The central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of show-cause notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the defaults/breaches complained of are not satisfactorily explained. When it comes to blacklisting, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action.

22. The High Court has simply stated that the purpose of show-cause notice is primarily to enable the noticee to meet the grounds on which the action is proposed against him. No doubt, the High Court is justified to this extent. However, it is equally important to mention as to what would be the consequence if the noticee does not satisfactorily meet the grounds on which an action is proposed. To put it otherwise, we are of the opinion that in order to fulfill the requirements of principles of natural justice, a show-cause notice should meet the following two requirements viz:

- (i) The material/grounds to be stated which according to the department necessitates an action;
- (ii) Particular penalty/action which is proposed to be taken. It is this second requirement which the High Court has failed to omit. We may hasten to add that even if it is not specifically mentioned in the show-cause notice but it can clearly and safely be discerned from the reading thereof, that would be sufficient to meet this requirement.”

[8] The position in law has been consistently followed thereafter by the Apex Court as held in case of *Vetindia Pharmaceuticals Limited versus State of Uttar Pradesh and another* reported in (2021) 1 SCC 804. Perusal of the impugned order also shows that there is no reference of any show-cause preceding the order of blacklisting neither any reference to

consideration of any reply thereto by the petitioner as there was no show-cause notice for blacklisting. Therefore, order of blacklisting is not only vitiated for lack of compliance of principles of natural justice but also shows complete non-application of mind.

[9] As such, the impugned order of debarment and blacklisting as contained in the letter dated 06.03.2023 is quashed. However, the respondents are at liberty to take a fresh decision, in accordance with law, after a proper show-cause notice within a stipulated time. Let it be made clear that we have not made any comments on merits of the case.

[10] The writ petition is allowed in the manner and to the extent indicated above.

Pending application(s), if any, also stands disposed of.

(T. AMARNATH GOUD), J (APARESH KUMAR SINGH), CJ