



Serial No. 01
Regular List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 291 of 2024

Date of Decision: 09.09.2024

RMSI Private Limited

... Petitioner(s)

- Versus -

1. State of Meghalaya,
Represented by the Chief Secretary
to the Government of Meghalaya,
Shillong.
2. The Development Commissioner
to the Government of Meghalaya,
Planning, Investment Promotion and
Sustainable Development Department,
Government of Meghalaya, Shillong
3. The Meghalaya Basin Management Agency,
Represented by its Chief Executive Officer,
C /o Meghalaya State Housing Financing
Cooperative Society, Upper Nongrim, Shillong
East Khasi Hills District, Meghalaya-793003.
4. The Project Director,
Community-Led Landscape Management Project (CLLMP)
C /o Meghalaya State Housing Financing
Cooperative Society, Upper Nongrim, Shillong
East Khasi Hills District, Meghalaya-793003.
5. The Additional Project Director,
Community-Led Landscape Management Project (CLLMP)
C /o Meghalaya State Housing Financing
Cooperative Society, Upper Nongrim, Shillong
East Khasi Hills District, Meghalaya-793003.

... Respondent(s)



Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Chief Justice (Acting)

Appearance:

For the Petitioner(s) : Dr. N. Mozika, Sr. Adv. with
Mr. Philemon Nongbri, Adv.
Mr. A Mishra, Adv.
Mr. N. Rewalia, Adv.

For the Respondent(s) : Mr. A. Kumar, AG with
Ms. A. Thungwa, GA

i)	Whether approved for reporting in Law journals etc.:	Yes/No
ii)	Whether approved for publication in press:	Yes/No

JUDGMENT AND ORDER

1. The writ petitioner company being aggrieved with the impugned order dated 25.07.2024 issued by the respondent No. 5, blacklisting the petitioner company for a period of 3 years w.e.f 01.07.2024 to 30.06.2027, cancelling all existing contracts and seeking refund of the entire contract amount is before this Court for issuance of a writ of mandamus and a certiorari and set aside and quash the impugned order.



2. The brief facts are that the respondent No. 3 had floated request for Expression of Interest in June 2019 for development and deployment of ICT based MIS to support the implementation of the Meghalaya Community Led Landscapes Management Project under MBMA. The petitioner then was awarded the project and a contract signed between the parties. As per the petitioner, the project proceeded smoothly during the inception, design, development and deployment phases and all the deliverables were accepted without any disputes, and invoices raised were accordingly paid. During the year 2022 it appears, certain issues had then cropped up which resulted in a serious gap in the project execution and understanding and it appears that on these issues, the respondent No. 5, issued a letter dated 23.02.2023 to the petitioner, alleging breach of various terms of the contract. The petitioner to the said letter, then filed a detailed response and in-person meeting was also held to discuss the matter. The respondent No. 5 by letter dated 30.03.2023 however, expressed his dissatisfaction and raised several issues, such as the working of the mobile application for the MIS, and also the date of raising of invoices which he alleged was in contravention to the agreed terms as laid down in the contract. That thereafter, after a period of more than a year the respondent No. 5 issued the impugned order dated 25.07.2024, blacklisting the petitioner company. Hence, the writ petition.



3. Dr. N. Mozika, learned Senior counsel assisted by Mr. Philemon Nongbri, learned counsel for the petitioner company has submitted that as per the timelines from the date of signing the contract on 16.12.2019 up to the deliverable stage 4, which was completed on 21.12.2020, there is no dispute that the works have been completed, and in this context has referred to the first show cause notice dated 23.02.2023, and has drawn the Court's attention to the table given therein, showing the date of acceptance of completion of stage 4, and the factum of release of payment on 29.11.2021. The learned Senior counsel submits that the dispute which arose was with regard to the stage 5 deliverables and the time stipulated therein, which he submits were unclear and ambiguous and has led to the misunderstanding. It is contended that the stage 5 time schedule of which the deliverable was 'handholding and maintenance for after commissioning of the MIS,' was given in the contract to be 36 months from the acceptance and full stream operationalization of the application, after the completion of the first year of operations for the application which was duly adhered to by the petitioner. Learned Senior counsel has also highlighted the fact that as per the terms, up to stage 5 which is from the effective date i.e. 16.12.2019 (T) plus 7(seven) months, 70% of the contractual amount was to be paid and the same was also accordingly release to the petitioner. Elaborating on this aspect, learned Senior counsel has submitted that due to COVID



restrictions and other factors there was a slight time overrun, inasmuch as, for deliverable stage I after the date of signing the contract (16.12.2019), the date of completion i.e. (T+1) would have been 16.01.2020, but the actual date of completion was 09.03.2023, for which invoice was accordingly raised thereafter. Similarly, he submits for stage 1, (T+2), the actual date of completion was 09.06.2020, stage 3, 19.10.2020 (T+6) and stage 4 (T+7) 21.12.2020. He submits that taking 21.12.2020 as the base line, the deliverable stage 5 i.e. after 36 months therefore was to conclude on 20.12.2023. As such, he submits the allegation that invoices had been raised before they were due i.e. in the period from 15.02.2022 to 23.09.2022 are misplaced. The learned Senior counsel also contends that prior to the commencement of the contract, a query had been raised as to when the 36 months of handholding and maintenance period (stage 5) would start and that to the petitioner's understanding, it should be immediately after the 7(seven) months period i.e. after completion of stage 4. This the learned Senior counsel submits, had been raised in the pre-proposal conference held on 22.08.2019, where this query finds place at Sl. No. 32 (Annexure-3 to the writ petition). In the reply thereto, the learned Senior counsel submits as can be seen from the minutes of the meeting, the respondent had stated that the maintenance period starts immediately after the successful completion of UAT life production. Further the learned Senior counsel reiterates that



with regard to the 30% of the remaining works where issues have arisen, even if the same has or could have been caused by a shortfall in the development of the applications and its workability after stage 4, the same cannot warrant the penalty of blacklisting of the petitioner by the respondent No. 5, as has been resorted to.

4. To the allegations that the MIS system delivered to the respondent failed to meet the contractual requirements and that the application had several critical issues, such as synchronization failures and frequent apps crashes, the learned Senior counsel had taken this Court to certain e-mails dated 19.01.2022 and 21.04.2022 showing the respondents' and the World Banks' appreciation with regard to the progress of work, and submits that the allegations made by the respondents are without any basis, as the system put in place by the petitioner is still being used by the respondents in their project. It is then contended that blacklisting will cause the civil death of the company, inasmuch as, they will be stigmatized, apart from being made ineligible from participating in future contracts with other entities. The contract itself he submits, in the event of such disputes at clause 44 and 45 thereof, has provided for a dispute resolution mechanism, which any party aggrieved can take recourse to. The respondent he submits, in spite of the availability of adequate remedy under the contract has however



taken the extreme step of blacklisting which will cause grievous injury to the company's' existence.

5. Learned senior counsel has also argued that the dispute if any, amounts to an ordinary breach of contract, which in this case, is primarily due to the ambiguity with regard to the stage 5 timeline, and on these circumstances, blacklisting is a penalty that should not have been resorted to. In support of his submissions, the learned Senior counsel has placed reliance on the following judgments: -

- i) ***The Blue Dreamz Advertising Pvt. Ltd. & Anr. Vs. Kolkata Municipal Corporation & Ors. SLP (CIVIL) No. 11682 of 2018.***
- ii) ***Kothati Filaments & Anr. Vs. Commissioner of Customs (Port) Kolkata & Ors. (2009) 2 SCC 192***
- iii) ***Sahara India (Firm) Lucknow Vs. Commissioner of Income Tax, Central-I & Anr. (2008) 14 SCC 151***
- iv) ***Secretary and Curator, Victoria Memorial Hall Vs. Howrah Ganatantrik Nagrik Samity (2010) 3 SCC 732***
- v) ***Union of India Vs. Tania Construction Pvt. Ltd. (2011) 5 SCC 697***

6. Mr. A. Kumar, learned Advocate General assisted by Ms. A. Thungwa, learned GA for the respondents at the outset, has submitted that the services and products rendered by the petitioner being far from satisfactory in a project of public utility has already caused loss of public



benefit. It is then submitted that the respondents were compelled to issue the impugned order dated 25.7.2024, after multiple show cause notices had been issued, and the petitioner provided with ample and sufficient opportunity to address and rectify the critical and fundamental issues that had arisen. The respondents he submits, had repeatedly requested for correction of the basic functionalities of the system, but the petitioner failed to address the issues, and no steps were taken to make the system functional. It is submitted that the petitioner in the meeting held on 17.03.2023, had acknowledged various issues, such as the mobile application not working as intended for the field functionaries, which led to the disruption of work and a consequent delay in the progress of the project, and that the petitioner had wrongfully raised invoices before completion of key milestones in contravention to the terms of the contract. The impugned order the learned Advocate General contends, is proportionate to the conduct of the petitioner for providing a completely unusable application that was neither utilized, nor can be utilized in the future. In this regard the learned Advocate General has taken this Court to various communications from the years 2021 and 2022, downloaded from various platforms showing the difficulties of the users and field functionaries in using the mobile application of MIS, provided by the petitioner. A letter dated 14.02.2023 has also been highlighted to substantiate the allegations, where in the said letter, it is shown that



though the petitioner had been duly informed on earlier occasions, there was no response from the petitioner nor any steps taken. The learned AG has also raised the aspect of fraud being perpetuated in collusion with the Addl Project Director of MBMA, in the release of certain payments on invoices that were presented allegedly before they were due. He then concludes his submissions by maintaining that the petitioner had failed miserably in the execution of the contract and had sought undue advantage from the contract and the penalty of blacklisting was therefore justified and commensurate. In support of his submissions the Learned Advocate General has placed the following decision in support thereof.

- i) ***Kulja Industries Limited vs. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited & Ors*** reported in ***(2014) 14 SCC 731***

7. Having heard the learned counsel for the parties, from the narration of facts and submissions advanced, it can be discerned that the only issue for consideration is whether in the stated circumstances thereof, blacklisting of the petitioner was justified. This Court on examination of the materials as placed finds that apart from the multitude of operational glitches that had been raised by the respondents in using the MIS developed by the petitioner in the commission of the project, however, as can be seen from the first show cause notice dated 23.02.2023, till stage 4, the date of completion had been accepted and payments were released to the petitioner. Serious dispute between the



parties arose only in the calculation and computation of the timelines for commencement and completion of stage 5 and the alleged contravention of the terms with regard to raising of invoices for stage 5. In this context, it would be relevant to reproduce the table contained in the first show cause notice hereinbelow as it portrays the timelines and the dispute that had arisen and noted therein with regard to the deployment of stage 5.

<i>Sn</i>	<i>Particulars</i>	<i>Expected dates as per the Contract terms</i>	<i>Actual Dates of raising invoice</i>
1.	<i>Date of Signing of contract (T)</i>	16-Dec.2019	
2.	<i>Date of raising of invoice for State 4</i>	10-Feb-2021	
	<i>Date of acceptance of completion of State 4 by MBMA</i>	18-Nov. 2021 (Payment released on 29- Nov. 2021.)	
4.	<i>Date of start of 1 year Deployment phase</i>	19-Nov. 2021	
5.	<i>Date of end of 1 year Deployment phase</i>	18-Nov. 2022	
6.	<i>Date of commencement of State 5 (starting of the 36 months of Handholding and maintenance)</i>	19-Nov. 2022	
7.	<i>Expected date of 1st half yearly report and raising of corresponding invoice</i>	After 19-May-2023	15 th Feb. 2022
8.	<i>Expected date of 2nd half yearly report and raising of corresponding invoice</i>	After 19-Nov-2023	15 th Feb. 2022
9.	<i>Expected date of 3rd half yearly report and raising of corresponding invoice</i>	After 19-May-2024	23 rd Sep. 2022
10	<i>Expected date of 4th half yearly report and raising of corresponding invoice</i>	After 19-Nov-2024	23 rd Sep. 2022
11	<i>Expected date of 5th half yearly report and raising of corresponding invoice</i>	After 19-May-2025	
12	<i>Expected date of 6th half yearly report and raising of corresponding invoice</i>	After 19-Nov-2025	



8. It would be also useful to extract hereinunder Appendix A, clause (C) (V) (D) which has provided the milestone and deliverable of stage 5.

Milestone	<i>Deliverable</i>	<i>Time schedule from the date of signing (T) (as of signing of contract)</i>	<i>% of the contract amount to the paid</i>
State 5	<i>Handholding and maintenance for after commissioning of the MIS</i>	<i>36 months from the acceptance and full stream operationalization of the application, after the completion of first year of operations for the application. In the first year, maintenance and associated costs would need to be built into the Deployment phase.</i>	<i>Remaining 30% in equal half yearly instalments after approval of the half yearly reports.</i>

9. A perusal of the aforementioned table would suggest that by application of the deliverable of stage 5, invoices had been raised by the petitioner before they were due, which the respondents maintained was in violation of the terms and warranted the infliction of the penalty of a blacklisting. This issue as to the period of the commencement of 36 months as noted earlier had been raised by the petitioner and recorded in the minutes of a pre-proposal conference held on 22.08.2019, the extract of the minutes whereof is reproduced hereinbelow:-

<i>Sl. No</i>	<i>RFP Clause</i>	<i>Page No.</i>	<i>Queries</i>	<i>MBMA Response</i>
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32	<i>Section 7/D: Reporting Requirements, Time Schedule and Payment Terms for Deliverables/Completion of Tasks/Stage 5-36 months form the acceptance and full stream operationalization of the application, after the completion of first year of operations for the application</i>	74	<i>It is not clear when the 36 months of handholding and maintenance period (stage 5) starts. To our understanding it should be immediately after 7th month, after completion of Stage 4. Kindly confirm.</i>	<i>Maintenance period starts immediately after the successful completion of UAT in live production</i>
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10. The response from the respondents to the said query as given above, however, does not specify or clarify the exact timeline as according to the petitioner the deliverable stage 5 (handholding and maintenance) as stipulated was to be of 36 months from the completion of the deliverable stage 4, and this if counted from the date of actual completion of stage 4 i.e. 21.12.2020 as submitted, stage 5 was to conclude on 20.12.2023 and therefore the invoices had been raised, when they were due. The petitioner in reply to the first show cause has also offered explanations as to the complaints about the operability of the mobile app, which had been flagged by the respondents attributing it to server issues and had also maintained that the mobile app was functional and assured that due diligence would be done again with regard to onsite performance testing. It is also seen that in the reply itself, a table had also been provided by the petitioner regarding the milestones and invoicing schedule made on the basis that the total duration of the project being 43 months from the date of signing the contract on 16.12.2019 with the



limited time overruns the date of commencement of stage 5 would be 21.10.2020 on the completion of stage 4 on 20.10.2020.

11. The illustration of the sequence of events as detailed above clearly reveals that notwithstanding certain glitches, the project was progressing with due acknowledgement by the respondents till stage 4. The nature of dispute between the parties as can be discerned from the entire transaction and commissioning of the project is only with the deficiency in the services provided by the petitioner, which as alleged by the respondents was a breach of the contract and misconduct which has caused harm to public interest, which warranted the blacklisting of the petitioner.

12. At this juncture, it would be necessary to refer to the pronouncements of the Supreme Court on blacklisting. In the case of ***Kulja Industries Limited*** (supra), it has been held that a decision on blacklisting is subject to judicial review on grounds of principles of natural justice, doctrine of proportionality, arbitrariness and discrimination. The same judgment itself has dealt elaborately with the legal position on the effect and nature of blacklisting as also the right that a petitioner possesses when such action is taken by the State or any



authority, in India and also in UK and USA. Paragraphs 20 to 25 being relevant are reproduced hereinbelow:-

“20. It is also well settled that even though the right of the writ petitioner is in the nature of a contractual right, the manner, the method and the motive behind the decision of the authority whether or not to enter into a contract is subject to judicial review on the touchstone of fairness, relevance, natural justice, non-discrimination, equality and proportionality. All these considerations that go to determine whether the action is sustainable in law have been sanctified by judicial pronouncements of this Court and are of seminal importance in a system that is committed to the rule of law. We do not consider it necessary to burden this judgment by a copious reference to the decisions on the subject. A reference to the following passage from the decision of this Court in [Mahabir Auto Stores v. Indian Oil Corpn.](#) should, in our view, suffice: (SCC pp. 760-61, para 12)

“12. It is well settled that every action of the State or an instrumentality of the State in exercise of its executive power, must be informed by reason. In appropriate cases, actions uninformed by reason may be questioned as arbitrary in proceedings under [Article 226](#) or [Article 32](#) of the Constitution. Reliance in this connection may be placed on the observations of this Court in [Radhakrishna Agarwal v. State of Bihar](#). ... In case any right conferred on the citizens which is sought to be interfered, such action is subject to [Article 14](#) of the Constitution, and must be reasonable and can be taken only upon lawful and relevant grounds of public interest. Where there is arbitrariness in State action of this type of entering or not entering into contracts, [Article 14](#) springs up and judicial review strikes such an action down. Every action of the State executive authority must be subject to rule of law and must be informed by reason. So, whatever be the activity of the public authority, in such monopoly or semi-monopoly dealings, it should meet the test of [Article 14](#) of the Constitution. If a governmental action even in the matters of entering or not entering into contracts, fails to satisfy the



test of reasonableness, the same would be unreasonable..... It appears to us that rule of reason and rule against arbitrariness and discrimination, rules of fair play and natural justice are part of the rule of law applicable in situation or action by State instrumentality in dealing with citizens in a situation like the present one. Even though the rights of the citizens are in the nature of contractual rights, the manner, the method and motive of a decision of entering or not entering into a contract, are subject to judicial review on the touchstone of relevance and reasonableness, fair play, natural justice, equality and non-discrimination in the type of the transactions and nature of the dealing as in the present case.

21. The legal position governing blacklisting of suppliers in USA and UK is no different. In USA instead of using the expression 'Blacklisting' the term "debarring" is used by the Statutes and the Courts. The Federal Government considers 'suspension and debarment' as a powerful tool for protecting taxpayer resources and maintaining integrity of the processes for federal acquisitions. Comprehensive guidelines are, therefore, issued by the government 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. These guidelines prescribe the following among other grounds for debarment:

a) Conviction of or civil judgment for --

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or



(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects your present responsibility;

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as—

(1) A wilful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A willful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction;

(c) * * *

(d) Any other cause of so serious or compelling a nature that it affects your present responsibility.

22. The guidelines also stipulate the factors that may influence the debarring official's decision which include the following:

a) The actual or potential harm or impact that results or may result from the wrongdoing.

b) The frequency of incidents and/or duration of the wrongdoing.

c) Whether there is a pattern or prior history of wrongdoing.

d) Whether the contractor has been excluded or disqualified by an agency of the Federal Government or has not been allowed to participate in State or local contracts or assistance agreements on the basis of conduct similar to one or more of the causes for debarment specified in this part.

(e) Whether and to what extent did the contractor plan, initiate or carry out the wrongdoing.



(f) Whether the contractor has accepted responsibility for the wrongdoing and recognized the seriousness of the misconduct.

(g) Whether the contractor has paid or agreed to pay all criminal, civil and administrative liabilities for the improper activity, including any investigative or administrative costs incurred by the government, and has made or agreed to make full restitution.

(h) Whether the contractor has cooperated fully with the government agencies during the investigation and any court or administrative action.

(i) Whether the wrongdoing was pervasive within the contractor's organization.

(j) The kind of positions held by the individuals involved in the wrongdoing.

(k) Whether the contractor has taken appropriate corrective action or remedial measures, such as establishing ethics training and implementing programs to prevent recurrence.

(l) Whether the contractor fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the debarring official.

23. As regards the period for which the order of debarment will remain effective, the guidelines state that the same would depend upon the seriousness of the case leading to such debarment.

24. Similarly in England, Wales and Northern Ireland, there are statutory provisions that make operators ineligible on several grounds including fraud, fraudulent trading or conspiracy to defraud, bribery etc.

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.”

13. Further in the case of **Blue Dreamz** (supra) the Supreme Court has held that where the case is of an ordinary breach of contract and the explanation offered raises a bonafide dispute, blacklisting as a penalty ought not to be resorted, as debarring a person for a certain number of years tantamount to civil death and that invoking the debarment for ordinary breach of contract where there is a bonafide dispute is not permissible. The relevant paragraphs thereof i.e. Para 25, 26, 27, 37 & 38 are reproduced hereinbelow:-

“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.

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.”

Apart from the pronouncements quoted above, which have detailed the circumstances that would warrant blacklisting, the above quoted case has also analyzed the judgment rendered in the case of **Kulja Industries Limited** (supra) where the party blacklisted were alleged to have fraudulently withdrawn huge amount of money not due to it. The



other judgments cited by the petitioner having limited application, are not discussed.

14. In the instant case, the General Conditions of Contract itself has in the Appendix thereto at Clause 2 under the caption ‘Fraud and Corruption’ defined what would amount to corrupt practice, fraudulent practice, collusive practice etc. The same is reproduced hereinbelow:-

“2. Requirements

2.1 The Bank requires that Borrowers (including beneficiaries of Bank financing); bidders (applicant/proposers), consultants, contractor and suppliers; any sub-contractors, sub-consultant, service providers or suppliers; any agents (whether declared or not); and any of their personal, observed the highest standard of ethics during the procurement process, selection and contract execution of Bank-finance contracts, and refrained from Fraud and Corruption.

2.2 To this end, the Bank:

a. defines, for the purposes of this provision, the terms set forth below as follows:

i) “corrupt practice” is the offering, giving, receiving or soliciting, directly or indirectly of anything of value to influence improperly the actions of another party;

ii) “fraudulent practice” is any act or omission, including misrepresentation, that knowingly or recklessly misleads, or attempts to mislead a party to obtain financial or other benefit or to avoid an obligation;

iii) “collusive practice” is an arrangement between two or more parties designed to achieve an improper purpose, including to influence improperly the actions of another party;



- iv) *“coercive practice” is impairing or harming, or threatening to impair or harm, directly or indirectly, any party or the property of the party to influence improperly the actions of a party;*
- v) *“obstructive practice” is;*
 - a. *deliberately destroying, falsifying, altering, or concealing of evidence material to the investigation or making false statement to investigators in order to materially impede a Bank investigation into allegations of a corrupt, fraudulent, coercive or collusive practice; and/or threatening, harassing, or intimidating any party to prevent it from disclosing from its knowledge or matters relevant to the investigation or from pursuing the investigation; or*
 - b. *acts intended to materially impede the exercise of the Bank’s inspection and audit rights provided for under paragraph 2.2.e. below.*
 - b. *Rejects of proposal for award if the Bank determines that the firm or individual recommended for award, any of its personal, or its agents, or its sub-consultants, sub-contractors, service providers, suppliers and/or their employees, has, directly or indirectly, engaged in corrupt, fraudulent, collusive, coercive or obstructive practices in competing for the contract in question;*
 - c. *In addition to the legal remedies set out in the relevant Legal Agreement, may take other appropriate actions, including declaring misprocurement, if the Bank determines at any time that representatives of the borrower or of a recipient of any part of the proceeds of the loan engaged in corrupt, fraudulent, collusive, coercive or obstructive practices during the procurement process, selection and/ or execution of the contract in question, without the Borrower having taken timely and appropriate action satisfactory to the Bank to address such practices when they occur, including by failing to inform the Bank in a timely manner at the time they knew of the practices;*
 - d. *Pursuant to the Bank’s Anti-Corruption Guidelines and in accordance with the Bank’s prevailing sanctions policies and procedures, may sanction a firm or individual, either indefinitely or for stated*



period of time, including by publicly declaring such firm or individual ineligible (i) to be awarded or otherwise benefit from a Bank-financed contract, financially or in any other manner; (ii) to be a nominated sub-contractor, consultant, manufacturer or supplier, or service provider of an otherwise eligible firm being awarded a Bank-financed contract; and (iii) to receive the proceeds of any loan made by the Bank or otherwise to participate further in the preparation or implementation of any Bank-financed project;

- e. Requires that a clause be included in bidding/request for proposals documents and in contracts financed by a Bank loan, requiring (i) bidders (applicants/proposers), consultants, contractors, and suppliers and their sub-contractors, sub-consultants, service providers, suppliers, agents, personnel, permit the Bank to inspect all accounts, records and others documents relating to the procurement process, selection and/or contract execution, and to have them audited by auditors appointed by the Bank.”*

15. A perusal of the impugned order dated 25.07.2024, does not however, make any allegation as to any fraud being committed or that there was any collusion, but the entire alleged infraction is based on the breach of the agreed terms of reference, non-fulfilment of minimum deliverables, non-remediation of deficiencies, delay in delivery and an attempt to take undue advantage in the bills raised for services in advance of the payments being made. Placing the facts of the instant case against the judgments which have been quoted above, the dispute between the parties cannot be said or held to be fraudulent or affected public interest to such an extent as to warrant the blacklisting or debarment of the



petitioner. No doubt issues have arisen which has caused a setback to the project but in the considered view of this Court the blacklisting of the petitioner is disproportionate to the infractions as alleged.

16. To the mind of the Court and in the backdrop of the facts and circumstances that have been set forth, the nature of dispute therefore, is not one which cannot be resolved by resorting to the terms contained in the contract itself, which has already provided for an inbuilt dispute resolution mechanism. Clause 45.1 thereof, has mandated that disputes shall be settled by arbitration and has provided for the manner and procedure to be adopted.

17. As such in view of the observations and discussions made hereinabove and on the given facts and circumstances of the case, the penalty of blacklisting inflicted upon the petitioner is deemed unreasonable and disproportionate and the impugned order dated 25.07.2024 is accordingly set aside and quashed, leaving the parties to avail alternate dispute resolution as contained in the terms of the contract itself.

18. The writ petition is allowed and stands disposed of.



Chief Justice (Acting)

Meghalaya
09.09.2024
"V. Lyndem PS"