



Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WP(C) No. 24 of 2025

Date of Decision :17.12.2025

M/s BSC-C & C JV
Through Mr. D. Srinivasa Rao,
Deputy General Manager (Contracts),
Office at: Plot No. 30, Institutional Area,
Sector-32 Gurugram, Haryana-122001

... Petitioner(s)

Versus

Public Works Department (Roads) through
Its Chief Engineer (National Highways)
Government of Meghalaya

... Respondent(s)

Coram:

Hon'ble Mr. Justice H.S. Thangkhiew, Judge.



Appearance:

For the Petitioner(s)	:	Mr. S. Muralidhar. Sr. Adv. with Mr. R. Prakash, Adv. Mr. A. Raghuvanshi, Adv. Ms. S. Gangar, Adv. Mr. M.A Karthik, Adv. Ms. G.C. Marboh, Adv.
For the Respondent(s)	:	Mr. A. Kumar, AG with Mr. A.S. Pandey, Adv. Mrs. N.G. Shylla, Sr. GA Mr. A.H. Kharwanlang, Add. Sr. GA Ms. S. Laloo, 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. By the instant writ petition the petitioner a joint venture concern is assailing the order dated 03.12.2024 passed by the respondents, whereby the petitioner has been blacklisted/debarred for 5(five) years from participating in any future tender/contract of Public Works Department.

2. The brief facts are that the tender and contract referred to in the impugned order of blacklisting, relates to a work of 'Two (2) Laning of Shillong-Nongstoin Section of NH-44E and Nongstoin-Rongjeng-Tura Road under Phase-A of SARDP-Ne-NH-44E & SR-MG-PWD-2010-11-172', in the State of Meghalaya, which was awarded to the petitioner, at a bid amount



of Rs. 1303.83 Crores, with the date of completion of the contract set at 07.03.2014. During the course of execution, the original contract price went into several revisions mostly on account of the additional works, which were added and due to price adjustments. Due to several factors, the work was not completed by the stipulated completion date but was prolonged further for a period of 6(six) years and was finally completed in December, 2017. Disputes thereafter, between the parties arose in the year 2017 and 2018, on certain claims, which as per the terms of the contract were put before a duly constituted Dispute Resolution Board (DRB), but as the respondent failed to make payment of interest awarded by the DRB, notice was sent by the petitioner with regard to the intention to invoke arbitration on the unpaid claims.

3. However, before the arbitration proceedings were concluded, the respondent filed a complaint for registration of an FIR on the allegations, that the petitioner had indulged in fabrication of records and adopted corrupt means to cause huge loss to the public exchequer. The case was then accordingly registered and a show cause notice of blacklisting was also issued to the petitioner, which was also annexed by the respondent as an annexure to a Section 16 application, filed before the Arbitral Tribunal. The Arbitral Tribunal then passed its award with the majority of 2:1, allowing Claim-I of the petitioner and rejecting the entire Claim-II of the petitioner. The petitioner



then received the impugned notice of blacklisting, debarring it for 5(five) years on the allegations of bribery and corruption. Hence, the writ petition.

4. Mr. S. Muralidhar, learned Senior counsel assisted by Mr. R. Prakash, learned counsel for the petitioner has submitted that the petitioner was awarded the contract on 21.02.2011, and while the project encountered certain delays, which were beyond the petitioner's control, the work was successfully completed on 15.12.2017. The project completion certificate he submits, was issued by the respondent on 13.03.2018 and that, during the execution period there were no complaints or allegations against the petitioners regarding the quality, workmanship or progress of work. In the course of the contract it is submitted, the contract price increased which was subject to adjustment on the increase or decrease in the rates and prices of materials, which were to be dealt with under clause 47 of the contract. The learned Senior counsel submits that due to the additional scope of works and amounts, supplementary agreements were signed between the petitioner and the respondent under four sanctioned revised cost estimates on 30.07.2013, 06.02.2015, 07.07.2015 and 30.05.2017, which took the project cost from 1303.83 Crores to 2406.46 Crores. These revisions in the contract price it is submitted, were as per due procedure and in fact, the revised cost estimate was prepared by the officers of the respondent and forwarded to Ministry of Roads Transport and Highways for evaluation and due sanction. The



respondent therefore, he contends despite having full knowledge and understanding of the procedure involved, while sanctioning the increased cost, falsely stated that it was with the connivance and involvement of the petitioner and its officers that the revisions were allowed.

5. The learned Senior counsel then submits that disputes arose in 2017/2018, when the recommendation of the Dispute Resolution Board (DRB) with respect to the legitimate claims of the petitioner were partly honoured, but not the other claims that had been adjudicated and recommended by a second reference of dispute to the DRB. He submits that though attempts were made to settle the matter amicably, the same was ultimately referred to arbitration under clause-3 of the Special Conditions of Contract and the proceedings commenced on 10.04.2019. It is submitted that the record of the arbitration would show that the respondent delayed the proceedings and did not file its reply until 09.11.2020 and in its statement of defense, no whisper of any allegation with respect to any documents that were placed by the petitioner/claimant, were made therein. Thereafter, even when issues were framed on 14.02.2022, the learned Senior counsel submits, there was no whisper of any allegation and this continued even into the evidence stage, and that even after the petitioners' witnesses were extensively examined on many dates, there never was any hint about any charge or



charges of bribery/corruption and the entire discourse was only with regard to exaggeration of claims.

6. It is then contended that only after the petitioner had established its legitimate claims in the arbitration proceedings, and after conclusion of arguments in September 2024, at this very belated stage, the respondent as an afterthought resorted to the drastic measure of blacklisting the petitioner by first issuing a show cause notice dated 16.09.2024, and subsequently the impugned order of blacklisting dated 03.12.2024. The learned Senior counsel then argues that it is the case of the petitioner, that blacklisting has been resorted to as a means to arm twist the petitioner into giving up its legitimate contractual claims against the respondent, and in this context, submits, it has not been explained as to what was the basis for this punitive action, which neither arose from, or is related to the contract in question. The timings he submits, i.e. the events of lodging of complaint, FIR, show cause notice and eventual blacklisting, all happened around the same time i.e. September, 2024, after the conclusion of the final opening arguments by the petitioner/claimant before the Arbitral Tribunal. These actions he contends, have been made with serious malice only to frustrate and prejudice the mind of the Arbitral Tribunal and also the on-going investigation on the charges levelled by the respondent.



7. The learned Senior counsel then submits that in trying to establish a case of corruption and bribery, the respondent is relying upon the documents submitted by the petitioner in the arbitration proceedings and is trying to mould the same to try and make out a case to meet its own mala fide objectives. It is further submitted that the said issue of alleged corruption and bribery was not a subject matter of arbitration, and was only maliciously brought in by the respondent by way of an application under Section 16, at the time of filing arguments before the Arbitral Tribunal. He then asserts that since neither an issue was framed before the Tribunal on this point, and the Tribunal also lacking authority to deal with a subject matter pending investigation, the same cannot be allowed to be relied upon by the respondent before this Court. The impugned blacklisting order he submits, is patently flawed as it is based on unproven and unsupported allegations and in this regard has contended that while the show cause notice refers to 17 ledger entries for the financial year 2014-2015, and alleges bribery and corruption, however, in the blacklisting order apart from these 17 entries, certain entries of 2015-2016, 2016-2017, has also been added which were never included in the show cause notice issued by the respondent. It is then contended that though the entire basis for blacklisting hinges upon the charges of bribery and corruption, however, on a bare perusal of the FIR, it would be evident that there are no charges of bribery and further only one retired Chief Engineer



has been named in the FIR, who till date has not been summoned by the Investigating Officer.

8. It then submitted that the principle of fairness and natural justice requires the authority to issue a clear specific and reasoned show cause notice before issuing any adverse order that affects a person's rights. The charges enumerated against the petitioner in the impugned order it is submitted, are patently unjust, unfair and abuse of power by the respondent by instructing the concerned Police authorities to lodge the FIR against the petitioner and its officers including shareholders. Admittedly he contends, the so-called action by the respondents was taken after seven years from the day the project was completed and the same was purely a mala fide act to prejudice the arbitral tribunal and consequently sabotage the legitimate claim of the petitioner. The learned Senior counsel has then reiterated his earlier arguments, with regard to the actions of the respondents being a clear counterblast with the intent to scuttle the arbitration proceedings, which is reflected by their conduct when the second set of claims which had been presented before the Dispute Resolution Board (DRB), had been allowed.

9. The learned Senior counsel has also narrated the sequence of events whereby, the respondent had made several attempts to challenge the interim award of the Rs. 75 Crores passed by the Arbitral Tribunal on 27.07.2021, till the stage of final arguments after the conclusion of the



petitioner's side when on 03.09.2024, the respondent had filed the complaint against the petitioner based on the documents filed along with the statement of claims on 30.05.2019. Thereafter he submits, on 17.09.2024, the respondent had filed an application under Section 16, contending that the dispute had become non-arbitrable, and that it was along with this application that a copy of the show cause notice was served on the petitioner. The attempt of the respondent it is submitted to justify that the blacklisting, was also on the basis of the award of the Tribunal 12.12.2024 upholding claim-I but rejecting claim II, is unfounded, inasmuch as, the show cause notice was issued on 16.09.2024 and the blacklisting notice on 03.12.2024, which was much prior to the Arbitral award 12.12.2024.

10. The invocation of the clauses of the bid document or contract, it is argued is legally unsustainable, inasmuch as, both the tender process and the work were conducted by the petitioner in accordance with the directions of the respondents and no objection was made by the respondent at any stage, and as such, there can be no reliance by the respondent on clause 37 of the Instructions to Bidders and clause 59 of the General Conditions of Contract. Clause 37, it is submitted which is sought to be relied upon by the respondent relates to mis-conduct, or improper actions at the pre-award stage and clause 59 of the GCC, which grants the respondent the right to terminate for the fundamental or material breach is not applicable in the present case, nor can



it be invoked retrospectively to justify the impugned blacklisting. The learned Senior counsel also urged that the said clauses i.e. clause 37 and 59, cannot form the basis for blacklisting at this belated stage without establishing any fundamental breach and therefore, the impugned show cause on this ground alone is liable to be quashed.

In support of his arguments, the learned Senior counsel has relied upon the following cases:-

- 1. *M/S Eurasian Equipment and Chemicals Ltd v. State of West Bengal (1975) 1 SCC 70;***
- 2. *Gorkha Security Services v. Government (NCT of Delhi) and Other (2014) 9 SCC 105;***
- 3. *UMC Technologies Private Ltd v. Food Corporation of India and Anr (2021) 2 SCC 551;***
- 4. *V-MARC India Ltd v. State of Uttar Pradesh, 2025 SCC OnLine All 379;***
- 5. *Floral Electrical Pvt. Ltd v. Haryana Vidyut Prasaran Nigam Ltd and Anr, 2025 SCC OnLine P&H 2191; and***
- 6. *M/S Techno Prints v. Chhattisgarh Textbook Corporation & ANR, SLP (c) No. 10042 of 2023.***

11. The learned AG on behalf of the respondents in reply has at the outset submitted that both the writ petitions are liable to be dismissed, inasmuch as, the blacklisting is justified, reasonable, proportionate and in larger public interest and is consequent to admitted acts of the contractors of large-scale corruption, bribery and extension of illegal gratification by the contractor to Government officials and other entities during execution of the contract. The learned AG has submitted that the petitioners have admitted by



way of its own ledger entries, that it indulged in extending illegal gratifications including supply of wine bottles, costly gifts, laptops, hotel arrangements, donations to unknown organizations, apart from other such means, to Government officials, Dispute Resolution Board members and Ministry of Road Transport and Highways officials as part of the execution of the contract. Sixteen (16) volumes of documents it is submitted, running close to 9500 pages, in various ledgers which had been filed for supporting the claims of the petitioners before the Arbitral Tribunal, contain the entries which revealed the illegal gratifications to procure favour from the Engineers and Government officials and DRB members etc. The learned AG has then enumerated the many entries, which he submits, has irrefutably substantiated the petitioners' indulgence in rampant corruption and that the ledger entries, are just the tip of the iceberg, which the petitioners have not denied, but tried to term these acts of bribery and corruption, as legitimate business expenses.

12. The petitioners he submits, failed to respond to any of the allegations of ledger entries regarding corruption and bribery in their reply to the impugned show cause, rather they admitted the correctness of such entries and sought to justify that the money was paid legitimately for day-to-day expenses of the project incurred between 2014-17. The witness for the petitioners the learned AG submits, in cross-examination in the Arbitral proceedings, had also admitted to the correctness of such ledger entries and



as such the explanation given by the petitioners is nothing but admission of illegal gratification and a disingenuous attempt to camouflage outright corruption. The materials presented it is submitted, were examined in greater detail to meet the arbitral claims made by the contractor and the same revealed the adoption of a systematic approach of extending illegal gratification on a regular basis to various officials, DRB members, MoRTH officials, apart from such other expenditures, which were also claimed as a legitimate cost of the project, for which reimbursement was sought from the Arbitral Tribunal.

13. The learned AG submits that the matter is undergoing detailed investigation and that the provisions of the Prevention of Corruption Act, 1988 have also been invoked. The Directorate of Enforcement he submits, has also issued summons to one Shri Almond M. Kharmawphlang, former Chief Engineer in relation to investigation under the provisions of Prevention of Money Laundering Act, 2002, and has called for attendance for production of the records, documents, evidence etc., collected in connection with the said FIR.

14. The Arbitration Tribunal he submits, having the benefit of all the materials including deposition on cross-examination vide award dated 12.12.2024, returned a categorical finding that the petitioners/contractor indulged in acts of corruption and fraud. To buttress this submission, the



learned AG has taken this Court to the relevant paragraphs of the award, which are set forth hereinbelow: - *(reproduced from written submissions)*

“181. The Claimant has asked to reimburse donation made to The Police Officers Wives Association (of Rs 4,00,000/-, page 5886 of SOC, donation made to Nongkhnum We care Society (Rs 5,00,000/-), donation made to Khasi Students Union (of more than Rs 6,00,000/-); to Gurudwara Singh Sabha (many entries eg at pages 5871, 5874, 5881, 5882, 5884 etc), Badminton Association (Rs 25,000/-) etc. these donations are not related to the project expenditure and cannot be reimbursed.

182. The Claimant has booked significant amounts spent towards Diwali and Christmas gifting which include costly gifts such as mobiles, cameras etc as per entries as below:

183. There are then entries regarding payment to CFO of the district Council @ Rs 5,000/- per month (entries for May June July 2014 at page 5878, Aug and Sep 2014 at page 5881, Nov 14 at page 5887, entries for month of July,



August and September on page 7120 of SOC). There are entries regarding monthly payments to the police station.

184. There are entries of influencing/bribing sales tax offices (many entries eg pages 5876, 5891 and 7121 of SOC), IOCL officials and bank auditors. There are many entries regarding influencing the officers of PWD department, the employer in this case. MoRTH officers and DRB members are also not left uncompromised.

185. It is surprising that the Claimant is asking the State to reimburse (along with interest), the expenditure made by the Contractor on the above, wrongly entertaining the officials/officers, offerings liquor and gifts to the same not only at Diwali and Christmas festivals, but at other times.

188. These payments, presented by the Claimant are for purchasing gift items for government officials including PWD, wine bottles for officials, making stay and food arrangements of MoRTH officials, arranging food and other expenditure at the time of DRB meetings. It also comes out that DRB member accompanies Mr. D Srinivas, the witness of the Claimant in the present case, while



coming to Shillong and tickets are also booked by the Claimant.

191. It is true that there is no specific plea by the Respondent in SOD regarding the corruption angle. It was also not made at the time of decision dated 27.07.2021. However, the Arbitral Tribunal is duty bound to see the papers presented by the Claimant in the Statement of Claim, especially when these are being brought to our knowledge. Despite such knowledge coming to the fore, the Claimant's written submissions remain silent on this issue. Obviously, the Claimant has nothing to say as all such vouchers register the detail and even at some points name the Government officials who have gotten the favours. There is an extensive list favouring Engineers, DRB members, MoRTH officials. Such payments clearly indicate connivance between engineers and the Claimant as noted by the Hon'ble High court of Meghalaya in its order dated 09.05.2022.

193. Thus, regarding this sub issue, the Arbitral tribunal is of the view that the Claimant has caused Fundamental Breach of Contract under Clause 59(h) of the Contract.



194. The Arbitral Tribunal also has no hesitation in observing that such documents do show connivance of the Claimant with the Engineers on the site. Even MoRTH and RB are also not beyond suspicion.

209. The Arbitral Tribunal, after hearing both the parties and going through the record, is of the view that the Respondent has invoked arbitration after DRB 2 as per its right which it has not done in the case of DRB I. Therefore, the DRB 2 decision needs to be looked into greater detail by the Tribunal and it cannot be taken as such as suggested by the Claimant despite the fact that the Engineers have given nil challenge to the Claimant's claim before DRB 2 and happily even 'physical verified' the machinery in a meeting of DRB 2.

226. The so-called verification has happened in August 2018 which is not of much help. How can physical verification of machinery deployed in 2011-2016 take place in 2018? Rather it raises more issues than answers and brings in the influence of liquor and gifts in the whole set up to get public money where it is not fully



proven. In any case the verification by Engineers is not of much use as they are under influence of the Claimant.

238. Having discussed the above sub issues, the arbitral tribunal looked at the whole issue (ii) in entirety. A few salient points emerge as follows:

(i) The Claimant has the temerity to put up vouchers showing offering of liquor, gifts to everybody involved in the process starting from JE to Chief Engineers, arranging parties for Engineers, funding MoRTH officials for stay and even members of DRB. The Claimant has even asked the Arbitral Tribunal to reimburse all such expenditures with interest. These vouchers perhaps explain the argument made by the Claimant that no letter of Claimant has been controverted and even in DRB, Engineers have not put up any paper against the claims put up by the Claimant. The so-called correspondence of the Engineers to MoRTH in favour of the Claimant also comes under suspicion. As MoRTH officials are also claimed (by vouchers) to be compromised, perhaps the issue of



increase of work from Rs 1,303 cr to Rs 2,406 cr also needs reexamination.

(ii) Clause 59.2 of the Contract states that 'corrupt practice' means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in procurement process or in contract execution. The action of the Claimant meets all these parameters and Claimant, by virtue of these vouchers, has indulged into corrupt practice. Thus, the Claimant has caused Fundamental Breach of Contract

(iii) Someone may say that the decision to decide about the Fundamental Breach is with the Engineer and Engineer has not decided anything. Further there is no effect of the Fundamental breach at this time as the Contract is already over and no action envisaged in 59.3, 59.4, 59.5 or Clause 60 can be taken. Thus, there is no consequence of this fundamental breach at this moment.

(iv) However, the Arbitral Tribunal concludes that in view of such vouchers on the file put by the Claimant itself, the so-called argument that the claims are



admitted by the Respondent falls flat as this so-called admission is influenced by extraneous considerations and cannot be relied upon. Even the DRB orders have become suspect. Further such a conduct saddles the Claimant with more responsibility to prove his claims with more rigour.

(v) Further the Arbitral tribunal comes to the considered conclusion that the Supplementary agreements of 06.08.2013, 23.02.2015 and 24.08.2016 have altered the intended completion date and in any case, it is common sense that the work of Rs 2406 crore cannot be completed in the same time as work of Rs 1303 crore

(vi) As noted above, 98% of the work gets completed by April 2016 itself, much before the agreed date of completion as per three Supplementary Agreements.

(vii) Further as explained above, the Claimant's calculations are totally off mark. These stand highly exaggerated and in the light of acceptance of plea that intended completion date got altered due to Supplementary Agreements, no claim is made out.



240. In the light of issues taken holistically, the Claimant has been compensated more than what is required, by the fact of increased cost of the project and consequent profit; and by the award in lieu of DRB 1 when some of the issues which have come to the light now, had not come to the fore, though the papers were available."

15. The learned AG then strongly contends that in the light of these revelations, the contractor/petitioner is liable to be barred from participating in future tenders, as permitting or condoning such conduct would result in substantial loss to the public and encourage the repetition of similar malpractices. The Arbitral Tribunal in this context he submits, has also correctly held that the increase in the project cost is also in question, and has even concluded that the DRB recommendations, are also not beyond the shadow of doubt and that the same needs to be examined in the light of various illegal gratifications extended by the petitioners. The learned AG has gone on to submit that from an initial project cost of Rs. 1300 Crores, the same has increased to more than Rs. 2400 Crores approximately, and that there are specific ledger entries in respect of DRB members, who had verified the claims of plant and machinery of the contractors in August-September 2018, when the project itself stood completed in December, 2017 and there was no question of there being any plant and machinery present. The



contractors/petitioners he submits, has already admitted to receiving 2523.38 Crores, as part of the total payments and has also received 94 Crores in pursuance to order dated 22.07.2021, passed by the Arbitration Tribunal based on admissions before the DRB. The admission of such claims by the Engineer causing huge loss to public exchequer he submits, is apparent from a letter dated 16.05.2016, whereby the earlier Engineer had denied all the claims of the petitioners, but on the U-turn taken by the new Engineer vide letter dated 12.09.2016, the Arbitral Tribunal by way of award dated 27.07.2021, awarded 75 Crores based on these admissions.

16. The learned AG submits that as ledger entries themselves reveal the underlying reasons for admissions made by the Government officials, which has caused huge loss to the public exchequer, in the light of such revelations, the blacklisting of the petitioners is reasonable, justified and proportionate. In support of his submissions, the learned AG has relied upon the following decisions: -

- 1. Public Works Department (National Highway) v/s M/S BSC-CC &JV, passed in Arb.A.No.6 of 2023, para 37;***
- 2. Shri Dharamukkala Srinivasa Rao v/s State of Meghalaya and Ors, passed in Crl. M.C. No.26 of 2025 in Crl. Petn No.20 of 2025; and***



**3. *Kulja Industries Limited v. Chief General
Manager Western Telecom Project BSNL, (2014)
14 SCC 731, Para 17.***

17. It is then submitted that clause 59.2 (h) of the contract including clause 37 of the Instructions to Bidders permit the respondents to blacklist/debar the contractor for fraudulent practice and that even independent of the same, an Employer has an inherent right to choose with whom to do business with and to debar entities which indulge in fraudulent activities. The learned AG has cited the case of ***Kulja Industries Limited vs. Chief General Manager Western Telecom Project BSNL (2014) 14 SCC 732***, to support this submission.

18. The learned AG has also advanced the submission that the joint venture and consequently the constituting entities are liable for the acts of bribery, corruption, fraud and cheating, inasmuch as, both the constituent partners of the joint venture actively participated in execution of the contract and indulged in acts of illegal gratification. A bare perusal of the JV agreement dated 14.06.2010 between M/s BSCPL Infrastructure Ltd., and C & C Construction Ltd., he submits, reveals the liability of both the partners and further the reply to the show cause has also been filed on behalf of the



Joint Venture itself. In this regard, the learned AG has placed reliance on the following decisions: -

- i) ITD Cementation India Ltd. v. SSJV-ZVS JV, (2023) SCC OnLine Del 1391*
- ii) TPF Engineering Pvt. Ltd. v. National Highway Logistics Management Ltd., (2023) SCC OnLine Del 7116*
- iii) State of Odisha v. Panda Infraproject Ltd., (2022) 4 SCC 393*

19. On the question of the delay in lodging the FIR and in issuing the impugned show cause notice, it is submitted by the learned AG, that such a contention in itself, amounts to an implicit admission that acts of corruption were indeed committed by the petitioners, and are now being urged to be disregarded merely on the ground of delay in their detection. This contention he submits, is untenable and contrary to the principles of the Rule of Law, as acts of bribery, corruption, fraud and cheating cannot be wiped away. It is further submitted that the show cause notice, was served immediately upon discovery of the corrupt and fraudulent acts committed by the petitioners, inasmuch as, as there was a stay of arbitral proceedings by the Supreme Court, the cross-examination of the witness of the contractors could be concluded only on 17.10.2023, after the stay had been lifted and thereafter, as the mandate of the Arbitral Tribunal then expired and was revived only pursuant to order dated 04.07.2024 passed by the Commercial Court, considerable time



had elapsed. Thus, he submits it was only on the resumption of the proceedings on a detailed examination of the ledgers to meet the arbitral claims, that the systematic corruption was revealed leading to the issuance of the show cause notice to the contractor and its constituent JV partners.

20. It is also been asserted by the learned AG, that the petitioner has suppressed material and facts such as corporate insolvency resolution process initiated against C&C Construction the joint venture partners, and that the same is under liquidation. It is also been submitted that there is a Serious Fraud Investigation Office (SFIO) inquiry initiated against C&C Construction and that the Joint Venture has filed the writ petition without the permission of the official liquidator. It does appear he contends, that M/s BSCPL Infrastructure has been pursuing Arbitration and appropriating the amounts behind the back of C&C Construction, inasmuch as, the statement of claims was filed before the Arbitral Tribunal on 05.08.2019, much after the initiation of CIRP without ever mentioning the same.

21. In the context of the show cause, the learned AG has referred to the case of ***Grosons Pharmaceuticals (P) Ltd., v. State of U.P & Ors. (2001) 8 SCC 604***, which he submits the Hon'ble Supreme Court has held that it is a sufficient requirement of law, that an opportunity of show cause is given before blacklisting and that it is also not necessary to give all materials. He then submits that the petitioner was granted reasonable opportunity of being



heard and that the Show Cause Notice, specifically detailed the grounds on which blacklisting was proposed and the failure of the petitioner to explain the allegations and even admitting to the alleged acts in its reply to the show cause, the blacklisting order is therefore reasonable, proportionate and in public interest. In this regard reliance has been placed in the case of ***Patel Engineering v/s Union of India (2012) 11 SCC 257***, wherein he submits it has been held that power of judicial review will not be invoked to protect private interest at the cost of public interest. Reliance has also been placed on this same point, by citing the cases of ***Asia Foundations and Construction Ltd v/s State of Gujarat (1985) SCC OnLine Guj 93*** and ***Ridhhi Siddhi Associates v/s NHAI 2024 SCC OnLine Del 5513***. The learned AG then closes his submission by reiterating his submissions that the blacklisting of the petitioners is justified, reasonable, proportionate and in the larger public interest and is consequent to admitted acts of large-scale corruption and extension of illegal gratification by the contractor to government officials during the execution of the contract.

22. On hearing the learned counsels of the parties, though lengthy submissions have been advanced and various authorities quoted in support of their respective cases, on examination of the materials and on consideration of the arguments so advanced, in the considered view of the court the issue revolves only around the legality of the blacklisting order, whether there was



substantial compliance with the principles of natural justice, whether there was adequate and substantial basis for the action, whether blacklisting the petitioner was a mala fide and a colorable exercise of power and lastly whether the punishment of debarment for five years can be held to be reasonable or proportionate to the alleged misconduct.

23. On the first issue that is, whether the respondent authorities possessed the legal authority either on the basis of a concluded contract viz clauses 37 of the 'Instruction to Bidders' and clause 59 of the 'General Conditions of Contract' or inherent power to blacklist a contractor after the contract has been concluded, the aforementioned clauses for the sake of convenience are reproduced hereinbelow: -

37. Corrupt or Fraudulent Practices.

37.1 The Employer will reject a proposal for award if it determines that the bidder recommended for award has engaged in corrupt or fraudulent practices in competing for the contract in question will declare the firm ineligible, either indefinitely or for a stated period of time, to be awarded a contract with National Highway Authority of India/State P.W.D and any other agencies, if at any time determines that the firm has engaged in



corrupt or fraudulent practices in competing for the contractor, or in execution.

37.2 Furthermore; Bidder shall be aware of the provision stated in Sub-Clause 23.2 and Sub-Clause 59.2 of the Conditions of Contract.

59. Termination

59.1. The Employer or the Contractor may terminate the Contract if the other party causes a fundamental breach of the Contract.

59.2. Fundamental breaches of Contract include, but shall not be limited to the following:

- a) the Contractor stops work for 28 days when no stoppage of work is shown on the current Programme and the stoppage has not been authorized by the Engineer;*
- b) the Engineer instructs the Contractor to delay the progress of the works and the instruction is not withdrawn within 28 days;*
- c) the Employer or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation;*



h) if the Contractor, in the judgment of the Employer has engaged in corrupt or fraudulent practices in competing for or in executing the contract.

For the purpose of this paragraph: “corrupt practice” means the offering, giving, receiving or soliciting of anything of value to influence the action of a public official in procurement process or in contract execution. “Fraudulent practice” means a misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Borrower and includes collusive practice among Bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the borrower of the benefits of free and open competition.

24. A perusal of clause 37, would show that the same would apply at the time of competing for a contract. However, clause 59.2 (h) of the GCC clearly spells out the scope of the words ‘corrupt practice’ and ‘fraudulent practice’, and in the instant case as can be seen from the circumstances, the said corrupt practice by the petitioner was while executing the contract and as such clause 59.2 (h) of the GCC, has vested the respondent/employer with the power to take appropriate action even though it was a concluded contract.



Added to this, is also the inherent power of the respondent to blacklist even when the said provision is absent in the contract. In this context, the judgment cited by the respondent in the case of *Kulja Industries Ltd* (supra) has dealt with this aspect wherein at para 17 it has been held as follows:

***“17. That apart, the power to blacklist a contractor whether the contract be for supply of material or equipment or for the execution of any other work whatsoever is in our opinion inherent in the party allotting the contract. There is no need for any such power being specifically conferred by statute or reserved by contractor. That is because “blacklisting” simply signifies 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. Between two private parties the right to take any such decision is absolute and untrammelled by any constraints whatsoever. The freedom to contract or not to contract is unqualified in the case of private parties. But any such decision is subject to judicial review when the same is taken by the State or any of its instrumentalities. This implies that any such decision will be open to scrutiny not only on the touchstone of the principles of natural justice but also on the doctrine of proportionality. A fair hearing to the party being blacklisted thus becomes an essential precondition for a proper exercise of the power and a valid order of blacklisting made pursuant thereto. The order itself being reasonable, fair and proportionate to the gravity of the offence is similarly examinable by a writ court.*”**

As such therefore, it is seen that the respondent was well within its authority to issue the show cause notice to the petitioner for blacklisting.

25. On the aspect of compliance with the principles of natural justice, the petitioner has raised the point that apart from the show cause notice being



vague, the final blacklisting order incorporated new allegations and relied on ledger entries from 2015-16 and 2016-17, that were never put to the petitioner in the notice. A perusal of the show cause notice dated 16.09.2025, would show that the same has clearly set out the instances of alleged corrupt practice directly attributable to the petitioner, which in the reply thereto, dated 30.09.2025, have not been specifically denied but sought to be explained away as valid expenses incurred, and not any act of alleged bribery or corruption. The contractor, notwithstanding the incorporation of ledger entries for the year 2015-16, 2016-17, in the order of blacklisting, in the opinion of this Court, has failed to explain the allegations on which the blacklisting was proposed and as such, cannot take the ground that all the details were not provided and reasonable opportunity not granted. The allegations made in the show cause notice pointing to fraudulent acts indulged by the petitioner, also has immense ramifications as it affects larger public interest and loss being caused to the public exchequer. Though the petitioner has also raised a contention that the decision is pre-determined, the same appears to not hold good, inasmuch as, in the blacklisting of the petitioner, sufficient opportunity had been provided which was not substantially rebutted. The case of *Grosos Pharmaceuticals (P) Ltd., (supra)* cited by respondents in this aspect is relevant, wherein at paragraph-2, it has been held as follows: -



“2. Learned counsel appearing for the appellant urged that seeing the nature and seriousness of the order passed against the appellant, the respondent ought to have supplied all the materials on the basis of which the charges contained in the show-cause notice were based along with the show-cause notice and in the absence of supply of materials, the order impugned is against the principles of natural justice. We do not find any merit in this contention. Admittedly, the appellant has only contractual relationship with the State Government and the said relationship is not governed by any statutory rules. There is no statutory rule which requires and an approved contractor cannot be blacklisted without giving an opportunity of show-cause. It is true that an order blacklisting an approved contractor result in civil consequences and in such a situation in the absence of statutory rules, the only requirement of law while passing such an order was to observe the principle of audi alteram partem which is one of the facets of the principles of natural justice. The contention that was incumbent upon the respondent to have supplied the material on the basis of which the charges against the appellant were based, was not the requirement of the principle of audi alteram. It was sufficient requirement of law that an opportunity of show-cause was given to the appellant before it was blacklisted. It is not disputed that in the present case, the appellant was given an opportunity to show cause and it did reply to the show-cause which was duly considered by the State Government. We are, therefore, of the view that the procedure adopted by the respondent while blacklisting the appellant was in conformity with the principles of natural justice.”

26. Coming to the next issue that is whether there exists any basis for the impugned action by the respondents, it is most pertinent to note that the materials relied upon for issuance of the show cause notice and subsequent blacklisting is not based on hearsay or suspicion, but on the ledgers produced by the petitioner and also supported by evidence in the cross examination before the Arbitral Tribunal. The entries having provided sufficient and



credible proof of illegal gratification, it was well within the rights of the respondents, to have resorted to this coercive action of debarring the petitioner. Another point that cannot be disregarded, is the fact that the said entries were not denied, but sought to be explained as expenditure incurred in the normal course of business, this explanation, in the view of this Court defies logic as the expenses entered in the ledgers were for purchasing of alcohol, personal gifts and other luxury items for government officials. The findings of the Arbitral Tribunal, also support the action of the respondents and as such the contention that the action resorted to by the respondent is either mala fide or motivated, is misplaced and without any basis, as the State is obligated to put public interest over everything else in such matters. With regard to the primacy of public interest, in the case of *Patel Engineering Ltd.*, (supra) at *Para-36 & 37* thereof which is relevant, it has been held as follows:

36. We cannot say the reasoning adopted by the second respondent is either irrational or perverse. 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. No doubt, the fact that the petitioner is blacklisted (for some period) by the second respondent is likely to have some adverse effect on its business prospects, but, as pointed out by this Court in Jagdish Mandal v. State of Orissa (2007) 14 SCC 517: (SCC p. 518)
“Power of judicial review will not be invoked to protect private interest at the cost of public interest, or to decide contractual disputes.”



37. The prejudice to the commercial interests of the petitioner, as pointed out by the High Court, is brought about by his own making. Therefore, it cannot be said that the impugned decision of R-2 lacks proportionality.”

27. Though arguments have also been raised as to the insufficiency and deficiency of the FIR as the Prevention of Corruption Act has initially not been mentioned, and only the name of one retired official has appeared, this in the opinion of the court will not disable or render the ensuing investigation invalid in any manner, inasmuch as, the FIR was registered on the materials that were available which prima facie, validated the allegations of illegal gratification.

28. On the issue as to whether the penalty imposed of Five Years debarment being excessive and disproportionate, considering the nature of allegations which reflects the conduct of the petitioner, and taking to account the size of the project and the scale of public funds involved, the penalty imposed cannot be held to be in any manner disproportionate or excessive.

29. The decisions relied upon learned Senior counsel for the petitioner, though covering the spectrum of the prerequisites for blacklisting, such as show cause notices to constitute a valid basis of a blacklisting order and that the said notice to disclose the exact details the same however, are easily distinguishable from the present case, wherein the facts stand on a completely different footing. As such, the same are not elaborated or discussed upon.



30. Therefore, in view of the overwhelming circumstances, shorn of all other technicalities that have been raised by the petitioner which would not have the effect otherwise, of altering the basic facts present on record, in the considered view of this Court, no case has been made out that would warrant any interference by this court in exercise of powers under Article 226 of the Constitution and the writ petition is accordingly dismissed.

31. All connected Misc. applications also stand disposed.

32. There shall be no order as to costs.

JUDGE

Meghalaya
17.12.2025
"V. Lyndem- PS"