

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

**Reserved on: 20.02.2018**  
**Pronounced on: 09.07.2018**

+ **LPA 660/2017, CAV. 883/2017 & C.M. APPL.36640/2017 & 40676/2017**

**NATIONAL HIGHWAYS AUTHORITY OF INDIA..... Appellant**

**Through: Sh. Sandeep Sethi, Sr. Advocate with Sh. Mukesh Kumar and Sh. Simranjeet Singh, Advocates.**

**versus**

**L.N. MALVIYA INFRA PROJECTS PVT. LTD. AND ANR.**

**..... Respondents**

**Through: Sh. Vikas Singh, Sr. Advocate with Ms. Nanda Devi Deka and Sh. Kapish Sethi, Advocates, for Respondent No.1.**

**Sh. Rajat Kumar, Advocates, for Respondent No.2.**

**CORAM:**

**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

**HON'BLE MR. JUSTICE A.K. CHAWLA**

**MR. JUSTICE S. RAVINDRA BHAT**

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1. The National Highways Authority of India (hereinafter referred to as "NHAI"-the Appellant) appeals the decision of a learned Single Judge allowing a writ petition under Article 226 of the Constitution of India setting aside an order dated 13.07.2017 which blacklisted the Respondent "L.N. Malviya" from participating in any work affiliated with the NHAI for a period of three years.

2. NHAI, as a regular practice, appoints consultancy firms to supervise the work at its construction sites, and for this purpose it releases tenders to the same effect. L.N. Malviya Infra Projects Pvt. Ltd. and M/s MC

Consultancy Engineers Pvt. Ltd.(hereafter “MC Consultancy”- this firm and L.N.Malviya referred to collectively as “Respondents”) are consultancy firms engaged in providing the abovementioned services. On 28.03.2012, Madhya Pradesh Road Development Corporation (MPRDC) had issued a tender for the execution of independent engineer services for the four-laning of Rewa to MP/UP Border Section from Km 229/100 to Km 140/6 of NH-7 (hereinafter referred to as the “Rewa-MP Project”). Their bid was accepted by authorizing a Letter of Acceptance (LoA) dated 05.09.2012. The Respondents in the present matter had formed a Joint Venture known as “MC Consulting Engineers Pvt. Ltd. JV L.N. Malviya Infra Projects Pvt. Ltd.” (hereafter “the JV”) to submit a common proposal to MPRDC on behalf of both parties, which was dated 09.01.2012. It is pertinent to mention at this stage that the availability of this information is disputed. However, the consulting firms have placed on record official communications informing the authority of the same, which took place through the exchange of letters. The clauses of the JV agreement were amended through a Memorandum of Understanding (MoU) dated 14.07.2013 which stipulated that MCC would pay 96% of its receipts to M/s L.N. Malviya which meant that accordingly they would be earning 4% on the execution of the same contract which had been stipulated as “royalty”.

3. After the completion of the Rewa-MP project, MCC was demerged and the transferee company, which was created, was M/s Technocrats Advisory Services Private Limited (TASPL) in January 2015 and subsequent to this, it took over the business for roads and highways. Information in this regard was given to the authority who had recognized it and had in accordance deposited the sums of money into the account of M/s L.N.

Malviya. In order to substantiate the same, they have also placed on record income tax returns, deposit sheets etc. indicative that the terms of the MoU were conveyed to the authority.

4. In June 2015, the NHAI released a Request for Proposal (RFP) for providing Independent Engineer Services for the operation and management of Gorakhpur-Kasia- UP/Bihar Border Section (hereinafter referred to as the “Gorakhpur Project”). TASPL/MCC submitted their bid for the same claiming experience in the management and completion of the Rewa-MP project on the basis of experience certificate dated 16.02.2015 issued in favor of JV by MPRDC. It is pertinent to note that the percentage share of Malviya and MCC was not stipulated in the experience certificate submitted. Further, Malviya also furnished an experience certificate dated 01.02.2016 with Certificate Number bearing 120 which specified the percentage share of each of the parties. It was clearly specified that percentage share of Malviya was 96% and that of MCC was 4% as per the terms of the amended MoU. Malviya submitted the above mentioned certificate dated 01.02.2016 with respect to two projects for the NHAI which were four-laning projects in Jharkhand and Nagpur. The NHAI was now faced with the issue of two conflicting claims being made with respect to percentage share in the Experience Certificates. The NHAI, in order to clarify this contention wrote a letter dated 29.08.2016 to the Principal Director, MPRCD Bhopal, seeking clarification with regard to the contradictory claims being presented. In a reply dated 15.09.2016 by the same authority, an additional Experience Certificate was provided with the date of 08.12.2016, which specified the percentage share of work done by both parties with regards to the Rewa-MP project. The Principal Director clarified that Malviya and MCC had made a

common proposal for the tender. Since, the Experience Certificates clearly state that they have been issued in the name of MCC in association with Malviya, over and above the fact that the authority had issued the certificates in the name of the JV, it made the Experience Certificate dated 16.02.2015 bearing No. 625 in the name of the same JV and not any one party. It further verified Experience Certificate No. 120, dated 01.02.2016 with the percentage share of work existing in the breakup of 96% in the name of Malviya and 4% for MCC.

5. Both Malviya and MCC sent letters dated 23.12.2016 and 09.01.2017 respectively to the NHAI. With respect to their clarifications published, Malviya stated that the tender had been awarded in the name of the JV and they were able to support the same by contesting the payment of dues in the name of the JV account made by the NHAI. Further, it was clear that no party could claim 100% share in the completion of the project. MCC contested that post the demerger (or division of JV), the tender stood vested in its favour and also alleged that Malviya was trying to cheat it. NHAI decided to refer the matter to a three member CGM Committee through Office Memorandum dated 03.02.2017. It also decided to not consider any bids from both NHAI and Malviya till the time the matter was decided. Through letter dated 06.02.2017, Malviya was given a chance to defend itself. The committee on 08.02.2017 received a reply from Malviya, reiterating its position. Subsequent to this, Malviya was unsuccessful in bidding for two tenders that were released after the publication of the Office Memo dated 03.02.2017 which led it to move a writ petition. On 09.02.2017 the results of the technical evaluation were published, wherein Malviya felt that the NIA had violated their OM, in which their bids were disregarded as

they argued that the orders passed in the OM dated 03.02.2017 should debar them from specifically the matter at hand.

6. During the pendency of the writ petition filed, the recommendations of the committee were released on 14.03.2017. NHAI rejected one of Malviya's bids through an e-mail dated 24.03.2017, and on 28.03.2017 it issued the blacklisting order against Malviya. Aggrieved, Malviya moved an application dated 01.04.2017, which it alleged was not considered by the NHAI. The learned single Judge set aside the impugned order so far as it related to Malviya's debarment; yet it refrained from making further observations. Aggrieved, NHAI has preferred this appeal.

7. NHAI argues that the learned Single Judge fell into an error in holding that Malviya's conduct could not be termed fraudulent. Counsel for NHAI submits that Malviya clearly and manifestly misrepresented and claimed the experience of the JV, which it could not legitimately have, given its terms and the fact that a controversy was pending with the MPRCD. It is pointed out that MPRDC itself issued a debarring order, which is the subject matter of writ proceedings before the Jabalpur Bench of the Madhya Pradesh High Court. This action was on the MPRDC's understanding and decision pursuant to the report of a five-member committee. That committee had recorded that Malviya claimed 96% of the experience gained from the Rewa contract, but had, during the hearing, stated that the actual experience could be either that percentage or something else. NHAI submits that this admission clearly exposed Malviya's argument that under the JV it was entitled to a predominant share. The discretion exercised, in these circumstances, was based upon the decision taken by MPRDC, the contract awarding body and was not unreasonable to warrant interference under

judicial review.

8. NHAI also highlighted that before MPRDC, Malviya claimed 96% experience of the project, whereas MCC claimed the whole (100%) experience, understandably leading to confusion. Given these facts, the NHAI acted reasonably in concluding that Malviya misrepresented its experience, as what could be legitimately claimed by it under the JV arrangement was under cloud. Therefore, the blacklisting order was justified and warranted.

9. Counsel for Malviya argued, on the other hand, that the impugned judgment is sound and does not call for interference. He highlighted that there ought to have been a *finding of fact* by the administrative agencies, after following principles of natural justice and granting minimum opportunity to those likely to be affected, that the contractor (Malviya) had in fact indulged in a corrupt or fraudulent practice. Highlighting that such a finding has drastic civil consequences, if made part of a blacklisting order, counsel emphasized that in such event, the materials should unmistakably point to culpability and wrongdoing.

10. It was submitted that all the documentary evidence on the record showed that at material times, when the MPRDC awarded the contract, it was made aware of Malviya's involvement, through the JV and MOU arrangements. Counsel relied on the letters exchanged between MCC and MPRDC in this respect and submitted that the latter public authority had acknowledged these facts and even issued Tax deducted at source certificates to Malviya. All these were ignored and NHAI mechanically, without applying its mind, concluded that the certificate furnished to it, claiming experience, was fraudulent.

11. It was argued that the contract for work and the JV Agreement was executed on the same day i.e. 12.09.2012; a Memorandum of Understanding was later drawn between the parties on 14.07.2012. It was argued that both these notified to the authority in the present matter at hand (i.e. MPRDC). The scheme of payment observed by the authority is in accordance with both the JV Agreement and the MoU. Clearly MPRDC was aware, took advantage of the arrangement between the two entities and availed their services and thereafter chose to disclaim the certificate. Consequently, NHAI's decision to place a three-year ban on LN Malviya and *rationale* for doing it was plainly unfair and arbitrary.

12. It was lastly argued that NHAI could not have mechanically and without due application of mind, adopted the action of MPRDC, especially when that was pending and in issue in writ proceedings before the Madhya Pradesh High Court. It was argued that since the ban order was issued by NHAI, it was under an obligation to satisfy itself, independently whether actually a fraudulent practice or misrepresentation by LN Malviya had been resorted to. Therefore, the impugned order, submitted Malviya's counsel, was justified in law.

### ***Analysis and Conclusions***

13. The learned Single Judge considered all the relevant facts, including the initial award of the contract, the important correspondence exchanged between MPRDC, MCC and the letters concerning the JV arrangements during the subsistence of the contract period. The MPRDC in its CGM's Committee report stated that the MoU is a subject matter that is beyond the scope of awarded work and cannot be recognized. However, the MoU was signed between the parties on 14.07.2013 and a letter dated 15.07.2013 was

sent to the MPRDC Office informing the latter about the development. Thereafter tax certificates were issued from 02.05.2013 to 02.08.2015, which clearly specify that Income Tax returns were filed in the name of the JV and not in the name of any individual entity.

14. The decision making procedure of the NHAI in the present matter at hand is largely reliant on the fact that the scheme or arrangement cum demerger that allowed MCC to convert to TASPL is outside the purview of the contract which is why it should not be upheld as valid in law. However, this is not a just interpretation of the same. According to the Agreement for the Assignment of Independent Engineer, which has been executed between MCC and NHAI, the clause pertaining to mutual rights and obligations of both parties clearly mentions that NHAI shall make payments in accordance with the provisions of this contract. That being said, it was fallacious on the part of NHAI to contend that the MoU was outside the purview of the contract, when payments were made to the account of Malviya, and the tax certificates were issued in the name of MCC which meant that the payment scheme being followed in some manner was in accordance with the provisions which relate to the MoU (which is now contended as outside the contract).

15. The NHAI's principal contentions are that firstly, by reversing the order it has passed in the first place will undermine its authority and secondly the issue they have raised is that the decision of the courts to intervene in the present matter and the requisite authority required for the same may not be there. If these are upheld, it would mean simply that the courts by interfering in the matters of awarding a government tender which is similar to a contract of a private nature is in violation of Article 14 of the

Constitution. In NHAI's appeal, it has been contended repeatedly that there should be no interference with its orders as it carefully considered all relevant facts and circumstances before issuing a detailed order. The said order in question has noted that

*“the consulting services/IE services for the four laning of Rewa-MP/UP Border (NH-7), four laning of Bhopal-Biaora (NH-12), four laning of Sidhi-Singrauli (NH-75E) and four laning of Mangawan- MP/UP Border (NH-27) projects were awarded through tender to M/s. MCCEPL and not to JV of M/s MCCEPL & M/s. L.N. Malviya Infra Projects Pvt. Ltd. Shri L.N. Malviya has misused the power of attorney obtained from M/s. MCCEPL and had tried to show its firm M/s. L.N. Malviya Infra Projects Private Limited as JV of M/s. MCCEPL for the above said projects.”*

16. The other reasons cited in the report leading up to the debarment of Malviya includes the noting of the fact that Letter of Acceptance (LOA) had been executed with M/s. MCCEPL and not with L.N. Malviya nor was it mentioned anywhere that the two firms were in JV for the above mentioned four projects. Further, the report observed that L.N. Malviya is guilty of misrepresentation of facts, which directly establish a *malafide* intent on the company's part, which is why they find it prudent to deem L.N Malviya as debarred for a period of three years. In support of their contention they have also mentioned the fact that the Supreme Court in Civil Appeal Number 2732/2014 in *National Highway Authority of India vs Neeraj Upadhyay* where interim relief was denied as it would amount to relief at the final stage. However, this cannot imply that the Supreme Court declared a matter of law that in all cases of blacklisting, no interim orders can be passed even if the circumstances require the courts to do so. Expanding on the same, the

Request for Proposal (RFP) for Appointment of an Independent Engineer issued by NHAI expressly sets out NHAI's policy that consultants maintain high ethical grounds while completing contractual work. Paragraph 1.8 of Section 2 of the RFP document provides that a firm would be declared ineligible if it was determined that the firm had engaged in 'corrupt or fraudulent practices'. Therefore the basis for deciding punitive action against L.N.Malviya should be the abovementioned clause which is recreated below:

*"1.8 It is the NHAI's policy that the consultants observe the highest standard of ethics during the selection and execution of such contracts. In pursuance of this policy, the NHAI: Defines, for the purpose of this paragraph, the terms set forth below as follows:*

*"corrupt practice" means the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the action of a public official in the selection process or in contract execution;*

*"fraudulent practice" means a misrepresentation or omission of facts in order to influence a selection process or the execution of a contract;*

*"collusive practices" means a scheme or arrangement between two or more consultants with or without the knowledge of the Client, designed to establish prices at artificial, non-competitive levels;*

*"coercive practices" means harming or threatening to harm, directly or indirectly, persons or their property to influence their participation in a procurement process, or affect the execution of a contract.*

*will reject a proposal for award if it determines that the*

*Consultant recommended for award has, directly or through an agent, engaged in corrupt, fraudulent, collusive or coercive practices in competing for the contract in question;*

*will declare a firm ineligible, either indefinitely or for a stated period of time, to be awarded a contract if it at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for, or in executing, a contract; and will have the right to require that a provision be included requiring consultants to permit the NHAI to inspect their accounts and records relating to the performance of the contract and to have them audited by authorized representatives of NHAI.”*

17. It is clear that to conclude that L.N. Malviya indulged in fraudulent or corrupt practices, there should have been discrepancy with the claims made by one of the parties. The NHAI's position is that L.N. Malviya produced false certificates, which it declared void (through a subsequent order), apart from the repeated claim that they were not aware of the JV Agreement and that the MoU was beyond the scope of the contract (tender) that was entered into by the parties. However, this is untenable and difficult to accept, given that MPRDC made direct deposits for the payment of the work to L.N. Malviya's account and payments for the same have generated Income Tax Returns under Form-16 in the name of MCCEPL both of which qualify as official documents which have been recognized by some sort of authority.

18. In the Agreement for the Assignment of Independent Engineering Services for the four-laning of the Rewa-MP/UP border executed by M/s. MCCEPL and MPRDC clearly stipulates the mutual rights and obligations of the parties which is recreated below:

*“The mutual rights and obligations of the MPRDC and the Consultant shall be set forth in the contract in particular;*

*The consultant shall carry out the services in accordance with the provisions of the Contract and*

*The MPRDC shall make payments to the Consultant in accordance with the provisions of the Contract”*

This stipulation reveals that the MPRDC had to recognize the consultant who performed the contractually stipulated work and the payment for the same must be made to the contractor who has performed said work. In the present matter at hand, the contract for the work and the JV Agreement was executed on the same day, i.e 12.09.2012 and subsequently an MoU dated 14.07.2012 was drawn by both the parties; both of which were notified to the authority in the present matter at hand (i.e. MPRDC). The scheme of payment observed by the authority is in accordance with both the JV Agreement and the MoU, which can only mean that they were recognized by the contracting authority. Keeping these facts in mind, it can be said that the decision taken by the NHAI to place a three-year ban on LN Malviya and its reasoning to do so is unfair and unjust considering that they have been able to substantiate their claims through able evidence.

19. In *Shri Sitaram Sugar Co. Ltd. Vs Union of India* AIR 1990 SC 127, a Constitution Bench ruling of the Supreme Court held that the obligation to act fairly on the part of the administrative authorities was evolved to ensure the rule of law and prevent failure of justice. The doctrine is complimentary to the principles of natural justice. The Court can intervene when an action of administrative authorities is unfair and unreasonable. Even citing other decisions from the court, it must be kept in mind that there is no formula for fairness as was upheld in the case of *Council for Civil Service Union vs*

*Min.*,[(1984) 3 All ER 935 (954) HL]. The Supreme Court while deciding the case of *Barium Chemicals vs Company Law Board*, [AIR 1967 SC 295] held that:

*“These grounds limit the jurisdiction of the Central Government. No jurisdiction, outside the section which empowers the initiation of investigation, can be exercised. An action, not based on circumstances suggesting an inference of the enumerated kind will not be valid. In other words, the enumeration of the inferences which may be drawn from the circumstances, postulates the absence of a general discretion to go on a fishing expedition to find evidence. No doubt the formation of opinion is subjective but the existence of circumstances relevant to the inference as the sine qua non for action must be demonstrable. If the action is questioned on the ground that no circumstance leading to an inference of the kind contemplated by the section exists, the action might be exposed to interference unless the existence of the circumstances is made out.*

*As my brother Shelat has put it trenchantly:- "It is not reasonable to say that the clause permitted the government to say that it has formed the opinion on circumstances which it thinks exist”*

*Since the existence of "circumstances" is a condition fundamental to the making of an opinion, the existence of the circumstances, if questioned, has to be proved at least prima facie. It is not sufficient to assert that the circumstances exist and give no clue to what they are because the circumstances must be such as to lead to conclusions of certain definiteness. The conclusions must relate to an intent to defraud, a fraudulent or unlawful purpose, fraud or misconduct or the withholding of information of a particular kind.*

Therefore, to merit any sort of action against the wrongdoer, the objective facts warranting adverse action must be established at least sufficiently on the face of the record. However, if the circumstances do not merit the same

and the authorities are unable to prove them it would be a case where subjective satisfaction may have been exercised arbitrarily making it more or less mandatory for the government to interfere.

20. The impugned order has heavily emphasized on the matter of how serious blacklisting is considered in civil terms for a contractor. There have been various instances where penal action of such nature has resulted in loss of reputation, loss of goodwill, damages in practice and has been summed up by many to also imply civil death. In *Erusian Equipment & Chemicals Ltd v. State of West Bengal & Anr*, AIR 1975 SC 266, the Supreme Court observed that: “*The blacklisting order involves civil consequences. It casts a slur. It creates a barrier between the persons blacklisted and the Government in the matter of transactions. The blacklists are “instruments of coercion”.*

*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.”*

21. Clearly therefore, blacklisting would have serious civic and economic harms to any particular institution. However, apart from its meaning and its consequences it is also important to appreciate certain conditions that may be precedent to the order of blacklisting being passed. In the present matter at hand, it has been contended that the Right to be Heard or the Right to Defend themselves was a chance/opportunity the NHAI did not let L.N. Malviya exercise, and they only issued a show cause notice to them in order to inform them that the decision would be taken on their arrival. Further, the NHAI has sustained the contentions of L.N. Malviya as against the order of debarment

only when it comes to the decision that is taken by the 3-CGM committee report and not by the 5 Member committee. Unlike all companies in the present matter, it is the authority NHAI that is being confusing and misleading in terms of its behavior. In *Rashtriya Ispat Nigam Limited and Anr. vs. Verma Transport Company* [AIR 2006 SC 2800] it was held that:

*“the High Court interfered with order of blacklisting of the firm on the ground that no notice was issued prior to the passing of the order of blacklisting, whereas in fact, no order of blacklisting was passed but only show-cause notice was issued and the final decision was yet to be taken. The Apex Court found that such a dispute could have been raised in the arbitration proceedings also. The aforesaid was a case where the High Court interfered with the order of blacklisting on the ground that no notice was issued before passing the order of blacklisting though, in fact, no order of blacklisting was passed, whereas in the instant case, there is no notice of blacklisting nor any order of blacklisting has been passed, so as to raise the dispute before the Arbitrator but even in the absence of any order of blacklisting, the firm has been shown blacklisted on the website on industry basis apparently on misconstruing the provisions of the agreement and T.D.S., therefore, the present petition would be maintainable.”*

22. In similar situations and cases, petitions have been allowed by the courts on the grounds that adequate notice was not provided before the tendering of a particular decision which leads to unfairness and arbitrariness in terms of procedure. In the aforementioned case, the situation is similar to the one being dealt with presently. Blacklisting also entails serious consequences in terms of its implications, which is why it should be kept in mind that apart from objectivity in terms of decision-making there must also be a clear understanding that cases of this nature would also require the satisfaction of beyond just minimum requirements. It would not suffice to

contend the fact that an authority has complied with the minimum requirements of objective fairness as it is clear that in the cases where punitive action to the tune of blacklisting has been ordered, it would be required that the authority observes a higher standard of objective fairness and must attempt to ensure that justice is rendered in their maximum capacity. Moreover, the issue surrounding blacklisting criterion or the general grounds one may look for have been clearly summarized by the learned Single Judge. The order passed deals with multiple general reasons on a broad spectrum of reasons or qualifying factors which may invite a decision akin to blacklisting. In *Kulja Industries Ltd. v. Chief General Manager, Western Telecom Project BSNL & Ors* [AIR 2014 SC 9], the Supreme Court had summarized the factors which were required to be considered which are recreated below:

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

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

*The frequency of incidents and/or duration of the wrongdoing.*

*Whether there is a pattern or prior history of wrongdoing.*

*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*

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

*Whether the contractor has accepted responsibility for the wrongdoing and recognized the seriousness of the misconduct.*

*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.*

*Whether the contractor has cooperated fully with the government agencies during the investigation and any court or administrative action*

*Whether the wrongdoing was pervasive within the contractor's organization.*

*The kind of positions held by the individuals involved in the wrongdoing*

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

*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.”*

None of these principles were adhered to in the present case.

23. This Court also notices that M/s Technocrat Advisory Services Private Limited was created out of M/s MCCEPL after the completion of the Rewa-MP/UP border project. By the order of the Court, the scheme of demerger became effective from the appointed date of 01.01.2015, and the consultancy division relating to roads/highways and bridges was taken over by TASPL. The demerger was in terms of Section 2(19AA) of the Income Tax Act, 1961 along with Sections 391 to 394 of the Companies Act, 1956. The concerned undertaking included the employees, the assets and the liabilities pertaining to the said undertaking. Yet the position adopted in this regard by M/s TASPL is strange and inexplicable as there is discord between the claims made by the it and the realities. If M/s MCCEPL has successfully, according to an agreement signed with the demerged organization, agreed to the terms of sharing 96% of its receipts to M/s L.N. Malviya then there should have been some sort of discrepancy in its claims. The blind acceptance of TASPL's position by MPRDC and NHAI in this regard is without

application of mind. TASPL which merely stepped into MCCEPL's shoes could not go beyond the written record of the JV agreement and the MOUs without spelling out its reasons; likewise, MPRDC could not claim to be oblivious of the written record, which shows that at different stages, it was aware of and accepted the arrangement, and issued TDS and other documents. These documents could not be resiled from.

24. In view of the above discussion, it is clear that L.N. Malviya had not acted in any manner that could have led to the formation of a *prima facie* opinion that it indulged in fraudulent or corrupt practices. Consequently, there is no infirmity in the approach or conclusions of the learned Single Judge, in the impugned judgment. The appeal is consequently dismissed.

**S. RAVINDRA BHAT**  
(JUDGE)

**A.K. CHAWLA**  
(JUDGE)

**JULY 09, 2018**

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