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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 30.09.2021.

Date of Decision: 29.10.2021.

\+ W.P.(C) 3448/2021

M/S RAJ CORPORATION LTD. ..... Petitioner

Through Mr.Amit Sibal, Sr.Adv. with Mr.Vishal Yadav, Mr.Abhishek Diwedi, Advs.

versus

NATIONAL HIGHWAY AUTHORITY OF INDIA & ANR. ..... Respondent

Through Mr.Saurabh Banerjee, Adv.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J

JUDGMENT

1. The present petition has been preferred under Article 226 of the Constitution of India seeking setting aside and quashing of Show Cause Notice dated 22.10.2020 and the consequential order dated 27.11.2020 passed by the respondent no. 1 debarring the petitioner from participating in any future projects to be floated by the respondent no. 1 for a period of two years.

2. The petitioner is a construction company providing infrastructure development services and claims to have successfully undertaken several construction contracts for various state governments and public sector undertakings. The respondent no. 1/National Highways Authority of India (*hereinafter*, "NHAI"), an authority established under the National

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Highways Authority of India Act, 1988, is responsible for the construction of various highways across India. Even though the General Manager (T) of respondent no.1 has been arrayed as respondent no.2, no relief is sought against the said respondent and therefore, reference to the respondent hereinafter will be read only *qua* respondent no.1.

3. Upon the respondent issuing a Request For Proposal (*hereinafter referred to as* "RFP") inviting bids for the construction of a "Six lane access controlled Highway (NH-152D) starting from junction with Kaithal-Safidon road (SH-11) near Rajound to junction with Jind-Safidon road (SH-14) near Kheri village (Ch. 56+000 to 80+000) (length 24 km)", the petitioner on 30.07.2019, submitted a bid in the EPC Mode by a Joint Venture namely Raj Corporation Ltd. – Bhuvaneshwar Construction Company, of which the petitioner was the lead member. The bid (*hereinafter referred to as* "first Bid") was accompanied by certificates of eligible projects by the Petitioner's chartered accountant M/s Ramji Sriram & Associates. Vide its letter dated 29.08.2019, the respondent sought certain clarifications from the Joint Venture, to which no reply was furnished and consequently the bid submitted by the Joint Venture was declared as non-responsive on account of the Joint Venture having failed to meet the eligibility criteria as specified under clause 2.2.2.2(i) of the RFP, consequently, the petitioner was refunded the bid security amount.

4. On 03.07.2020, the petitioner company, this time in its individual capacity, submitted its bid (*hereinafter referred to as*, "second bid") for another tender floated by the respondent. The same was for construction of a "Six lane access-controlled Highway from Junction with sector – 62/25 diving road on Faridabad-Ballabhgarh bypass to Junction near KMP

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expressway with NH-148N (Delhi-Vadodara Expressway) section of NH-148NA (Design CH 33+000 to 59+063) in the State of Haryana on Hybrid Annuity Mode under Bharatmala Pariyojna." Vide its letter dated 17.07.2020, upon finding that some of the supporting documents submitted by the petitioner were not in accordance with the terms of the RFP, the respondent, while directing the petitioner to furnish some original documents as per the terms of the RFP, sought certain clarifications from the petitioner. One of the aspects on which clarification was sought from the petitioner was the reason for submission of the 'Independent Auditor's Report' for the years 2018-19 & 2019-20 instead of the 'Tax Audit Reports' for the said years as required under the RFP.

5. In response thereto, the petitioner vide its letter dated 22.07.2020, while clarifying the issues raised by the respondent, submitted copies of the independent auditor's reports for the relevant years along with the amended bank guarantee as well as a corrected copy of the letter accompanying the technical bid.

6. The petitioner's bid was, however, once again rejected as being technically non-responsive, which rejection was based on a difference in the details and value of the projects claimed to have been undertaken by it alongwith the year wise break-up of the turnover as submitted by the petitioner in the two bids, the first dated 30.07.2019 where the petitioner was part of the Joint Venture and the second being 03.07.2020. The respondent, vide letter dated 28.07.2020 informed the petitioner that since it had claimed some additional projects as eligible projects in its first bid *vis-à-vis* the projects referred to in the second bid, it was evident that there was misrepresentation of facts qua the payment received/claimed for

eligible projects in the bids submitted by it. The petitioner was also granted an opportunity to make a representation by 05.08.2020. Consequently, the petitioner vide its letter dated 04.08.2020, while clarifying that the first bid had been prepared by its erstwhile chartered accountant in the office of its Joint Venture partner, wherein some mistakes had been committed by him in preparing details of payments received on a project wise/year wise basis, also pointed out that all documents submitted alongwith the second bid were absolutely correct, having been verified from the record. It was, therefore, claimed by the petitioner that it was fully eligible for award of the tender on the basis of the total technical score of the highway sector.

7. However, vide its letter dated 06.08.2020, the respondent rejected the petitioner's representation and informed the petitioner that its bid had been rightly declared as non-responsive on account of misrepresentation of facts and inflation of financial certificates, to influence the bidding process, which amounted to fraudulent practice in terms of Clause 4.3(b) of the RFP. The rejection order was followed by the impugned Show Cause Notice dated 22.10.2020, whereby the petitioner was asked to show cause as to why it should, as per terms of the RFP, not be debarred from participating in the ongoing and future bids of the respondent for a period of 2 years, on account of it having adopting fraudulent practices. The petitioner was granted 15 days' time to submit its representation and was also asked to indicate whether it was desirous of availing an opportunity of personal hearing.

8. As directed, the petitioner submitted its reply on 26.10.2020, wherein while making a request for a personal hearing in terms of paragraph 6 of the Show Cause Notice, it sought to explain that the documents submitted

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with its first bid had been prepared in the office of its Joint Venture Partner where, due to an inadvertent mistake on the part of its Chartered Accountant Ramji Sriram & Associates, who had vide its letter dated 24.09.2019 already sent a communication disclosing that an error had been committed on his part, the papers meant to be submitted with the bid had been mixed up with papers of some other contractors. The petitioner, in its reply, also reiterated that there was no misrepresentation on its part and all the documents submitted along with its second bid were in order.

9. The reply furnished by the petitioner was not found to be satisfactory and consequently, the respondent vide its impugned letter dated 27.11.2020 informed the petitioner that the Competent Authority had not found any merit in the explanation so proffered. Consequently, the petitioner was debarred from participating in the ongoing and future bids of the respondent for a period of two years. Being aggrieved by the impugned order, the petitioner approached the respondent's Chairman vide its representation dated 03.12.2020, wherein the petitioner while pointing out that similarly placed bidders, who had committed mistakes of a like nature were debarred for a period of six months only, prayed for reduction of the period of debarment. The petitioner also set out that the debarring order was likely to affect its workforce of 3000 employees during the ongoing pandemic of COVID-19. As the representation did not elicit any response, the petitioner sent further reminders on 19.01.2021 and 08.02.2021, but to no avail and consequently, the present petition came to be filed.

10. In support of the petition, Mr. Amit Sibal, learned senior counsel for the petitioner, firstly submits that the respondent's presumption that the petitioner had made any misrepresentation or indulged in a fraudulent

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practice was wholly without any basis. The respondent had failed to appreciate that the first bid was submitted by the petitioner as a member of a Joint Venture in which there was some mix up of papers on the part of the Chartered Accountant, M/s. Ramji Sriram & Associates, who had, upon realising the said mistake, vide its letter dated 24.09.2019, not only informed the petitioner but also the respondent regarding the inadvertent mix up in the documents submitted with the first bid that occurred on his part, as a result whereof, the details of certain unrelated projects were included in the list of documents submitted with the bid. The petitioner, upon learning about the said mistake had promptly changed its chartered accountant by then engaging Shri. Sunil Singhal as its new chartered accountant, who had prepared the requisite documents submitted with the second bid. He also submits, that no defects or misrepresentation in documents submitted with the second bid dated 03.07.2020 were ever pointed out and that the petitioner was solely disqualified and debarred on the presumption that the difference in the documents submitted along with the two bids amounted to misrepresentation and a fraudulent practice.

11. Mr. Sibal then submits that despite the offer made by the respondent in the impugned Show Cause Notice dated 22.10.2020 to grant an opportunity of personal hearing to the petitioner, no such opportunity was ever granted to the petitioner and that too despite a specific request being made by the petitioner, to avail the same, on 26.10.2020. On the other hand, the minutes of the meeting of the executive committee of the respondent held on 11.09.2020 in itself, show that a premeditated decision to debar the petitioner had already been taken even before issuance of the

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Show Cause Notice to the petitioner. He therefore, contends that the impugned order is liable to be set aside on this ground alone.

12. Mr. Sibal then submits that the impugned debarring order is not only wholly cryptic, having been passed without dealing with any of the detailed submissions made by the petitioner in its representation dated 26.10.2020, but is even otherwise discriminatory and shows that the respondent is adopting a pick and choose policy by singling out the petitioner by debarring it for a period of two years in these difficult times, when the entire world is reeling under the effects of COVID-19. In support of this submission, he has drawn my attention to a debarring order dated 18.03.2020 issued by the respondent in respect of one M/s Krishna Constructions, who had been debarred for a period of six months even after being found to have indulged in corrupt and fraudulent practices. He further submits that, in the present case, while debarring the petitioner for an inordinately long period of two years, the respondent has failed to appreciate that the petitioner was not guilty of submitting any false or wrong documents along with its second bid, in respect whereof the debarring order has been passed, and was being penalised only on account of a mix up of papers submitted alongwith the first bid, which in any event was treated as non-responsive.

13. Finally he submits that the impugned order was grossly disproportionate to the mistake alleged to have been committed by the petitioner, which lapse, even as per the respondent was committed at the time of submitting the first bid. He thus, contends that the respondent had arbitrarily resorted to the extreme and harsh step of debarring the petitioner for a period of two years without appreciating that the petitioner was not

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even alleged to be guilty of such serious misconduct so as to warrant blacklisting for the maximum period of two years envisaged under the RFP. Keeping in view the petitioner's past record of carrying out various construction projects to the utmost satisfaction of the respondent, coupled with the fact that it was being sought to be penalised on account of a mistake in respect of the first bid, which bid did not materialize, the impugned decision to blacklist the petitioner was clearly disproportionate and unwarranted. In support of his submissions, he places reliance on the decision of the Apex Court in ***Kulja Industries Lt. v. Chief General Manager*** **[(2014) 14 SCC 731]** and on a decision taken by a coordinate bench of this Court in ***Avinash Em Projects Pvt. Ltd. V. Gail(India) Limited*****[2015 SCC Online Del 7135]**. He, therefore, prays that the impugned Show Cause Notice and order be quashed.

14. Per contra, Mr. Saurabh Banerjee, learned counsel for respondent opposes the petition by contending that the petitioner is a repeat offender and habitual defaulter, who had been found guilty of time and again indulging in fraudulent practices. Despite being disqualified in the first bid, on the ground of submitting details of certain ineligible projects alongwith its bid and the Tax Audit Reports, instead of the Independent Auditor's Reports as well as an incorrectly drafted bank guarantee along with a letter that comprised of several inconsistencies and errors with its technical bid, the petitioner once again committed the same mistakes while submitting its second bid for which there is no explanation whatsoever. Moreover, it had also deliberately failed to comply and adhere to the mandatory conditions of the RFPs for two consecutive years i.e. the first bid submitted in July, 2019 and the second bid submitted in July, 2020.

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The respondent could therefore, not be faulted for passing the impugned notice and order.

15. He further submits that the petitioner has also deliberately withheld the letter dated 29.08.2019 from this Court, wherein it was called upon to submit replies/clarifications to the discrepancies raised by the evaluation committee of the respondent no.1, in respect of the bid dated 30.07.2019, which it failed to furnish, and in fact readily accepted the refund of the bid security amount. The said letter would clearly show that the petitioner had been a habitual offender, by repeatedly failing to comply with the mandatory conditions of the RFP. On both occasions, i.e. while submitting the first bid as also the second bid, the petitioner had deliberately filed incomplete documents and defective bank guarantees. Moreover, once the petitioner company chose not to assail the letter dated 25.09.2019, vide which its bid dated 30.07.2019 was declared as being technically non-responsive, it cannot now be permitted to urge that there were no discrepancies at all in its first bid.

16. Mr. Banerjee submits that the respondent was fully justified in passing the debarment order once the petitioner was found to be not only repeatedly violating the mandatory conditions stipulated in the RFP but also admittedly guilty of having included ineligible projects in the list of eligible projects furnished with its first bid. The belated explanation now sought to be given by the petitioner regarding a mix up of papers by the chartered accountant was rightly rejected. He further submits, that no interference was called for in the decision to debar the petitioner, with the same having been taken by the evaluation committee, after a careful

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deliberation of all relevant factors including the explanation sought to be furnished by the petitioner.

17. Mr. Banerjee then submits that the petitioner's plea that the impugned order is a non-speaking order or that the same was passed by the respondent without following the principles of natural justice is wholly incorrect. He submits that the misrepresentation on the petitioner's part was evident from a perusal of the documents filed alongwith the bids itself and therefore, even though there was no requirement to grant any personal hearing to the petitioner before passing the impugned order, a personal hearing was given to the petitioner on 10.11.2020. He thus contends that the petitioner's plea of not having been granted an opportunity of hearing is merely an afterthought as no such plea was ever taken by it in any of its representations submitted to the respondent's chairman on 03.12.2020, 19.01.2021 and 08.02.2021.

18. He finally submits that the impugned order has been passed to ensure that stringent and strict standards are maintained by all contractors in respect of such projects which involve construction and maintenance of roads for use by the common people. Once it was found that the petitioner had failed to adhere to the highest standards of ethics as stipulated under clause 4.1 of the RFP, the respondent was justified in taking action against the petitioner in accordance with clause 4.2 of the RFP. Seeing the gravity of the wrongdoings repeatedly committed by the petitioner, the penalty for debarment for the miniscule period of 2 years could by no means be said to be disproportionate, harsh or unfair in any manner. He, therefore, prays that the writ petition be dismissed.

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19. I have heard learned counsel for the parties and with their assistance perused the records. From the submissions at the bar it appears that, two primary questions arise for my consideration in the present petition – the first being, whether the petitioner company can be said to have indulged in "Misrepresentations" or "Fraudulent Practice" and the second being, whether the impugned debarring order, to the extent that it debarred the petitioner from participating in any future tenders of the respondent for a period of two years, could be said to be disproportionate to the wrongs allegedly committed by the petitioner.

20. Before dealing with the submissions of the parties on these questions, it may be apposite to reproduce in extenso the impugned debarring order dated 27.11.2020 which also refers to the explanation offered by the petitioner in response to the Show Cause Notice dated 04.08.2020 as also to the Show Cause Notice dated 22.10.2020. The same reads as under:-

(Kind Attn.-Sh. Manoj Kumar, Engineer)

Sub: Construction of Six Lane access controlled Highway from Junction with Sector-62/65 dividing road on Faridabad-Ballabhgarh Bypass to Junction near KMP Expressway with NH-148N (Delhi-Vadodara Expressway) Section of NH-148NA (Design Ch. 33+000 to 59 063) in state of Haryana on Hybrid Annuity Mode under Bharatmala Pariyojana-reg.

Dear Sir/Ma'am,

*1.Bids for the subject project were received online in single stage two cover system(Technical Bid & Financial Bid) on 03.07.2020 wherein you- **M/s Raj Corporation Ltd** also submitted the bid.*

2. The bid submitted by you was technically evaluated by the Competent Authority. It was conveyed to you vide letter of even no. dated 28.07.2020 that your bid was rejected under clause

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*2.6.2 of the RFP and declared as **"technically non-responsive"** on account of following reasons:*

*(i)You had earlier submitted your bid in another project of NHAI with tender id **2019 NHAI_26535_1** for "Construction of six lane access controlled Highway (NH 152D) starting from Junction with Kaithal-Safidon road (SH-11) near Rajound to Junction with Jind-Safidon road (SH-14) near Kheri village (Ch. 56+000 to 80+000) (length 24 km) under Bharatmala Pariyojana in the State of Haryana on EPC mode" on 30.07.2019. The bid for this project was declared as Technically Non Responsive in the aforesaid project.*

(ii) The details of the payments received year wise for eligible projects claimed in the aforesaid bid in 2019 was compared to the details submitted in the instant bid of 2020for subject project. After scrutiny by the Competent Authority, it was duly observed that you have misrepresented for the payments received/claimed in the Statutory Auditor's certificates for the instant bid of 03.07.2020 when compared to the earlier submitted bid on 30.07.2019 and then attached Statutory Auditor's certificates.

(iii) You had earlier claimed some additional projects as eligible projects in the bid for Construction of six lane access controlled Highway (NH-152D) starting from Junction with Korthal-Safidon road (SH-11) near Rajound to Junction with Lind-Safidon road (SH. 14) near Kheri village (Ch 56-000 to 80+000) (length 24 km) under Bharatmala Pariyojna in the State of Haryana an EPC mode It was observed that sum of payment claimed in earlier bid, are more than the total sum of proceeds from contract & supply as per Financial statements submitted for FY 2018-19, 2017-18 & 2016-17.

*(iv) Relying on the above stated facts revealed through the Statutory Auditor's Certificate submitted by yourself, it was noted by the Competent Authority that you have misrepresented the facts of payment received/claimed for eligible projects. Accordingly, with the approval of Competent Authority at NHAI, your bid was rejected under clause **2.6.2** of the RFP and declared as technically non-responsive. You were given seven days' time period to represent and explain your*

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stand, if any, to your technically non responsiveness in accordance with the principles of Natural justice.

3. Subsequently you had submitted your representation vide letterno.RCL/NHAI/Faridabad-Ballabhgarh.02 dated 04.08.2020 wherein following was mentioned:

It is being clarified that I was submitted the Bid for "Construction of six lane access controlled Highway (NH-1520) starting from junction with Kaithal-Safidon road (SH-11) near Rajound to Junction with Jind-Safidon Road (Sh-14) near Kheri village (Ch 56+000 to 80+000) (length 24 Km) Last year in Joint Venture and paper of this tender was prepared in office of JV Member Some mistakes of accounting section of other member has been occurred in making detail of payment received project wise/ year wise. However this tender has been disqualified, We also apologize for our mistake due to We and our JV Partner was fresher in tendering of EPC Mode. We have scrutinized payment received project wise/year wise at present and submitted this bid accordingly. Now we are eligible for this tender by total technical score of Highway Sector only. You are therefore requested to consider my candidature ship for this tender.

4. Your representation was examined by the Competent Authority and vide letter of even no dated 06.08 2020, the following was conveyed to you

(i) Ramji Sriram & Associates, Chartered Accountants was the statutory auditor for the earlier submitted bid on 20.07 2019 for the project for "Construction of six lane access controlled Highway (NH-152D) starting from Junction with Kaithal-Safidon rood (SH-11) near Rajound to Junction with Jind-Safidon road (SH-14) near Kheri village (Ch. 56+000 to 80 000) (length 24 km) under Bharatmala Pariyojana in the State of Haryana on EPC mode as well as for the FY 2015-16 to 2018-19 as per the instant bid, All the technical and financial certificates along with Balance sheet for the aforementioned bid submitted on 30.07 2019 were signed/audited by Ramji Sriram & Associates, Chartered Accountants and as such, ***your contention that tender documents for the previous project was prepared in office of JV Member is disproved and***

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rendered incorrect.

(ii) Even after considering the claim for the certificates submitted in the instant bid for payments received/claimed as correct, ***the sum of the payment received as per statutory auditor certificates (financial year wise) of projects claimed in instant bid and additional projects claimed in earlier bid dated 30.07.2019, is more than total of the proceeds from contract & supply as per Financial statements submitted for FY 2018-19, 2017-18 & 2016-17.***

(iii) Based on the above observations ***revealing misrepresentation on your part****, your representation submitted vide letter dated 04.08 2020 was found to be absolutely untenable and was thus rejected Your bid was declared as* ***technically non-responsive*** *bid on account of misrepresentation of facts and inflation of the financial certificates to influence the bidding process amounting to* ***fraudulent practice in terms of Clause 4.3 (b) of RFP.***

5. Vide NHAI letter of even no, dated 22.10.2020, a show-cause notice was served upon you to submit your explanation in written or in person, ***as to why your firm l.e. M/s Raj Corporation Ltd. should not be debarred from participating in the ongoing and future bids of NHAI for a period of two (02) years on account of fraudulent practice as per terms of the RFP****. The notice required you to indicate to the Authority in writing if you want to avail the opportunity of personal hearing to explain your position in respect of the above stated charges within next 15 days of the receipt of the notice.*

6. In response to the above show-cause notice, you had submitted your clarifications vide letter no. RCUNHAI/Faridabad-Ballabhgarh/03 dated 26.10.2020 wherein the following was submitted:

(i) It is being clarified that we have submitted bid for the work "Construction of six lane access controlled Highway (NH-152D) starting from Junction with Kaithal-Safidon road(SH-11) near Rajound to Junction with Jind-Safidon road (SH-14) near Kheri village(Ch. 56+000 to 80+000) (length 24km) dated 30.07.2019 in JV Our candidature ship of the above work was declared unresponsive as per RFP clause No. 2 2.2.4

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(i) (copy of letter enclosed). As per this letter the eligible projects submitted for this Bid are not considered for the qualification criteria.
(ii) As we already intimated that certificates and other papers of the above bid documents was prepared in JV office by officials of same CA. At that time of preparation of certificates and other papers some certificates are erroneously issued due to mixing of papers of other contractors by officials of CA We have also clarified it vide letter no RCL/NHAI/Faridabad-Ballabhgarh/02 dated 04.08 2020 A letter of CA Ramji Sriram and Associates is also being enclosed writing by him an 24 Sep 2019 in this regard which was received by us after 25 Sep 2019 but we have got disqualified by NHAI on 25 Sep 2019 Therefore we have not write anything to yourself because my candidateship has been turned down under Para 2.2.2.2.(i) vide your letter no NHAV/EM/Ismailabad-Narnaul/2018/Pkg, 3/141586 dated 25.9.2019.
(iii) As we have already intimated that there is nothing misrepresentation in papers submitted for this bid Le. "Construction of Six Lane access controlled Highway from Junction with Sector-62/65 dividing road on Faridabad-Ballabhgarh Bypass to Junction near KMP Expressway with NH-148N (Delhi-Vadodara Expressway) Section of NH 148N (Design Ch 33+000 to 59+063) in state of Haryana on Hybrid Annuity under Bharatmala Pariyojana" and submitted certificates are correct. Therefore misrepresentation cannot be assumed on the basis of last Bid which has been already disqualified under Clause 22.21 and in this regard we have also clarified para 1 and 2 as above. Therefore misrepresentation is not made by us and it will not be justice to access the Misrepresentation on the basis of certificate of last bid which already declared non responsive and cancelled/withdrawn. Therefore, the blame of/show cause notice for misrepresentation are not correct and not accepted at all. However we are not claiming candidature ship for this tender because tender is already disposed off"
7. Vide aforesaid letter dated 26.10.2020, you had also sought

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the chance and time for personal hearing which was granted on 10.11.2020.

8. Response submitted by you vide letter dated 26 10 2020 has been examined thoroughly by the Competent Authority and it was observed that documentary evidence have been submitted for substantiating your claim that there is no miss-representation of facts and the certificate submitted in the earlier bid for Pkg 3 of Ismailabad-Narnaul NH-152D was erroneously prepared due to mixing up of the paper and the documents now submitted are correct. Moreover, even in the personal hearing on 10.11.2020, no such documentary evidence was submitted or presented. In the absence of any documentary or any other evidence to support your assertion/claim, it would be naive for the Authority to believe just your oral testimony. Moreover, a claim becomes fact and legally plausible only when there is evidence supporting the same. For the said reasons, the explanations submitted by you set out in Para No 6 (i) (ii) and (ii) are not sustainable and liable to be rejected.

9. In view of above stated reasons, reply submitted by you has been considered by the Competent Authority and the same is found to be untenable and is hereby rejected.

10. It is important to state here that if such a behaviour of adopting fraudulent practices in bidding is not discouraged and not dealt with strictly, then it would set a wrong precedent for the future bidders, which in turn, will adversely impact the public interest involved in the infrastructure projects taken up by NHAI.

11 Accordingly, in terms of the provisions of RFP and as approved by the Competent Authority, you are hereby debarred from participating in on-going bids and future bids of the NHAI for a period of 2 years.

12. This is without prejudice to other rights available to the Authority under the provisions of the RFP and other applicable laws."

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21. From a bare perusal of the impugned order, it is evident that the allegation of misrepresentation against the petitioner was based solely on the premise that the documents submitted alongwith its first bid, were not matching with the documents submitted with its second bid. Based on this difference, the respondent has concluded that the petitioner had sought to misrepresent facts and indulged in a fraudulent practice, without even specifying as to what was the fraud in which the petitioner had indulged.

22. The petitioner's case is that the error in the documents submitted by it alongwith the first bid occurred entirely at the hands of M/s Ramji Sriram & Associates Chartered Accountants, who served as its statutory auditor while submitting the documents of the first bid on the part of the Joint Venture. In support of this plea, the petitioner has relied on a letter, sent from the office of M/s Ramji Sriram & Associates to the petitioner, a copy whereof was endorsed to the respondent, to contend that the petitioner was not at all responsible for the error which was being referred to as "Misrepresentation" by the respondent. The petitioner has further contended that it already stood penalised by the rejection of its first bid as non-responsive, despite the letter sent by its erstwhile chartered accountant, clearly showing that the inadvertent mistake was committed by M/s Ramji Sriram & Accountants, itself and not on the part of the petitioner company. The respondent has simply ignored this plea of the petitioner by observing that there was no documentary evidence filed in support thereof. On the other hand, the respondent has claimed that as the letter sent by M/s Ramji Sriram & Accountants, was produced by the petitioner at a later date, its authenticity was doubtful. In my view, once the petitioner had produced a letter received from a chartered accountant duly registered with the

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Institute of Chartered Accountants of India, the least which was expected from the respondent was to verify the authenticity thereof, before simply discarding it. Instead of making an attempt to verify the said letter, the respondent had simply proceeded to hold that the petitioner company had not produced any documentary evidence in support of its plea that the documents filed along with its first bid in 2019 inadvertently included data regarding some of the projects carried out by its Joint Venture partner on account of a mistake committed by its Chartered Accountant.

23. In my considered opinion, merely because the petitioner failed to pursue its claim regarding the rejection of its first bid, even after it received a communication from the petitioner's erstwhile chartered accountant, cannot be the sole ground for doubting the veracity of the said letter. The petitioner has sought to explain that by the time it received the letter from its Chartered Accountant, the first tender already stood finalized and therefore it did not pursue the matter with the respondent regarding its claim in the first tender, which explanation is certainly a plausible one. I also find that the respondent has simply compared the documents filed by the petitioner along with its first bid vis-à-vis the documents filed along with the second bid and has come to a conclusion that there was misrepresentation on the petitioner's part as the figures submitted alongwith the two bids were not matching. However, the respondent has not properly appreciated fact that the first bid was submitted on behalf of a Joint Venture, of which the petitioner company was a part, while the second bid was submitted by the petitioner company in its individual capacity. In fact it appears that the respondent has, while rejecting the petitioner's second bid laid undue emphasis on the documents submitted

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alongwith its first bid even though it is an undisputed position that the first bid was not of the petitioner alone and therefore the erroneous inclusion of certain projects on the part of its Joint Venture partner or the chartered accountant, as claimed by both the petitioner and the chartered accountant could not be ruled out.

24. At this stage, it may be useful to refer to the respondent's letter dated 29.08.2019 which required the petitioner to file a response to each of the discrepancies noticed by the respondent in the petitioner's first bid. The same reads as under:-

Construction of Six-Lane access controlled highway (NH-152D) starting from Junction with Kaithal-Safidon road(SH-11) near Rajound to Junction with Jind-Safidon road (SH-14) near Kheri Village [Ch.56+000 to 80+000; length 24 km] on EPC Mode under Bharatmala Pariyojana in the State of Haryana- *Clarification from M/s RCL-BCC (JV)*

S.No.	Discrepancy observed	Comments of Evaluation Committee
1.	*Appendix-IA (Letter comprising the Technical Bid) The Power of Attorney for signing of Bid, Power of Attorney for Lead Member and the Joint Bidding Agreement have been executed on 19.07.2019, however, Appendix-IA (Letter comprising the Technical Bid has been signed on 18.07.2019 i.e. before the execution of POA, JBA etc., It is pertinent*	*Bidder is to clarify the same.*

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	to note that how, the Authorised Signatory of the Bidder can sign Appendix-IA on behalf of the Lead Member before deriving requisite powers through POA. *Therefore, Bidder is required to clarify how the Authorized Signatory of the Bidder has signed Appendix-IA (Letter comprising the Technical Bid) on 18.07.2019 i.e. before deriving the requisite powers through POA executed and notarized on 19.07.2019.*	
2.	*Appendix-IB (Letter comprising the Technical Bid)* *The Power of Attorney for signing of Bid, Power of Attorney for Lead Member and the Joint Bidding Agreement have been executed on 19.07.2019, however, Appendix-IB (Letter comprising the Technical Bid has been signed on 18.07.2019 i.e. before the execution of POA, JBA etc., It is pertinent to note that how, the Authorised Signatory of the Bidder can sign Appendix-IA on behalf of the Lead Member before deriving requisite powers through POA.* *Therefore, Bidder is required to clarify how the Authorized Signatory of the Bidder has signed Appendix-IB (Letter*	*Bidder is to clarify the same.*

	comprising the Technical Bid) on 18.07.2019 i.e. before deriving the requisite powers through POA executed and notarized on 19.07.2019.	
3.	*Appendix-II (Bank Guarantee for Bid Security)* *In para 4 of the Bank Guarantee, the bidder has mentioned that the Bank Guarantee shall be operatable at a branch in Agra, however, the same shall be operatable at a branch in New Delhi. Therefore, Bidder is required to furnish an amendment to the said Bank Guarantee duly mentioning the address of Delhi Branch at which the said Bank Guarantee shall also be operatable.* *Further, at the last of the non-obstante clause after para 15, the Bidder has mentioned "All claims under this guarantee shall be payable at HDFC Bank Ltd., Plot no:109, 110, 1st floor Bhawan Plaza, Sector-12A, Din Dayal Upadhyay Puram, Sikandra Agra 282007.", which is in contradiction to Para 14 of the format of Bank Guarantee for Bid Security prescribed in the RFP.* *Therefore, Bidder is required to furnish the amendment to the Bank Guarantee duly*	*The Bidder is to submit the amendment to Bank Guarantee with correct clauses.*

	rectifying the aforementioned discrepancy.	
4.	*Audited Annual Reports* *1. In case of Lead Member of the Bidder namely Raj Corporation Limited, the Bidder not submitted the Audited Annual Reports for Financial Year 2014-15, which is required as per clause 2.2.2.8 of RFP. Please clarify.* *2. For FY 2015-16 to FY 2017-18, the Lead Member of the Bidder namely Raj Corporation limited has not submitted the Independent Auditor's Report, rather the Bidder has furnished a Tax Audit Report u/s 44AB of Income Tax Act, 1961. Please clarify.* *3. For FY 2014-15 to 2018-19, Other Member of the Bidder namely Bhuvneshwar Construction Company has not submitted the Independent Auditor's Report, rather the Bidder has furnished a Tax Audit Report u/s 44AB of Income Tax Act, 1961. Please clarify.*	*Bidder is to clarify the same.*
5.	*Annex-III (Financial Capacity of the bidder)* *In case of other Member of the JV namely "Bhuvneshwar Construction Company, the latest financial statements*	*Bidder to clarify whether Praveen K Srivastava & Co. Or Ramji Sriram & Associate is the Statutory Auditor for the other Member of the JV namely "Bhuvneshwar*

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	have been audited by Praveen K Srivastava & Co., however, the certificate certifying the Net Worth has been issued by Ramji Sriram & Associates. *Therefore, Bidder is required to clarify how Ramji Sriram & Associate can issue the said certificate in the capacity of Statutory Auditor through some supporting documents.*	*Construction Company along with supporting documents.*
6.	*Annex-IV(Details of Eligible Projects)* *In case of other Member of the JV namely "Bhuvneshwar Construction Company, the latest financial statements have been audited by Praveen K Srivastava & Co., however, the certificate certifying the Net Worth has been issued by Ramji Sriram & Associates.* *Therefore, Bidder is required to clarify how Ramji Sriram & Associate can issue the said certificate in the capacity of Statutory Auditor through some supporting documents.*	*Bidder to clarify whether Praveen K Srivastava & Co. Or Ramji Sriram & Associate is the Statutory Auditor for the other Member of the JV namely "Bhuvneshwar Construction Company along with supporting documents.*
7.	*Annex-VI(Information required to evaluate the Bid Capacity)* *In case of other Member of the JV namely "Bhuvneshwar Construction Company, the latest financial statements have been audited by Praveen K Srivastava & Co., however, the certificate certifying the*	*Bidder to clarify whether Praveen K Srivastava & Co. Or Ramji Sriram & Associate is the Statutory Auditor for the other Member of the JV namely "Bhuvneshwar Construction Company along with supporting documents.*

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	value of A & B under Assessed Available Bid Capacity has been issued by Ramji Sriram & Associates. *Therefore, Bidder is required to clarify how Ramji Sriram & Associate can issue the said certificate in the capacity of Statutory Auditor through some supporting documents.*	

This letter on which heavy reliance has been placed by the respondent to contend that the petitioner had deliberately suppressed the same from this Court, in fact does not in any manner forward the case of the respondent. On the other hand, this letter appears to be supporting the petitioner's case that except for the erroneous inclusion of certain ineligible projects in the list annexed to the first bid, the discrepancies pointed out by the respondent were mostly trivial. The petitioner has also explained that no response to this letter of the respondent was deemed necessary as the petitioner had realized about the mistake committed by its Chartered Accountant and consequently it did not raise any grievance regarding the first bid being declared technically non-responsive.

25. Though the respondent is correct in urging that most of the discrepancies qua the first bid as mentioned in the letter dated 29.08.2019, were repeated at the time of raising discrepancies in the second bid as well, the vital fact which cannot be ignored is that all these discrepancies qua the second bid were promptly resolved by the petitioner. The respondent's own stand in its letter dated 17.07.2020 requiring the petitioner to submit certain original documents and make minor corrections in the bank guarantee and

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the letter accompanying the bid also appears to negate the respondent's plea that there was misrepresentation on the part of the petitioner. In fact, the petitioner's response on 22.07.2020 to the aforesaid communication clearly shows that the petitioner had duly submitted the necessary original documents and carried out the corrections as required by the respondent. The said letter reads as under:-

RAJ CORPORATION LIMITED.

Ref No.: RCL/NHAI/Faridabad-Ballabhgarh/01 Dated: 22.07.2020

To,

Shri Rohin Kumar Gupta,
General Manager (T).
Bharatmala,
NHAI,
G-5 & 6, Sector-10, Dwarka,
New Delhi-110075.

Sub: Construction of Six Lane access controlled Highway from Junction with Sector-62/65 dividing road on Faridabad -Ballabhgarh Bypass to Junction near KMP Expressway with NH-148N (Delhi-Vadodara Expressway) Section of NH-143NA (Design Ch. 33+000 to 59+063) in state of Haryana on Hybrid Annuity Mode under Bharatmala Pariyojana.

Ref. Your Letter No.: NHAI/BM/DND-KMP/NH-148NA/ Pkg-3 dated 17.07.2020 sent vide e-mail dated: 17.07.2020

Sir,

With reference to your letter no.- NHAI/BM/DND-KMP/NH-148NA/ Pkg-3 dated 17.07.2020 regarding clarification on the issues raised as mentioned in Annexures for the purpose of evaluating the

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bid. We are submitting our clarification in tabular form as under:

S. No.	***Discrepancy Observed***	***Comments of Evaluation Committee***	***Our Reply***
1.	*Financial Statements* *The bidder has submitted Audited Financial Statements for last five financial years ie, 2019-20 to 2015-16. However, for the FY 2019 20 and 2018-19 bidder has submitted Tax Audit report in place of Independent Auditor's Report.*	*It is requested to submit the Independent Auditor's report for the FY 2018-19 and 2019-20.*	***Both Balance Sheet along with Directors Report and Independent Auditor's report with annexures for the FY 2018-19 and FY 2019-20 are being submitted.***
2.	*Appendix-II [Bank Guarantee for Bid security)* *Bidder has submitted Appendix-II (Bank Guarantee for Bid security) wherein-* *(1) In Para 1, bidder has mentioned RFP date "22.06.2020" in place of "16.12.2019"*	*It is requested to submit amendment to the BG.*	***Amendment of Bank Guarantee as required is being submitted.***

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	(2) In Para 3 of notwithstanding of amendment of Bank Guarantee dated 01.07.2020 bidder has mentioned ".......written claim or demand, lodged at our bank counter........' which should be deleted from the Bank Guarantee.		
3.	*Appendix 1A (Letter comprising the Technical Bid)* *The Bidder has submitted Appendix-1A (Letter comprising the Technical Bid) wherein the last sentence "**In witness thereof, 1/we submit this Bid under and in accordance with the terms of the RFP document**" is not mentioned by the Bidder.*	*It is requested to rectify the same.*	***Letter of Technical Bid after necessary correction are being enclosed.***

Thanking You,
Encl: As above

S/d
Authorized Signatory

From this letter it is apparent, that the deficiencies pointed out by the respondent were not only majorly technical in nature but were even

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otherwise duly rectified by the petitioner immediately. I am therefore, unable to agree with the respondent that the petitioner was a willful or habitual offender of indulging in any fraudulent practice. It is thus evident that while passing the impugned order, the respondent, despite being aware that there were no serious lapses on the part of the petitioner in complying with the mandatory conditions of the RFP, was swayed only by the factum of the erroneous inclusion of certain projects in the list submitted by the Joint Venture alongwith the first bid. It is not the respondent's case that the petitioner failed to promptly respond to the discrepancies pointed out by the respondent in its letter dated 17.07.2020. The respondent also does not allege that there was any wrongful inclusion of any project in the supporting documents filed alongwith the petitioner's second bid.

26. Having said so, the fact that there was a discrepancy between the documents filed by the petitioner along with its second bid vis-à-vis the documents filed along with the first bid cannot be denied. The petitioner had admitted that the documents filed alongwith the first bid wrongly included details of certain projects which were not relevant, which bid had in any event been rejected as being technically non-responsive. Once the said lapse was admittedly not repeated in the second bid, merely because there were certain deficiencies in the second bid also, which were promptly removed by the petitioner, it could not be said that any fraudulent practices were being adopted by it while submitting its second bid. I am therefore, unable to agree with the respondent that the petitioner was guilty of any misrepresentation or fraudulent practices.

27. At this stage, I may also note the petitioner's plea that the decision to debar it was taken much before the petitioner was even called upon to show

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cause and was therefore pre-meditated. A perusal of the minutes of the meeting of the Executive Committee of the respondent held on 11.09.2020 leaves no manner of doubt that the respondent had in its said meeting already decided to debar the petitioner. The Show Cause Notice was issued to the petitioner on a subsequent date on 22.10.2020, was therefore evidently an empty formality and did not leave any scope for the petitioner to oppose the debarring itself.

28. The impugned debarring decision was not only based on a conclusion already arrived at by the executive committee on 11.09.2020 but in fact, even the letters dated 28.07.2020 and 06.08.2020 addressed to the petitioner suggest that the respondent had already arrived at a final conclusion that the discrepancies noticed in the two bids were willful in nature. The impugned debarring order thus appears to have been passed on the basis of a preconceived notion regarding the petitioner's guilt, rather than a holistic decision, taken after providing due consideration to all the replies and representations made by the petitioner. I therefore, have no hesitation in holding that the conclusion of the petitioner being guilty of misrepresentation and indulging in fraudulent practice was arrived at without due application of mind to all the relevant factors and thus cannot be sustained.

29. However, be that as it may, the undisputed position emerging from the record regarding the discrepancy in the documents submitted by the petitioner *Vis-a-vis* its two bids cannot be simply overlooked. The petitioner has sought to justify the mistake in submission of some incorrect documents along with the first bid by blaming its Chartered Accountant, who is stated to have admitted this mistake. The fact however remains that the documents

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filed along with the two bids were not matching and therefore, while the respondent cannot be said to be wholly unjustified in choosing to restrict its dealings with the petitioner company, the petitioner's plea regarding the disproportionality of the penalty imposed by the impugned order needs to be now dealt with.

30. In this regard, the petitioner has relied on the decision of the Apex Court in ***Kulja Industries limited Vs. Chief Gen. Manager*** *(2014) 14 SCC 731*, to contend that any decision made by the respondent in furtherance of its freedom to contract or not to contract with a private entity is subject to judicial review by a writ Court. A decision of debarring has therefore to necessarily withstand the touchstone of fairness, relevance, natural justice, non-discrimination, equality and proportionality. The observations of the Apex Court in paragraphs 21 and 22 of ***Kulja (Supra)*** may be usefully extracted herein below:-

> *"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;*

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(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 willful 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 contractor has been excluded or disqualified by an agency of the Federal Government or have not been allowed to participate in State or local contracts or assistance agreements on a 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.

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(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 have made or agreed to make full restitution.
(h) Whether 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."

31. In this regard, reference may also be made to the decision of a Coordinate Bench of this Court in ***Coastal Marine Construction and Engineering Limited Vs. Indian Oil Corporation Ltd.*** *2019 SCC Online Del 6542*: wherein the legal position in this regard has been eloquently explained. The relevant extracts from paragraphs 35, 36, 37, 41 and 42 of the same read as under:-

"35. It is now well settled that blacklisting a person visits him with serious adverse consequences. In Erusian Equipment & Chemicals Ltd v. State of West Bengal: (1975) 1 SCC 70, the Supreme Court had observed as under:—

"The blacklisting order does not pertain to any particular contract. 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".

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36. The Supreme Court in Gorkha Security Services v. Government (NCT of Delhi): 2014 SCC OnLine SC 599 had made the following observation:

"With blacklisting many civil and/or evil consequences follow. It is described as "civil death" of a person who is foisted with the order of blacklisting. Such an order is stigmatic in nature and debars such a person from participating in government tenders which means precluding him from the award of government contracts."

37. Indisputably, the impugned orders blacklisting the petitioner have severe adverse consequences for the petitioner. It is not disputed that the petitioner is essentially involved in executing contracts for various PSUs and Government agencies. It is usual for all Government undertakings and PSUs to specify eligibility criteria that exclude any person who has been blacklisted by any other Government agency, from participating in contracts or for tendering for contracts with Government agencies. Undisputedly, the import of the impugned orders blacklisting the petitioner is that the petitioner would also be disabled from participating in bidding processes or entering into contracts with other PSUs and Government agencies. The magnitude of the punitive measure is further enhanced as the petitioner has three independent business verticals and the business of rendering marine support is a small fraction of the overall business of the petitioner. The impugned orders would not only affect the petitioner in conducting the business with regard to marine support but also disable the petitioner from executing contracts relating to its other business verticals.

xxx

41. As observed by the Supreme Court in Erusian Equipment & Chemicals Ltd. (supra), an order of blacklisting casts a slur on the party being blacklisted and is stigmatic. Given the nature of such an order and the import thereof, it would be unreasonable and arbitrary to visit every contractor who is in breach of his contractual obligations with such consequences.

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In Sarku Engineering Services (supra), a Division Bench of the Bombay High Court considered the case of a contractor (the petitioner therein) who had been blacklisted on the allegation that it was responsible for major delay in execution of a contract entered into with Oil and Natural Gas Corporation Limited (respondent no. 2 therein). The contractor disputed the allegation that it was in breach of its obligations; however, Oil and Natural Gas Corporation Limited found the performance of the petitioner therein to be unsatisfactory and, therefore, decided to avoid future dealings with the said petitioner. The question whether the petitioner therein was, in fact, responsible for the delay was a disputed question that was pending adjudication by an arbitral tribunal. In the aforesaid context, the Bombay High Court had observed as under:—

"58. We hasten to add that there could be a situation wherein the inherent power of blacklisting or placing the contractor on Holiday-list can be exercised and the stipulations or the terms of the contract may not restrict or fetter exercise of such power. Equally, the mere pendency of legal proceedings cannot be a absolute bar for invoking this inherent power or exercising it. However, there have to be strong, independent and overwhelming materials to resort to this power given the drastic consequences that an order of blacklisting has on a contractor. The power to blacklist cannot be resorted to when the grounds for the same are only breach or violation of a term or condition of a particular contract and when legal redress is available to both parties. Else, for every breach or violation, though there are legal modes of redress and which compensate the party like respondent No. 2, it would resort to blacklisting and by sometimes abandoning or scuttling the pending legal proceedings."

42. Plainly, if a contractor is to be visited with the punitive measure of blacklisting on account of an allegation that he has committed a breach of a contract, the nature of his conduct must be so deviant or aberrant so as to warrant such a punitive measure. A mere allegation of breach of contractual obligations that is disputed, per se, does not invite any such punitive action. In the present case, IOCL had relied upon the Blacklisting Guidelines in support of the

impugned orders. In terms of paragraph 2.1(i) of the Blacklisting Guidelines, a party could be put on a holiday list if he had committed a breach of a contract."
(emphasis supplied)

32. On the question of fairness and equality in terms of government dealing, it may also be appropriate to refer to a recent decision of the Allahabad High Court in ***M/s Baba Traders v. State of Uttar Pradesh*** *2019 SCC OnLine All 3746,* wherein the Division Bench observed as under:-

> *"37. An order of blacklisting has the effect of depriving a person of equality of opportunity in the manner of public contract and in a case where the State acts to the prejudice of a person it has to be supported by legality. The activities of the State having the public element quality must be imbued with fairness and equality."*

33. When the facts of the present case are considered in the light of the principles laid down in the aforesaid decisions, although I am inclined to accept the respondent's plea that the petitioner was blameworthy to some extent in not exercising due care while submitting the documents with the first bid, the fact remains that the said bid did not materialize and therefore, in my view, the respondent was wholly unjustified in imposing the maximum penalty of two years as permissible under the terms of the RFP. There is no doubt that the punishment imposed upon the petitioner was extremely harsh and disproportionate, especially taking into consideration my view hereinabove that the respondent's decision to hold the petitioner guilty of misrepresentation and adopting fraudulent practices is wholly untenable and based on presumption of the petitioner's guilt rather than facts.

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34. I have also considered the decisions in ***Avinash EM Projects Pvt. Ltd. v GAIL [I] Ltd. 2015 SCC Online Del 7135 and M/s.GAIL India Ltd. v M/s. Avinash Em Projects Pvt. Ltd. LPA 242/2015*** relied upon by the respondent but find that the same are not applicable to the facts of the present case. In both these decisions, the Court was dealing with situations where the petitioner therein was found to be guilty of repeatedly violating the mandatory commitments as stipulated in the respective RFPs. However in the present case, it is not even the respondent's stand that the petitioner had failed to carry out any of its obligations under the contract as admittedly no contract was entered into with the petitioner in respect of either of the two bids.

35. Considering the fact that both the petitioner's bids stand rejected on account of its own lapses as also the fact that the petitioner has already suffered a debarment for eleven months which has adversely impacted the 3000 workmen employed by it, I find that remanding the matter to the respondent at this stage for reconsideration of the debarment period will, therefore, not be in the interest of justice. I am, thus, of the view that the impugned debarring order dated 27.11.2020, which has already been in effect for 11 months, deserves to be modified to the extent that the same will cease to be in effect from the date of this decision, and therefore, the petitioner will be eligible to participate in any future tenders floated on or after the date of this decision.

36. Before I conclude, I may observe that though the petitioner has raised a plea regarding discrimination and non-adherence to principles of natural justice, in view of my conclusion hereinabove, I do not deem it necessary to deal with these aspects, more so since they raise disputed questions of fact

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as both parties have taken diametrically opposite stands regarding the opportunity for personal hearing being granted to the petitioner prior to passing of the debarring order. For the same reasons, I do not deem it necessary to deal with the decisions relied upon by the respondent in support of its plea that no personal hearing to the petitioner was warranted in the facts of the present case.

37. The writ petition is, therefore allowed by directing that the impugned order insofar as it debars the petitioner for a period of two years will stand modified to the aforesaid extent. The pending application is disposed of as having been rendered infructuous.

(REKHA PALLI)
JUDGE

OCTOBER 29, 2021
sr/ms

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