**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP-11390-2024 (O&M)
Reserved on : 04.11.2024
Pronounced on : 19.12.2024

M/s Saptagiri Restaurant Private Limited ...... Petitioner

Versus

Airports Authority of India and others ...... Respondents

CORAM : HON'BLE MR. JUSTICE ARUN PALLI
HON'BLE MR. JUSTICE VIKRAM AGGARWAL

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Present : Mr. Gurminder Singh, Senior Advocate with
Mr. Karmanbir Singh Kharbanda, Advocate
for the petitioner.

Mr. Chetan Mittal, Senior Advocate with
Ms. Shubhra Singh, Advocate
Mr. Nitin Kumar Sharma, Advocate
Mr. Avichal Sharma, Advocate
Mr. Vivek Singla, Advocate
for the respondents.

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VIKRAM AGGARWAL, J

1. The petitioner assails orders dated 08.08.2023 **(Annexures P-12 and P-13)** vide which the petitioner was debarred from participating in future tenders/RFPs floated by Airports Authority of India for a period of three years and the licence awarded to it for Wellness Centre/Spa and Massage Chair Facility was terminated. Under challenge is also an order dated 02.05.2024 **(Annexure P-30)**, passed by the Dispute Resolution Committee

(DRC) (respondent No.3), vide which the orders dated 08.08.2023 were upheld.

FACTS

2. The petitioner-Company claims to be in the business of managing restaurants and other related services for the past 23 years and states to have been running various food and beverages outlets, restaurants, Spa, Massage Chair facility etc. in airports all across the country for the last two decades. The petitioner claims to have considerable experience in running such outlets and claims to have earned appreciation from the Airports Authority of India for the services rendered.

3. Pursuant to E-tenders issued on 05.09.2022 by the Airports Authority of India (Airport Director, Sri Guru Ramdas Ji International Airport, Amritsar) (respondent No.2) for licence for operating wellness Centre/Spa and Massage Chair inside the domestic Security Hold Area at Sri Guru Ramdas Ji International Airport, Amritsar and the International Security Hold Area of Sri Guru Ramdas Ji Airport, Amritsar, the petitioner submitted its bids.

4. Vide communication dated 30.11.2022 **(Annexure P-4)**, the petitioner was informed that certain complaints had been received against it alleging that one Karan Singh, proprietor of M/s Syona Spa is an employee of the petitioner and being a tenderer, there was a conflict of interest as per Clause 10 of RFP provisions contained in the notice inviting e-tender (DNIET) and, therefore, the explanation of the petitioner was called.

5. It is the petitioner's case that the copies of the alleged complaints were not annexed with the notice which would show that the

complaints were anonymous and had been initiated at the instance of business rivals of the petitioner. A detailed reply dated 05.12.2022 **(Annexure P-5)** was submitted denying the allegations.

6. Finding the allegations levelled in the complaints to be baseless, the respondents awarded the tenders to the petitioner for both the domestic Security Hold Area and the International Security Hold Area on 02.02.2023 (**Annexures P-6 and P-7)** followed by execution of licence agreements on 28.07.2023 **(Annexures P-8 and P-9)** for the period 06.06.2023 to 05.06.2028. The licence fee for the domestic area was fixed at Rs.1,60,555/- per month upto 1½ year and going upto Rs.2,35,069/- after 4 ½ years. For the International area, it was fixed at Rs.1,03,555/- per month upto 1½ year going upto Rs.1,51,615/- after 4½ years.

7. Prior to the execution of the licence agreements but after the award of tenders to the petitioner, show cause notice dated 05.06.2023 **(Annexure P-10)** was issued to the petitioner. It was alleged in the show cause notice that the petitioner had given a loan to Mr. Karan Singh, proprietor of M/s Syona Spa, which, according to the respondents, remained unpaid and that Mr. Bikram Singh, the Managing Director of the petitioner-Company, had a share holding in M/s Mahesh Sunny Enterprises Private Limited of which Mr. Karan Singh was an employee. A detailed response dated 14.06.2023 **(Annexure P-11)** to the show cause notice was submitted by the petitioner stating that Karan Singh did not have any connection with the petitioner and also that Sh. Bikram Singh, who was also a director of M/s Mahesh Sunny Enterprises Pvt. Ltd. was holding less than **10%/20%** share

in the petitioner company. Being satisfied with the reply submitted by the petitioner, the licence agreements **(Annexures P-8 and P-9)** were executed.

8. Vide orders dated 08.08.2023 **(Annexure P-12 and P-13)**, the petitioner was debarred from participating in any tender floated by the Airports Authority of India for a period of 03 years alleging conflict of interest and material misrepresentation and the licences were also terminated.

9. The orders dated 08.08.2023 were challenged by way of CWP No.17635 of 2023 but the same was withdrawn vide order dated 16.08.2023 **(Annexure P-14)** with liberty to the petitioner to approach the Dispute Resolution Committee-respondent No.3 (hereinafter referred to as 'respondent No.3') in terms of the provisions of Clause 29 of the General Terms and Conditions in Appendix 1 of the licence.

10. Vide order dated 27.01.2024 **(Annexure P-15)**, respondent No.3 upheld the orders dated 08.08.2023. For the said order was completely non-speaking, the petitioner filed CWP No.3401 of 2024 in which an affidavit dated 23.02.2024 **(Annexure P-16)** was filed by the Incharge (Commercial), Amritsar International Airport stating that the order dated 27.01.2024 be treated as withdrawn and that respondent No.3 would pass a fresh reasoned order within a period of 10 days. Accordingly, vide order dated 20.04.2024 **(Annexure P-17)**, CWP No.3401 of 2024 was disposed of with a direction to respondent No.3 to pass the final order on or before 02.05.2024.

11. Pursuant to the aforesaid directions issued by this Court, the petitioner appeared before respondent No.3 and submitted a detailed reply dated 23.04.2024 **(Annexure P-26)** in which, apart from other issues, reliance was placed upon the judgment dated 09.08.2023 of the Madras High

Court and the judgment dated 06.10.2023 of the High Court of Jammu & Kashmir. Reliance was also placed upon the order of the Supreme Court of India passed in SLP No.3376 of 2024, filed by the Airports Authority of India against the judgment dated 06.10.2023 of the High Court of Jammu & Kashmir. Various other documents **(Annexure P-18 to P-25)** were annexed with the said reply.

12. After exchange of certain further communications **(Annexures P-27 to P-29)**, order dated 02.05.2024 **(Annexure P-30)** was received by the petitioner much to its shock vide which respondent No.3 upheld the orders dated 08.08.2023.

13. It is the case of the petitioner that Clauses 9 & 10 of the General Information and Guidelines in the Detailed Notice Inviting Tender (hereinafter referred to as 'the DNIET') with regard to fraud and corrupt practices & penalties and conflict of interest do not apply in the present case and no violation has been committed by the petitioner. It has been averred that Karan Singh was working in the petitioner company for over a period of 07 years. However, when his interest developed to start a conflicting business, the petitioner did not think it appropriate to retain him in service and accordingly his services were terminated on 08.08.2022. It has also been averred that since Karan Singh is no longer an employee of the petitioner, it cannot refrain him from participating in some tender if he qualifies for the same. It has also been averred that since M/s Syona Spa of which Karan Singh was the director was not eligible for further participation in the tender, it no longer remained a bidder/participant and, therefore, the petitioner could not be blamed. A similar stand was taken as regards the allegation of conflict

of interest. It is the case of the petitioner that no opportunity of personal hearing had ever been granted by the respondents to explain as to how the allegations were untenable and that in a great hurry, the orders dated 08.08.2023 had been passed.

14. Referring to the commercial manual issued in 2019, it has been averred that the procedure as to how and in what manner the orders of debarment is to be passed is stipulated in the said commercial manual and since no conditions stipulated therein exists in the present case, the action of cancellation of licence and debarment is without any basis and jurisdiction.

15. It has also been averred that the order dated 02.05.2024 had travelled beyond the purview of the show cause notice and is in grave violation of the principles of natural justice as new allegations were levelled in the order dated 02.05.2024 which were not a part of the show cause notice. It has been averred that three fresh grounds that Mahesh Sunny Enterprises Private Limited had been depositing ESI and EPF of Mr. Karan Singh ten months after his termination; that M/s Syona Spa had opted for a similar process in tenders for Raipur and Pune wherein the petitioner was also a bidder and that the address of the petitioner, M/s Syona Spa and Mahesh Sunny Enterprises was the same i.e. L-322 Mahipalpur extension, New Delhi were not a part of the show cause notice though duly stated in the order dated 02.05.2024. It is the case of the petitioner that order dated 02.05.2024 had been passed in a casual manner and that the order is a mere reproduction of the allegations levelled in the show cause notice and the findings recorded in the earlier order passed by respondent No.3. Various other grounds have been raised on which the impugned orders have been challenged.

REPLY

16. The writ petition has been opposed by the respondents. In the written statement, it has been averred that post issuance of the order dated 02.05.2024, the petitioner cannot re-agitate the orders dated 08.08.2023 by filing the instant writ petition, once the previous writ petitions have been withdrawn and that if the petitioner was not satisfied with the decision of respondent No.3, it would have an alternative remedy of arbitration. Reference has been made to Clause 29 of the General Terms and Conditions in Appendix 1 of the licence which talks about arbitration. It has also been averred that no prejudice had been caused to the petitioner and that the allegations of violation of the principles of natural justice were devoid of merit as the petitioner had been granted due opportunity of hearing before respondent No.3 and the petitioner had also submitted additional documents and written submissions.

17. Since there is no dispute in the facts, the same have not been denied but the basic stand that has been taken in the written statement is that respondent No.3 had considered the matter in detail and had passed a speaking order which is perfectly legal and valid. Reference has also been made to a show cause notice dated 08.06.2023 **(Annexure R-7)** issued to the petitioner on account of collusive bidding, considering 07 different tenders floated at different airports including Amritsar International Airport to which reply dated 16.06.2023 **(Annexure R-8)** was submitted by the petitioner. It has further been averred that after affording an opportunity of personal hearing on 30.11.2023, the petitioner had been debarred for a period of 03

years from participating in any AAI tender vide order dated 20.12.2023 **(Annexure R-9)**.

ARGUMENTS (PETITIONER)

18. Learned counsel for the parties were duly heard.

19. It was strenuously urged and vehemently submitted by learned Senior counsel representing the petitioner that the orders dated 08.08.2023 vide which the licence was cancelled and the petitioner was debarred and the order dated 02.05.2024 vide which the orders dated 08.08.2023 were upheld are completely illegal and arbitrary, besides being grossly violative of the principles of natural justice and accordingly deserve to be quashed.

20. Learned Senior counsel extensively referred to the terms and conditions of the DNIET as also the commercial manual, 2019. It was submitted that the debarment order would apply only to the Amritsar International Airport and not to the other airports in the country for the said order had been issued by the Airport Director of the Amritsar International Airport. It was submitted that to fill up the **lacuna/lacunae**, order dated 20.12.2023 was passed by the Airports Authority of India debarring the petitioner from participating in the tenders of AAI for a period of 03 years. It was submitted that this order was challenged in the Court of Addl. District Judge Budgam, J&K wherein order dated 21.12.2023 was passed staying the operation of the order dated 20.12.2023. This order was challenged in the High Court of J&K wherein it was stated by the Airports ,Authority of India that the said order be treated as withdrawn. SLP No.3376 of 2024 was filed by AAI before the Supreme Court of India but the same was disposed of as not having been pressed vide order dated 16.02.2024. It was submitted

that under the circumstances, there was no order debarring the petitioner from airports across the country. It was also submitted that despite this, the petitioner had been held to be technically non-responsive in a number of tenders pertaining to different airports by placing reliance upon the orders of debarment passed on 08.08.2023. It was further submitted by the learned Senior counsel that the show cause notice should have provided for a punishment. For no punishment was mentioned in the show cause notice, the principles of natural justice had been violated and, therefore, the impugned orders would not be sustainable. Reliance was placed upon an order dated 16.10.2024, passed by this Court in ***CWP No.27726 of 2024*** titled as **Rajender Contractor versus State of Haryana and others** and the judgment in the case of ***Kulja Industries Ltd. versus Chief General Manager W.P. Proj. BSNL and others (2014) 14 SCC 731, Isolaters and Isolaters versus Madhya Pradesh Madhya Kshetra Vidyut Vitran Co. Ltd. & Anr. 2023 AIR (Supreme Court) 2058, Gorkha Security Services versus Government (NCT of Delhi) and others 2014 (9) Supreme Court Cases 105*** in this regard.

21. Learned Senior counsel submitted that the impugned order dated 02.05.2024 had travelled beyond the purview of the show cause notice dated 05.06.2023 and was, therefore, against the settled proposition of law.

22. It was submitted by learned Senior Counsel that though a show cause notice for disqualification had been issued, no show cause notice for debarment had been issued and that the debarment order dated 08.08.2023 was passed prior to the order vide which the licence was terminated whereas

normally order of termination of licence would be issued prior to an order of debarment.

23. Reference was made to Clause 10 of the DNIET which deals with conflict of interest. Reference was also made to Clause 9 of the DNIET which deals with debarment and it was submitted that there was a gross violation of these provisions.

24. Learned Senior Counsel also submitted that licence to the petitioner had been granted after the complaints were filed against the petitioner and reply was submitted meaning thereby that the complaints had been considered and consigned to record and, therefore, there was no occasion for the respondents to issue further show cause notices and even thereafter execute the agreements. Reference was made to the orders dated 29.08.2023 and 13.10.2023 passed by the Court of the Addl. District Judge at Budgam and the High Court of Jammu & Kashmir respectively wherein it was held that the debarment at Amritsar would pertain only to Amritsar. Reference was further made to the order dated 20.12.2023 passed by the Airports Authority of India, the order dated 21.12.2023 passed by the Court of the Addl. District Judge, Budgam, the order dated 22.07.2024 passed by the High Court of Jammu & Kashmir, the statement given by AAI that the order dated 20.12.2023 be treated as withdrawn and the order passed by the Supreme Court of India.

25. It was submitted by learned Senior counsel that the impugned orders are, therefore, completely illegal and arbitrary and deserve to be set aside.

ARGUMENTS (RESPONDENTS)

26. Per contra, learned Senior counsel representing the respondents, defended the impugned orders with equal vehemence and submitted that the petitioner was raising technical grounds for it had committed an illegality on account of which the licence was cancelled and the petitioner was debarred. Reference was made to Clause 9(b) of the DNIET and it was submitted that debarment had already been provided for in the said provision and that the show cause notice talked of action under the provisions of the DNIET and not only about annulment. Reference was made to the order passed by this Court in CWP No.3401 of 2024 wherein it had been observed that the petitioner would have the liberty to appear before respondent No.3 pursuant to which the petitioner did appear before respondent No.3 and submitted various documents. It was submitted that since the order dated 02.05.2024 was passed by respondent No.3 after hearing the petitioner in detail, the argument of violation of principles of natural justice does not survive. It was submitted that even on merits, the entire controversy was fully considered and examined by respondent No.3 and a detailed order was passed.

27. Learned Senior Counsel submitted that factual aspects and disputed questions of facts could not in any case, be gone into under Article 226 of the Constitution of India and that for the said purpose, the petitioner would have to invoke arbitration. It was submitted that merely because licence was issued to the petitioner would not mean that the complaints had been considered and consigned to record and that even during the pendency of the complaints, nothing stopped the respondents from proceeding further while still examining the complaints.

28. As regards the judgment of the Madras High Court, it was submitted that the writ petition had been dismissed on 30.12.2024. With regard to the order dated 20.12.2023, it was submitted that a review application had been filed by AAI of the order dated 22.02.2024 and vide order dated 18.09.2024, the order dated 22.02.2024 had been stayed. As regards the previous round of litigation in the Jammu & Kashmir High Court, it was submitted that the Supreme Court of India had left the question open and had not conclusively decided that the debarment order would not apply to the other airports.

29. It was submitted by learned Senior Counsel that the violation of principles of natural justice could be cured if the appellate/higher body had granted a fair opportunity before deciding the appeal. Reliance in this regard was placed upon the judgment of the Supreme Court of India in ***Krishnadatt Awasthy versus State of Madhya Pradesh and others 2024(2) DNJ 478*** and the judgment of the Delhi High Court in ***Aneuser Busch Inbev India Limited versus Commissioner (Excise), Entertainment and Luxury Tax and others 2019 SCC Online Del 12144.***

30. It was further submitted that once the petitioner had chosen to avail the alternative remedy before respondent No.3 wherein all contentions were raised and it was duly granted an opportunity of hearing and opportunity to submit fresh documents, the doctrine of election would come into play and the petitioner cannot, in this writ petition, plead about violation of the principles of natural justice. Reliance was placed upon the judgments of the Supreme Court of India in ***Jayantilal Ratanchand Shah vs. Reserve Bank of India and Others (1996) 9 Supreme Court Cases 650, M/s Otik***

Hotels and Resorts Private Limited versus Indian Railway Catering and Tourism Corporation Limited 2016 SCC Online Del 5508 and State Bank of Patiala and others versus S.K.Sharma (1996) 3 Supreme Court Cases 364.

31. We have considered the submissions made by learned counsel for the parties and have perused the paper book.

ANALYSIS AND FINDINGS

32. Before adverting to the merits of the controversy, it would be apposite to refer to the relevant terms and conditions of the DNIET. Clause 9 of the DNIET deals with fraud and corrupt practices and penalties whereas Clause 10 of the DNIET deals with conflict of interest;

> **9. Fraud & Corrupt Practices and Penalty**
>
> **a) Even if the bidder satisfies every criterion as per the guidelines set forth above, but at any stage during the tender process, or after the issuance of LOIA to the successful bidder, or after the execution of concession agreement or during the subsistence thereof, AAl at its discretion can disqualify the bidder or terminate the concession (as the case maybe), If the bidder/licensee:**
>
> > **i. has been debarred by any state or central government or government agency In India and the same is subsisted at the time of NIET; or**
> >
> > **ii) has made misleading or false representation in the forms, statements and attachments submitted; or**
> >
> > **iii. the applicant does not respond promptly and thoroughly to requests for supplementary Information requested by AAI for the evaluation of the Proposal; or**

iv. One or more of the eligibility criterion have not been met by the Applicant;or

v. The Applicant has made a material misrepresentation; or

vi. The Applicant has engaged in a corrupt, fraudulent, coercive, undesirable or restrictive practice,

vii. The applicant or its Affiliates or a person or entity having legal relationship with applicant committed any fraud or forgery by way of submission of any kind of documents/ bank guarantee/ Security Deposit etc (during the tender process and thereafter) with this or any other tender/ contract with Airports Authority of India or any PSU or Government Departments during the last five (5) years;

b) Then the LOIA or the draft Agreement as the case may be, shall, notwithstanding anything to the contrary contained therein or in this NIET Document, be liable to be terminated by a communication in writing by AAI to the agency without AAI being liable in any manner whatsoever to the agency. In such an event, AAI shall forfeit and appropriate the EMD and Performance Security and debar the agency from AAI tenders-for-any-period not succeeding subject to minimum of three (3) years, as the case may be without prejudice to any other right or remedy that may be avallable to AAI in this regard.

c) If such an event occurs after the issuance of LOIA and during the contract period, then AAI reserves the right to

take any such measure as may be deemed fit in the sole discretion of AAI, Including annulment of the contract and forfeiture of the Performance Security amount.

d) Proposals shall be deemed to be under consideration immediately after they are opened until such time that AAI makes an official Intimation of award/rejection to the Applicants. While the Proposals are under consideration, Applicants and/or their representatives or other interested parties are advised to refrain from contacting, by any means, AAI and/or their employees/representatives on matters relating to the Proposals under consideration.

10. <u>Conflict of Interest:</u>

A Bidder shall not have a conflict of interest (the "Conflict of Interest") that affect the Bidding process. Any Bidder found to have a conflict of Interest shall be disqualified. A Bidder shall be deemed to have a Conflict of Interest affecting the Bidding process, if:

1. The bidder, or its Affiliate (or any constituent thereof) and any other Bidder or any Affillate thereof (or any Constituent thereof) have common controlling shareholders or other ownership interest:

Provided that this disqualification shall not apply in cases where the direct or Indirect shareholding of a Bidder, Its Member or an Affiliate thereof (or any shareholder thereof) having a shareholding of more than 20% (twenty percent) of the aggregate issued, subscribed and paid up share capital of such Bidder, Member or Affiliate, (as the case may be) in the other Bidder, its Member or an Affiliate is less than 20%

(twenty percent) of the aggregate issued, subscribed and paid up equity share capital thereof, provided further that this disqualification shall not apply to any ownership by the Authority, a bank, insurance company, pension fund or a public financial institution referred to in section 2(72) of the Companies Act, 2013;

For the purposes of this clause, Indirect shareholding held through 01(One) ar more intermediate persons shall be computed as follows:

(A) where any intermediary is controlled by a person through management control or otherwise, the entire shareholding held by such controlled intermediary in any other person (the "Subject person") shall ba taken in to account for computing the shareholding of such controlling person in the subject person; and

(B) subject always to sub-clause (A) above, where a person does not exercise control over an Intermediary, which has shareholding in the subject person, the computation of indirect shareholding of such person in the subject person shall be undertaken on a proportionate basis, provided, however, that no such shareholding shall be reckoned under this sub-clause if the shareholding of such person in the Intermediary is less than 26% (twenty-six percent) of the aggregate issued, subscribed and paid up equity shareholding of such intermediary; or

ii. a Bidder/Nominated Entity has nominated the same Nominated Entity or Nominated personnel as another Bidder; or

iii. a constituent of such Bidder is also a constituent of another Bidder; or

iv. such Bidder or any Affiliate/ thereof receives, has received, or has entered into an agreement to receive, any direct or indirect subsidy, grant, concessional loan, or subordinated debt from any other Bidder, or any Affiliate thereof or has provided or has entered into an agreement to provide any such subsidy, grant, concessional loan or subordinated debt to any other Bidder, its Member or any Affiliate thereof; or

v. such Bidder has the same legal representative for purposes of a Bid as any other Bidder; or

vi. such Bidder or any Affiliate thereof, has à relationship with another Bidder or any Affiliate thereof, directly or indirectly or through a common third party/ parties, that puts either or both of them in a position to have access to each other's Information, or to influence the Bid of either or each other; or such Bidder or any Affiliate thereof, has participated as a consultant to the Authority in the preparation of any documents, design or technical specifications of the project.

<u>Explanation:</u>

In case a Bidder is a Consortium, then the term Bidder as used in this Clause shall include each Member of such Consortium and the term Affiliate with respect to

> **a Bidder shall include an Affiliate of each Member of that Consortium.**
>
> **<u>Note:</u>**
>
> **Regarding conflict of interest, AAI shall place reliance upon the declaration to be submitted by the bidder/applicant in the form of acceptance of AAI's tender conditions/other documents forming part of technical bids.**
>
> **In the event, the declaration submitted by the bidder/applicant towards there being no conflict or interest, is found incorrect/false, such incorrect declaration would be treated as submission of false/incorrect document and it would amount to material misrepresentation made by the bidder/applicant. In such event, punitive actions shall be taken by AAI as per provision of tender documents/licence agreement.”**

A perusal of Clause 9 (b) of the DNIET shows that the letter of intent or the agreement would be liable to be terminated in terms of the provisions of Clause 9 (a) of the DNIET and in such an event, the EMD and performance security would be liable to be forfeited and the agency would be liable to be debarred from AAI tenders for a period of minimum of three years. Clause 10 of the DNIET which deals with conflict of interest lays down that a bidder shall not have a conflict of interest that affects the bidding process and that any bidder found to have a conflict of interest would be disqualified. The clause then goes on to explain as to when a bidder would be deemed to have a conflict of interest.

33. Clause 29 of the Terms & Conditions in Appendix 1 of the licence deals with Dispute Resolution;

> **"(29) All disputes and differences arising out of or in any way touching or concerning this Agreement (except these the decision whereof is otherwise herein before expressly provided for or to which the AAI ACT, 1994 and the rules framed there-under which are now enforce or which may here-after come into force are applicable), shall, in the first instance, be referred to a Dispute Resolution Committee (DRC) setup at the airports, for which a written application should be obtained from the party and the points clearly spelt out. In case the dispute is not resolved within 45 days of reference, then the case shall be referred to the sole arbitration of a person to be appointed by the Chairman / Member/ RED of the Authority. The award of the arbitrator so appointed shall be final and binding on the parties. The Arbitration & Conciliation Act 1996 as amended up to date shall be applicable. Once the arbitration clause has been invoked, the DRC process will cease to be operative. It will be no bar that the Arbitrator appointed as aforesaid is or has been an employee of the Authority and the appointment of the Arbitrator will not be challenged or be open to question in any Court of Law, on this account.**
>
> **Before making a reference to Dispute Resolution Committee, the licensee will have to first deposit 50% of the disputed amount in the form of BG (additional Bank Guarantee with validity of minimum two (2) years from the date of making reference to DRC, and further extendable) /DD/PO/NEFT with AAI and the consent shall be given by the licensee for**

acceptance of the recommendations of the Dispute Resolution Committee.

The case shall be referred to the sole Arbitrator by the Chairman / Member / RED of the Authority, subject to the condition that the licensee shall have to deposit 50% of the disputed amount in the form of BG (additional Bank Guarantee with validity of minimum two (2) years from the date of making such reference, and further extendable) / DD/PO/RTGS/NEFT with AAI as condition precedent before making reference to the Arbitration for adjudication of dispute.”

34. Coming to the communication dated 30.11.2022 **(Annexure P-4)** only a reply dated 05.12.2022 **(Annexure P-5)** was submitted on account of the receipt of complaints against the petitioner and clarification was sought on five issues. After the award of the licence, show cause notice dated 05.06.2023 **(Annexure P-10)** was issued wherein the petitioner was called upon to explain as to why action should not be taken against it on the grounds of conflict of interest and material representation. It would be relevant to mention here that the action referred to in Clause 9 (b) of the DNIET was of termination of the licence and debarment. It is, therefore, difficult to accept that there was no show cause notice as regards debarment. Be that as it may, orders dated 08.08.2023 were initially challenged by way of CWP No. 17635 of 2023 which was eventually withdrawn on 16.08.2023 with liberty to approach respondent No.3 in terms of Clause 29 of the Terms & Conditions in Appendix 1 of the licence;

“Learned Senior counsel for the petitioner, after arguing at length, prays for and is permitted to withdraw the petition

with liberty to the petitioner to approach the Dispute Resolution Committee (DRC) under clause 29 of the General Terms and Conditions of the agreement.

Learned senior counsel, entering appearance on behalf of the respondents, on advance copy, submits that in case, the petitioner does so, the Committee shall look into the matter and take a decision therein expeditiously.

Dismissed as withdrawn with the liberty prayed for."

35. Pursuant to this, order dated 27.01.2024 was passed by respondent No.3 vide which the orders dated 08.08.2023 were upheld. For this order was non-speaking, CWP No.3401 of 2024 was filed by the petitioner wherein a statement was given by the respondents that the order be treated as withdrawn and that a fresh order would be passed after hearing the petitioner;

"A certiorari is prayed for, to quash the order dated 08.08.2023 (P-1), vide which the petitioner (M/s Saptagiri Restaurant Pvt. Ltd.) has been debarred from participating in the tenders floated by the Airports Authority of India (respondent No.1), for a period of three (03) years. And also the order of an even date (P-2) by which licence for Wellness Centre/Spa and Massage Chair Facility inside Domestic Security Hold Area as also the International Security Hold Area at SGRDJI Airport, Amritsar, has since been terminated, with immediate effect.

The petitioner being aggrieved had even earlier approached this Court vide CWP No.17635 of 2023, which was disposed of on August 16, 2023, to enable the petitioner to invoke the dispute resolution mechanism envisaged under clause 29 of the General Terms and Conditions of the Contract. Whereafter, the authorities have passed a fresh

order dated January 27, 2024 (P-4), affirming the earlier orders dated 08.08.2023 (ibid). Thus, this petition.

After we had issued notice to the respondents, an affidavit dated 23.02.2024 has been filed by Ms. Harmanjote Kaur, In-charge (Comml.), Sri Guru Ram Dass Jee International Airport, Amritsar. And, the averments set out in para 4 reads as thus:

> **"That the impugned order passed by DRC dated 27.01.2024 (Annexure P-4) be treated as withdrawn and the dispute Resolution Committee (Respondent No.3) would pass a fresh reasoned order after taking into consideration all the relevant documents within a period of 10 days."**

Accordingly, learned Senior counsel for the respondents submits, for the impugned order dated January 27, 2024 (P-4) stands withdrawn, the Dispute Resolution Committee (DRC), after the petitioner is heard, shall pass the orders afresh. Therefore, he submits that let the petitioner appear before the Committee (respondent No.3) on 23.04.2024 @ 11:00 am at the Airport itself. Further, the petitioner shall also be at liberty to support/supplement its claim by furnishing any fresh material/documents, including the decisions rendered by the Hon'ble Madras High Court, dated 09.08.2023 (P-20) as also by Hon'ble High Court of Jammu and Kashmir and Ladakh at Srinagar, dated 13.10.2023 (P-22), on the appointed date itself, if so advised. Which shall be taken cognizance of by the DRC before passing appropriate orders, as indicated above.

That being so, learned Senior counsel for the petitioner submits that let this petition be disposed of in the wake of the affidavit, referred to above, and the statement made by learned Senior counsel for the respondents. However, he

submits that the matter being time sensitive, the authorities be directed to pass the formal orders within a specified time.

To which, learned Senior counsel for the respondents fairly submits, and as indicated in the affidavit itself, the DRC shall pass the final orders, after the petitioner appears before the Committee on 23.04.2024, within a period of 10 days, i.e. on or before 02.05.2024."

In the wake of the position sketched out above, and in terms of the statements made by learned counsel for the parties, the petition stands disposed of.

This Court is sanguine that the Committee shall consider the matter in the right earnest. And pass the necessary orders within the time indicated by learned Senior counsel for the respondents.

Needless to assert that this order shall not constitute any expression of opinion on the merits of the case of either party, for, as indicated above, the Committee shall examine the concerns/grievances of the petitioner, strictly in accordance with law."

36. Eventually, the impugned order dated 02.05.2024 was passed before which a detailed representation dated 23.04.2024 **(Annexure P-26)** alongwith a number of documents was submitted by the petitioner before respondent No.3. Certain other communications **(Annexures P-27 to P-29)** also ensued between the parties and finally the order dated 02.05.2024 was passed by respondent No.3. A bare perusal of this order shows that the same is a detailed order wherein the allegations, the previous proceedings, the orders passed by different High Courts, the validity of the orders dated 08.08.2023 and all other aspects were duly gone into and eventually the orders dated 08.08.2023 were upheld. The order runs into 09 pages and is an

extremely detailed order dealing with all relevant aspects. In the considered opinion of this Court, after the passing of this order, it would not at all be open for the petitioner to submit that there was violation of the principles of natural justice. It becomes manifestly clear that this argument is being raised since there appears to be no argument on merits. The impugned order shows a clear cut *modus operandi* adopted by the petitioner while participating in the tenders thereby committing fraud and corrupt practices and also having a conflict of interest as stated under Clauses 9 and 10 of the DNIET referred to in the preceding paragraphs. The petitioner committed gross illegalities and misrepresentations while participating in the tenders thereby leading to the termination of the agreement and its debarment. When one goes through the show cause notices placed on record, the response submitted by the petitioner, the orders of termination and debarment and finally the impugned order dated 02.05.2024 passed by respondent No.3, there remains not even an iota of doubt in the mind of this Court that the orders dated 08.08.2023 and the order dated 02.05.2024 are perfectly legal and valid and do no call for any interference. Though, as has been observed previously, the order dated 02.05.2024 is a detailed order running into 09 pages, it would be essential to refer to certain parts of the same.

> **"M/s SRPL challenged the decision taken by the Committee by filing writ petition before the Hon'ble High Court of Punjab & Haryana by filing a Writ Petition numbered as CWP No.3041 of 2024. The Hon'ble High Court vide its order dated: 20.04.2024 disposed of the writ petition by directing the Committee (DRC) to pass a fresh order on or before 02.05.2024. M/s SRPL was directed to appear before the Committee (DRC) on 23.04.2024. M/s SRPL appeared**

before the Committee (DRC) on 23.04.2024 and submitted the following documents.

1. The revised shareholding pattern of M/s Mahesh Sunny Enterprises Pvt. Ltd. as on 31.03.2023 along with other documents; Board of Resolution dated 25.05.2022, Gift Deeds dt. 20.06.2022, Form No.SH-1 SH-4.

2. Judgement dt. 09.08.2023 of Hon'ble Madras High Court (WP No.23446/2023)

3. Judgement dt. 06.10.2023 pronounced on 13.10.2023 of FAO No.24/2023 of Hon'ble High Court of Jammu & Kashmir and Ladakh upholding the Order dt. 08.09.2023 of District Court of Budgam (CNR No. JKBG020013342023).

4. Court Order 20.04.2024 of Hon'ble High Court Punjab & Haryana (CWP-3041/2024)

5. Copy of License issued by Delhi Pollution Control Committee (DPCC)

6. Copy of letter dated 05.06.2016 issued to M/s Syona SPA

7. Copy of letter dated 08.08.2022 for terminating the services of Sh. Karan Singh from M/s SRP and other documents.”

37. It was held by the DRC that the debarment and annulment orders passed by the Airport Director, Amritsar had been passed after taking approval from the competent authority and, therefore, the same would be considered as orders passed by the Airports Authority of India. The

submissions as regards the share holding in M/s Mahesh Sunny Enterprises Private Limited was also noticed;

> **"Considering the above facts, the Committee (DRC) is of the view that the debarment and annulment order passed by the Airport Director, Amritsar Airport has been passed after taking approval from the competent authority and thus the orders dated 08.06.2023 would be considered as orders passed Airports Authority of India, therefore, the judgments quoted by M/s SRPL are different.**
>
> **The other submission made by M/s SRPL is that its share-holding in M/s Mahesh Sunny Enterprises Pvt. Ltd. was less than the cut off as per the tender document. M/s SRPL has placed certain documents on the file along-with its written submissions. The tender was issued on 05.09.2022 and the last date for submission was 03.10.2022. It has been observed that such documents regarding change in shareholding pattern, gift deeds were not submitted by the party at the time of show cause notice isued by AAI, Amritsar on 05.06.2023."**

38. As regards the issue of Karan Singh being an employee of the petitioner and M/s Mahesh Sunny Enterprises Private Limited as also the involvement of M/s Syona Spa, respondent No.3 held as under:-

> "**<u>OBSERVATIONS OF DRC:</u>**
>
> **1) The above submissions of Sh. Karan Singh read with his earlier submission made on 12.04.2023 shows that he was an employee of M/s Saptagiri Restaurant Pvt. Ltd. as well as M/s Mahesh Sunny Enterprises Pvt. Ltd. and his services were dispensed with M/s SRPL in August, 2022 and was continuing with M/s Mahesh Sunny Pvt. Ltd. but later on,**

the submissions were revised/changed by Sh. Karan Singh in his letter dated 16.06.2023 stating that when he resumed his office recently, came to know that his services have also been discontinued by M/s Mahesh Sunny Enterprises Pvt. Ltd. prior to August, 2022.

2) The above, submissions shows that Sh. Karan Singh was misleading AAI by changing his submissions from time to time.

3) If the bid is visible in CPP e-tenders government portal, this means the bidder has submitted both technical and financial bids as mere submission of technical bid only will not close the bid process. This means the party M/s Syona Spa has completed the entire bid process on CPP portal only then the bid is visible to bid manager after technical opening.
4) Funds equivalent to six months license fees along with 01 month advance license fees are only required if the party comes as H1 i.e. after award of license. The party has shown same intention for above 07 tenders (02 of instant tenders of Amritsar airport). Moreover, there is an option to withdraw the bid in CPP portal and as per tender conditions also which has not been exercised by M/s Syona Spa depicting malafide/corrupt intentions of the party in the tender processes. The beneficiary of such conduct of M/s Syona Spa is M/s SRPL.

5) The fact that the services of Sh. Karan Singh were discontinued by M/s SRPL and M/s Mahesh Sunny Enterprises Pvt. Ltd. but M/s Syona Spa participated in all the tenders wherein M/s SRPL was also one of the bidder during the period Mid July to October end (2022) infers that both the bidders were having access to each other

information and reply to show causes are just an after thoughts.

39. As regards the share holding of Bikram Singh, etc. and the conflict of interest issue, it was held as under:-

<u>"OBSERVATIONS OF DRC:</u>

1) No documentary evidence on shareholding of Sh. Bikram Singh in M/s Mahesh Sunny Enterprises Pvt. Ltd. was submitted on the date of reply of show cause was provided. As per documents submitted by the party in the DRC process, it can be seen that there has been major change in the distribution of shares in M/s Mahesh Sunny Enterprises Pvt. Ltd. in respect of shares of Sh. Bikram Singh. It is the responsibility of party /Director Sh. Bikram Singh to have presented the documents related to Gift deed at the time of show- cause notice. Mere submission of statement that "it is a matter of record" cannot be taken into consideration as per records submitted at later stage the party had a major change in shareholding pattern in the months of May to July 2022.

2) Considering the fact that a mistake was done by official of M/s Mahesh Sunny Enterprises Pvt. Ltd. in depositing EPF and ESI of Sh. Karan Singh for near about 10 months i.e. from the month of termination of services prior to August 2022 till the month of June 2023 cannot be considered a mere mistake but a pre-conceived after-thought to come out of the grounds of conflict of interest.

3) Further, the statement provided by M/s SRPL that "*it appears from the response dated 12.04.2023 of Sh. Karan Singh, as received now through your office that … as M/s*

Syona Spa or Sh. Karan Singh cannot be said to be bidder..." **false as per bid procedure of CPP portal (e-tenders), the bidders get the information automatically regarding the bids submitted along with details of bidders when the bid manager opens the technical bids of the tenders.**

4) Also, only after submitting of tender fees, EMD, documents of technical bid and financial bid BOQ (rate quote), the bid gets completed and the system accepts the bids and then the further process is carried out.

5) DRC has also observed that M/s Syona Spa has opted for similar process in tenders for Raipur and Pune wherein M/s SRPL was also one of the bidder. As the information regarding bidders become visible on CPP portal instantly after opening of technical bids by bid managers, the reason that M/s SRPL has not highlighted to AAI the malafide intentions of M/s Syona Spa to affect the bidding process can be

considered as the fact that both the bidders were working closely in the bid processes having the access of each other's information in respect to the bid submission.

The DRC has also observed that the address of all the three firms in question is same i.e. L-322 MAHIPALPUR EXTENS, NEW DELHI 110037. It has also come to light that the address of M/s Syona SPA (L-73/L-322, Mahipalpur Extension, New Delhi) and M/s Saptagiri Restaurant Pvt. Ltd. (L-322, Mahipalpur Extension, New Delhi) are in the same premises. In this regard, the reference has been taken into the account from the letter dated 06.05.2016 issued by M/s SRPL confirming the address L-73 and L-322, Ist Floor,

Hotel Saptagiri, Mahipalpur Extn. National Highway No.08, New Delhi-110034 (unit of Satpagiri Restaurant Pvt. Ltd.).”

40. Finally it was concluded by respondent No.3-DRC as under:-

> **“Thus in the light of facts discussed above, it can be reasonably inferred that M/s SRPL (one bidder) has relationship with M/s Syona Spa (Sh. Karan Singh-Prop.) (another bidder) directly or indirectly or through M/s Mahesh Sunny Enterprises Pvt. Ltd. (a common third party) that puts either or both of tghem in a position to have access to each other’s information, or to influence the bid of either or each other which means conflict of interest as per tender conditions.**
>
> **DRC is of the view that the documents submitted by the party were created after participation in the tender and were presented before this forum for the purpose of misleading and to obtain a favourable order.**
>
> **Thus, DRC comes to the conclusion that the orders dated 08.08.2023 passed by Airport Director, Amritsar Airport by which M/s SRPL was debarred and license was annulled, would remain valid.”**

41. It is, therefore, clear that respondent No.3 examined the matter from all angles after giving due opportunity of hearing to all stake holders and thereafter passed the order under challenge.

42. Let us now examine to what extent, in exercise of the power of judicial review, this Court would interfere in the impugned order/s.

43. It would be essential to bear in mind that challenge to policy decisions, administrative action, issuance of tenders, holding of auctions, sale of plots, resumption proceedings have all been raked up before the Courts on various occasions. The question which fell for consideration before the Supreme Court of India and various high Courts in these kind of litigations was as to whether policy decisions, administrative actions etc. can be interfered with exercising the power of judicial review or as to whether the Courts were to refrain from doing so. Though there are a catena of judgments on the subject, reference to few of them would be noteworthy. In the case of ***Jagdish Mandal versus State of Orissa and others 2007 (14) SCC 517***, the Supreme Court of India was seized of a challenge to the award of construction contracts to one Jagdish Mandal and Laxmi Sharma. The High Court of Orissa had allowed the writ petition filed by the unsuccessful bidder after which the matter reached the Supreme Court. The Supreme Court of India examined the scope of interference in judicial review of tender processes and award of contracts. While referring to various judgments on the subject, the Supreme Court of India held that judicial review of administration action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and *mala fides*. It was held that its purpose is to check whether choice or decision is made lawfully and not to check whether choice or decision is sound. It was held that when the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. It was held that a contract is a commercial transaction and evaluating tenders and awarding contracts are essentially commercial functions. The Supreme Court of India laid down that

the principles of equity and natural justice stay at a distance and that if the decision relating to the award of a contract is *bona fide* and is in public interest, Courts will not, in exercise of power of judicial review, interfere even if a procedural abberation or error in assessment or prejudice to a tenderer is made out. It was held that the power of judicial review would not be permitted to be invoked to protect private interest at the cost of public interest or to decide contractual disputes. It was held that attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade Courts to interfere by exercising power of judicial review should be resisted. It was held that such interferences, whether interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. It was held that under the circumstances, before interfering in such matters in exercise of the power of judicial review, a Court should pose to itself the questions whether the process adopted or decision made by the authority is *mala fide* or is intended to favour someone and that whether the public interest is affected;

> **"19. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and malafides. Its purpose is to check whether choice or decision is made 'lawfully' and not to check whether choice or decision is 'sound'. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding**

contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is *bona fide* and is in public interest, courts will not, in exercise of Page 0102 power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes.

The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions :

> **i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone.**
>
> **OR**
>
> **Whether the process adopted or decision made is so arbitrary and irrational that the court can say : 'the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached.'**

ii) Whether public interest is affected.

> **If the answers are in the negative, there should be no interference under Article 226. Cases involving black-listing or imposition of penal consequences on a tenderer/contractor or distribution of state largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action.**

44. In the case of ***Silppi Constructions Contractors versus Union of India and Anr. Etc. Etc. 2020 (16) SCC 48***9 also the Supreme Court of India referred to the judgments on the subject and held as under:-

> **19. This Court being the guardian of fundamental rights is duty bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court in all the aforesaid decisions has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts but this discretionary power must be exercised with a great deal of restraint and caution. The Courts must realise their limitations and the havoc which needless interference in commercial matters can cause. In**

contracts involving technical issues the courts should be even more reluctant because most of us in judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. As laid down in the judgments cited above the courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give "fair play in the joints" to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer.

20. The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the state instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. With this approach in mind we shall deal with the present case.

The Supreme Court of India, therefore, held that the Courts, being the guardian of fundamental rights would be duty bound to interfere when there is arbitrariness, irrationality, *mala fides* and bias. It was held that in all the judgments referred to by the Supreme Court of India, the Courts had been cautioned time and again that they should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters and that the Courts are normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or *mala fides* or bias or irrationality is made out. It was held that the Courts must realize their limitations and the havoc which needless interference in commercial matters can cause. It was held that in matters involving technical issues, the Courts should be even more reluctant because most of us in Judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. It was held that the Courts should not use a magnifying glass while scanning tenders and make every small mistake appear like a big blunder. It was held that infact, the Courts must give 'fair play in the joints' to the Government and public undertakings in matters of contract and must also not interfere where such interference will cause unnecessary loss to the public exchequer. It was held that the essence of the law laid down in the judgments which had been rendered from time to time is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the State instrumentalities; the Courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable. It was held that the Court does not sit like a Court of appeal over the appropriate authority and must realize that the authority concerned is the best judge of its requirements and, therefore, interference of the Courts should be minimal. It was held that if two interpretations are possible, then the interpretation of the author must be accepted and that the Courts will only interfere to prevent arbitrariness, irrationality, bias, *mala fides* or perversity.

45. Very recently, the Supreme Court of India took a similar view in the case of ***State of Punjab and others versus Mehardin 2022 (5) SCC 648*** and while referring to the cases of ***Jagdish Mandal versus State of Orissa and others and Silppi Constructions Contractors versus Union of India and Anr. Etc. Etc.*** (supra) as also the judgment in the case of ***TATA Cellular versus Union of India (1994) 6 SCC 651*** reiterated the view.

46. Most recently, while examining the challenge to the central vista project in the case of ***Rajeev Suri Versus Delhi Development Authority 2022 (11) SCC 1,*** a Constitution Bench of the Supreme Court of India examined the scope of judicial review of an Administrative or so to say quasi legislative action. It was held that the rule of law as accepted and settled in India, with regard to judicial interference in administrative and executive or policy matters is no more *res integra*. It was held that the duty enjoined upon the judiciary is to ensure checks and balances and to place itself between the Government and citizens when they come face to face in a Court of law and that it is meant to act as an equalizer and ensure that the flow of decisions from executive to citizens is overseen through the prism of well-established principles, as and when called upon to do so. It was held that the judicial organ is not meant to impose the citizens' or even its own version of good governance upon the Government in the name of Rule of Law in exercise of its power of judicial review.

47. The Apex Court examined the issue threadbare starting from observations made by Lord Brightman in the case of Chief Constable of the

North Wales Police v. Evans [1982] 1 WLR 1155 to the observations of the Supreme Court of India in the case of ***TATA Cellular versus Union of India*** (supra), the observations made by Graham Aldus and John Alder in their book 'Applications for Judicial Review, Law and Practice' and while examining the need for heightened judicial review, the Supreme Court of India declined to interfere in the Central Vista Project and held as under:-

> **"167. To sum up the above discussion, it may be noted that judicial review primarily involves a review of State action - legislative, executive, administrative and policy. The primary examination in a review of a legislative action is the existence of power with the legislature to legislate on a particular subject matter. For this purpose, we often resort to doctrines of pith and substance, harmonious construction, territorial nexus etc. Once the existence of power is not in dispute, it is essentially an enquiry under Article 13 of the Constitution which enjoins the State to not violate any of the provisions of Part-III in a lawmaking function. The review of executive action would depend upon the precise nature of the action. For, the domain of executive is wide and is generally understood to take within its sweep all residuary functions of the State. Thus, the precise scope of review would depend on the decision and the subject matter. For instance, an action taken under a statute must be in accordance with the statute and would be checked on the anvil of ultra vires the statutory or constitutional parameters. The enquiry must also ensure that the executive action is within the scope of executive powers earmarked for State Governments and Union Government respectively in the constitutional scheme. The scope of review of a pure administrative action is well settled. Since generally individuals are directly involved in such action, the Court concerns itself with the sacred principles of natural justice - audi altrem partem, speaking orders,**

> **absence of bias etc. The enquiry is also informed by the Wednesbury principles of unreasonableness. The review of a policy decision entails a limited enquiry. As noted above, second guessing by the Court or substitution of judicial opinion on what would constitute a better policy is strictly excluded from the purview of this enquiry. Under the constitutional scheme, the government/executive is vested with the resources to undertake necessary research, studies, dialogue and expert consultation and accordingly, a pure policy decision is not interfered with in an ordinary manner. The burden is heavy to demonstrate a manifest illegality or arbitrariness or procedural lapses in the culmination of the policy decision. However, the underlying feature of protection of fundamental rights guaranteed by the Constitution must inform all enquiries of State action by the constitutional Court."**

48. As regards the argument that the debarment order would apply only to the Amritsar International Airport for the same had been issued by the Airport Director of the Amritsar International Airport, it has to be noticed that respondent No.3 in its order has duly observed that the said order was passed after due approval from the competent authority. Be that as it may, we do not wish to go into the issue at this stage for wherever the petitioner is being debarred on the basis of the orders under challenge in this petition, the petitioner is invoking the jurisdiction of the Courts concerned as would be evident from the orders passed by the District Court, Budgam, the High Court of Jammu & Kashmir and the High Court of Madras. This Court is essentially concerned with the legality of the orders under challenge. Still further, it has also come on record that an order dated 20.12.2023 had also been passed by the Airports Authority of India debarring the petitioner across

the country but subsequently a statement was given before the Jammu & Kashmir High Court that the same had been withdrawn and accordingly order dated 22.02.2024 had been passed by the Jammu & Kashmir High Court. However, during the course of arguments, it was stated that a review petition had been filed against the said order dated 22.02.2024 and vide order dated 18.09.2024, the order dated 22.02.2024 had been stayed. As regards the writ petition filed in the Madras High Court, the same was stated to have been dismissed on 30.09.2024. It would be essential to state here that these facts were stated by learned counsel representing the respondents and were not denied by learned counsel representing the petitioner. Even otherwise, once the terms and conditions of the tenders being floated across the country are not before this Court, it would not be possible for this Court to lay down as to whether the petitioner is being rightly debarred at other places or not.

49. The argument that the impugned order had travelled beyond the purview of the show cause notice dated 08.06.2023 is also devoid of merit because when the parties appeared before respondent No.3, a number of additional documents were submitted before it and respondent No.3 examined the matter threadbare and then decided the same. The petitioner was given due opportunity to present its case and to produce documents and was duly heard. Under the circumstances, it cannot be said that the impugned order dated 02.05.2024 has travelled beyond the purview of the show cause notice dated 08.06.2023. The argument that no show cause notice for debarment had been issued is also devoid of merit. Firstly, Clause 9(a) of the DNIET duly lays down that an order of debarment can be passed under certain conditions which have also been enumerated therein. Still

further, as has been observed in the preceding paragraphs, the parties had been relegated to the DRC-respondent No.3 and a detailed order, as has been noticed in the preceding paragraphs also was passed by respondent No.3 after giving due opportunity of hearing and, therefore, it cannot be said that there was no show cause notice before passing of the debarment order. Infact, here, the no prejudice theory would come in and it can safely be held that once the matter was examined threadbare by respondent No.3, no prejudice can be said to have been caused to the petitioner even if there was no show cause notice before the passing of the initial debarment order dated 08.08.2024.

50. The argument that since the licence had been granted to the petitioner after reply to the complaints had been filed meaning thereby that the complaints had not been found to be having merit by the respondents is devoid of merit and is rejected. Merely because the licence had been awarded to the petitioner does not mean that the respondents had consigned the complaints to record having found them to be devoid of merit. This argument is too far fetched to be even considered and is accordingly rejected.

51. We have gone through the judgments relied upon by learned counsel for the parties.

52. As regards the judgments, reliance upon which was placed by learned Senior Counsel representing the petitioner, the judgment in **Rajender Contractor versus State of Haryana and others** *(supra)* would not apply for in that case no show cause notice had been issued prior to the issuance of a debarment order whereas the said issue has been discussed in detail with regard to the facts of this case which are totally different. For the same

reasons, the judgments in ***Kulja Industries Ltd. versus Chief General Manager W.P. Proj. BSNL and others and Gorkha Security Services versus Government (NCT of Delhi) and others*** (supra) would not apply. The judgment in the case of ***Isolaters and Isolaters versus Madhya Pradesh Madhya Kshetra Vidyut Vitran Co. Ltd. & Anr.*** (supra) wherein it was held that it would not be enough to put the contractor concerned only on notice of debarment without specifically putting it on notice on the issue of penalty would also not come to the aid of the petitioner for in Clause 9 of the DNIET itself, the provision of debarment has been laid down and it has been provided that the minimum debarment would be for a period of three years. In the present case, the debarment is for the minimum period of 03 years and, therefore, no prejudice can be stated to have been caused to the petitioner.

53. As regards the judgments relied upon by learned counsel representing the respondents, in the case of ***Krishnadatt Awasthy versus State of Madhya Pradesh and others*** (supra), the Supreme Court of India, while referring to the judgment in ***Ashok Kumar Sonkar versus Union of India (2007) 4 SCC 54*** held that the principles of natural justice cannot be put in a straitjacket formula and that its application depends upon the facts and circumstances of each case. It was held that to sustain a complaint of non-compliance with the principles of natural justice one must establish that he had been prejudiced thereby for non-compliance with the principles of natural justice.

54. The Supreme Court then referred to the theory of prejudice as had been considered in the case of ***Jankinath Sarangi v. State of Orissa (1969) 3 SCC 392*** whereafter, the principles on the issue of prejudice and the

violation of the principles of natural justice were laid down. One of the principles was that while applying the rule of *audi alteram partem,* the Court concerned must always bear in mind the ultimate and overriding objective underlying the said rule viz., to ensure a fair hearing and to ensure that there is no failure of justice. Ultimately it was held that even though the appellants before the Supreme Court had not been joined at the initial stage, an opportunity to controvert the findings of the Authorities was duly afforded lateron and under the circumstances, no prejudice was said to have been caused to them. The Supreme Court held as under:-

> **"44. In the narration of the facts as discussed above, it is clear that the appellants have emphasized on their non-joinder at the initial stage before the Collector. A bare perusal of the order passed by the Collector reflects that it is based on the counter-affidavit filed by the Janpad Panchayat whereby it is established that the appellants were related to the members of the selection committee. Subsequently, the collector held the process to be vitiated by bias by applying the test of reasonable likelihood of bias. Once again, upon challenge being made by the appellants before the revisional authority, their relationship with the members of the selection committee was not disputed yet violation of doctrine of audi altrem partem was alleged merely due to non-joinder. After hearing them, the plea of non-impleadment did not find force before the revisional authority and the challenge did not succeed. Aggrieved appellants moved a writ petition before the High Court where ample opportunity was given by learned Single Judge and they were allowed to inspect the records. Thus, an opportunity to controvert the findings of the Collector and the Commissioner and factual narration thereof was duly**

afforded. After sufficient opportunities given by the Ld. Single Judge, the appellants neither denied their relationship with the members of the selection committee nor demonstrated that how the findings are perverse or contrary to record, causing any prejudice to them.

45. In the sequel of above factual narration, first limb of natural justice that is 'rule against bias' was proved as reasonable likelihood of bias was fully established irrefutably. The violation of another limb i.e. *audi alteram partem,* which is procedural, has been prayed by the appellants on the pretext of their non-joinder at the initial stage; in my opinion, without showing prejudice mere non-joinder even at initial stage does not violate the natural justice doctrine in the case at hand."

55. A similar view was taken by a constitution Bench of the Supreme Court on India in the case of ***Jayantilal Ratanchand Shah vs. Reserve Bank of India and Others*** *(supra)* and the High Court of Delhi in the case of ***Aneuser Busch Inbev India Limited versus Commissioner (Excise), Entertainment and Luxury Tax) and others.***

As an upshot of the aforesaid discussion, we find the writ petition to be devoid of merit and accordingly the same is dismissed.

Pending application(s), if any, stand(s) disposed of accordingly.

(ARUN PALLI)
JUDGE

(VIKRAM AGGARWAL)
JUDGE

Reserved on : 04.11.2024
Pronounced on : 19.12.2024

Whether speaking/reasoned Yes/No
Whether Reportable Yes/No