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

+ **W.P.(C) 4475/2024**

GHAI CONSTRUCTION PVT LTD

..... Petitioner

Through: Mr. Udit Seth and Mr. Divyanshu,
Advocates.

versus

INDIAN PORT RAIL AND ROPEWAY CORPORATION LTD

..... Respondent

Through: Mr. S. G. Rajput, Advocate.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

24.05.2024

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1. The Petitioner has approached this Court challenging the Communication dated 27.12.2023 issued by the Respondent blacklisting the Petitioner for a period of three years from participating in any tender issued by the Respondents.
2. Mr. S. G. Rajput, learned Counsel, is appearing on behalf of the Respondent. He states that *Vakalatnama* has been filed.
3. Material on record indicates that the Petitioner was awarded a contract for "Construction of 2 lane ROB & approaches in lieu of L.C No.104E/SPL3 at Km. 97/6-7 between Cherukuwasa & Undi railway stations on Gudivada - Bhimavaram section at NH Km. 170+400 on Kathipudi - Pamarru road of NH 214 (New NH-165) in West Godavari district I state of Andhra Pradesh".



4. A perusal of the Communication dated 27.12.2023 reveals that no show cause notice has been issued to the Petitioner informing that the Petitioner will be blacklisted for a period of three years. The action of blacklisting the Petitioner is, therefore, contrary to the law laid down by the Apex Court in Gorkha Security Services v. Government (NCT of Delhi) and Ors., (2014) 9 SCC 105 and UMC Technologies Private Limited v. Food Corporation of India & Anr., 2021 (2) SCC 551. The Apex Court in Gorkha Security Services v. Government (NCT of Delhi) and Ors., (2014) 9 SCC 105, in categorical terms has held that the action of debarment has to be preceded by a notice specifically informing the Noticee that it will be debarred for any infringement and in the absence of any notice, the order of debarment cannot be passed. The Apex Court has held as under:

“16. It is a common case of the parties that the blacklisting has to be preceded by a show-cause notice. Law in this regard is firmly grounded and does not even demand much amplification. The necessity of compliance with the principles of natural justice by giving the opportunity to the person against whom action of blacklisting is sought to be taken has a valid and solid rationale behind it. 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.”

5. In view of the above, since no show cause notice has been issued to the Petitioner, this Court is inclined to set aside the Impugned Communication dated 27.12.2023. The Impugned Communication dated 27.12.2023 is set aside.



6. However, it is always open for the Respondent to issue a fresh show cause notice to the Petitioner and proceed further in accordance with law.
7. It is made clear that the Impugned Communication dated 27.12.2023 is set aside only on the ground that no show cause notice has been issued to the Petitioner informing that the Petitioner can be debarred.
8. With these observations, the writ petition is disposed of, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

MAY 24, 2024

S. Zakir