



2024:DHC:6031



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

Date of decision: 06th AUGUST, 2024

IN THE MATTER OF:

+ **W.P.(C) 8502/2023, CM APPLs. 32368/2023, 32929/2023**

SURYA CHETAN AVIATION HANDLING SERVICES & ORS.

..... Petitioners

Through: Mr. Umakant Mishra, Ms. Apoorva Sharma, Mr. Prabhat Nayak and Mr. Debabrata Dash, Advocates.

versus

AIRPORTS AUTHORITY OF INDIA & ANR. Respondents

Through: Mr. Digvijay Rai & Mr. Archit Mishra, Advocates for R-1/AAI with Mr. Vivek Gupta, AGM (Law), Mr. Mukesh Kumar, DGM (OPS).
Mr. Vineet Dhanda, CGSC for R-2.

+ **W.P.(C) 10678/2023, CM APPLs. 41404-05/2023, 18898/2024**

SRI SAI SAMPATH AVIATION SERVICES & ANR..... Petitioners

Through: Mr. Umakant Mishra, Ms. Apoorva Sharma, Mr. Prabhat Nayak and Mr. Debabrata Dash, Advocates.

versus

UNION OF INDIA AND ORS. Respondents

Through: Mr. Sandeep Kumar Mahapatra, CGSC with Mr. Tribhuvan, Advocate for R-1.
Mr. Vedansh Anand, GP for UoI.
Mr. Digvijay Rai & Mr. Archit



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Mishra, Advocates for AAI with Mr.
Vivek Gupta, AGM (Law), Mr.
Mukesh Kumar, DGM (OPS).

+ **W.P.(C) 14394/2023, CM APPL. 57061/2023**

SRI AUREA AVIATION PVT. LTD.

..... Petitioner

Through: Mr. Umakant Mishra, Ms. Apoorva
Sharma, Mr. Prabhat Nayak and Mr.
Debabrata Dash, Advocates.

versus

UNION OF INDIA & ORS.

..... Respondents

Through: Mr. Bhagvan Swarup Shukla, CGSC
with Mr. Venkat Mani Tripathi,
Advocate for UoI.
Mr. Digvijay Rai & Mr. Archit
Mishra, Advocates for AAI with Mr.
Vivek Gupta, AGM (Law), Mr.
Mukesh Kumar, DGM (OPS).

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

1. In W.P.(C) 8502/2023 & W.P.(C) 10678/2023, the Petitioners have approached this Court challenging the Order dated 09.05.2023 bearing No.E-184321/OP-12018/I/2023-operations/186 and in W.P.(C) 14394/2023, the Petitioner challenges the order dated 18.10.2023 bearing No.E-184321/OP-12018/I/2023-operations/311. All the Orders have been passed by the Respondent/Airport Authority of India (AAI) debarring the Petitioners for a period of three years from participating in any other tenders



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issued by the Respondent/Airport Authority of India (AAI).

2. Since the facts and allegations and the parties in all the writ petitions i.e., W.P.(C) 8502/2023, W.P.(C) 10678/2023, and W.P.(C) 14394/2023 are similar and the issues involved in the writ petitions are also similar, with the consent of the parties, all the Writ Petitions are being disposed of by a common Judgment.

3. The facts of W.P.(C) 8502/2023 are that a Request for Proposal (RFP) was issued by the Airport Authority of India for ground handling services at “Group D” airports. The Petitioners herein formed a consortium and participated in the tender process by submitting its bid for 18 Airports. The Petitioner No.1/ M/s Surya Chetan Aviation Handling Services being the lead member had 51% participation followed by the Petitioner No.2/M/s Sri Lakshmi Narasimha Swamy Milk Chilling Centre having 26% and Petitioner No.3/M/s Airclub Aviation Private Limited having 23% shares in the consortium. The Petitioners were the highest bidder for Gaggal (Kangra), Porbandar, Cuddapah, Rajahmundry, Deoghar and Jharsuguda Airports. On 23.02.2023, the Petitioners were asked to submit certain documents for issuance of Letter of Intent.

4. Material on record indicates that on 22.03.2023, a Show Cause Notice was issued to the Petitioners. The Show Cause Notice indicates that a complaint has been received against the Petitioners stating that the Petitioners have violated Clause 2.2.1(f) of the RFP and further a false affidavit has been submitted by the Petitioners which tantamounts to fraud and corrupt practices as per Clause 4 of the RFP. On receipt of the complaint, a Show Cause Notice was issued to the Petitioners to show cause



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as to why action should not be taken against the Petitioners for furnishing a false affidavit. A perusal of the Show Cause Notice indicates that the complaint is with regard to the ownership interest of M/s Aircab Aviation Pvt. Ltd. and M/s Airclub Aviation Pvt. Ltd. in M/s Redbird Airways Pvt Ltd. which is a non-scheduled air carrier. The Show Cause Notice indicates that M/s Aircab Aviation Pvt Ltd is also the owner and partner of non-schedule air carrier i.e., Redbird Airways Pvt Ltd. The companies have same Board of Directors, same registered office address, and same mail id which has been filed with the Company of Registrar. The Show Cause Notice indicates that all 03 companies i.e., M/s Redbird Airways Pvt Ltd, M/s Aircab Aviation Pvt Ltd, and M/s Airclub Aviation Pvt Ltd are directly linked with one another and there is a direct interest in M/s Airclub Aviation Pvt. Ltd. which is a part of the Consortium which has made its bid and has violated the terms of the RFP.

5. Clause 2.2.1(f) of the RFP postulates that no bidder shall be a scheduled or/and non-scheduled air carrier or any entity in which a scheduled air carrier or a non-scheduled carrier or its promoter(s) directly or indirectly holds any interest or is otherwise an Associate of a scheduled air carrier. The primary allegation in the Show Cause Notice is that M/s Redbird Airways Pvt Ltd, M/s Aircab Aviation Pvt Ltd, and M/s Airclub Aviation Pvt Ltd are inter-linked with one another and, therefore, the Consortium has violated Clause 2.2.1(f) of the RFP. The Show Cause Notice indicates that the Petitioners vide para 9 of the affidavit i.e., Appendix-6 declared that no Member of the Consortium and any of their affiliates has any ownership interest in any of the scheduled or non-scheduled air earner



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or any entity in which a scheduled air carrier or a non-scheduled carrier or its promoters directly or indirectly holds any interest or is otherwise an associate of a scheduled air carrier. It is, therefore, stated that the action of the joint venture tantamounts to fraud and corrupt practices as per Clause 4 of the RFP and the Respondents proceeded further to show cause as to why penalties under Clause 4 of the RFP should not be imposed on the Petitioners. The Show Cause Notice indicates that one Mr. Akshay Kumar Director of M/s Redbird Airways Pvt Ltd which is a non-scheduled flight operator had planned the affairs in such a way that he would get the tender for Ground Handling Services for the consortium. It is stated that one Mr. Robin Singh is presently the Director of M/s Airclub Aviation Pvt Ltd which is a part of the consortium and the said Mr. Robin Singh is the brother-in-law of Mr. Akshay Kumar, who is the Director of M/s. Aircab Aviation Pvt. Ltd. holding 99% shares of M/s. Aircab Aviation Pvt. Ltd and his wife Ms. Kajal Kumari who is the sister of Mr. Robin Singh holds the remaining 1% share of M/s. Aircab Aviation Pvt. Ltd. It is stated that Mr. Akshay Kumar also owns 2.24% shares of M/s Redbird Airways Pvt. Ltd and further 97.34 shares of M/s Redbird Airways Pvt Ltd are held by M/s. Aircab Aviation Pvt. Ltd. It is stated that Mr. Robin Singh, who is presently the Director of M/s Airclub Aviation Pvt Ltd, is carrying an AEP (Aerodrome Entry Permit) in the name of Redbird Aviation.

6. The facts in W.P.(C) 10678/2023 indicates that on 05.01.2023, a Request for Proposal (RFP) was issued by the Airport Authority of India for ground handling services at “Group D” airports. The Petitioners and Respondent No.4 formed a consortium and participated in the tender process



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by submitting its bid for all the Airports. The Petitioner No.1/M/s Sri Sai Sampath Aviation Service being the lead member had 51% participation followed by the Petitioner No.2/M/s Sri Laxmi Narsimha Swamy Milk Chilling Centre having 26% and Respondent No.4/M/s Airclub Aviation Pvt. Ltd having 23% shares in the consortium. The consortium formed by the Petitioners and Respondent No.4 was found to be the highest bidder for ground handling services for the Bareilly, Bhatinda, and Pathankot Airports.

7. On 22nd March 2023, a Show Cause Notice was issued to the consortium, mirroring the one previously issued to the Petitioners in W.P.(C) 8502/2023 as M/s Sri Lakshmi Narasimha Swamy Milk Chilling Centre and M/s Airclub Aviation Private Limited were also the member of consortium in W.P.(C) 8502/2023. The notice alleged that a complaint had been lodged, accusing the Petitioners of breaching Clause 2.2.1(f) of the RFP. Additionally, it claimed that the Petitioners had submitted a false affidavit, constituting fraudulent and corrupt practices under Clause 4 of the RFP. The Petitioners were required to Show Cause as to why disciplinary action should not be initiated against them as per Clause 4 of the RFP. The allegation was similar to the one in W.P.(C) 8502/2023.

8. A reply to the Show Cause Notices was given. The Petitioners in both the cases, W.P.(C) 8502/2023 and W.P.(C) 10678/2023 gave similar replies. It is stated that Chapter 7 of the AAI Commercial Manual, 2019 sets out the rules and complaint handling mechanism for anonymous tips which states that anonymous complaints should not be entertained, and such complaints should be ignored. It is also contended that the lead members of the consortium i.e., M/s Surya Chetan Aviation Handling Services in W.P.(C)



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8502/2023 and M/s Sri Sai Sampath Aviation Service in W.P.(C) 10678/2023 have no links with any Scheduled/Non-Scheduled air carrier. It is stated that the said Mr. Robin Singh was merely an employee having no authority or power to direct the policies of M/s Redbird Airways Pvt Ltd. It is submitted that at the relevant point of time there was no commonalities of Directors and therefore, the affidavit given by the consortium is perfectly valid. However, the reply given by the Petitioner to the Show Cause notice was rejected and the Impugned Debarment Order has been passed debarring the Petitioners for a period of three years on the ground that the bid given by the Petitioners are in violation of Clause 2.2.1(f) of the RFP and a false affidavit has been submitted by the Petitioners which attracts action under Clause 4 of the RFP. The security given by the Petitioners were also forfeited.

9. The facts in W.P.(C) 14394/2023 indicate that a Request for Proposal (RFP) was issued by the Airport Authority of India for ground handling services at “Group D” airports. The Petitioner participated in the tender process by submitting its bid for 10 Airports. The Petitioner was declared as the highest bidder for Diu, Gondia, and Kandla Airports. On 23.02.2023, the Petitioner was asked to clear its outstanding bills and submit certain documents for issuance of Letter of Intent. It is stated that the Petitioner herein accepted the letter and submitted the requisite documents.

10. Material on record indicates that on 12.09.2023, a Show Cause Notice was issued to the Petitioner. The Show Cause Notice indicates that a complaint has been received against the Petitioners stating that the Petitioners have violated Clause 2.2.1(f) of the RFP inasmuch as in another



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tender in which the Petitioner had partnered with Airclub Aviation and Surya Chetan Aviation, as a minority member and had applied for “Group C” Airports, (i) Ranchi, (ii) Dehradun, (iii) Vadodara, (iv) Bhopal, and (v) Vijayawada and the said tender was terminated by the AAI and the Petitioner has withheld this information from the AAI while submitting its bid in the tender in question and has submitted a false affidavit which tantamounts to fraud and corrupt practices as per Clause 4 of the RFP. Vide the said Show Cause Notice, the AAI asked the Petitioner to show cause as to why action should not be taken against the Petitioner for furnishing a false affidavit.

11. A reply to the Show Cause Notices was given. It is stated in the reply that the Concession Agreements in respect of Group C airports were executed by a distinct and separate Consortium and were terminated for an alleged breach of clause 2.2.1 (f) of that particular Tender. It is stated in the reply that the said matter should have no bearing on this matter and the bid submitted by the Petitioner herein is not in breach of any terms of the tender as the Petitioner has applied solo for this tender as a distinct and single bidder. It is further stated in the reply that Aurea is not an entity in which any scheduled air carrier or a non-scheduled air carrier or its promoter directly or indirectly holds any interest.

12. The reply to the Show Cause notice was rejected and the Impugned Debarment Order has been passed debarring the Petitioner for a period of three years on the ground that the bid given by the Petitioner is in violation of Clause 2.2.1(f) of the RFP and a false affidavit has been submitted by the Petitioner which attracts action under Clause 4 of the RFP. The security



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given by the Petitioner was also forfeited. It is this Order which has been challenged in the present Writ Petition, W.P.(C) 14394/2023.

13. Learned Counsel appearing for the Petitioners states that the complaint on which the Show Cause Notice has been issued was an anonymous complaint and the Respondents could not have proceeded with the said complaint as it is contrary to the AAI Commercial Manual, 2019 and the CVC. He points out to the response given by the Respondent/AAI to the bidders and the Petitioners on a query raised regarding Clause 2.2.1(f) of the RFP. The said query and answer reads as under:

<i>S.No</i>	<i>Document/ Clause Reference</i>	<i>Original Clause</i>	<i>Remarks by bidders</i>	<i>Response</i>
6.	<i>Section 2.2.1 f</i>		<i>1. In Point 2.2.1 f, the terms interest and promoter have not been defined in the list of definitions in the tender document. Kindly clarify on the meaning of promoter and interest pertaining to this clause</i>	<i>1. The promoter shall mean majority equity investor in scheduled or/and non-scheduled air carrier or any entity in which a scheduled air carrier or a non-scheduled carrier holds directly or indirectly any equity interest.</i>

14. Learned Counsel for the Petitioner states that promoter means a majority investor in scheduled or non-scheduled air carrier or any entity in which a scheduled air carrier or a non-scheduled carrier holds directly or indirectly any equity interest. It is stated that none of the members of the consortium would fall under the definition of the term promoter, and therefore, Clause 2.2.1(f) cannot be attracted in the facts of the present case.



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He also strenuously contends that Mr. Robin Singh is not the Director of M/s Redbird Airways Pvt Ltd and is only the Director of M/s Airclub Aviation Pvt. Ltd which is a member of consortium. He states that the fact that Mr. Robin Singh happens to be the brother-in-law of a Director of M/s Redbird Airways Pvt Ltd does not show any commonality of interest. He states that Mr. Robin Singh does not have any shareholding in M/s Redbird Airways Pvt Ltd and he has only acted as an employee for a short period of time.

15. On the contention of the Respondents that the address of the three members of consortium i.e., M/s. Airclub Aviation Pvt. Ltd., M/s. Aircab Aviation Pvt. Ltd., and M/s Redbird Airways Pvt. Ltd are the same, it is put forth by the learned Counsel for the Petitioners that the Petitioners are small start-up aviation companies and this was done as a cost cutting measure in order to have office premises as close as possible to airport and to avoid heavy rentals /other associated over heads. On the contention of the Respondents that all the three companies have conducted their last AGM meeting on the same date and also have the same Email IDs, it is put forth by the learned Counsel for the Petitioners that all the three companies have the same Company Secretary and hence, as a matter of convenience, the AGM meeting was called on the same date.

16. Similarly in W.P.(C) 10678/2023, it is put forth by the learned Counsel for the Petitioners that the allegations in the Show Cause Notice mainly pertain to M/s Airclub Aviation Pvt. Ltd. and not any other consortium member and it is pertinent to mention that and as per Clause 2.2.1(f) of the RFP in case of consortium, the combined technical capacity,



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net worth and turnover were to be considered for members of the consortium that hold at least 26% shares. It is the case of the Petitioners that the composition of the consortium suggests that since M/s Airclub Aviation Pvt. Ltd. only holds 23% shares, its position is immaterial for evaluation for eligibility criteria either in technical capacity or financial capacity under the RFP.

17. The Petitioners in W.P.(C) 10678/2023 also suggest that without any prejudice and legal obligation, the lead member i.e., M/s Sri Sai Sampath Aviation Service along with the second member i.e., M/s Sri Laxmi Narsimha Swamy Milk Chilling Centre are willing to take the remaining stake of 23% of M/s Airclub Aviation Pvt. Ltd. if the authority so agrees.

18. It is the contention of the Petitioners that the Respondents have sent a very vague and general Show Cause Notice in which they alleged the breach of Clause 2.2.1 of the RFP. It is stated that the said Show Cause Notice is not specific and silent about the details of alleged violations and also does not mention any specific nature of actions proposed to deal with such violations preventing the Petitioners to make an effective representation which is in violation of the principles of natural justice.

19. It is also stated by the learned Counsel for the Petitioners that the Impugned Order is bad in law inasmuch as, the Show Cause Notice does not state that the Petitioners are likely to be debarred. He contends that merely by indicating that the action is to be taken under Clause 4 of the RFP is not sufficient. He places reliance upon a Judgment of the Apex Court in UMC Technologies (P) Ltd. v. Food Corpn. of India, (2021) 2 SCC 551. He specifically draws attention of this Court to Paragraph Nos.24 and 25 of the



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said Judgment which reads as under:

"24. A plain reading of the notice makes it clear that the action of blacklisting was neither expressly proposed nor could it have been inferred from the language employed by the Corporation in its show-cause notice. After listing 12 clauses of the "Instruction to Bidders", which were part of the Corporation's bid document dated 25-11-2016, the notice merely contains a vague statement that in light of the alleged leakage of question papers by the appellant, an appropriate decision will be taken by the Corporation. In fact, Clause 10 of the same Instruction to Bidders section of the bid document, which the Corporation has argued to be the source of its power to blacklist the appellant, is not even mentioned in the show-cause notice. While the notice clarified that the 12 clauses specified in the notice were only indicative and not exhaustive, there was nothing in the notice which could have given the appellant the impression that the action of blacklisting was being proposed. This is especially true since the appellant was under the belief that the Corporation was not even empowered to take such an action against it and since the only clause which mentioned blacklisting was not referred to by the Corporation in its show-cause notice. While the following paragraphs deal with whether or not the appellant's said belief was well-founded, there can be no question that it was incumbent on the part of the Corporation to clarify in the show-cause notice that it intended to blacklist the appellant, so as to provide adequate and meaningful opportunity to the appellant to show cause against the same.

25. The mere existence of a clause in the bid document, which mentions blacklisting as a bar against eligibility, cannot satisfy the mandatory requirement of a clear mention of the proposed action in the show-cause



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notice. The Corporation's notice is completely silent about blacklisting and as such, it could not have led the appellant to infer that such an action could be taken by the Corporation in pursuance of this notice. Had the Corporation expressed its mind in the show-cause notice to blacklist, the appellant could have filed a suitable reply for the same. Therefore, we are of the opinion that the show-cause notice dated 10-4-2018 does not fulfil the requirements of a valid show-cause notice for blacklisting. In our view, the order of blacklisting the appellant clearly traversed beyond the bounds of the show-cause notice which is impermissible in law. As a result, the consequent blacklisting order dated 9-1-2019 cannot be sustained."

20. Learned Counsel for the Petitioner also places reliance on a Judgment dated 25.04.2019 passed by a Co-ordinate Bench of this Court in **LPA No.264/2019** in the case of "M/s Act Integrated Solutions Ltd vs. Food Corporation of India and Anr.".

21. In W.P.(C) 14394/2023, the learned Counsel for the Petitioner states that the grounds taken in the Impugned Order show that the current bid for Group D airports were not evaluated as per the terms of the tender in question but rather according to what happened in the Previous Tender for Group C airports and thereby the decision taken by the AAI in debarring the Petitioner from the tender in question is infested with bias and non-application of mind. He further states that the RFP for the current bidding process does not allow the authority to go beyond the bidding process in respect of Airports specified in the tender. He further submits that neither the Show Cause Notice dated 12.09.2023 nor the impugned order dated



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18.10.2023 specify as to what corrupt practice, fraudulent practice, coercive practice, undesirable, or restrictive practice was resorted to by the petitioner during the Bidding Process. He further states that the Impugned Order dated 18.10.2023 issued by the Respondent has been passed without affording personal hearing to the Petitioner and without affording any opportunity of making an effective representation and being heard and is, thereby, against the Principles of Natural Justice.

22. *Per contra*, learned Counsel for the Respondents contends that as per the information downloaded from the website of the Ministry of Corporate Affairs, it is evident that one Ms. Sarita Bhardwaj has been one of the Directors in all the 3 firms i.e. M/s Airclub Aviation Pvt. Ltd., M/s Aircab Aviation Pvt. Ltd. and M/s Redbird Airways Pvt. Ltd. and also Mr. Ankit Kumar acted as a Director of M/s Airclub Aviation Pvt. Ltd. and M/s Redbird Airways Pvt. Ltd. at different points of time. He further contends that Mr. Akashay Kumar Director of M/s Redbird Airways Pvt Ltd, which is a non scheduled flight operator was the brain child behind the Consortium. He states that his brother-in-law Mr. Robin Singh is the Director of M/s Airclub Aviation, which is a part of the Consortium and he carries Aerodrome Entry Permit in the name of Redbird Aviation, which is a non-scheduled flight operation. The learned Counsel for the Respondents has taken this Court through the share holding pattern of M/s Airclub Aviation Pvt. Ltd., M/s Aircab Aviation Pvt. Ltd., and M/s Redbird Airways Pvt. Ltd to show the commonality of interest in the companies. He has also taken this Court through the official address and the email address of all the three companies to substantiate his contention. He states that the documents of all



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the three companies show relation between the three entities. It is further submitted that the consortium members submitted false affidavits as per Appendix-6 despite the conflict of interest in respect of M/s Aircab Aviation Pvt. Ltd and M/s Airclub Aviation Pvt. Ltd and therefore, all the members of the consortium and the consortium are liable for furnishing false affidavits along with their bids and their participation in the tender process is illegal and their bids are in violation of the express conditions laid down in the RFP. It is stated that a bare perusal of Clause 4 of the RFP makes it clear that the bidder, including their employees and agency have to observe the highest standard of ethics not only till the issuance of the LOIA but also subsequent to the issue of LOIA and also during the subsistence of the Concession Agreement.

23. It is stated by the learned Counsel for the Respondents that the stand taken by the Petitioners that the Respondents have acted on a anonymous/pseudonym complaint is erroneous and incorrect for the reason that the Respondents have taken action pursuant to the directions of Ministry of Civil Aviation which they are bound to do so.

24. The learned Counsel for the Respondent in W.P.(C) 14394/2023 states that the Petitioner herein has violated the terms of the RFP issued for Group C Airports, in the previous tender, were found to be violating Clause 2.2.1 (f) of the RFP and were also found to be submitting a false affidavit. Accordingly action was taken by the Respondent under clause 4 of the said RFP. The learned Counsel further contends that as a result of the penal action taken under Clause 4 in the previous tender the Petitioner cannot participate in the current tender. The learned Counsel further suggests that



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Clause 4 makes things very clear that the Bidders and their employees and agency have to observe the highest standard of ethics not only till the issuance of the LOIA but also subsequent to the issuance of the said letter.

25. Heard learned Counsel appearing for the parties and perused the material on record.

26. At the outset it is pertinent to mention the contention that the Petitioners put forth, that the Respondent has acted on anonymous/pseudonymous complaint is unfounded. The Respondent has furnished an email from the Secretary of the Ministry of Civil Aviation (MoCA) showing where this process of investigation took place. Such an email from the Ministry would create a legitimate cause of action for the Respondent to investigate and proceed ahead.

27. The Respondents have looked into the complaint and found substance in the complaint and have, therefore, proceeded ahead. The action of the Respondents cannot be said to be contrary to law or arbitrary.

28. At this stage it is pertinent to reproduce Clause 4 of the RFP and the same reads as under:

"4. FRAUD AND CORRUPT PRACTICES

4.1 The Bidders and their respective officers, employees, agents and advisers shall observe the highest standard of ethics during the Bidding Process and subsequent to the issue of the LOA and during the subsistence of the Concession Agreement. Notwithstanding anything to the contrary contained herein, or in the LOA or the Concession Agreement, the Authority may reject a Bid, withdraw the LOA, or terminate the Concession Agreement, as the case may be, without being liable in any manner whatsoever to



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the Bidder or Concessionaire, as the case may be, if it determines that the Bidder or Concessionaire, as the case may be, has, directly or indirectly or through an engaged in corrupt practice, fraudulent practice, coercive practice, and' practice or restrictive practice in the Bidding Process. In such an event, the A shall be entitled to forfeit and appropriate the Bid Security or Security Deposit, as the case may be, as Damages, without prejudice to any other right or remedy that may be available to the Authority under the Bidding Documents and/ or the Concession Agreement, or otherwise.

4.2 Without prejudice to the rights of the Authority under Clause 4.1 hereinabove, if an Bidder is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice during the Bidding Process, such Bidder shall not be eligible to participate in any tender or RFP issued by the Authority during a period of 3 (three) years from the date such Bidder is found by the Authority to have directly or indirectly or through an agent, engaged or indulged in any corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice, as the case may be.

4.3. For the purposes of this Clause the following terms shall have the meaning. Hereinafter respectively assigned to them:

"corrupt practice" means:

(i). the offering, giving, receiving, or soliciting, directly or indirectly, of anything of value to influence the actions of any person connected with the Bidding Process (for avoidance of doubt,



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offering of employment to, or employing, or engaging in any manner whatsoever, directly or indirectly, any official of the Authority who is or has been associated in any manner, directly or indirectly, with the Bidding Process or the LOIA or has dealt with matters concerning the Concession Agreement or arising there-from, before or after the execution thereof, at any time prior to the expiry of two years from the date such official resigns or retires' from or otherwise ceases to be in the service of the Authority, shall be deemed to constitute influencing the actions of a person connected with the Bidding Process); or (ii) save and except as permitted under Clause 2.1.15 of this RFP, engaging in any manner whatsoever, whether during the Bidding Process or after the issue of the LOIA or after the execution of the Concession Agreement, as the case may be, any person in respect of any matter relating to the Concession or the LOIAA or the Concession Agreement, who at any time has been or is a legal, financial or technical adviser of the Authority in relation to any matter concerning the Concession;

"fraudulent practice" means a misrepresentation or omission of facts or suppression of facts or disclosure of incomplete facts, in order to influence the Bidding Process;

"coercive practice" means impairing or harming or threatening to impair or directly or indirectly, any person or property to Influence any person's partii or action in the Bidding Process;

"undesirable practice" means



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(i). *establishing contact with any person connected with or employed or engaged by the Authority with the objective of canvassing, lobbying or in any manner influencing or attempting to influence the Bidding Process; or*

(ii). *Having, a Conflict of Interest; and*

"restrictive practice" means forming a cartel or arriving at any understanding or arrangement among Bidders with the objective of restricting or manipulating a full and fair competition in the Bidding Process."

A reading of Clause 4 of the RFP, Fraud and Corrupt Practises, clearly highlights the powers of the Respondent when dealing with bidders who may be in default. A perusal of the Clause clearly shows that a party in default of the said clause will be liable for debarment for a period of 3 years. This Court is of the opinion that the contention of the Petitioner, that the Show Cause Notice that was supplied did not categorically list out the penal action that the Respondent was going to take, renders the Show Cause Notice illegal as a result of being contrary to the law laid down in Gorkha Security Services v. Government (NCT of Delhi) and Ors., (2014) 9 SCC 105 and UMC Technologies (supra), does not hold much weight as the Show Cause Notice dated 22/03/223 clearly states reference to a breach under Clause 2.2.1 RFP and subsequent penal action to be taken under Clause 4 of the RFP clearly stating a debarment of 3 years. It is also pertinent to mention, in UMC Technologies (supra) it has been postulated that if it can be clearly inferred that if the intention to take such action, of debarment, by the issuer of the notice against the noticee is clear then the action for



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debarment cannot be set aside for want of notice.

29. The scope of interference of this Court in administrative decisions has been laid down in a catena of judgments. In Uflex Ltd. v. State of T.N., (2022) 1 SCC 165, the Apex Court has observed as under:-

*“2. The judicial review of such contractual matters has its own limitations. It is in this context of judicial review of administrative actions that this Court has opined that it is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. **The purpose is to check whether the choice of decision is made lawfully and not to check whether the choice of decision is sound. In evaluating tenders and awarding contracts, the parties are to be governed by principles of commercial prudence. To that extent, principles of equity and natural justice have to stay at a distance.** [Jagdish Mandal v. State of Orissa, (2007) 14 SCC 517].”*
(emphasis supplied)

30. The Apex Court in Michigan Rubber (India) Ltd. v. State of Karnataka, (2012) 8 SCC 216, after relying on various judgments has observed as under:-

“23. From the above decisions, the following principles emerge:

(a) The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. These actions are amenable to the judicial review only to the extent that the State must act validly for a discernible reason and not whimsically for any ulterior purpose. If the State acts within the bounds of reasonableness, it would be legitimate to take into consideration the national



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priorities;

(b) Fixation of a value of the tender is entirely within the purview of the executive and the courts hardly have any role to play in this process except for striking down such action of the executive as is proved to be arbitrary or unreasonable. If the Government acts in conformity with certain healthy standards and norms such as awarding of contracts by inviting tenders, in those circumstances, the interference by courts is very limited;

(c) In the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities unless the action of the tendering authority is found to be malicious and a misuse of its statutory powers, interference by courts is not warranted;

(d) Certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work; and

(e) If the State or its instrumentalities act reasonably, fairly and in public interest in awarding contract, here again, interference by court is very restrictive since no person can claim a fundamental right to carry on business with the Government.”

31. It is well settled that the scope of interference by the High Court under Article 226 of the Constitution is extremely narrow. The duty of this Court is not to substitute its view for another but rather to peruse the



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decision making process as neutral and not mala fide or arbitrary. Simply put this Court must consider whether the decision made is lawful and not whether the decision is sound and the Court should only interfere when the decision made is perverse, irrational or arbitrary.

32. The admitted facts, that the three companies in question, i.e. M/s Redbird Aviation, M/s Airclub Aviation, and M/s Aircab Aviation have the same official address, email address, and have also had their last AGM on the same day plants a seed of suspicion as to the relation between the three entities which is made worse only seeing their directors and shareholding patterns. The Share holding pattern of all the three companies reads as under:

Shareholding Pattern for the Companies in questions:

1) Aircab Aviation Pvt Ltd

- | | |
|--------------------------------------|---------------------|
| <i>a. Mr. Akshay Kumar, Promotor</i> | <i>: 99% Shares</i> |
| <i>b. Ms. Kajal Kumari, Director</i> | <i>: 1% Shares</i> |

2) Redbird Aviation Pvt Ltd

- | | |
|--------------------------------------|------------------------|
| <i>a. Aircab Aviation Pvt Ltd</i> | <i>: 97.34% Shares</i> |
| <i>b. Akshay Kumar, Director</i> | <i>: 2.24% Shares</i> |
| <i>c. Ms. Kajal Kumari, Director</i> | <i>: 0.42% Shares</i> |

3) Airclub Aviation Pvt Ltd

- | | |
|--|---------------------|
| <i>a. Ms. Abhilash Singh, Director</i> | <i>: 99% Shares</i> |
| <i>b. Mr. Robin Singh, Director</i> | <i>: 1% Shares</i> |

Robin Singh is the brother-in-law of Akshay Kumar as Akshay Kumar has married Kajal Kumari who is the sister of Robin Singh.

33. The data on the website of the Ministry of Corporate Affairs (MCA) also clearly establishes a direct conflict of interest between the three entities



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by having direct ownership interest. The Show Cause Notice that has been issued conforms with the norms and principles laid down by the Apex Court. The process of debarment itself has followed due course. Hence, In the facts of the present case the Court does not deem it expedient to interfere under Article 226 of the Constitution.

34. Accordingly, the Writ Petitions are dismissed. Pending applications, if any, also stand dismissed.

SUBRAMONIUM PRASAD, J

AUGUST 06, 2024

S. Zakir/vsk