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

Date of Decision: 14th August, 2024

+ **W.P.(C) 6986/2024**

TRANSYS CONSULTING PVT LTD

.....Petitioner

Through: Mr. Sandeep Sethi, Senior Advocate
with Ms. Ritwika Nanda and Ms.
Shruti Gupta, Advocates.

versus

NATIONAL HIGHWAY AUTHORITY OF INDIARespondent

Through: Mr. Santosh Kumar, Standing
Counsel with Mr. Adithya Ramani,
Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

JUDGMENT

SANJEEV NARULA, J. (Oral):

1. This petition, filed under Article 226 of the Constitution of India, 1950, seeks judicial review of the Respondent's decision dated 10th April 2024,¹ which debars and blacklists the Petitioner from future engagements with the Respondent for a period of two years, in addition to imposing a financial penalty of INR 3.06 lakhs. The Petitioner contends that this punitive action not only severely hampers their professional activities but also lacks sufficient justification, thus, raising serious concerns about its legality under the principles of administrative fairness and due process.

¹ "the impugned decision"/ "the impugned letter"



2. Brief facts leading to the filing of the present petition is as follows:

2.1. The Petitioner, a consulting engineering firm, was awarded a Letter of Award² on 05th April, 2017 to provide consultancy services for the preparation of Detailed Project Reports.³ This engagement was part of an initiative to enhance freight movement efficiency in India, specifically under the Bharatmala Pariyojna—focusing on Economic Corridors, Feeder Routes, and Coastal Roads (Lot-3/Chhattisgarh/Package-1).⁴ The LOA was followed by execution of a Contract Agreement/ Consultancy Agreement dated 24th April, 2017, for preparation of DPRs for the Project comprising six stretches. In accordance with the Consultancy Agreement, the Petitioner provided its services and submitted DPRs for seven project stretches to the Respondent. The present petition concerns the Project Stretch of Bilaspur to Urga Section of NH-130A from Chainage 0+000 to 70+200 under Bharatmala Pariyojna (Raipur Dhanbad Economic Corridor) in the State of Chattisgarh.⁵

2.2. On 12th July, 2023, a show cause notice was served to the Petitioner alleging contractual defaults. The Petitioner was called upon to provide an explanation as to why a penalty of INR 80,19,201/- and debarment of five years should not be imposed for the alleged failures. The Petitioner submitted their response to the said notice on 24th July, 2023, addressing and refuting all allegations listed in the notice.

2.3. On 07th May, 2024, the Respondent issued the impugned letter to the Petitioner thereby, *inter alia*, debarring/ blacklisting the Petitioner for a

² “LOA”

³ “DPRs”

⁴ “the Project”

⁵ “the Project Stretch”



period of two years from future works of Respondent and imposed a penalty of INR 3.06 lakhs.

3. In the above background, Mr. Sandeep Sethi, Senior Counsel for Petitioner, strongly urges the following:

3.1. The impugned communication is bereft of any reasoning and has not considered Petitioner's reply dated 24th July, 2023 to the show cause notice. Thus, the impugned communication violates the principles of natural justice as it fails to provide the Petitioner with a fair and effective opportunity to be heard.

3.2. The decision to impose penalties should have been made by the committee that initially reviewed the Petitioner's response to the show cause notice. Instead, the impugned letter was issued by the Competent Authority under the National Highways Act, 1956,⁶ who did not participate in the deliberations regarding the Petitioner's reply or in the decision-making process concerning the penalty and debarment. This disconnection between the reviewing body and the decision-making authority further undermines the legitimacy of the punitive measures imposed on the Petitioner.

3.3. The impugned letter conspicuously omits any reference to Clause 7.3.1(ii) of the Consultancy Agreement, which specifies the conditions under which penalties for inaccuracies in survey, investigation, or design work may be imposed. The failure to cite this critical clause in the context of alleged violations suggests that the impugned decision of blacklisting is arbitrary and lacks a sound legal basis. The severe sanction of blacklisting effectively jeopardizes the Petitioner's ability to continue its business

⁶ "the NH Act"



operations.

3.4. The Petitioner has duly carried out their contractual obligations. The notifications for land acquisition under Sections 3A and 3D of the NH Act were carried out in a phased manner in consultation with the Respondent. Additionally, the penalty for non-identification of an IOCL pipeline, which formed part of the allegations leading to the penalties, does not fall within the scope of Clause 7.3.1(ii) of the Consultancy Agreement, which demonstrates the arbitrariness in the impugned decision.

4. *Per contra*, counsel for Respondent put forth the following submissions:

4.1. The Petitioner exhibited negligence in executing its contractual duties, particularly in conducting a thorough land acquisition survey. The Petitioner's failure to identify all necessary parcels of land for acquisition in the initial stages necessitated multiple notifications under Sections 3A and 3D of the NH Act, which could have been avoided with a comprehensive initial survey. Furthermore, Clause 4.11.2.2(2) of the General Conditions of Contract explicitly mandates the Petitioner to survey sub-surface utilities, including a compulsory review of Gazette Notifications for existing pipelines such as the IOCL pipeline. The Petitioner's failure in this regard not only led to unforeseen project costs but also significantly delayed project timelines, thereby justifying the penalties imposed.

4.2. In response to these lapses, a show cause notice was issued to the Petitioner, providing them with an opportunity to address the allegations. The decision outlined in the impugned communication was made after careful consideration of the Petitioner's response to the show cause notice. The Respondent has adhered to the principles of natural justice by giving the



Petitioner a fair chance to explain their position.

4.3. The impugned communication from the Competent Authority under the NH Act is sufficiently reasoned given the context and the nature of the administrative process involved. It details the deficiencies found in the DPRs submitted by the Petitioner. Respondent authority in question are not judicial bodies and, therefore, not bound to provide the level of detailed reasoning expected of a Court. Their approach is consistent with administrative practices and the operational requirements of the NH Act, as the impugned order clearly provides a legal and rational basis for the actions taken against the Petitioner.

ANALYSIS AND FINDINGS

5. The Court has considered the detailed submissions advanced. The Respondent through the impugned communication asserts that the Petitioner has delivered inadequate services in preparing the DPRs for the Project Stretch, in accordance with the Consultancy Agreement. The said communication reads to the following effect:

“NOTICE OF DEBARMENT AND PENALTY

NHAI/CG/11012/Bsp-Urga/E-210967/2

Date: 10.04.2024

The Authorized Representative

Transys Consulting Pvt. Ltd.

12th Floor,

JMD Regent Square, M.G. Road,

Gurgaon-122002, Haryana

Sub: *Consultancy services for Four laning of Bilaspur to Urga section of NH-130A from design Chainage 0+00 to 70 + 20 under Bharatmala Pariyojna (Raipur-Dhanbad Economic Corridor) in the State of Chhattisgarh under Hybrid Mode. (“Project”): Imposition of ‘Debarment’ and ‘Levy of penalty’ -reg.*



- Ref: i. Consultancy Agreement dated 24.04.2017
ii. Authority's Letter no.NHAI/CG/Bilaspur-Urga/E-210967/181 dated 12.07.2023
iii. Consultant's Letter No.Transys/01/406/CG/NHAI/2023-24/062 dated 24.07.2023

Dear Sir,

This is with reference to the Consultancy Agreement signed between the National Highways Authority of India ("NHAI" or "Authority") and Transys Consulting Pvt. Ltd. in association with Accrete Consulting Engineer (P) Ltd. for the DPR services for the subject project on 24.04.2017 ("Consultancy Agreement"). This Contract clearly indicates M/s Transys Consultancy Pvt. Ltd. as the lead firm responsible for the performance of the Contract.

*2. It is submitted that while preparing the DPR for the subject Project, Transys Consulting Pvt. Ltd. (**hereinafter referred to as the "DPR Consultant"**) has been negligent towards its duties and responsibilities, which are contained under the Scope of works/Terms of Reference of the Consultancy Agreement.*

*2.1 It is very clear that preparation of 3A and 3D notification under the NH Act, 1956 is the sole responsibility of the DPR Consultant as per the Terms of Reference of the Consultancy Agreement. However, based on 3D notification and subsequent 3G award declared/ finalized by CALA, a large number of plots (more than 13% of the project length within 60m RoW) besides the additional land requirement for toll plaza, rest area and intersections etc. have been found missing from the submission of DPR. Thus, due to this negligence of the DPR Consultant in the LA process, about 46 Ha. of additional land are now being necessitated for fresh 3A and 3D notification, which clearly evinces default on the DPR Consultant's part under **Clause 3.1 of the ToR of the Consultancy Agreement**. The reply in this respect was examined and not found justified because committed responsibility in the Agreement is to extract the data from the Revenue Department.*

2.2 The DPR Consultant also failed to identify the underground IOCL Pipelines in the Project stretch. It was reported by the concessionaire on 06.08.2022 that during construction, as at Ch. 65+530 an underground pipeline crossing the proposed alignment, including an extended RoW (nearly 150m at the proposed Rest Area location), has been found. Hence, this lapse by the DPR Consultant has led to an additional financial burden on NHAI for encasing/protection structure as well as impeding the Project progress at this location. Thus, it is established that the DPR Consultant



*have not conducted GPR Survey and has defaulted **under Clause 4.11.2.2 of the ToR of the Consultancy Agreement.***

3. *In this regard, the Authority has issued a Show Cause Notice to the Consultant vide its letter dated 12.07.2023 (cited under ref. ii above) seeking explanation from it. The Consultant made its representation to the Show Cause Notice vide its letter dated 24.07.2023 (cited under ref. iii above). The Authority has reviewed the said representation from the Consultant and has found the above- mentioned lapses as unsatisfactory, evasive and devoid of any merit.*

4. *In view of the aforesaid, it is clearly established that the Consultant has defaulted in fulfilling its obligations (as mentioned above) in terms Clause 3.1.1. (Standard of Performance), Clause 7.1.1 of the General Conditions of Contract ("GC") of the Consultancy Agreement read with Clauses 3.1, 3.6 (Scope of Services), Clause 4.1 (xviii), Clause 4.2 (Primary Tasks), Clause 4.11.2.2 (Topographic Surveys) and Clause 10.10 (Draft 3D publication report), of the ToR of the Consultancy Agreement. Accordingly, the Competent Authority of NHAI hereby declares Transys Consulting Pvt. Ltd. as non-performer and debars them under Clause 7.4.2 of the GC of the Consultancy Agreement read with NHAI circulars no. 186/2015 dated 27.11.2015 and no. 97/12 dated 17.04.2012 from participation in the bids for future works of NHAI for a period of 2 (two) years from the date of this Notice. In the meantime, of debarred period, Consultant is hereby directed to complete its all pending assignment with desired correction with respect to Estimate. schedules, Alignment, accurate Land Acquisition details with detailed underground survey report. Further, in terms of Clause 7.3.1(ii) of the GC of the Consultancy Agreement a financial penalty of 1% of IC cost (Rs. 3.06 Lakh) is to be paid by the Consultant within 15 days from the issuance of this letter, in case of non-deposition, the deposition will be adjusted in the future payments.*

5. *The instant Notice is being issued without prejudice to Authority's right to claim damages and/or to realize any dues, losses and damages and/or to exercise any other right or remedy on account of Consultant's failure to comply with its obligations under the Consultancy Agreement, which may be available now or in future under the Consultancy Agreement or under the applicable laws or otherwise, as the case may be.*



This Notice is issued with the approval of the Competent Authority of NHAI.

Yours Sincerely

*Sd/-
(Kamal Kant Mishra)
General Manager-Tech.
(Chhattisgarh Div)
NHAI HQ- New Delhi”*

6. In response, the Petitioner furnished a detailed reply to the allegations raised in the show cause notice whereby they stated that the alleged deficiencies regarding non-identification of the land for the Project Stretch and the underground IOCL pipelines in the Project do not fall under any of the conditions specified in Clause 7.3.1(ii) of the Consultancy Agreement. Their response to this effect is as follows:

“Letter No. Transys/01/406/CG/NHAI/2023-24/062 Date: 24.07.2023

*To,
The General Manager (Technical)-CG
NHAI HQ New Delhi
G-5 & 6 Sector – 10, Dwarka
New Delhi – 110075
Ph. 01125074100/ 25074200*

Subject: *“Construction of Four Lane Bilaspur – Urga section of NH-130A from design Ch. 0+000 to Ch. 70+200, (from NH-49 near Dheka village to Bhaisma village) under Bharatmala Pariyojna (Lot-3/Chhattisgarh/Package-1, Raipur – Dhanbad economic corridor) in the State of Chhattisgarh on HAM Mode’ – **Reg Show Cause Notice***

Reference: *1) NHAI HQ Letter no. NHAI/CG/Bilaspur-Urga/E-210967/181 dated 12.07.2023*

Dear Sir,



Land plan has been prepared by consultants vide letter no. 259 dated 29.01.2019. and the same has been checked and verified jointly with revenue officials as per the ROW fixed on the project road.

After verification of land plan it was approved by the revenue official and accordingly schedules 3A, 3D was verified and signed by the revenue officer.

➤ *Regarding requirement of supplementary schedules publication for additional land acquisition*

Since the revenue map is not in uniform scale throughout the map, there is a chance of escaping some khasra number out of the proceed right of corridor and at same time there is chance of addition of new khasra number at time of joint verification at site with Patwari and Revenue Inspector. Here are some examples presented below:

- We have been provided Revenue map from Revenue Department for publication of 3A is not much updated as per ground. For example, in revenue map of village Dheka in Bilaspur, there are part survey number 214/2 and 214/3, The same was published in 3A while at the joint measurement survey at ground along with Patwari, it was found that the piece of land with khasra number 214 in Dheka village in Bilaspur has been further subdivided in to many subparts like 214/1, 214/2, 214/3, 214/9 upto 214/21. For such additional such sub parts which fall within the proposed ROW corridor need to be published under supplementary 3A.*
- There is a piece of lane with part survey number 210 of village Dheka in Bilaspur in revenue map. Consultant measured the boundary of the piece of land and found 0.2711 ha and published in 3A. Later during the joint measurement survey along with patwari at site, It was found that the piece of land with part survey number 210 has 0.38 ha as per patwari record. In this case also balance area of 0.1089 ha of part survey number 210 of Dheka in Bilaspur needs to be published on Supplementary 3A. Likewise the same has been applicable to other part survey number also.*

Since Land acquisition is a rigorous process and is not under direct control of the DPR consultant but there is statutory process from State Government via CALA. Moreover, as a DPR consultant we constantly followed up with the concerned CALA for the publication of gazette notifications.



➤ **Regarding land acquisition for Project facilities**

Initially location of project facilities like toll plaza has not been finalised as intimated vide our letter no. 90 dated 23.07.2018 and letter no. 99 dated 01.10.2019 and the project was to bid, RO Raipur instructed to acquire land along the project alignment excluding the project facilities and hence accordingly 3D has been notified. Later after finalising the location of toll plaza, rest area and truck laybys, Consultant had submitted supplementary 3A of 51.8285 Ha of land given below vide letter no. 42 dated 28.06.2021. On the basis of the submission of draft 3A, 3D has been notified as below:

S. no.	CALA	Submitted by consultant Supplementary 3A	3D Gazette notifications	Notified Area of Land
1	Bilaspur	15.0804 ha	S.O. 21(e) dated 07/21/2021 S.O. 2382 (e) dated 01/06/2023	10.327 ha 6.463 Ha
2	Janjgir Champa	21.3742 ha	S.O. 5132(e) dated 04/11/2022 S.O. 1080(e) dated 07/03/2023	23.314 Ha 1.875 Ha
3	Korba	15.3739 ha	S.O. 1282(e) dated 20/03/2023	16.387 ha
	Total	51.8285 ha		58.366 Ha

Approval from CALA is time taking process for the publication in gazette notification. Time gap from consultant submission upto Gazette notification due to finalisation and verification of schedules from NHAI and CALA is high. As per contract clause 4.13.2 of TOR" The consultant shall prepare Land Acquisition Plan and assist NHAI in acquisition of land under various act", Consultant consistently assisting NHAI for land acquisition process and the final status of land acquisition is as given below:



State of Work : Bidding - URGENT section of NH-150A (between 0+300 to km. 70+000)

Status of Land Acquisition till date

Sl. No.	CMA	Change		Total Land to be acquired (Ha) as per State PWDOT	Existing ROW	Additional Land to be acquired (Ha)	Notification (N/A 33%)				Notification (N/A 33%)			
		From	To				Published				Published			
							No. Date	Area (Ha)	Part	Status	No. Date	Area (Ha)	Part	Status
1	Bilaspur	0+000	06+000	110.960	0.000	04.960	S.O. 1046(2) dt. 05.03.2018	094.715	I	Notified	S.O. 4320(2) dt. 26.09.2019	64.202	I	Notified
							S.O. 4357(2) dt. 05.03.2018	27.263	II	Notified	S.O. 1230(2) dt. 27.04.2020	30.479	II	Notified
							S.O. 5123(2) dt. 08.10.2021	20.269	III	Notified	S.O. 2134(2) dt. 07.01.2019	28.282	III	Notified
							S.O. 4317(2) dt. 18.10.2021	10.307	IV	Notified	S.O. 5043(2) dt. 03.02.2021	40.727	IV	Notified
											S.O. 3593(2) dt. 01.04.2021	0.400	V	Notified
Sub total for Bilaspur District											144.888			
2	Jirga - Champa	0+000	02+000	215.180		015.180	S.O. 1080(2) dt. 09.03.2018	472.725	I	Notified	S.O. 4360(2) dt. 06.04.2019	165.268	I	Notified
							S.O. 5122(2) dt. 09.09.2018	38.249	II	Notified	S.O. 22(2) dt. 09.07.2019	22.243	II	Notified
							submitted by consultant letter no. 47 dated	21.374	IV		S.O. 3132(2) dt. 26.09.2019	23.374	III	Notified
											S.O. 1700(2) dt. 27.04.2021	1.272	IV	Notified
							Sub total for Jirga (Champa District)							
3	Korba	00+000	70+000	136.720	4.000	132.720	S.O. 1001(2) dt. 08.09.2018	244.767	I	Notified	S.O. 4388(2) dt. 12.09.2018	108.969	I	Notified
							S.O. 4340(2) dt. 08.09.2018	1.125	II	Notified				
							S.O. 5122(2) dt. 08.09.2018	41.870	III	Notified	S.O. 25(2) dt. 01.01.2019	40.238	II	Notified
							submitted by consultant letter no. 47 dated	15.374	IV		S.O. 1282(2) dt. 03.02.2021	18.287	III	Notified
							Sub total for Korba District							
Total				458.900	10.000	448.900		1075.775				469.126		

➤ **Regarding matter with infringing railway alignment with project road alignment**

Consultant in the very beginning informed NHAI that there is railway line proposed which is infringing with project road alignment from km 60+000 to km. 65+000 vide letter no. 07 dated 05.04.2018. Vide this letter consultant suggested to make 0+000 to 60+000 as single package and balance length of road would be dealt at later stage once the alignment finalized with IRCON.

With reference to consultant letter 12 dated 19.04.2018, a meeting was called on 12.04.2018 with IRCON where in consultant explained the project highway alignment, land acquisition status and also informed that the project was in bidding stage. It has been concluded to explore modifications of either railway alignment or modification in highway alignment.

With reference to letter no. 74 dated 02.07.2018, a meeting was called on 14.05.2018 with IRCON. At the meeting consultant explored railway alignment options at urga and a comparative statement of the alignment options also explained in the meeting.

Afterwards no instruction came from PIU and projects went on advance



stages of bidding. Consultant brought the case in timely manner to the knowledge of PIU and had put sincere effort to resolve the issues. So from the above, it doesn't seem consultant is non serious towards duties and responsibilities as per provisions under ToR of Consultancy Agreement.

➤ ***Regarding underground IOCL Pipe line crossing***

Field investigation were carried out and ROW pillar was fixed along the project alignment and there were no ROW pillar of IOCL across project alignment upto 100m either sides. Also We conducted public hearing, social survey and joint site measurement for the 3D publication along project road alignment with patwari and revenue land officer. Nobody has given any Information about possibility of underground IOCL pipe line. Since project road in green field and consultant has no clues regarding underground utilities. So it not worthwhile to mention that the consultant is irresponsible towards project work.

With constant effort of consultant, the project has been bid in time and in assured you also to cooperate in future for the project work. Consultant is trying to level best to resolve the issues and follow the instructions without delay. You may kindly note all sincere efforts are being made to accomplish the activities, at the same time we would like to extend our sincere thanks for the co-operation extended by PIU Bilaspur in achieving the very tight schedules and the time frames.

We therefore humbly request you not to initiate either financial penalty or debarment against the consultant. We ensure to keep our constant effort for the completion of the project at the earliest

Thanking you and assuring you of our best services at all times.

Yours faithfully

Sd/-

For Transys Consulting Pvt. Ltd
Bhupendra Man Shrestha
(Team Leader cum Senior Highway Engineer)''

7. In the opinion of the Court, the Petitioner's detailed contentions



addressing the allegations raised in the show cause notice have not been adequately deliberated by the Respondent. The impugned communication reiterates the initial allegations (paragraphs 2.1. and 2.2. of the show cause notice) and concludes that Petitioner's response is "*unsatisfactory, evasive and devoid of merit*", without any analysis. This lack of cogent reasoning can easily be noticed from the following paragraph of the impugned letter:

"3. In this regard, the Authority has issued a Show Cause Notice to the Consultation vide its letter dated 12.07.2023 (cited under ref. ii above) seeking explanation from it. The Consultant made its representation to the Show Cause Notice vide its letter dated 24.07.2023 (cited under ref. iii above). The Authority has reviewed the said representation from the Consultant and has found the above-mentioned lapses as *unsatisfactory, evasive and devoid of merit*."

8. The conclusion that Petitioner's response was "*unsatisfactory, evasive and devoid of merit*" is, thus, not supported by any reasons. The Court acknowledges that while the Respondent is not required to produce a judicial order-like reasoning, yet the principles of administrative fairness and natural justice mandate that any decision affecting the rights of a party, especially one involving punitive measures such as blacklisting or debarring, must be predicated on a clear and reasoned consideration of the concerned party's responses. Merely labelling the Petitioner's responses as "*unsatisfactory, evasive, and devoid of merit*" without substantive reasoning and failure to engage with the specific points raised by the Petitioner amounts to violation of principles of natural justice. Therefore, the Court is not persuaded by the Respondent's argument that the Petitioner's reply itself constitutes an acknowledgment of their default or that the brief reasoning provided by them in the impugned communication is sufficient to sustain the action. While indeed reasoning can be concise, but there must still be some



deliberation clearly addressing the submissions made by the affected party before taking a decision to blacklist or debar an entity. Hence, the arguments raised by the Petitioner in their reply warrant proper consideration, and the failure to do so violates the principles of natural justice.

9. Notably, debarment is a tool used to discipline suppliers or contractors who have engaged in fraud, misrepresentation, or breaches of regulations or contract terms. However, such irregularities must justify the decision, as blacklisting or debarment carries severe consequences for any entity. Thus, any explanation provided by the concerned entity that raises a legitimate dispute must be thoroughly addressed before taking such a punitive action. In such circumstances, the Respondent must give due deliberation to the Petitioner's arguments, and the decision must be supported by sound reasoning.

10. In the counter affidavit and the rejoinder, the parties have extensively engaged in presenting allegations and counter-allegations concerning the merits of the impugned action. However, in the Court's assessment, these arguments are peripheral to the central issue—whether the impugned order itself stands on cogent grounds, independent of justifications postulated outside of its four corners. The Court holds that the reasons for the Respondent's decision must be clearly articulated within the impugned order itself; they cannot be retroactively supplemented by contentions presented in the counter affidavit. The impugned order must encapsulate and address the merits of the case as presented in the initial proceedings, particularly when it relates to punitive measures like blacklisting or debarment. It is imperative that the Competent Authority engages directly and explicitly with the explanations offered in response to the show cause notice.



11. In light of the above analysis, the Court holds that the process leading to the impugned decision being procedurally deficient, warrants a reconsideration of Petitioner's response conforming to the principles of natural justice and fair play as outlined. The present petition is allowed and the impugned order is set aside. Respondent is permitted to issue a fresh order, after due consideration of the Petitioner's response dated 24th July, 2023, and after affording an opportunity them a personal hearing. It is clarified that the decision of imposition of a penalty of INR 3.06 lakhs is not being disturbed.

12. The Court has not reflected any opinion on the merits of the contraventions alleged against the Petitioner. All rights and contentions of the parties are left open.

13. With the above directions, the present petition is disposed of.

SANJEEV NARULA, J

AUGUST 14, 2024

as