

19.03.2025
Item Nos.3-4
gd/ssd

FMA/220/2025
MS M & S CO AND ANR.
VS
INDIAN INSTITUTE OF TECHNOLOGY
KHARAGPUR THROUGH THE CHIEF ENGINEER
IA NO: CAN/1/2025
with
MAT/355/2025
INDIAN INSTITUTE OF TECHNOLOGY
KHARAGPUR THROUGH THE CHIEF ENGINEER
VS
M/S M & S CO AND ANR.
IA NO: CAN/1/2025, CAN/2/2025

Mr. Pankaj Mehta,
Mr. Aditya Mondal,
Ms. S. Soni,
Mr. Debdut Banerjee
..for the Appellants in FMA 220 of
2025 and for the Respondents in
MAT 355 of 2025.

Mr. Suddhasattva Banerjee,
Ms. Akanksha Mukherjee,
Mr. Aritro Ray
..for the Appellant in MAT 355 of
2025 and for the Respondent in
FMA 220 of 2025.

Re: CAN 1 of 2025 in MAT 355 of 2025

1. The appeal filed by the respondent in the writ petition, namely, IIT is time barred and there is a delay of 59 days in filing this appeal.

2. The learned advocate appearing for the respondents in the said appeal would vehemently oppose the prayer for condonation of delay contending that the IIT, being a Government of India Organisation,

they should have been vigilant in preferring the appeal within the period of limitation.

3. With regard to this submission we need to note that the appellant/IIT is not a business entity or a manufacturing unit but it is an educational institution.

4. Therefore, some play in the joins has to be granted in favour of IIT more particularly when the delay is neither inordinate nor unexplained and the delay is only 59 days and the explanation given by the appellant/IIT is found to be fully satisfactory.

5. Therefore, the delay in filing the appeal is condoned and the application being CAN 1 of 2025 is allowed.

Re: FMA 220 of 2025 and MAT 355 of 2025

6. These intra court appeals are directed against the order dated 10th December, 2024 in WPA 10361 of 2024.

7. In the said writ petition there were two writ petitioners, namely, M/s M & S Co., the first writ petitioner (hereinafter referred to as the “Partnership Firm”) and M & S Paving Pvt. Ltd., the second writ petitioner (hereinafter referred to as the “Company”). The sole respondent in the writ petition was the Indian Institute of Technology, Kharagpur.

8. The writ petitioners as well as the respondent are aggrieved by the impugned order and two appeals have been preferred against the impugned order.

9. We have elaborately heard the learned advocates for the parties and carefully perused the materials placed on record.

10. The order impugned in the writ petition was an order blacklisting the partnership firm by order dated 27.2.2024.

11. The reason for two appeals being filed both by the writ petitioners as well as IIT is on account of the finding rendered by the learned Single Bench by which the learned Single Bench held that the partnership firm could be blacklisted for the mistake committed by them as pointed out by IIT which is the tender inviting authority.

12. However, IIT/the tender inviting authority was not entitled to blacklist the company as there was no privity between the company and the IIT.

13. The learned advocate appearing for the appellant/company as well as the firm placed reliance on the decision of the Hon'ble Division Bench of the Gauhati High Court in *G.R. Engineering Works Ltd. v. Oil India Ltd. and Ors.* in (2009) 4 Gauhati Law Reports 865. On going through the facts of the said case, we find that in the said case the partnership firm stood dissolved by a deed of resolution which was dated 1st

April, 2005 and considering those facts and circumstances of the case the Hon'ble Court held that there was no impediment in law in taking into account the experience and financial capability of the firm which was taken over by the company and more particularly the partners of the firm became not only the shareholders but the directors of the company.

14. The facts of the case is entirely different and we are of the view that the said decision cannot be of any assistance to the case of the appellant/firm and company.

15. The next decision relied on by the learned advocate appearing for the firm and company is that of the Hon'ble Supreme Court in *Techno Prints v. Chhattisgarh Textbook Corporation & Anr.* in 2025 INSC 236. The learned counsel has invited our attention to various paragraphs of the said judgment more particularly paragraphs 25, 29 and 32. This judgment has been placed into service to support the submission that blacklisting a contractor is a very drastic step and such step should not be resorted to by the tender inviting authority. The Hon'ble Supreme Court has pointed out the various decisions rendered on the said issue and in paragraph 29 has come to the conclusion that the blacklisting of the contractor in the said case was not tenable on the ground that the facts of the case on the face of it could be said to be that there was no

good reason for the authority to issue a show cause notice calling upon the contractor why he should not be blacklisted.

16. While we respectfully take note of the observations made by the Hon'ble Supreme Court in the said judgment as regards the effect of blacklisting we need to apply the said decision considering the facts and circumstances of the case which we shall do so in the succeeding paragraphs.

17. The third decision relied on by the learned advocate appearing for the appellant/company and firm is that of the Hon'ble Supreme Court in the case of *Gorkha Security Services v. Government (NCT of Delhi) and Others* in (2014) 9 SCC 105. This judgment is to support the argument that action of blacklisting is termed as civil death and, therefore, blacklisting of the contractor should not be resorted to.

18. To examine the applicability of the decisions of the Hon'ble Supreme Court and consider as to whether the IIT was justified in cancelling the letter of acceptance issued to the firm and debarring the firm and company vide a communication dated 27.2.2024 was justified and whether the learned Single Bench was right in partially accepting the case of the appellant/firm and company and partially rejecting the case of the respondent/IIT. The facts are not in dispute. The firm submitted a bid in response to a

notice inviting tender dated 4.7.2023 for repairing and resurfacing of bituminous road and revamping of campus storm water drainage (Phase-II) at IIT, Kharagpur.

19. Upon evaluation of the documents a communication was sent to the company dated 2.1.2024 informing the company that the firm had participated in the tendering process and submitted the bid in July, 2023; however, resolution for change in Constitution of the firm has been passed in March/April, 2022 and the same has been filed with the Registrar of Companies in April, 2022. The company was directed to clarify as to how the firm has participated in the tender process in July, 2023 when the change in Constitution of the firm has been applied with the Registrar of Companies in April, 2022. The company was directed to elucidate why the bid of a firm whose Constitution has been changed in April, 2022 can be considered legally valid in July, 2023.

20. Further, the company was informed that during the tendering process, important/relevant information related to the technical qualification has been deliberately suppressed in order to gain unfair advantage with an attempt to mislead a Government Institution.

21. They were called upon to submit a reply latest by 13th January, 2023. Non-submission of satisfactory

reason would lead to debarment/blacklisting as per the conditions of the General Conditions of Contract/Government guidelines or under law. A reply was given by the company on 12.1.2024.

22. We have perused the reply which appears to be a very elaborate reply and in no uncertain terms the company has admitted about the formation of the company in August, 2020, the Board Resolution which was passed on 28th March, 2022 by the company to take over the assets, liabilities etc. of the firm and that the requisite forms have been filed before the Registrar of Companies on 23rd April, 2022.

23. Apart from that, in the reply it has been pointed out that the takeover of the firm by the company is duly communicated to and sanctioned by the bank account operators of the firm and the bank account operators have issued No Objection Statement affirming their approval for the transfer of the firm's business to the company and they have explicitly confirm their willingness to facilitate the transfer of the bank accounts held in the name of the firm.

24. Further, the company reiterated their willingness which was communicated earlier vide e-mail dated 20.12.2023 their willingness to comply with the performance guarantee requirement and alleged that ignoring all the communication, show cause notice has been issued. Ultimately, the company requested

IIT to issue a corrigendum officially acknowledging the change the Constitution of the firm and authorized the company to provide the necessary performance guarantee without any penalty while granting the essential extension of time for its submission and not to take any unnecessary and unwarranted action against the company.

25. Thus, it could be seen from the reply to the show cause notice it has been not only admitted by the firm/company about the takeover by the company but all facts and attended circumstances thereto. This is precisely the reason by which the company requested a corrigendum to be issued. The question would be whether this is permissible. Admittedly, the bidder is bound by the integrity pack apart from the General Conditions of Contract and the Government guidelines which are made applicable from time to time to any Government Institution.

26. Therefore, the seriousness of the issue should be viewed from the angle of the tender inviting authority and the court should not sit in judgment over the decision of the tender inviting authority as to how the view such an issue.

27. The consistent submission of the learned advocate for the company/firm is that the firm continues to be in existence as on date.

28. Unfortunately, this fact is not within the knowledge of the tender inviting authority, namely, IIT, Kharagpur and it is wholly within the knowledge of the firm and the company which information has not been placed before the tender inviting authority.

29. Thus, in our view would be a clear violation of the terms and conditions of the contract as well as of the integrity pack. One more communication which is very vital which was taken note of the tender inviting authority is the letter written by the company to the Chief Engineer, Civil, Construction and Maintenance Section, IIT, Kharagpur dated 18.12.2023 wherein they have mentioned that the Constitution of the firm has been changed to Private Limited Company which is also one of the appellant herein and accordingly, all the takeover process related to all the payments and expenses, assets and liabilities, along with all business operation activities is being controlled by the company.

30. Further, the company refers to an earlier letter dated 13.12.2023 to issue corrigendum to appoint the company as a contractor for the work allotted to the firm.

31. Further, they informed that the Constitution of the firm stand changed to a Private Limited Company in the bank and accordingly, bank has activated all accounts and limits in the name of the company and

the bank is bound to issue Performance Guarantee in the name of the company instead of the firm.

32. Therefore, a request was made to amend the Constitution of the firm into the company in the records of IIT as well as extend the period of 15 days as per the letter of submission for submitting the Performance Guarantee without any penalty till the period of amendment made in the records.

33. This request was reiterated vide e-mail dated 20.12.2023. The letter sent by the company dated 18.12.2023 speaks for itself. The tender inviting authority was informed in no uncertain terms that the firm does not exist and it has been changed to a Private Limited Company.

34. Therefore, the tender inviting authority cannot be expected to make a robbing enquiry as to whether the firm still continues to be in existence of firm and the fact that the firm still continues to exist as submitted before us today was never brought to the notice to the tender inviting authorities rather it was in the affirmative that the company has taken over the assets, expenses, liabilities along with all business operational activity of the firm.

35. Therefore, the tender inviting authority cannot be asked to go behind the said communication and take a different decision in the matter.

36. Thus, considering all these situations, the tender inviting authority, namely, IIT, Kharagpur has issued the order of cancellation of letter of acceptance and debarment of not only the firm but the company as well.

37. The learned Single Bench has found fault with this decision contending that there was no privity between the tender inviting authority, namely, IIT, Kharagpur and the company.

38. However, on facts such conclusion cannot be arrived at more particularly in the light of the candid statement made by the company in their letter dated 18.12.2023.

39. Therefore, we are respectfully not in agreement with the view taken by the learned Single Bench. Having held so, we need to examine as to whether the effect of the debarment as mentioned about the facts and circumstances of the case have to be taken into consideration. When the firm had already been taken over by the company pursuant to a Board Resolution dated 28.3.2022, the very fact should have been brought to the notice of the tender inviting authority at some stage of the matter.

40. This came to light only after the letter of acceptance was issued in the name of the firm and it is thereafter the communication was sent by the company to the tender inviting authority on 18.12.2023 to issue

a corrigendum and amend the letter of approval permitting the company to carry out the work and also submit the Performance Guarantee.

41. Thus, this aspect has to be considered based on the assessment that would be made by the tender inviting authority.

42. Therefore, if on facts this court is convinced that there was good reason for the authority to issue show cause notice and take action, the case on hand cannot be treated to be one which is stated to be a drastic step taken without any foundational facts. In the preceding paragraphs we have set out the facts which are admitted the facts called out from the communication submitted by the tenderer to the tender inviting authority and not any external material which are based on decision.

43. Therefore, we are of the considered view that the order of cancellation of letter of acceptance and debarment both of the firm and the company was justified as on their own volition the company has stated their entity and the firm no longer exists.

44. Therefore, the conclusion of the learned Single Bench to that extent calls for interference as well as the conclusion of the learned Single Bench granting a partial relief to the firm also calls for interference.

45. Accordingly, the appeal filed by the firm and the company in FMA 220 of 2025 is dismissed and the

appeal filed by the tender inviting authority, namely, Indian Institute of Technology, Kharagpur in MAT 355 of 2025 is allowed.

46. The order of debarment does not specify the period. Any order of debarment cannot be eternal and should operate within a time frame.

47. Therefore, we are of the view that the debarment shall be for a period of one year with effect from 27.2.2024 after which no claim shall be attached either to the firm or to the company on the basis of the facts which laid to the debarment.

48. No cost.

(T. S. SIVAGNANAM)
CHIEF JUSTICE

(CHAITALI CHATTERJEE (DAS), J.)