

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Before:

The Hon'ble Justice Om Narayan Rai

WPA 10536 of 2025

M/s IDL Explosives Limited & Ors.

-vs.-

Coal India Limited & Anr.

For the Petitioner : Mr. S.N. Mookherji, Sr. Adv.
Mr. V. Gupta, Adv.
Mr. Neelesh Choudhury, Adv.
Mr. A. Poddar, Adv.
Mr. P. Barua, Adv.

For the Respondent : Mr. Jishnu Saha, Sr. Adv.
Mr. Ayan Poddar, Adv.
Mr. Soham Dutta, Adv.
Ms. Khusboo Ruia, Adv.

Hearing Concluded on : 08.08.2025

Judgment on : 13.08.2025

Om Narayan Rai, J.:-

- 1.** The petitioners, three in number, are aggrieved by the debarment of the petitioner no. 1 from contracting with Coal India Limited and its subsidiaries. The petitioners' request to the respondents to review the two years' ban imposed on the petitioner no. 1 has been spurned by an order dated May 02, 2025 passed by the Chairman, Coal India Limited and hence the writ petition.

FACTS:

2. Shorn of minute details, the salient facts of the case, as may be gathered from the pleadings of the parties (i.e. the writ petition filed by the petitioner and the affidavit-in-opposition filed on behalf of the respondent), are as follows:-

a) On July 23, 2021 a “*Notice Inviting Tender cum e-Reverse Auction Open Domestic Tender*” (hereafter “NIT”) was published by the respondent no. 1 for running contracts and empanelment as reserve running contract holders for a period of two years from the date of issuance of running contract for supply of bulk explosives to all the subsidiary companies of the respondent no. 1.

b) The NIT prescribed certain terms and conditions that were required to be fulfilled by bidders in order to be eligible for the contract. One of the primary conditions in the NIT was that preference would be given to eligible bidders as per the Procurement Public (Preference to Make in India), Order 2017 of the Government of India. In terms thereof “Local Suppliers” were to be preferred over Non-Local suppliers. There was a further sub-division of the category of Local Suppliers as well into Class-I and Class-II Local Suppliers.

c) The NIT defined “Class-I Local Supplier”, “Class-II Local Supplier”, “Non-Local Supplier” and “Local Content” in the following manner:-

“a. ‘Class-I Local Supplier’ means a supplier, whose goods and/or services offered for procurement, has local content equal to or more than 50%.

b. ‘Class-II Local Supplier’ means a supplier, whose goods and/or services, offered for procurement, has 20% or more local content but less than 50%.

c. ‘Non-Local Supplier’ means a supplier, whose goods and/or services, offered for procurement, has local content less than 20%.

d. ‘Local Content’ means the amount of value added in India which shall be the total value of the item procured (excluding net domestic indirect taxes) minus the value of imported content in the item (including all customs duties) as a proportion of the total value, in percent.”

d) The petitioner no. 1 participated in the tender process and ultimately, on October 08, 2021 the petitioner no. 1 and the respondent no. 1 entered into a running contract and a reserve running contract for supply of bulk explosives for a period of two years effective from October 10, 2021. Such contract was to remain valid till October 09, 2023.

e) While the petitioner no. 1 was executing the earlier contract, on March 04, 2023 the respondent no. 1 published another NIT for conclusion of running contracts and empanelment as reserve running contract holders for a period of two years for supply of cartridge explosives to all the subsidiaries companies of the respondent no. 1.

f) The petitioner no. 1 participated in the said tender process also and ultimately on May 31, 2023 the petitioner no. 1 and the respondent no. 1 entered into a running contract and reserve running contract for supply of cartridges explosive for a period of two years.

- g) On August 25, 2023, the respondent no. 1 wrote a letter to the petitioner no. 1 informing that a complaint had been received by the Hon'ble Minister for Coal, Mines and Parliamentary Affairs as regards the authenticity of "Local Content Certificates" submitted by the petitioner no. 1 and that upon receipt of such complaint the respondent no. 1 had engaged external auditor for verification of the Local Content Certificates submitted by the petitioner no. 1.
- h) Accordingly, the external auditor visited the office of the petitioner no. 1 and conducted inspection.
- i) On March 12, 2024, the respondent no. 1 issued a notice to the petitioner no. 1 asking the petitioner no. 1 to show-cause as to why the petitioner's business should not be banned for a period of two years in view of wilful suppression of facts, furnishing wrong information and submission of false declaration against tender no. 3 dated July 03, 2021. The said notice provided a window of 21 days for the petitioner no. 1 to answer the charge levelled against the petitioner no. 1.
- j) The petitioner no. 1 sought for extension of the time specified in the show-cause notice by 60 days to submit its response thereto but the respondent no. 1 granted an additional time of 30 days only to the petitioner no. 1. The petitioner no. 1, ultimately, responded to the said show-cause notice within the additional time of 30 days granted to it by the respondent no. 1.
- k) On July 02, 2024, the respondent no. 1 issued an order banning the petitioner no. 1 for a period of two years from July 02, 2024

against award of any contract by the respondent no. 1 or its subsidiaries.

- l) Upon receipt of the said order of debarment, the petitioners invoked clause 6.13.5.11 of the Purchase Manual, 2020 (which provided that the proscribed entity could make an appeal or representation seeking withdrawal or any modification of the order) and made a representation dated July 18, 2024 to the Chairman, Coal India Limited thereby requesting for immediate lifting of the ban imposed on it.
- m) The petitioner's aforesaid request remained unconsidered by the said Chairman for a substantially long time. The petitioner no. 1, therefore, approached this Court by filing a writ petition being WPA No. 1370 of 2025 assailing the said order of ban.
- n) The said writ petition being WPA No. 1370 of 2025 was disposed of by this Court by an order dated January 20, 2025 thereby directing the Chairman, Coal India Limited to take a decision on the request made by the petitioner no. 1 strictly in accordance with the prevailing guidelines upon giving the petitioner no. 1 an opportunity of hearing and to place documents in support of the case at the earliest and positively within a period of four weeks from the date of communication of the said order.
- o) In terms of the aforesaid direction passed by this Court on January 20, 2025, the petitioner no. 1 was called on for hearing on February 20, 2025. The petitioner no. 1 attended the hearing and submitted relevant documents in support of his case.

- p) Ultimately on February 27, 2025, the respondent no. 2 (i.e. the Chairman, Coal India Limited) passed an order thereby rejecting the petitioner no. 1's request for lifting of ban and confirming the order of debarment imposed on the petitioner no. 1.
- q) Laying challenge to the said order dated February 27, 2025, the petitioner no. 1 approached this Court for the second time by filing WPA 5558 of 2025. The said writ petition was disposed of by this Court by an order dated April 10, 2025 directing the Chairman, Coal India Limited to reconsider the prayer of the petitioner no. 1 afresh only on the point of the proportionality of the order of ban imposed.
- r) Upon the said order being passed, the Chairman, Coal India Limited took up the petitioner no. 1's case and passed another order dated May 02, 2025 thereby concluding that the decision to debar the petitioner no. 1 for a period of two years was *just, legal and proportionate*.
- s) Being aggrieved *inter alia* by the said order dated May 02, 2025, the petitioner has approached this Court again by filing the present writ petition.

ARGUMENTS ON BEHALF OF THE PETITIONERS:

3. Mr. Mookherji, learned Senior Advocate appearing for the petitioner took this Court through Section II of the NIT captioned "*Instruction To Bidders*" and placed Clause 36 thereof intituled "*Banning of Business*". He invited the attention of the Court to Clause 36(vi) which lists "*Wilful suppression of facts or furnishing of wrong information, false declaration*

or manipulated or forged documents by the firm or using any other illegal/unfair means” as one of the cases that could lead to banning of business dealings with the relevant entity. He then invited the attention of this Court to the provision pertaining to the period of banning, which forms the concluding part of Clause 36 itself and stressed on the requirement of consideration of the twin factors mentioned therein (i.e. gravity of the offence and quantum of loss suffered by the Coal India Limited or its subsidiaries before reaching a decision as regards the period of ban.

4. Mr. Mookherji submitted that the offence attributed to the petitioner, falls under Clause 36(vi) of the NIT and that for such an offence, the maximum period for which ban could be imposed was two years. It was submitted that the provision of banning only provided the ceiling limit and that the relevant authorities were obliged to decide the period upto which such ban would operate keeping in mind the ceiling limit prescribed for a particular offence. It was further submitted that for reaching a decision as regards the period of ban it was necessary for the concerned authority to consider both the gravity of the offence as well as the quantum of loss suffered by the Coal India Limited or its subsidiaries. It was then contended that prescription of a ceiling limit as regards the period of banning was strongly indicative of the aspect that a ban covering the maximum period should not be awarded in all cases.

5. Mr. Mookherji next asserted that the order dated April 10, 2025 passed by this Court while disposing of WPA No. 5558 of 2025 has

clearly specified the scope of decision by the respondent no. 1. Inviting attention of this Court to paragraphs 32 to 37 and 46 of the said order dated April 10, 2025, Mr. Mookherji submitted that it was incumbent on the Chairman, Coal India Limited to decide on the point of proportionality of the order of ban while disclosing the gravity of the offence and also as to whether any loss had been suffered by the Coal India Limited or any of its subsidiaries because of the Local Content Certificate submitted by the petitioner.

6. Mr. Mookherji further contended that the order dated May 02, 2025 impugned in the present writ petition has merely theoretically elaborated on the gravity of the offence but has not been able to spell out anything of substance on the point as to whether loss has been suffered by Coal India Limited or its subsidiaries at all.
7. It was further urged that in reality no offence had been committed by the petitioner inasmuch as a perusal of the period-wise comparative workings of the local content provided in the show-cause notice dated March 12, 2024 would indicate that the petitioner had missed the 50% mark only by whiskers. It was then argued that the small mismatch in the local content percentage has been blown out of proportion to drive guilt to the petitioner and impose the maximum penalty of banning for two years.
8. Mr. Mookherji invited the attention of this Court to Clause 6.13.5.6 of the Purchase Manual, 2020 of Coal India Limited to submit that if the gravity of the offence had really been of such a higher degree as to be visited with the maximum penalty (in terms of the period of ban) then

not only would the petitioner have been banned for a period of two years but the existing/on-going contracts would also have been terminated. He then invited the attention of this Court to the order of ban (at pages 463-464 of the writ petition) and demonstrated that in the instant case the banning order was specifically not made applicable to the on-going running contract no. 261 dated October 07, 2023 for supply of bulk explosives to ECL, CCL, MCL & NCL and running contract no. 245 dated May 31, 2023 for supply of cartridge explosives and accessories to all the subsidiary companies including NEC. It was asserted by Mr. Mookherji that such fact clearly indicated that the gravity of the offence allegedly committed by the petitioner no. 1 in any case was not such that the maximum penalty of ban for two years could be imposed on it.

9. Mr. Mookherji further submitted that the ban that had been imposed on the petitioner had been operating harshly on the petitioner and that the petitioner was being deprived of participating in other business opportunities due to it. It was submitted that while putting in its bid in response to tender process the petitioner was required to declare as to whether any ban had been imposed on the petitioner or not and upon such declaration being made in the affirmative, the petitioner was being disqualified. He invited the attention of this Court to a letter dated December 24, 2024 (at page 526 of the writ petition) and submitted that the petitioner was prevented from getting a business deal with Singareni Collieries Company Limited only because of the ban imposed by the Coal India Limited and that the petitioner had to close its operation at Ramagundam unit located at Telangana State and

retrench its employees thereby incurring loss of about Rs. 200 crore for a period of 2 years.

- 10.** Mr. Mookherji then took this Court through the petitioner no.1's representation dated July 18, 2024 carrying the request for lifting of the ban imposed on it and sought to demonstrate that the petitioner's failure to reach the 50% threshold of local content was the result of the prevalent market situation at the relevant point of time. He indicated that the said request for review had detailed several reasons leading to such shortage which *inter alia* included the after effect of Covid and the breaking of war between Russia and Ukraine in February 2022. He also indicated that such shortage of ammonium nitrate had been acknowledged by the Government as well which would stand established by the fact that a query as regards insufficient production of HDAN required for manufacturing of various kinds of explosives used for coal mining, non-coal mining and infrastructure had also been raised in the Lok Sabha in March 2022 and that the Ministry of Coal, Government of India had also convened a meeting in April, 2022 under the Chairmanship of Sri. V.K. Tiwari, Additional Secretary (Coal) to discuss about the mitigating measures in order to deal with the acute shortage of ammonium-nitrate. He sought to emphasize that the shortage fall in local content was actually not the petitioner's doing and that the same was driven by factors beyond the petitioner's control.
- 11.** Mr. Mookherji then submitted that the petitioner had been doing business with Coal India Limited for the last five decades and that imposition of ban for a period of two years was wholly uncalled for.

12. Mr. Mookherji then invited the attention of this Court to Rule 151(iii) of the General Financial Rules, 2017 which had been referred to in the order dated May 02, 2025 impugned in the present writ petition and submitted that the language of the provision for debarment mentioned in the said Rule which provided for the maximum debarment for a period of two years in case it was found that the bidder had breached the Code of integrity was not really different from that of Clause 36 of the NIT. It was submitted that both the provisions provided only the upper bound and that the decision-maker would still remain obliged to consider whether the case warranted imposition of ban for the maximum period or for a period lesser than the maximum. He also referred to Rule 175 (1)(h) intitled Code of Integrity (of the said General Financial Rules, 2017) to indicate that making false declarations or provide false information for participation in a tender process or to secure a contract amounted to a breach of the said Code of Integrity.

13. Mr. Mookherji then argued that it would be evident from the facts of the case that when the petitioner had approached this Court at the first instance, the respondent no. 1 had not even cared to consider the petitioner's representation against the banning order and that the same remained pending with the respondent for a substantially long period. It was urged that it was only upon the Court intervening and directing the Chairman, Coal India Limited to dispose of the petitioner's representation that the same was ultimately considered and disposed of by passing an order dated February 27, 2025 which order too was set aside by this Court by an order dated April 10, 2025 as the same had

been passed without taking into consideration the factors that were mandatorily required to be considered for deciding the period of banning.

14. It was urged that the order dated May 02, 2025 which is presently impugned in the said writ petition fares no better than the earlier order and that the Chairman, Coal India Limited has passed the same in violation of the order dated April 10, 2025 passed by this Court in WPA 5558 of 2025. He has submitted that even if the respondent's contention is taken at face value and it is accepted that the petitioner had furnished information that was incorrect as regards the local content percentage then also such aspect has not led to any loss to be incurred by the respondent Coal India Limited or its subsidiaries. It is further submitted that the respondent has destroyed the fabric of the relevant clauses of the NIT by interpreting the expression "and" as "and/or". It was submitted that when the relevant clause clearly indicated that two conditions were to be considered i.e. the gravity of the offence and the quantum of loss suffered by the Coal India Limited, it was not open to the respondent to replace the expression "and" by "and/or" and reach a conclusion that fulfilment of either of the two conditions could lead to the imposition of the maximum penalty of banning of two years.

15. It has been submitted that the aspect of shortage of ammonium-nitrate on the relevant point of time and its consequent effect on the local content percentage in the product supplied by the petitioner has not at all been taken into consideration by the

respondent. It was also submitted that the local content percentage certificate was given by the petitioner on a fair estimate on the basis of the guidelines. It was submitted that since the petitioner has already suffered a substantial period of the ban imposed on it, therefore, there was no justification for continuing the ban any further.

- 16.** Mr. Mookherji relied on a judgment of the Hon'ble Supreme Court in the case of ***Kulja Industries Limited vs. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited & Ors.***¹ and placed paragraphs 17 and 26 thereof for the proposition that imposition of punishment of blacklisting or banning on a contractor could be subjected to judicial review if the same was done by the State or any of its instrumentalities and that such imposition would be open to scrutiny both on the touchstone of the principles of natural justice as also on the doctrine of proportionality.
- 17.** He also relied on the judgment in the case of ***Isolators and Isolators vs. Madhya Pradesh Madhya Kshetra Vidyut Vitran Company Limited & Anr.***² and placed paragraph 38.1 thereof for the proposition that maximum penalty could not be imposed by ignoring the relevant factors. He next relied on the judgment in the case of ***UMC Technologies Private Limited vs. Food Corporation of India & Anr.***³ and took the Court through paragraphs 14 and 15 thereof to demonstrate that blacklisting or banning has long lasting civil consequences on the future business prospects of the person engaged

¹ (2014) 14 SCC 731

² (2023) 8 SCC 607

³ (2021) 2 SCC 551

in business and that the same can effectively lead to the civil death of such a person.

18. Mr. Mookherji next relied on the judgment in the case of ***Comptroller and Auditor-General of India, Gian Prakash, New Delhi & Anr. vs. K. S. Jagannathan & Anr.***⁴ for the proposition that in a fit case the Court can itself pass such order or give such direction which the relevant Government or public authority should have passed or given had it properly and lawfully exercised its discretion.

19. Mr. Mookherji next relied on the judgment of ***M/s. Otik Hotels and Resorts Private Limited vs. Indian Railway Catering and Tourism Corporation Ltd.***⁵ and ***M/s. Sai Consulting Engineers Pvt. Ltd. vs. Rail Vikas Nigam Ltd. & Ors.***⁶, for the proposition that in a fit case the Court itself can interfere with the period of punishment or period of banning.

ARGUMENTS ON BEHALF OF THE RESPONDENTS:

20. Mr. Jishnu Saha, learned Senior Advocate appearing for the respondent opposed the writ petition and submitted that the banning order *per se* now stands accepted by the petitioner and the only grievance of the petitioner is that the period of ban should not have been two years. He submitted that the contention of the petitioner was essentially that while it could be so that the offence which the petitioner was indicted for was grave but it was not so grave that the ban for a period of two years could have been imposed on the petitioner.

⁴ (1986) 2 SCC 679

⁵ 2016 SCC OnLine Del 5508

⁶ 2013 SCC OnLine Del 679

- 21.** Mr. Saha submitted that the petitioner is clearly wrong in assuming that for a ban of the nature imposed on the petitioner to continue for a period of two years both the conditions i.e. gravity of the offence and quantum of loss suffered by the Coal India Limited or its subsidiaries should be fulfilled. It was further submitted by Mr. Saha that loss, in any case, could not only mean financial. He submitted that loss could be of one of reputation and it could also be of the integrity of the procurement process.
- 22.** Mr. Saha took this Court through Clause 6B(ii)(d) under Section II captioned *Instructions to Bidders* (at page 111 of the writ petition) and submitted that false declaration was itself sufficient to attract banning of business of bidders or its successors for a period upto two years in line with Clause 36 thereof along with such other actions as may be permissible under in law.
- 23.** Mr. Saha then invited the attention of this Court Clause 36 (iii) of the same Section i.e. *Instructions to Bidders* (at page 131 of the writ petition) to show that *Violation/transgression of the Integrity Pact* was itself a reason to impose ban and in such a situation the quantum of loss suffered by the Coal India Limited was immaterial. He invited the attention of this Court to Clause 30 under Section III captioned *General Conditions of Contract* of the NIT which provides that the provision of the Purchase Manual of Coal India Limited and its subsequent amendments would also be applicable. He then took the Court through Clause 6.13.2 of the Purchase Manual, 2020 and submitted that in terms thereof when misconduct and moral turpitude of a firm went

beyond mere performance issues, imposition of a ban on business relations with the firm could be done for a specified period of time after following the prescribed procedure. It was sought to be highlighted that the said Clause did not provide for loss as a factor to be considered while deciding the period of banning.

24. He took the Court to the order dated May 02, 2025 which has been impugned in the writ petition and sought to demonstrate that the same was well reasoned and that all the relevant factors had been considered by the authority concerned while rendering the same.

25. Mr. Saha relied on the judgment of the Hon'ble Supreme Court in the case of ***N.G. Projects Limited vs. Vinod Kumar Jain & Ors.***⁷ and placed paragraph 12 thereof for the proposition that the owner or the employer of a project or the tender issuing authority who had authored the tender documents was the best person to appreciate its requirement and interpret its documents. It was submitted that since the NIT was prepared by the Coal India Limited, therefore, Coal India Limited had/has full authority to interpret the expression "and" as "and/or". It was submitted that going by the terms of the NIT which make it evident that making a false declaration, can by itself lead to banning for a period of two years, the ban imposed on the petitioner by the said authority for two years stands justified and the expression "and" can justifiably be read as "or". He then relied on the judgment of the Hon'ble Supreme Court in the case of ***Gujarat Urja Vikas Nigam Ltd. vs.***

⁷ (2022) 6 SCC 127

Essar Power Ltd.⁸ to demonstrate that sometimes the expression “and” can mean “or” and the expression “or” can mean “and”. He also placed reliance on the judgment in case of **Om Kumar & Ors. vs. Union of India**⁹ to submit that the Court would not interfere with the quantum of punishment unless the Court finds that the punishment was shockingly disproportionate to conduct the delinquent.

26. He also relied on a judgment of the Hon’ble Supreme Court in the case of **Union of India & Ors. vs. Managobinda Samantaray**¹⁰, for the proposition that in the context of quantum of punishment imposed, the Courts are only to consider whether there is any error in the decision making process and that the Court should not interfere unless exercise of discretion in awarding punishment is perverse in the sense that the punishment imposed is grossly disproportionate.

27. It was further submitted by Mr. Saha that the punishment imposed in the case at hand was commensurate with the offence committed by the petitioner no. 1 inasmuch as the petitioner had been instrumental in keeping Class-I Local Suppliers at bay and bagging the contract at their cost.

28. Mr. Saha further submitted that the petitioner was guilty of subverting the public procurement process by projecting itself as Class-I Local Supplier while it was evidently not one and as such the ban of two years imposed on the petitioner was fully justified. It was further submitted that in order to interfere with the ban imposed, even on the ground of proportionality, the Court would have to reach a conclusion that there

⁸ (2008) 4 SCC 755

⁹ (2001) 2 SCC 386

¹⁰ 2022 SCC OnLine SC 284

was a wrongful *nexus* between the purpose and the period of ban and that there was an element of *malafide* in the penalty imposed.

29. It was then submitted that there was no mandate by the Court in its order dated April 10, 2025 that the relevant clauses of the contract must be interpreted to mean that loss must have been incurred by the Coal India Limited. Mr. Saha further submitted that in fact loss could always be made good by appropriate recovery through an action for damages and that being so the quantum of loss suffered by the Coal India Limited could not have been of much relevance for deciding the period of ban.

30. It was further submitted by Mr. Saha that running contracts with various suppliers are generally valid for two years and tenders are floated biennially and that being so, if a person/entity is debarred for a short term then such a person may not suffer any tangible consequence of such debarment as by the time of the next tendering process, such bar would be over and the entity/person would have become eligible to participate in the tender process. It was submitted that such aspect would defeat the purpose of ban. Mr. Saha submitted that in such view of the matter imposition of ban for a period of two years was quite justified.

31. Mr. Saha also distinguished the judgments cited by Mr. Mookherji and submitted that the same did not further the case of the writ petitioners.

REJOINDER SUBMISSIONS ON BEHALF OF THE PETITIONERS:

32. Mr. Mookherji briefly re-joined by submitting that clause 36(iii) of the NIT which referred to violation/transgression of integrity pact was not

applicable to the petitioners' case. He invited the attention of the Court to Clause 37 of Section II of the NIT that provided for "*Pre-Contract Integrity Pact*" (at page 132 of the writ petition) as well as the format for the Pre-Contract Integrity Pact appearing at pages 188 to 193 of the writ petition and submitted that in order to constitute violation of integrity pact, it would have to be demonstrated that the petitioner no. 1 had violated the provisions mentioned in the said format, which was not the case.

33. It was further submitted that the expression "*quantum of loss suffered by CIL or the Subsidiary Companies*" employed in the concluding portion of Clause 36 of Section II of the NIT which provides for a decision on the period of banning, puts it beyond the pale of doubt that loss suffered by the Coal India Limited must mean financial loss and it is only such financial loss that should form one of the two components required to be considered for deciding the period of banning.

34. He also distinguished the judgments cited by Mr. Saha and submitted that the same did not aid the respondents at all.

ANALYSIS & DECISION:

35. Notwithstanding the plurality of the prayers made and the reliefs claimed in the writ petition, the scope of the present writ petition has actually shrunk to a very little measure in view of the order dated April 10, 2025 passed by this Court while disposing of W.P.A. 5558 of 2025.

The said order, in paragraph 46 thereof, directed as follows:-

"46. The Chairman, CIL is directed to reconsider the prayer of the petitioner afresh only on the point of proportionality of the order of ban imposed. A reasoned order shall be passed addressing the fact as to why

ban for the maximum period is to be imposed upon the petitioner. The reasoned order shall also disclose the gravity of the offence and as to whether any loss was suffered by CIL or any of its subsidiaries because of the Local Content Certificate submitted by the petitioner.”

36. The aforequoted paragraph contains three directions. Firstly, the Chairman, Coal India Limited was required to *“reconsider the prayer of the petitioner afresh only on the point of proportionality of the order of ban imposed.”* Secondly, the said authority was to pass a reasoned order *“addressing the fact as to why ban for the maximum period”* was to be imposed on the petitioner. Thirdly, the reasoned order was required to *“disclose the gravity of the offence and as to whether any loss was suffered by CIL or any of its subsidiaries because of the Local Content Certificate submitted by the petitioner.”*

37. It is noticed that in paragraph 41 of the said order dated April 10, 2025, the Court pinpointed the flaw in the earlier order dated February 27, 2025 passed by the Chairman, Coal India Limited and also succinctly indicated the manner in which the decision ought to have been taken by the said Chairman. The said paragraph deserves notice:-

“41. The Chairman appears to have missed out on this aspect of the period of ban. The period of ban is to be decided on two factors; first, the gravity of the offence and second, the quantum of loss suffered by CIL or the subsidiary companies. In the impugned order, there is no reflection as to whether the period of ban has been decided keeping in mind the aforesaid two factors.”

38. Thus the decision making process as regards the period of ban was and is to be predicated on the consideration of the binary factors of *“the*

gravity of the offence and the quantum of loss suffered by CIL or the subsidiary companies.”

39. Tested on the anvil of the order dated April 10, 2025 passed by this Court, the order dated May 02, 2025 fails to pass muster.

40. When this Court has interpreted the provision contained in Clause 36 of Section II of the NIT in a particular way and treated the expression “and” as the coordinating conjunction leading to a joinder of the requirement of consideration of the gravity of the offence and the quantum of loss suffered by CIL or its subsidiary companies for deciding the period of banning and when the respondents have allowed such order to attain finality, it was no longer open to the Chairman, Coal India Limited to interpret the same expression differently and treat it as “and/or” thereby introducing a disjunctive word (or) and making room to treat one of the two conditions as alternative to the other.

41. Even otherwise, the interpretation done by the Chairman, Coal India Limited does not commend to reason inasmuch as a plain reading of the relevant clause of the NIT would not persuade a reasonable reader to read the expression “and” used therein as “and/or”. For facility of a better understanding the subject provision, the relevant portion of Clause 36 of Section II of the NIT under the caption “*Instruction To Bidders*” is extracted herein below:-

*“The period of banning shall be decided based on the gravity of the offence **and** the quantum of loss suffered by CIL or the Subsidiary Companies. In case of banning under sub-clauses (i), (ii) & (iii) above, the banning period shall not be exceeding three years. In case banning under other sub-clauses, banning period shall not exceed two years.”*

- 42.** It is now well settled that the words used in a contractual provision must at the first instance be given their plain and literal meaning and that a shift from the rule of plain and literal reading of the provision is permitted only if the same leads to an absurd result. **(See: Annaya Kocha Shetty (Dead) through Lrs. vs. Laxmibai Narayan Satose Since Deceased through Lrs. & Ors.¹¹)**
- 43.** In this case at hand reading the expression “and” used in the aforequoted clause as a coordinating conjunction does not lead to any absurdity at all. In fact if it had been the intention of the parties to treat only one of the two factors i.e. either “*the gravity of the offence*” or “*the quantum of loss suffered*” as sufficient to impose ban for the maximum period of two years then the parties could have easily used the expressions either/or at the appropriate place in the relevant clause.
- 44.** While the submission of Mr. Saha that loss could be one of reputation as also of purity of the procurement process appears to be catchy at the first blush, it ultimately fails to resonate with not only the order impugned but also the relevant provisions of the NIT. As rightly submitted by Mr. Mookherji, the expression “*quantum of loss suffered by CIL or the Subsidiary Companies*” used in the NIT clearly indicates that loss which is to be factored in for deciding the period of banning is financial loss. Furthermore, the order impugned also refers to loss in the context of financial loss only when it mentions “*Though the specific quantum of financial loss arising from the misrepresentation cannot be ascertained precisely.....*”

¹¹ 2025 SCC OnLine SC 758

45. A perusal of the order dated May 02, 2025 passed by the Chairman, Coal India Limited thereby disposing of the petitioner no.1's representation, it can be clearly seen that while the said Chairman has considered and dwelt upon the gravity aspect of the offence committed by the petitioner no. 1 the aspect of "*quantum of loss suffered by CIL or the Subsidiary Companies*" has been glossed over firstly, by mentioning that the specific quantum of financial loss arising from the misrepresentation cannot be precisely ascertained and secondly, by treating the expression "and" which connects "*the gravity of the offence*" with the "*quantum of loss suffered by CIL or the Subsidiary Companies*" in the relevant clause as "and/or". It is true that non-ascertainability of financial loss by Coal India Limited is not equivalent to non-existence of the loss-factor or of no loss having been incurred but then after having accepted the order passed by this Court on April 10, 2025 which specifically directed the Chairman to disclose as to whether any loss was suffered by CIL or any of its subsidiaries because of the Local Content Certificate submitted by the petitioner it was incumbent upon the Chairman, Coal India Limited to either discernibly demonstrate the loss suffered by Coal India Limited or any of its subsidiaries or at least to clearly state the reasons why such loss could not ascertained (or why was such loss non-ascertainable). The said authority could not have simply played down the requirement of disclosing the loss suffered by Coal India Limited or any of its subsidiaries by stating that the same was not ascertainable and that gravity of the offence alone could justify imposition of ban for the maximum period by reading the expression

“and” in the relevant clause as *“and/or”*. If the measure of a penalty (whether it be in terms of money or in terms of period of debarment) is to be decided on the basis of two factors, the most reasonable inference would be that for the penalty to be maximum both the requisite factors should be present. Imposition of maximum penalty in the absence of one of the two factors so prescribed would, in the considered view of the Court, by itself be disproportionate.

46. In the case at hand, the Chairman, Coal India Limited has not only failed to quantify the loss despite the specific direction of this Court but has also failed to provide any reason for his inability to quantify the loss. He has also not stated as to whether at all any loss has been suffered by Coal India Limited or any of its subsidiaries. In such view of the matter, one is left to proceed on the basis that no loss was suffered by Coal India Limited or any of its subsidiaries in the facts of the present case.

47. In such view of the matter, the period of ban imposed by the respondents would certainly require reconsideration and for that the matter needs to be remanded to the Chairman, Coal India Limited.

48. There is one more weighty reason that persuades the Court to remit the matter back to the Chairman, Coal India Limited to reconsider the period of ban (i.e. reduction thereof).

49. One of the grounds that has been mentioned by the Chairman, Coal India Limited in support of the continuance of ban for a period of two years is that running contracts with various suppliers are generally valid for two years and tenders are floated biennially and as such if a person/entity is blacklisted for a short term then such a person may

not suffer any tangible consequence of blacklisting as by the time of the next tendering process, such entity/person would become eligible to participate in the tender thereby frustrating the very object and purpose of ban. It is the petitioners' assertion that consequent upon the order of ban; the petitioner no.1 has lost an opportunity to strike a deal with Singareni Collieries Limited as the said company had disqualified the petitioner only because of the banning order and further that the said order has led the petitioner to close one of its units namely Ramagundam Unit located at Telangana.

50. As to what is the actual state of affairs (i.e. whether the petitioner no.1 has indeed suffered loss consequent upon the ban being imposed) would need to be ascertained, but if indeed the petitioner no.1 has suffered as asserted in the writ petition, one of the grounds put forth by the Chairman, Coal India Limited in support of the continuation of the ban (i.e. that a *tangible consequence* of penalty imposed must be felt by the petitioner) would stand sufficiently satisfied. In this connection clause 6.13.5.11 of the Purchase Manual, 2020 which has been invoked by the petitioners by their letter dated July 18, 2024 carrying the request for lifting of the ban may be noticed:

“6.13.5.11 *If after issuance of banning order by the Subsidiary Company/CIL (HQ), the firm comes up with any appeal or representation seeking withdrawal or any modification of the order, the matter should be decided with the approval of Chairman, CIL.”*

51. It can be noticed that the said clause does not specify any time limit within which a representation is to be made. That being so, it can be

safely concluded that a representation seeking withdrawal or modification of the ban can be made at any time after the penalty of ban is imposed. That in turn leads to the inference that the decision maker would be entitled to take into consideration events happening subsequent to the imposition of the ban order also. In such view of the matter it would be within the authority of the Chairman, Coal India Limited to consider whether the petitioner no.1 has suffered due to the imposition of the ban as asserted by it. While it will be obligatory on the part of the petitioners to demonstrate that the petitioner no.1 has suffered due to the continuation of the ban it will also be incumbent on the Chairman, Coal India Limited to count the same as a relevant factor while considering reduction of the period of ban.

52. All of the above, in the considered view of this Court, would be relevant to determine the proportionality of continuance of the ban imposed. While on the subject an instructive passage from the judgment of the Hon'ble Supreme Court in the case of ***Teri Oat Estates (P) Ltd. vs. U.T., Chandigarh & Ors.***¹² may be noticed:-

“46.By proportionality, it is meant that the question whether while regulating exercise of fundamental rights, the appropriate or least restrictive choice of measures has been made by the legislature or the administrator so as to achieve the object of the legislation or the purpose of the administrative order, as the case may be. Under the principle, the court will see that the legislature and the administrative authority

“maintain a proper balance between the adverse effects which the legislation or the administrative order may have on the rights, liberties or interests of persons keeping in mind the purpose which they were intended to serve”. ”

¹² (2004) 2 SCC 130

53. Now turning to the decisions cited by the parties as regards the judgment in the case of ***Kulja Industries Limited*** (supra) cited on behalf of the petitioners, the same is an authority for the proposition a decision of blacklisting taken by the State or any of its instrumentalities would be open to scrutiny not only on the touchstone of principles of natural justice but also on the doctrine of proportionality. In due deference to the authoritative dictum of the Hon'ble Supreme Court, this Court to has intervened and decided to interfere with the order impugned in the present writ petition. This Court has also noticed that in the said case too while the Hon'ble Supreme Court had allowed the writ petition of the petitioning contractor, the decision as regards the period of blacklisting had been left to be taken by the concerned authority.

54. The judgment in the case of ***Isolators and Isolators*** (supra) relied on by the petitioners, turns on its own facts. In the said case the Hon'ble Supreme Court had set aside the order of debarment upon being satisfied about *the undeniable factual situation where the entire blame could not have been foisted upon or shifted towards the appellant contractor*. In the case at hand, as already indicated, the scope of the writ petition has been narrowed down by the order dated April 10, 2025 which has been accepted by the parties. The said order only left the question of proportionality of the banning open for decision, that too in the context of whether the same could be reduced or not. The imposition of ban *per se* is no longer open to challenge. Indeed, if the Court finds that the ban imposed for a particular period is utterly

disproportionate the Court is not powerless to reduce it in terms of the authoritative pronouncement in the case of **Comptroller and Auditor-General of India, Gian Prakash, New Delhi** (supra) but then as held in **Kulja Industries Limited** (supra) since the concerned employing authority is the primary repository of power to take a decision in the matter of imposition of penalty, all endeavour should be made to let such authority has its say. This Court is conscious that this is the third round of litigation but even then, since the imposition of ban *per se* has been (sort of) accepted by the petitioners and there are factual aspects relating to the loss suffered by the petitioners by reason of the ban that need to be gone into as indicated hereinabove, this Court has found it fit make an order of remand instead of taking the task of re-determining the period of ban on itself.

55. The judgment in the case of **UMC Technologies Private Limited** (supra) is an authority for the proposition that an order of blacklisting has a domino effect which can effectively lead to the civil death of a person or an entity. Indeed if an order of banning is allowed to continue for an unduly long period that would spell disaster. It is precisely for such reason that this Court has directed the Chairman, Coal India Limited to consider the petitioners' case of loss being suffered by them consequent upon the imposition of ban.

56. As regards the two Delhi High Court judgments in the case of **M/s. Otik Hotels and Resorts Private Limited** (supra) and **M/s. Sai Consulting Engineers Pvt. Ltd** (supra) the same were rendered in the peculiar facts of the case. While in the case of **M/s. Sai Consulting Engineers**

Pvt. Ltd. (supra) ban was based on poor performance of the contractor in respect whereof arbitral proceedings had been initiated, in the case of **M/s. Otik Hotels and Resorts Private Limited** (supra), the ban was imposed due to failure on the part of the contractor to start the work in terms of the contract. To wit, in both the cases the issues were related solely to the performance of the contract while in the case at hand the issue relates to furnishing of wrong information.

57. This Court is aware of the arguments advanced on behalf of the petitioners as regards the reasons that led to the failure of the petitioner to meet the local content percentage requirements. All said and done, today it cannot be said with certainty that the information supplied or furnished by the petitioner was wholly correct or justified for the simple reason that the punishment of ban *per se* is no longer open to challenge. The charge levelled against the petitioner cannot be equated to the charges of mere failure in performance of contract.

58. As regards the judgment in the case of **N.G. Projects Limited** (supra) cited on behalf of the respondents, the same cannot come to the aid of the respondents. Firstly, the said judgment was rendered in the context of interpretation of a tender document at the stage of bidding where the tender issuing authority is to be given a leeway to say what it expects from the tenderer or the bidder. Secondly in the instant case while deciding W.P.A. 5558 of 2025 by the order dated April 10, 2025, this Court has already interpreted the relevant clause in a particular way that has been accepted by both the parties. It is not open thereafter to

any party to say that it has a different interpretation to offer as regards subject clause.

59. The judgment in the case of **Gujarat Urja Vikas Nigam Ltd.** (supra) is an authority for the proposition that “*and*” can sometimes be read as *or* and vice-versa. Such a proposition is indeed salutary but the same is not applicable to the facts of the instant case. Firstly, while in the instant case the wordings of the relevant clause are clear and conscionable, the expression and used in case **Gujarat Urja Vikas Nigam Ltd.** (supra) led to absurdity in that the same created two for a for adjudication of the same dispute. It was in such context that the Hon’ble Supreme Court resorted to the well settled rule of construction of treating “and” as “or” in certain cases. Secondly, at the cost of repetition, it may be reiterated that when by the order dated April 10, 2025, this Court has already interpreted the relevant clause in a particular way that has been accepted by both the parties no interpretation at variance with the one indicated in the said order dated April 10, 2025 can be entertained now.

60. As regards the judgments in the cases of **Om Kumar & Ors.** (supra) and **Managobinda Samantaray** (supra), the same are authorities for the proposition that Courts would not interfere with the quantum of punishment unless the Court finds that the punishment was shockingly disproportionate to conduct the delinquent and that quantum of punishment is within the discretionary domain of the decision making authority. This Court has in fact acted in respectful obedience to the said judgments and decided to remand the matter

back to the Chairman, Coal India Limited to consider the quantum of punishment inflicted (i.e. reduction of the period of ban) in the light of the facts of the present case.

- 61.** For all the reasons aforesaid, the order impugned dated May 02, 2025 calls for interference. The same is set aside and the matter is remitted to the Chairman Coal India Limited for considering aspect of reduction of the period of ban imposed on the petitioner no.1. Such decision must be taken within a period of four weeks from date, in accordance with the relevant guidelines governing the parties as also the observations made hereinabove.
- 62.** In the meantime, if any NIT is published then the petitioners may be permitted to submit their bid and/or if the petitioners have already submitted any bid in view of the earlier orders passed by this Court the fate of the bids so submitted by the petitioners will be subject to the decision taken by the Chairman, Coal India Limited in terms of this order.
- 63.** WPA 10536 of 2025 stands disposed of on above terms. No costs.
- 64.** Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties upon compliance of all formalities.

(Om Narayan Rai, J.)