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

Reserved on: 2nd September, 2025

Pronounced on: 15th October, 2025

+ W.P.(C) 830/2020

SH. OMENDER KUMAR

.....Petitioner

Through: Ms. Seema Bengani and Mr. Kartik
Jain, Advocates.

versus

GOVERNMENT OF NCT OF DELHI AND ORS.Respondents

Through: Mr. Abhinav Sharma, Ms. Avsi Malik
and Mr. Shubham, Advocates.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present petition under Article 226 of the Constitution of India, 1950 seeks following prayers:-

“a) Issue a Writ of Mandamus directing the respondent department to accept the bid amount of the Petitioner, as per LOA dated 16.12.2019.

b) Issue a Writ Certiorari to quash the orders dated 6.1.2020 whereby the Petitioner has been blacklisted and his EMD has been forfeited and



his prayer for extension of time to comply with LOA has been rejected or in the alternative return the EMD amount of the Petitioner.

c) Pass any other order or order(s) or directions deemed fit and proper in the facts and circumstances of the present case.”

2. The petitioner participated in the tender process with regard to kiosk near bus bay No. 155 Platform-D, ISBT, Anand Vihar, Delhi in NIT No. DTIDC/SEPTEMBER 2019-20/1163, which was opened in November 2019. The petitioner was a successful bidder in the aforesaid tender and a Letter of Acceptance (for short, “LOA”) was issued to him on 16.12.2019. *Vide* the said LOA dated 16.12.2019, the petitioner was given time period of 7 days to complete necessary formalities. The said LOA is reproduced hereinbelow: -



DTI DELHI Transport Infrastructure
Development Corporation Ltd. (DTIDC)

ANNEXURE R-2

DELHI TRANSPORT INFRASTRUCTURE DEVELOPMENT CORPORATION LIMITED
[An Enterprise of Govt. Of NCT of Delhi]
2nd-Floor: Maharana Partap: ISBT Kashmere Gate, Delhi

70

F.No.DTIDC/2019-20/KG/1163/958

Dated:- 16/12/2019

To

Sh.Omendra Kumar,
S/o Sh.Virendra Singh,
R/o H.No.C-2/473, Gali No.14,
Harsh Vihar, Mandoli,
North East Delhi, Delhi-110093.

Sub: - Letter of Acceptance (LOA)

Name of Tender:- Licensing of Shops/ Sites/ Spaces at Vivekanand ISBT, Anand Vihar & Vir Hakikat Rai ISBT, Sarai Kale Khan, Delhi, September, 2019 for commercial utilization.

Sir,

Reference to your tender submitted on 06.11.2019, it is hereby informed that your tender for the Kiosk Near (Bus Bay No.155), at Platform-D, ISBT, Anand Vihar, Delhi (area measuring 5X3 = 15.00 sq.ft. is accepted by the competent authority on your quoted price of licence fee of Rs.2,45,000/- (Rupees Two Lac Forty Five Thousand Only) per month. Consequently, you are requested to deposit the following amounts with DTIDC:-

- (i) Advance Licence fee, maintenance charges @ Rs.30/- per sq.ft/month, applicable GST, water charges etc. for the first three months in shape of demand draft/banker cheque/RTGS only drawn in favour of Executive Director, DTIDC in terms of clause 4.7 of the NIT. The Bill in this regard may be obtained from Accounts Branch of this office.
- (ii) Interest Free Security Deposit (IFSD) amount, equivalent to 03 months licence fee i.e. Rs.7,35,000/- (3 X 2,45,000/-) in shape of Pay order/Demand Draft/Bank Guarantee (valid for atleast 12 months) in favour of Executive Director, DTIDC in terms of the NIT.

Please note that your licence fee & other charges for the aforesaid licence premises shall be commenced in terms of clause 4.3 of the NIT. Further in terms of condition No.4.26 successful bidder shall have to submit valid TIN/GST Number issued by VAT/GST Department, GNCTD, within 15 days of issuance of Letter of Acceptance (LOA).



DTIC DELHI Transport Infrastructure
Development Corporation Ltd. (DTIC)

You are, therefore requested to submit the above amounts within 07 days of the issue of this letter of acceptance (LOA), failing which your EMD of Rs.2,00,000/- will be forfeited without prejudice to the other rights and remedy available to DTIC under the NIT conditions against the tenderer.

Note:- It is also requested to provide your valid e-mail address and mobile number.

This issues with the approval of MD, DTIC.

[Signature]
Dy. General Manager, DTIC

Copy to:-

1. P.A to MD, DTIC Ltd. for kind information of MD, DTIC Ltd.
2. SE (Civil), DTIC.
3. AGM (Finance)/A.O., DTIC – please find enclosed herewith DD No.015273 dated 14.10.2019 of Rs.2,00,000/- Axis Bank Ltd. deposited by the above tenderer on account of EMD with the above tender. The same may be encashed under intimation to this office.
4. AGM Works (Civil)/Anand Vihar, DTIC.
5. AGM Works (Elect), DTIC.
6. Estate Manager, DTIC, ISBT, Anand Vihar, Delhi.
7. Cashier, DTIC.

[Signature]
True copy

3. It is the case of the petitioner that he could not complete the formalities within the stipulated period of 7 days as he fell sick and wrote two letters dated 21.12.2019 and 30.12.2019 to respondent No. 3 to extend the time for complying with conditions of LOA. The petitioner also issued legal notice to



respondent No. 3 on 06.01.2020 relying upon his medical documents of Guru Teg Bahadur Hospital, Dilshad Garden, Delhi, dated 21.10.2019 onwards to show that he was undergoing various medical tests even on 16.12.2019 when aforesaid LOA was issued.

4. Subsequently, respondent No.3 *vide* communication dated 06.01.2020 forfeited the Earnest Money Deposit (EMD) of the petitioner and debarred the petitioner from taking participation in Tender/RFP of DTIDC for the said financial year and next four financial years in terms of NIT condition No.4.7. The said communication dated 01.01.2020 reads as under:-



DELHI Transport Infrastructure
Development Corporation Ltd. (DTIC)

ANNEX-1 & (Copy)

DELHI TRANSPORT INFRASTRUCTURE DEVELOPMENT CORPORATION LIMITED
(AN ENTERPRISE OF GOVT. OF NCT OF DELHI)

2nd Floor: Maharana Pratap, I.S.B.T. KASHMERE GATE, DELHI

F.No.DTIDC/2019-20/AV/1187/ 1082

Dated:- 06/01/2020

LIST OF DEBARRED BIDDER/PERSON

Name of Tender:- Licensing of Shops/ Sites/ Spaces at Vivekanand ISBT, Anand Vihar & Vir Hakikat Rai ISBT, Sarai Kale Khan, Delhi, September 2019 for commercial utilization.

NIT No.DTIDC/September/2019-20/1163

The following successful bidders have failed to complete the formalities for the respective licence premises as stipulated in the LOA letter dated 16/12/2019:-

S.No.	Name & Address of the successful bidder	EMD amount	Shop No./ licence premises
1	Sh.Omendra Kumar, S/o Sh.Virendra Singh, R/o H.No.C-2/473, Gali No.14, Harsh Vihar, Mandoli, North East Delhi, Delhi-110093	Rs.2,00,000/-	Kiosk Near (Bus Bay No.155) at Platform-D, ISBT, Anand Vihar, Delhi.

The EMD of above successful bidders is hereby forfeited and the concerned successful bidders are debarred from taking participation in Tender/RFP of DTIDC for this financial year and next four financial year in terms of NIT condition No.4.7.

This issues with prior approval of MD, DTIDC.

To

The successful bidder named above.

Dy. General Manager, DTIDC

F.No. DTIDC/2019-20/AV/1187/

Dated

Copy to:-

1. P.A to MD, DTIDC Ltd. for kind information of MD, DTIDC Ltd.
2. SE (Civil), DTIDC.
3. AGM (Finance)/A.O, DTIDC - with the direction to forfeit the EMD amount in respect of the above successful bidder under intimation to this office.
4. Cashier, DTIDC - with the direction to forfeit the EMD amount in respect of the above successful bidder under intimation to this office.
5. Concerned shop file.
6. Incharge (IT), DTIDC with the direction to place the same on the website of DTIDC under intimation to this office.

Signature Not Verified

Digitally Signed By: NEETI
KUMARI SHARMA
Signing Date: 16.10.2025
17:47:45



5. Learned counsel for the petitioner in support of his case has relied upon judgment dated 24.07.2017 of Coordinate Bench of this Court in **W.P.(C) 713/2017 titled as “Raman Kalra v. Govt. of NCT of Delhi And Ors.”** wherein, in similar circumstances, it was held that it is necessary for DTIDC to permit the bidder against whom such action of blacklisting is proposed, to explain and issue show cause as to why such action for debarring him not be taken and/or the period of blacklisting be reduced and such a right to represent against the imposition of such punitive measures be given to the bidders. Reliance is placed on the following paragraphs: -

“16. Mr Gautam Narayan also opposed the contention that the petitioner was entitled to any hearing before being blacklisted. He submitted that the event of blacklisting was expressly provided for under the NIT and, therefore, no further notice was required to be issued to the petitioner. He relied on the decision of a Coordinate Bench of this Court in *M/s Otik Hotels and Resorts Pvt. Ltd. v. Indian Railway Catering and Tourism Corporation Ltd.: 2016 SCC OnLine Del 5508* in support of his contention.

23. The next question to examine is whether DTIDC was required to give any notice before debarring the petitioner from further contracts or blacklisting the petitioner. On this question, the law is well settled. In *M/s Erusian Equipment (supra)*, the Supreme Court had authoritatively held that fundamentals of fair play require that a person should be given an opportunity to represent his case before he is blacklisted. The relevant passage of the said judgment is set out below:-

“20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the



Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist.”

30. In the circumstances, the decision of DTIDC to debar the petitioner for the financial year 2016-17 and four further financial years is set aside. DTIDC is at liberty to blacklist and debar the petitioner from participating in future tenders; however, it would be necessary for DTIDC to issue a notice indicating its intention to impose such punishment and take a final decision to do so after considering the petitioner’s response, if any, and following the principles of natural justice.”

6. Reliance has also been placed by the petitioner upon judgment of Division Bench of Hon’ble High Court of Allahabad, **Cropscare Infotech Pvt. Ltd. Thru. Its Director Ankit Dixit v. State of U.P. Addl. Chief/Prin. Secy. Deptt. of Basic Education and Others¹**, in support of his contention that order of blacklisting cannot be passed without show cause notice and certainly not for an indefinite period. Reliance has been placed on the following paragraphs: -

“15. The period of blacklisting is to be mentioned in the order, which has not been done. No document has been annexed to show any provision known to the petitioners prescribing a time limit of one year of blacklisting. The explanation is an eyewash and does not stand scrutiny on the anvil of law declared by Hon’ble the

¹ 2025 SCC Online All 4931



Supreme Court. Nowhere has he stated in the counter affidavit that any show cause notice was issued to the petitioners proposing an action of blacklisting against it even if it was permissible in additional terms and condition no. 29 of the GeM tender process. The Officer, it seems is adamant not only to defy the law declared by Hon'ble the Supreme Court but he has even tried to justify it on unacceptable grounds rather than accepting his error. This is the reason we had proposed a cost of at least Rs. 50,000/- to be imposed. We reject the reasons given in the counter affidavit of the District Magistrate outrightly.”

7. Learned counsel for the petitioner also relied on decision of a Division Bench of Hon'ble High Court of Andhra Pradesh in **K.S. Sastry v. The A.P. Small Scale Industrial Development Corpn. Ltd.**², in support of contention of Double Jeopardy. The relevant portion of the said judgment reads thus: -

“2. The only submission urged by Mr. V. Venkata Ranlana learned Counsel for the appellant is that as the subject-matter of both the proceedings were identical and once disciplinary proceedings were carried out and was concluded by imposition of penalty, a second penalty which was also imposable then under the rules but had not been imposed was not available to be inflicted by a later notice.

6. A reading of the Rule shows that the revisional power is available to different authorities but, unless the authority is the Government itself or a Head of Department directly under it, the power is not given to the same authority which passed the order of punishment of unless he has been specified as an authority for that purpose in a general or special order in that behalf of the Government and when so notified, he can exercise the power

² 1994 SCC OnLine AP 420



within such time as may be prescribed in the same order. In the present case, the order was passed by the Executive Director of the Corporation and nothing has been disclosed before us that the Managing Director of the respondent-Corporation who issued the notice on the second occasion is an authority higher than the Executive Director. As a matter of fact, the submission of the learned counsel for the appellant is that the Executive Director and the Managing Director are the same authorities. Rule 40, hence, would not come to the aid of the respondent-Corporation even if the Rule would apply as far as possible, in vesting any power of revision in the Managing Director as even the Board of the respondent-Corporation which is the highest authority, is not stated to have notified conferment of any such power. Admittedly under the regulations, the Board is the appellate authority against punishments imposed but the order has not been issued by the Board. The order shows the decision to revise the order to have been taken for the following reason:

“Subsequent to the issue of final orders, it has been brought to the notice of the Corporation that a loss of Rs. 20,000/- has been caused to the Corporation due to the miscalculation and lower fixation of sale price of various items of raw material and due to various other irregularities committed by Sri K.S. Sastry. As such, the question of recovery of losses arose and after due examination, it is decided that although orders have been issued stopping one increment of the delinquent officer, there is no objection to proceed against him for the recovery of the loss from the delinquent by revising the original order, in view of the heavy loss caused to the Corporation. As per instruction 17 under CCA Rules, there is no need to hold an elaborate enquiry before imposing the punishment of recovery and in the first instance itself, the delinquent officer can be asked to show-cause against the penalty of recovery which is a minor punishment and orders passed after taking into account the explanation given by him. Thus, it has been concluded that the loss caused to the Corporation has to be recovered and that it would not amount to double punishment.”



7. Such reasons show that in reality the proceeding was sought to be reopened to recoup the loss caused to the respondent-Corporation. The course of action adopted is either a revision or a plain intendment to impose a new punishment in addition to the one already imposed. As no power of revision is vested either under the Regulations or the Rules, we are of the view that so far as the fresh charges are identical neither a revision nor infliction of a second punishment was permissible.”

8. The petitioner also relied on decision of Hon’ble Supreme Court in **M/s. Erusian Equipment & Chemicals Ltd. V. State of West Bengal and Another**,³, in support his contention that fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist.

9. Short counter affidavit dated 07.12.2021 was filed on behalf of the Respondents wherein, Clause 4.7 of Notice Inviting Tender (NIT) relating to terms and conditions for submission of bids was reproduced in paragraph 4. The said clause reads as under: -

“License Fees (and other applicable charges & taxes) shall be payable in advance by the Licensee to DTIDC on monthly basis. All the payments shall be accepted through Demand Draft/banker cheques/RTGS/instructions issued by the DTIDC time to time. No payment through cheques or cash will be accepted. The license fee, maintenance charges along with applicable GST thereupon for the first three months shall be paid by the selected tenderer, within 07 days of the issue of LOA (Letter of acceptance) alongwith interest free security deposit, mentioned hereinafter. Failure to deposit the same shall attract forfeiture of HMD and the bidder shall be

³ (1975) 1 SCC 70



debarred from participating of tender/RPP, of DTIDC for this financial year and next four financial years.”

10. Hence, the respondents submitted that, in the instant case, LOA was handed over to the petitioner on 16.12.2019 itself and copy of the same was also sent to him through speed post which was delivered at his address on 19.12.2019. But the petitioner failed to submit his unconditional acceptance within 2 days and as per Clause 5.26 of NIT, if the tenderer fails to give his unconditional acceptance within 2 days, the competent authority is within its power to appropriate bid security. It is the specific case of the respondents that the petitioner did not approach the department with his request of extension and only waited for the very last moment to make such request. The respondents also submitted in their counter affidavit that the medical records attached in the petition are prescriptions or lab reports, no document showing any admission/discharge from any hospital has been attached which may have been otherwise considered to be a situation which would have precluded the petitioner from submitting a duly signed LOA within the stipulated time period and thereby, fulfilling the conditions therein.

11. Learned counsel for the respondents placed reliance on decision of a Coordinate Bench of this Court in **M/s. Otik Hotels and Resorts Private Limited v. Indian Railway Catering and Tourism Corporation Ltd.**,⁴ in support of his contention that, if the tender documents clearly stipulated that in the event the license fee was not paid in whole or part, the applicant would be debarred from participating in any bidding process for future projects of

⁴ 2016 SCC OnLine Del 5508



the respondent therein. Relevant paragraphs of the said judgment are as under:

-

“1. Present writ petitions have been filed challenging the termination letters dated 28th September, 2016 passed by the respondent-IRCTC terminating the temporary licences awarded to the petitioner of on-board catering services in train nos. 12832-24 and 12365-66 on the ground that the petitioner failed to start the catering service w.e.f. 21st September, 2016 and did not pay the security deposit and licence fee on or before 19th September, 2016. The respondent-IRCTC further in terms of Clause 4.8 of the tender document has debarred the petitioner from participating in future projects of respondent-IRCTC for a period of one year.

3. Learned counsel for the petitioner also submits that without any show cause notice, the petitioner has been debarred for a period of one year. In support of his submission, learned counsel for the petitioner relies upon the judgment of the Supreme Court in Gorkha Security Services v. Government (NCT of Delhi), (2014) 9 SCC 105 wherein it has been held that before imposition of penalty of blacklisting/debarment, the petitioner has to be given a specific notice stating that in the event the authority is not satisfied with the reply it gives, it can be blacklisted/debarred.

11. In fact, even while submitting its bids, the petitioner had specifically agreed that on account of non-acceptance of Award or on account of non-fulfillment of the tender conditions within the prescribed time, it shall stand debarred by the respondent-IRCTC from participation in its future tenders for a period of one year. Consequently, in the opinion of this Court, no specific notice stating that the petitioner would be debarred on account of non-payment of licence fee was required.

13. The judgment of Gorkha Security Services (supra) also does not help the petitioner as in the said case the tender document did not provide specifically for blacklisting/debarment of the contractor. In the present case, Clause 4.8 of the tender document as well as the petitioner's own



bid documents specifically state that the petitioner can be debarred for a period of one year on account of non-fulfillment of tender conditions within the prescribed time.

14. Recently, the Supreme Court in Bakshi Security & Personnel Services (P) Ltd. v. Devkishan Computed (P) Ltd., (2016) 8 SCC 446 has held as under:-

“16. We also agree with the contention of Shri Raval that the writ jurisdiction cannot be utilised to make a fresh bargain between parties.

19. It is also well to remember the admonition given by this Court in Michigan Rubber (India) Ltd. v. State of Karnataka [Michigan Rubber (India) Ltd. v. State of Karnataka, (2012) 8 SCC 216] in cases like the present, as under: (SCC p. 228, para 21)

“21. In Jagdish Mandal v. State of Orissa [Jagdish Mandal v. State of Orissa, (2007) 14 SCC 517], the following conclusion is relevant: (SCC p. 531, para 22)

“22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made “lawfully” and not to check whether choice or decision is “sound”. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court.



Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual matters in exercise of power of judicial review, should pose to itself the following questions:

- (i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;

OR

Whether the process adopted or decision made is so arbitrary and irrational that the court can say: “the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached”;

- (ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action.”

12. Respondents have further place reliance on decision of Coordinate Bench of this Court dated 19.04.2022 in *W.P.(C) 6297/2020 titled as “Veena Garg v. Delhi Development Authority”*, which reads as follows:



“10. The Petitioner had deposited 5% of the reserve price. However, she had failed to deposit 20% of the bid premium which was to be paid with the acceptance of the bid. Clause 2.4.3 states that in case the bidder fails to deposit 20% of the bid premium within 7 days from the issue of Letter of Intent, the first stage of the EMD bid (5% of the reserve price) shall stand forfeited. The Petitioner is now praying for a deviation from the terms stipulated in the tender document. It is well settled law that participating in the tender, a bidder cannot seek for deviation from the tender document which has been accepted by the petitioner on his own accord. It goes against contractual obligations steeped in accepting such a tender, and therefore, violates the principles under Article 14 of the Constitution with respect to other bidders.”

13. As per the terms and conditions of the NIT, the selected tender was to follow the timeline as provided in clause iv of the paragraph 2.4 of the NIT which is reproduced below: -

“

Stage of Activity	Time Period
Payment of Advance License Fee for three months, maintenance charges, taxes and Interest Free Security Deposit/ Performance Security to DTIDC by Licensee	Within 07 days of issue of Letter of Acceptance (LOA)
Vacant Shops to be handed over to Selected Bidder/Tenderer	Within 07 days of making the due payments in accordance with LOA.
Signing of License Agreement	The licence agreement shall be executed Within 15 days from the date of payment of dues as per Letter of Acceptance.

”



14. Thus, it was expressly provided that the bidder would be required to pay advance license fee for three months, maintenances charges, taxes and interest free security deposit/performance security within a period of 7 days of the issuance of the LOA.

15. The other relevant part of the NIT with respect to failure on part of the bidder to deposit the aforesaid amount is in paragraph 4.7 which reads as under:-

“

4.7 License Fees (and other applicable charges & taxes) shall be payable in advance by the Licensee to DTIDC on monthly basis. All the payments shall be accepted through Demand Draft/banker cheques/RTGS/instructions issued by the DTIDC time to time. No payment through cheques or cash will be accepted. The license fee, maintenance charges along with applicable GST thereupon for the first three months shall be paid by the selected tenderer, within 07 days of the issue of LOA (Letter of acceptance) alongwith interest free security deposit, mentioned hereinafter. Failure to deposit the same shall attract forfeiture of EMD and the bidder shall be debarred from participating of tender/RFP of DTIDC for this financial year and next four financial years.

”

16. So far as the forfeiture of EMD is concerned, it is noted that the petitioner had failed to deposit the advance license fee, other applicable charges, taxes, and interest free security deposit/performance security and when called upon to do so in terms of the LOA.

17. The petitioner, in the present case, has taken a stand that he could not do so on account of his ill health and had sought time for extension. In the present case, the LOA was issued to the petitioner on 16.12.2019 and the



letter forfeiting the EMD and debarring the petitioner was issued on 06.01.2020. The letter dated 21.12.2019 (five days after receiving the LOA) was sent on behalf of the petitioner to the respondent No. 3/DTIDC after receiving the LOA which is annexed with the present petition and reads as under: -

“It is requested that I had filled Shop No. 155 in Anand Vihar bus stand in Tender. I received F.No. DTIDC/2019-20/KG/1163/958 by department on 16.12.2019. In which I was given time by department to do 07 days formalities for shop. Due to which my health deteriorated, I am unable to do the formalities of this shop for a few days, and I should be given a few days to complete the formalities of this shop.

I pray to the department that if my formalities are not fill in 07 days, then my 2 lakhs amount deposit should not be confiscated nor should I be blacklisted and nor can my shop be canceled. On the basis of humanity, give me a few days time so that I can complete the formalities of this shop.

It will be so kind of you.”

18. The contents of the aforesaid letter also reflects that the petitioner was fully aware that, in case, he does not complete the formalities within a period of 7 days, his EMD would be forfeited. In this letter, no specific timeline has been sought by the petitioner and the request is completely vague. As per Clause 5.26 of NIT, the petitioner had to sign and returned the duplicate copy of LOA within two days of the receipt of the same in acknowledgement and unconditional acceptance thereof. As per the said clause, in default thereof, unless the respondent No. 3/DTIDC extended time for such acceptance, the bid security will be appropriated by DTIDC for not unconditionally accepting the terms of LOA. Clause 5.26 of the NIT reads as under: -



“5.26 After evaluation of tender. Letter of Acceptance (the "LOA") shall be issued, in duplicate, by DTIDC to the Selected Tenderer and the Selected Tenderer shall, within 2 (two) days of the receipt of the LOA, sign and return the duplicate copy of the LOA in acknowledgement and unconditional acceptance thereof. In the event the duplicate copy of the LOA duly signed by the Selected Bidder/Tenderer is not received by the stipulated date, DTIDC may, unless it consents to extension of time for submission thereof, appropriate the Bid Security of such tenderer as Damages on account of failure of the Selected Tenderer/Bidder to unconditionally accept the terms of LOA.”

Thus, the petitioner herein defaulted in not sending duly signed LOA in duplicate signifying his unconditional acceptance of the same. The aforesaid letter, as noted hereinbefore, was sent five days after receiving of LOA and therefore, there was no express or implied consent on part of the respondent No.3/DTIDC to extend the period of two days.

19. In these circumstances, the respondent No.3/DTIDC, in the considered opinion of this Court, had the right to forfeit the EMD in terms of the tender document.

20. The other issue raised in the present petition is with respect to debarring the petitioner from participating in further contracts or blacklisting the petitioner without giving any notice.

21. In **Raman Kalra v. Govt. of NCT of Delhi and Ors.**, *vide* judgment dated 24.07.2017 learned Coordinate Bench of this Court, while dealing with similar NIT issued by DTIDC (present respondent No.3), had observed and held as under: -



“23. The next question to examine is whether DTIDC was required to give any notice before debarring the petitioner from further contracts or blacklisting the petitioner. On this question, the law is well settled. In *M/s Erusian Equipment (supra)*, the Supreme Court had authoritatively held that fundamentals of fair play require that a person should be given an opportunity to represent his case before he is blacklisted. The relevant passage of the said judgment is set out below:-

“20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist.”

23. The requirement of giving prior notice before blacklisting a person was reiterated by the Supreme Court in *Raghunath Thakur (supra)*. However, the said cases were rendered in a context where there was no specific provision incorporated in the tender conditions, which indicated that blacklisting would follow in case of a given event. In the present case, the NIT specifically provides that in the event the bids are withdrawn within the validity period, the bidder would be debarred. **Thus, the principal question to be addressed is, whether specifically mentioning in the tender conditions that blacklisting would follow in certain eventualities, entitles DTIDC to impose such measure on a bidder without notice to him and without considering his explanation in defence.**

24. Indisputably, blacklisting a bidder or debarring him from participating in further tenders has serious civil consequences for his business. As noticed in *Gorkha Securities Services (supra)*, such an order is also stigmatic in nature. A person who is excluded from participating in tenders floated by DTIDC may also on the basis of being debarred by DTIDC, be disqualified from participating in tenders floated by other authorities or government bodies/agencies. It



is, thus, necessary that such a punitive measure be not taken mechanically.

26. This Court is thus of the view that it is necessary for DTIDC to permit the bidder against whom such action of blacklisting is proposed, to explain and show cause why such action for debarring him not be taken and / or that the period of blacklisting be reduced. In *Otik Hotels (supra)*, a Coordinate Bench of this Court observed that no show cause notice was required because the tender documents itself stipulated that the applicant who failed to pay the licence fee as required would be debarred from participating in bidding for future projects of the respondent therein for a period of one year. However, the Court also found that in the facts of that case, punishment of debarment for a period of one year was not proportionate and consequently, reduced the punishment of debarment imposed on the petitioner therein to a period of one month. Thus, the said decision also underscores the importance of evaluating whether the harsh measure of debarring a defaulting bidder for a period ought to be taken mechanically, without considering the question if such measure is proportionate in the given circumstances. This Court is of the view that such question cannot be considered without affording the bidder a chance to furnish an explanation.

27. In the case of *Naresh Khetrpal (supra)*, a Division Bench of this Court considered a challenge to the clause of the tender document whereby the Ministry of Tourism had reserved its right to not to accept bids from agencies resorting to unethical practices or against whom investigation/enquiry proceedings had been initiated by investigating agencies. The Court held that such a clause could not be read in a manner so as to exclude from its ambit, the principles of fair play and natural justice.

28. Indisputably, DTIDC would have the discretion to not to deal with a bidder who has been found to be untrustworthy as he has defaulted. In *Patel Engineering Ltd. v. Union of India and Anr.: (2012) 11 SCC 257*, the Supreme Court had reiterated the principle that the “authority of the State to blacklist a person is a necessary



concomitant to the executive power of the State to carry on the trade or the business and making of contracts for any purpose, etc”.

29. However, the exercise of such powers cannot be arbitrary or unreasonable and must take into account the doctrine of proportionality and fair play. Thus, although paragraph 4.7 of the NIT expressly provides that the failure on the part of the bidder to pay advance licence fee and security deposit within seven days of the receipt of LOA would result in the bidder being debarred for the specified period; this Court is not persuaded to accept that the said punitive measure would follow automatically and without affording the bidder a chance to represent against the same. The provisions to debar the bidders on account of any default must be read as only enabling DTIDC to take such action. Such provision also serves as a notice to the bidders that their default could invite such measures. However, the bidders ought to be given a right to represent against the imposition of such punitive measures and it is necessary for DTIDC to consider the same before imposing such punitive measures.”

(emphasis supplied)

22. The aforesaid judgment squarely covers the issue in the present case as well. The judgment was delivered in the context of same paragraph 4.7 of NIT as in the present case. Even the judgment of **M/s Otik Hotels (supra)** relied on by the learned counsel for the respondents have been dealt with and explained. As observed therein, even in **M/s Otik Hotels (supra)**, it was held that punishment of debarment, in the facts, was not proportionate. Respondents herein have also forfeited the EMD amount as well as debarred the petitioner from participating in any tender of DTIDC for the financial year of the tender as well as next four financial years.



23. In these circumstances, therefore, the action of DTIDC to debar the petitioner for the financial year of the tender and further for four financial years is set aside.

24. With the aforesaid directions, the present petition is disposed of.

25. Interim order dated 18.02.2020 stands vacated.

26. Pending application(s), if any, also stand disposed of.

27. Judgment be uploaded on the website of this Court *forthwith*.

AMIT SHARMA
JUDGE

OCTOBER 15, 2025/YG/sn/ns