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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 9748/2024 and CM APPL.39966/2024**
VIJAY SHARMAPetitioner

Through: Ms. Aditya Kapur, Adv.
versus

FOOD CORPORATION OF INDIARespondent
Through: Mr. Manoj and Ms. Aparna Sinha,
Adv.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

ORDER

% **24.07.2025**

1. The present petition has been filed by the petitioner assailing a communication received along with e-mail dated 03.07.2024 which reads as under:



hereby guarantees that work undertaken by him will render the repaired structures completely safe and the minimum life of such work executed by the GUARANTOR treatment shall be five years to be reckoned from the date after the maintenance period, prescribed in the contract'.

That if GUARANTOR fails to execute the defected work or commits breach there under then the GUARANTOR will indemnify the Principal and his successors against all loss, damage, cost, expense or otherwise which may be incurred by him by reason of any default on the part of the GUARANTOR in performance and observance of this supplementary agreement. As to the amount of loss and/or damage and/or cost incurred by the Government the decision of the Engineer-in-charge will be final and binding on the parties.

Also, under Special Conditions of MTF at S.No.9, "the Contractor has to undertake construction of works for certification as per GRIHA norms and accordingly register the project for the maximum star rating with in the ambit of scope of work". For submission of GRIHA certificate, this office had issued various notices vide letters dated 13.01.2022, 26.04.2022, 03.08.2022, 06.09.2022, but GRIHA certificate has not been submitted by you till date for which amount of Rs1,50,000/- was withheld by this office.

Therefore, I Naresh Kumar Mehta, Assistant General Manager(Civil), FCI, Headquarters, New Delhi in exercise of the powers conferred on me by the aforesaid agreement under clauses 2(b),17,22,29(1),29(2),34(ii) for and on behalf of FCI hereby:

1. Forfeit the Security Deposit and Withheld Amount as per details below:-
Forfeiture of Security Deposit lying with FCI against above said work
Rs.26,05,845/-
Forfeiture of Withheld Amount lying with FCI (Non submission of GRIHA Certificate)
Rs.1,50,000/-
Total Rs.27,55,845/-

2. Debar your firm from participating in any future tenders of the corporation for a period of FIVE years from the date of issue of this letter.

3. You shall not be allowed to participate in the tendering process for the work related with the repairs/strengthening/renovation of the said Flats at sector -27, Noida.

This is without prejudice to FCI right to take action under any clauses or sub clauses of the agreement and to realize FCI dues and losses and damages whatsoever under clauses or sub-clauses. Moreover, any losses and damages out

of and incurred by Corporation by such conduct, will be recovered from you without prejudice to any other rights and remedies of the Corporation under the contract and law.

Yours faithfully,

(Naresh Kumar Mehta)
Assistant General Manager(Civil)

Copy to:

1. General Manager(Engg.), FCI, Headquarters, New Delhi...for information and necessary action, please.
2. General Manager(Hqrs.), FCI, Headquarters, New Delhi...for information and necessary action, please.
3. General Manager(Vig.), FCI, Headquarters, New Delhi...for information and necessary action, please.
4. General Manager(S&C) FCI, Headquarters, New Delhi...for information and necessary action, please.
5. Executive Directors, (North/South/East/West/North-East).for information and necessary action, please.
6. All GMs (Region) for information and necessary action, please.
7. CGM(IT) with a request to upload the same in the FCI web site, please.

2. Vide order dated 18.07.2024, it was *inter-alia* observed as under:

"7.In light of the above, on a prima facie consideration of the submissions and the documents placed on record by the Petitioner,



the Court observes that the impugned undated communication issued by the Respondent, to the extent that it debars the Petitioner from participating in any future bids of the Respondent for 5 years, was issued without issuing a show cause notice or affording an opportunity to the Petitioner to put forth their stand and is thus in violation of the principles of natural justice.

8. Accordingly, till the next date of hearing, the directions for debarring the Petitioner from participating in any future tenders as directed in the impugned communication shall remain stayed.”

3. Learned counsel for the respondent accedes that the impugned action *qua* blacklisting / debarring the petitioner from participating in any future tender was taken without issuing a Show Cause Notice (SCN) or affording an opportunity of hearing to the petitioner.

4. In the circumstances, the same is liable to be set aside in terms of the judgment of Supreme Court in ***Gorkha Security Services vs. Govt. (NCT of Delhi)***, (2014) 9 SCC 105. It is directed accordingly.

5. However, liberty is granted to the respondent to issue a fresh SCN to the petitioner, putting the petitioner to notice as to the action proposed to be taken against it and the rationale or basis thereof.

6. It is agreed that the petitioner would be granted a reasonable period of time to file a reply thereto, and also be afforded an opportunity of hearing by the concerned officials of the respondent. The respondent would thereafter pass a reasoned order in case any action is proposed to be taken against the petitioner under due intimation to the petitioner.

7. Needless to say, the same shall be subject to the legal rights and remedies of the petitioner.

8. The petition is disposed of in the above terms. Pending applications also stand disposed of.

SACHIN DATTA, J

JULY 24, 2025/cl