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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 9438/2025, CM APPL. 39894/2025, CM APPL. 39893/2025**
MORPHING INNOVATIONS OPC PVT. LTD.Petitioner
Through: Mr. Anil K. Airi, Sr. Adv. along with
Mr. Ravi Krishan C. Ms. Sadhan
Sharma, Ms. Shruti and Mr. Vishal
Tyagi, Advocates.
versus

**NATIONAL HIGHWAYS AND INFRASTRUCTURE
DEVELOPMENT CORPORATION LIMITED & ORS.**
.....Respondents
Through: Mr. Santosh Kumar, SC along with
Ms. Nidhi Rani, Advocates for R1.
Mr. Ankur Mittal (CGSC) and Mr.
Aviraj Pandey, Adv.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA
ORDER
% **09.07.2025**

1. The present petition has been filed by the petitioner *inter-alia* assailing a debarment order dated 01.07.2025 issued by the respondent no.1/National Highways and Infrastructure Development Corporation Ltd. (NHIDCL) against the petitioner. The said order reads as under:

“Debarment Notice

Sub: Debarment of M/s Morphing Innovations OPC Pvt. Ltd. for a period of 12 months from participating in future projects to be undertaken by NHIDCL/MORTH.

It is for general information to all concerned that M/s Morphing Innovations OPC Pvt. Ltd., R/o 432/8, Civil Lines Road, Campus, Old Hyderabad, Lucknow-226007 (U.P.) is hereby debarred for a period of 12 months from the date of issue of this notice in accordance with RFP clause



33. 3 of section II of 1TB for failing in submission of Performance security and additional performance security as per RFP clause 33.1 section II of 1TB.

2. The firm M/s Morphing Innovations OPC Pvt. Ltd. is debarred for a period of 12 months from participating in future projects to be undertaken by NHIDCL/ MORTH.

3. This is for information and necessary action for all concerned.

4. This is issued without prejudice to the rights of the NHIDCL available in accordance with RFP documents dated: 02.04.2025 and/or under applicable law.”

2. The present petition has been filed in the backdrop of a Letter of Award (LOA) dated 16.05.2025 awarded to the petitioner for the works of “*Shifting of 33 kV and 11 kV electrical utilities and the construction of power lines along NH-4 from Km155.00 to Km181.00 (from the end of Jarawa to Rangat) in the Baratang and Rangat feeder areas of Middle Andaman, in the Union Territory of Andaman and Nicobar Islands, based on percentage rate basis*”

3. It is submitted that pursuant to the issuance of the LOA, certain discrepancies were noticed by the petitioner in the said project, which were duly informed to respondent no.1.

4. It is the case of the petitioner that despite repeated representations, the respondent no.1 in order to cover up its lapses issued the impugned notice without show cause notice, hearing or intimation to the petitioner.

5. At the outset, it is noticed that while caption of the impugned order describes the same to be a “debarment notice”, paragraph 2 of the said order indicates that the impugned action is in the nature of debarment order whereby the petitioner has been debarred for a period of 12 months from participating in future projects to be undertaken by the NHIDCL/ MORTH.

6. On query, learned counsel for the respondent no.1 submits that the



purport of the said order is to debar the petitioner for non-compliance of relevant terms of Request of Proposal referred to in the debarment notice. By virtue of the said communication, the petitioner stands debarred with effect from the date of issuance of the aforesaid communication.

7. In the light of the aforesaid, it is evident that the debarment action was not preceded by a show cause notice as contemplated by the Supreme Court in ***Gorkha Security Services vs. Govt. (NCT of Delhi)***, (2014) 9 SCC 105. The relevant portion of the said judgment reads as under:

“16. It is a common case of the parties that the blacklisting has to be preceded by a show-cause notice. Law in this regard is firmly grounded and does not even demand much amplification. The necessity of compliance with the principles of natural justice by giving the opportunity to the person against whom action of blacklisting is sought to be taken has a valid and solid rationale behind it. With blacklisting, many civil and/or evil consequences follow. It is described as “civil death” of a person who is foisted with the order of blacklisting. Such an order is stigmatic in nature and debars such a person from participating in government tenders which means precluding him from the award of government contracts.

17. Way back in the year 1975, this Court in Erusian Equipment & Chemicals Ltd. v. State of W.B. [Erusian Equipment & Chemicals Ltd. v. State of W.B., (1975) 1 SCC 70] , highlighted the necessity of giving an opportunity to such a person by serving a show-cause notice thereby giving him opportunity to meet the allegations which were in the mind of the authority contemplating blacklisting of such a person. This is clear from the reading of paras 12 and 20 of the said judgment. Necessitating this requirement, the Court observed thus: (SCC pp. 74-75)

“12. Under Article 298 of the Constitution the executive power of the Union and the State shall extend to the carrying on of any trade and to the acquisition, holding and disposal of property and the making of contracts for any purpose. The State can carry on executive function by making a law or without making a law. The exercise of such powers and functions in trade by the State is subject to Part III of the Constitution. Article 14 speaks of equality before the law and equal protection of the laws. Equality of opportunity should apply to matters of public contracts. The State has the right to trade. The State has there the duty to observe equality. An ordinary individual can choose not to deal with any person. The Government cannot choose to exclude persons by discrimination. The



order of blacklisting has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who is on the approved list is unable to enter into advantageous relations with the Government because of the order of blacklisting. A person who has been dealing with the Government in the matter of sale and purchase of materials has a legitimate interest or expectation. When the State acts to the prejudice of a person it has to be supported by legality.

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.”

18. *Again, in Raghunath Thakur v. State of Bihar [(1989) 1 SCC 229] the aforesaid principle was reiterated in the following manner: (SCC p. 230, para 4)*

“4. Indisputably, no notice had been given to the appellant of the proposal of blacklisting the appellant. It was contended on behalf of the State Government that there was no requirement in the rule of giving any prior notice before blacklisting any person. Insofar as the contention that there is no requirement specifically of giving any notice is concerned, the respondent is right. But it is an implied principle of the rule of law that any order having civil consequence should be passed only after following the principles of natural justice. It has to be realised that blacklisting any person in respect of business ventures has civil consequence for the future business of the person concerned in any event. Even if the rules do not express so, it is an elementary principle of natural justice that parties affected by any order should have right of being heard and making representations against the order. In that view of the matter, the last portion of the order insofar as it directs blacklisting of the appellant in respect of future contracts, cannot be sustained in law. In the premises, that portion of the order directing that the appellant be placed in the blacklist in respect of future contracts under the Collector is set aside. So far as the cancellation of the bid of the appellant is concerned, that is not affected. This order will, however, not prevent the State Government or the appropriate authorities from taking any future steps for blacklisting the appellant if the Government is so entitled to do in accordance with law i.e. after giving the appellant due notice and an opportunity of making representation. After hearing the appellant, the State Government will be



at liberty to pass any order in accordance with law indicating the reasons therefor. We, however, make it quite clear that we are not expressing any opinion on the correctness or otherwise of the allegations made against the appellant. The appeal is thus disposed of.”

19. Recently, in *Patel Engg. Ltd. v. Union of India* [*Patel Engg. Ltd. v. Union of India*, (2012) 11 SCC 257 : (2013) 1 SCC (Civ) 445] speaking through one of us (Jasti Chelameswar, J.) this Court emphatically reiterated the principle by explaining the same in the following manner: (SCC pp. 262-63, paras 13-15)

“13. The concept of ‘blacklisting’ is explained by this Court in *Erusian Equipment & Chemicals Ltd. v. State of W.B.* [*Erusian Equipment & Chemicals Ltd. v. State of W.B.*, (1975) 1 SCC 70] as under: (SCC p. 75, para 20)

‘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.’

14. The nature of the authority of the State to blacklist the persons was considered by this Court in the abovementioned case [“12. Under Article 298 of the Constitution the executive power of the Union and the State shall extend to the carrying on of any trade and to the acquisition, holding and disposal of property and the making of contracts for any purpose. The State can carry on executive function by making a law or without making a law. The exercise of such powers and functions in trade by the State is subject to Part III of the Constitution. Article 14 speaks of equality before the law and equal protection of the laws. Equality of opportunity should apply to matters of public contracts. The State has the right to trade. The State has there the duty to observe equality. An ordinary individual can choose not to deal with any person. The Government cannot choose to exclude persons by discrimination. The order of blacklisting has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who is on the approved list is unable to enter into advantageous relations with the Government because of the order of blacklisting. A person who has been dealing with the Government in the matter of sale and purchase of materials has a legitimate interest or expectation.”(*Erusian Equipment case* [*Erusian Equipment & Chemicals Ltd. v. State of W.B.*, (1975) 1 SCC 70] , [(1975) 1 SCC 70], SCC p. 74, para 12)] and took note of the constitutional provision (Article 298) [“**298. Power to carry on trade, etc.**—The executive power of the Union and of each State shall extend to the carrying on of any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose: Provided that—(a) the said executive power of



the Union shall, insofar as such trade or business or such purpose is not one with respect to which Parliament may make laws, be subject in each State to legislation by the State; and(b) the said executive power of each State shall, insofar as such trade or business or such purpose is not one with respect to which the State Legislature may make laws, be subject to legislation by Parliament.”] , which authorises both the Union of India and the States to make contracts for any purpose and to carry on any trade or business. It also authorises the acquisition, holding and disposal of property. This Court also took note of the fact that the right to make a contract includes the right not to make a contract. By definition, the said right is inherent in every person capable of entering into a contract. However, such a right either to enter or not to enter into a contract with any person is subject to a constitutional obligation to obey the command of Article 14. Though nobody has any right to compel the State to enter into a contract, everybody has a right to be treated equally when the State seeks to establish contractual relationships. [“17. The Government is a Government of laws and not of men. It is true that neither the petitioner nor the respondent has any right to enter into a contract but they are entitled to equal treatment with others who offer tender or quotations for the purchase of the goods. The privilege arises because it is the Government which is trading with the public and the democratic form of Government demands equality and absence of arbitrariness and discrimination in such transactions. Hohfeld treats privileges as a form of liberty as opposed to a duty. The activities of the Government have a public element and, therefore, there should be fairness and equality. The State need not enter into any contract with any one but if it does so, it must do so fairly without discrimination and without unfair procedure. Reputation is a part of a person's character and personality. Blacklisting tarnishes one's reputation.”(Erusian Equipment case [Erusian Equipment & Chemicals Ltd. v. State of W.B., (1975) 1 SCC 70] , [(1975) 1 SCC 70], SCC p. 75, para 17))] The effect of excluding a person from entering into a contractual relationship with the State would be to deprive such person to be treated equally with those, who are also engaged in similar activity.

15. It follows from the above judgment in Erusian Equipment case [Erusian Equipment & Chemicals Ltd. v. State of W.B., (1975) 1 SCC 70] that the decision of the State or its instrumentalities not to deal with certain persons or class of persons on account of the undesirability of entering into the contractual relationship with such persons is called blacklisting. The State can decline to enter into a contractual relationship with a person or a class of persons for a legitimate purpose. 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. There need not be any statutory grant of such power. The only legal limitation upon the exercise of such an



authority is that the State is to act fairly and rationally without in any way being arbitrary—thereby such a decision can be taken for some legitimate purpose. What is the legitimate purpose that is sought to be achieved by the State in a given case can vary depending upon various factors.”

20. Thus, there is no dispute about the requirement of serving show-cause notice. We may also hasten to add that once the show-cause notice is given and opportunity to reply to the show-cause notice is afforded, it is not even necessary to give an oral hearing. The High Court has rightly repudiated the appellant's attempt in finding foul with the impugned order on this ground. Such a contention was specifically repelled in Patel Engg. [Patel Engg. Ltd. v. Union of India, (2012) 11 SCC 257 : (2013) 1 SCC (Civ) 445]”

8. In the light of the aforesaid, the impugned order cannot be pass muster. The same is, accordingly, set aside.
9. However, liberty is granted to the respondent no.1 to issue a proper show cause notice to the petitioner, putting it to notice as to the action proposed to be taken against it. The petitioner shall be given an opportunity to respond thereto. Thereafter, it shall be open for the respondent to pass a speaking order after affording an opportunity of hearing to the petitioner.
10. It is made clear that this order shall not be construed as an expression of opinion of this Court as regards merits or demerits of the debarment action proposed to be taken against the petitioner. All contentions of the parties are left open.
11. The present petition stands disposed of in the above terms. Pending applications also stand disposed of.

SACHIN DATTA, J

JULY 9, 2025/at