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

+ W.P.(C) 9621/2025 and CM APPL.40386/2025 (Stay)
ALTINOK CONSULTING ENGINEERING INC & ORS.

.....Petitioners

Through: Mr. K. Sultan Singh, Sr. Adv., Mr.
Samar Vijay Singh and Mr. Amit
Ojha, Advs.

versus

NATIONAL HIGHWAYS AND INFRASTRUCTURE
DEVELOPMENT CO LTD & ANR.

.....Respondents

Through: Mr. Mritunjay Kr.Singh, Mr. Saikat
Khatua and Mr. Uday Chaudhary,
Advs. for R-1.

Mr. Shoumendu Mukherji, Sr. Panel
Counsel, Ms. Megha Sharma, Mr.
Anirudh Ghosh, Mr. Anshuman
Mohanty and Mr. Vedansh Anand,
GP, UOI/R-2.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

ORDER

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15.07.2025

1. The present petition assails a communication dated 06.06.2025 whereby the respondent no.1 has sought to terminate the contract dated 06.05.2022 between the parties. By way of the said communication, the petitioner has also been sought to be debarred for a period of two years.
2. The communication dated 06.06.2025 sets out in detail the alleged contractual lapses on the part of the petitioner in respect to the work for which the contract was entered into between the parties. The same concludes as under:

“14. In the light of aforesaid facts and circumstances, non-exhaustive fundamental breach and in view of the Consultant's



persistent & sustained gross default in fulfilling contractual obligations, the Authority has now after giving sufficient time to cure the defaults and extending all possible support to the Consultant and after observing non change in the non-professional and lackadaisical attitude of the Construction, the Authority has left with no other option but to terminate this contract with "M/s Altinok Consulting Engineering Inc, in joint venture with M/s EDMA C Engineering Consultant (I) Pvt. Ltd., and in association with M/s DSD Infratech Management Pvt. Ltd." in accordance with the provisions of Clause 2.9.1 of GCC and Clause 4.5.2 of GCC of the Consultancy Agreement on account of Authority Engineer's Default with immediate effect. The contract is hereby terminated with immediate effect.

15. As a natural consequence of the termination, due to the Consultant's failure, the Consultant shall deemed to have been debarred for a period of 2 years and shall not be able to bid any contract of the NHIDCL & executing agencies of MoRT&H either singularly or in a JV or its Related Parties in accordance with Clause 2.9.7 of the Contract Agreement.

16. The provisions of Clause 2.9.4 shall henceforth apply.

17. Whereas, as a consequence, and in accordance with Clause 2.9.4, upon Termination of this Consultancy Agreement in accordance with the terms of Article 2 of the GCC, the Authority's Engineer shall comply and conform to the following:

- a. Deliver to the Authority all plans, drawings, specifications, designs, reports, other documents, reports & software (if any) prepared by the Consultants for the Client under this Contract along with a detailed inventory.*
- b. Deliver to the Authority all equipment & material made available by client or purchased by the Consultant with funds provided by the Client.*

18. Whereas, the Authority, upon termination shall make the following payments to the Consultant (after offsetting against these payments any amount that may be due from the Consultant to the Client):

- a. remuneration pursuant to Clause GC 6 hereof for Services satisfactorily performed prior to the effective date of termination;*



b. reimbursable expenditures pursuant to Clause GC 6 hereof for expenditures actually incurred prior to the effective date of termination; and

c. except in the case of termination pursuant to paragraphs (a) through(d) of Clause GC2.9.1 hereof, reimbursement of any reasonable cost incident to the prompt and orderly termination of the Contract including the cost of there turn travel of the Consultants' personnel and their eligible dependents.

19. In pursuance of this Termination Notice, your firm shall perform no further services other than those reasonably necessary to close this Contract Agreement.

20. This Notice is being issued without prejudice to Authority's right to claim damages and/ or to realize any dues, losses and damages and/ or to exercise any other right or remedy on account of Consultant's failure to comply with its obligations under this Consultancy Agreement, which may be available now or in future under the Consultancy Agreement or under the applicable laws or otherwise, as the case may be.

21. This order is issued with the approval of the Competent Authority of NHIDCL.”

3. During the course of arguments it is acceded by respective counsel for the parties that a contract between the parties contains a ‘Dispute Resolution’ (Arbitration Clause) which can be resorted to for adjudication of *inter se* contractual disputes.

4. In the circumstances, given that highly contentious and disputed questions of facts are involved, it would be apposite for the petitioner to seek relief qua termination by invoking the arbitration clause in the contract between the parties. As regards the grievance of the petitioner qua the debarment action which has been taken (as mentioned in para-15 of the impugned order), it is apparent that the said action has been taken without issuing a Show Cause Notice (SCN) to the petitioner or affording an



opportunity of hearing to the petitioner.

5. *Ex facie*, the principles of natural justice could not have been obviated in the present case prior to taking debarment action. In terms of the judgment in **Gorkha Security Services vs. Govt. (NCT of Delhi)**, (2014) 9 SCC 105, it was incumbent on the respondent to issue a SCN and also afford an opportunity of hearing to the petitioner prior to taking debarment action. The relevant extracts of the said judgment are 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]”

6. In the circumstances, the debarment action against the petitioner, inasmuch as the same has been taken in denial of the principles of natural justice, does not withstand judicial scrutiny. Accordingly, the same is set aside.

7. However, it is made clear that the respondents shall be entitled to issue a fresh SCN to the petitioner putting it notice as to the debarment action (if any sought to be taken by the petitioner) and setting out the reasons and basis thereof. The petitioner shall be entitled to file a response thereto. Thereafter, the respondents shall be at liberty to pass a reasoned order after affording an opportunity of hearing to the petitioner.

8. The above redresses the grievance of the petitioner in the present petition.

9. The petition is, accordingly, disposed of in the above terms. The pending application also stands disposed of.

SACHIN DATTA, J

JULY 15, 2025/cl