



\$~98

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

+ **W.P.(C) 16589/2025 and CM APPL.67954/2025**

M/S MSV INTERNATIONAL INC.Petitioner

Through: **Mr. Rakesh Khanna (Sr. Adv) along
with Mr. Rajive R. Raj, Mr. Rishi
Singh, Ms. Arushi, Advs.**

versus

UNION OF INDIA AND ORS.Respondents

Through: **Mr. Santosh Kumar (SC) along with
Mr. Adithya Ramani, Adv.**

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

ORDER

% **04.11.2025**

CM APPL.67953/2025 (Exemption)

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 16589/2025

3. The present petition has been filed by the petitioner, being aggrieved by revocation/ cancellation/ withdrawal of the 'Letter of Awards' (LOAs) dated 08.10.2025 (Waljapat- Ranipat), 09.10.2025 (Majlar- Jaisalmer) & 13.10.2025 (Cuttack-Kandarpur), issued by the respondent no.2/National Highway Authority of India (NHAI) pursuant to the debarment order dated 15.09.2025 and revised order dated 09.10.2025 passed by the Appellate Authority.
4. The petitioner is further aggrieved by the order dated 20.09.2025 (Indore- Harda) and 10.10.2025 (Kota-Baran), whereby the petitioner, despite being the highest bidder, NHAI/respondent no.2 has unilaterally



chosen to retender instead of issuing of letter of award to the petitioner. It is pointed out that the debarment order initially passed on 15.09.2025 contemplates that the petitioner stands interdicted only from participation in any future tenders issued by MoRTH and their executing agencies, effective from the issuance of the certificate. The said debarment action even on the face of it, cannot possibly affect the letter of awards already issued to the petitioner and bids already submitted by the tender, which are prior to the date of the debarment order.

5. The aforesaid debarment order dated 15.09.2025 was the subject matter of the appellate proceedings which, as noticed, culminated in the order dated 09.10.2025. The same was assailed by way of W.P (C) 15782/2025 in which the following order dated 14.10.2025 was passed:-

“3. The present petition assails an order dated 15.09.2025 passed by the respondent no.3 (NHAI) whereby the petitioner has been debarred from participating in any future bid of National Highway Authority of India (NHAI), MoRTH/respondent no. 2 and their executing agencies for a period of two years. The petitioner is further aggrieved by the appellate order dated 09.10.2025 whereby the respondent reduced the debarment to six months but imposed additional punishment by way of penalty of Rs. 19,72,250/-.

4. Learned senior counsel for the petitioner submits that the respondent no.3 completely erred in characterising the minor discrepancies in the petitioner’s bid as fraudulent practice. It is submitted that at best there were minor unintentional/ clerical errors which do not warrant a punitive action of this nature i.e. debarment for a maximum period of two years taken against the petitioner.

5. It is submitted that the respondents failed to appreciate that even if the alleged discrepancies in the bid of the petitioner are taken into account, the residual bid capacity of the petitioner was well within the permissible limit as contemplated in the Request for Proposal (RFP) and, therefore, the unintentional errors were inconsequential in nature.

6. It is pointed out that, in the first instance, by way of the impugned order dated 15.09.2025, completely overlooking the petitioner’s response



to the show cause notice, a debarment of two years was sought to be slapped on the petitioner. The petitioner took recourse to the prescribed departmental remedy by approaching the concerned review committee.

7. It is noticed that in the appeal filed by the petitioner the following contentions were specifically raised:-

“a) While LOA for this DPR Project was already received on 03.02.2025, it was inadvertently missed out from the list of Running Projects as pointed out by the Authority , though we, the Bidders had no such intention as the ongoing negotiations and non-availability of a confirmed Commencement Date from Authority ' s side confused the Bidding Team to not to consider it as a Running Project for Residue Bid Capacity estimations , and thus was a sheer technical oversight. As a course correction, we, the Bidders considered this project in our revised Residual Bid Capacity calculations at S. No. 9 (Annexure - 1) of the List of the Running Projects to assess the implications of this inadvertent oversight and it is found that the Bidders still had the buffer Residual Bid Capacity to undertake this DPR Project under reference. There was no motive involved as there was no extra weightage of any extent of bid capacity beyond the required lowest bench mark. Thus, it may kindly be appreciated that the Bidders had no intention of hiding or not disclosing this material fact, though it was not included in the list of running projects as a sheer confusion arising from the common sense definition of Ongoing Projects wherein this project was mistakably construed as “Not Yet Commenced” and hence Not to be Considered as an “Ongoing or a Running Project” - though a mistake in the stricter terms of definition of Running Projects brought out in the RFP stipulations . It is therefore, further reiterated that this oversight may kindly not be classified as Fraudulent Practice in the true sense of Clause 11 (a) (ii) of LOI of RFP, as this data point which otherwise has been considered in the revised Residual Bid Capacity estimation, have no material impact on the selection process of the DPR Consultant due to the following plausible reasons:-

i) It does not impact the Technical Score of the Bidders; and;
ii) Having been included in the Running Projects Lists as pointed out by the Authority, has no material effect as there was no extra weightage for any extent of capacity beyond the lowest bench mark and hence did not impact the competitiveness of the overall bidding process.

b) The said percentage sharing of 90% is typo error, which may



please be ignored and treated as 75%. In this regard, NHAI has also published a policy circular no 11.41/ 2022 dated 12/08/2022. As per the said Policy and Clause 12.1.iii of Data Sheet under RFP for the subject project “If the applicant firm has /have prepared the DPR /FS projects solely on its own, 100% weightage shall be given. If the applicant firm has prepared the DPR/FS projects as a lead partner in a JV, 75% weightage shall be given. If the applicant firm have prepared the DPR projects as the other partner (not lead partner) in a JV 50% weightage shall be given. If the applicant firm have prepared the DPR/ FS projects as an associate, 25% weightage shall be given /’. From the above provision of policy circular, it is clear that weightage/sharing/experience of Sub-consultant shall be 25% only, and therefore our share as lead partner has to be considered as 75 %. This issue having been so well laid out in the RFP it was an inadvertent error on our part. That there was no intent of any fraud behind this would be borne out of the fact that parallel, we had already uploaded, the CA Certificate dated Dec 8, 2022 on the INFRACON Portal (Annexure-2), which clearly depicts that the share of Associate partner is 25%. This CA Certificate is in public domain showing clearly that the error was purely an oversight by the person who prepared the Bid and may kindly not be classified as a fraudulent practice.

As regards the other inaccuracies mentioned, the same have been already replied to where in it was humbly pleaded that there was no intent of fraud involved as there was no motive to increase the residual bid capacity in absence of any extra marks as per the RFP for any extent of excessive capacity beyond the qualifying mark of 15 kms.

c) Regarding the issue of classifying the Muzaffarpur- Begusarai project, we vehemently plead as under:

The Draft Consultancy Agreement /RFP for instant DPR for UER-II, indicates in context of DPR projects already done by a bidding consultant, once a bidder was identified as HI, the past assignments would have assumed the status of ‘on going’ projects. As regards their completion, the Draft Consultancy Agreement/RFP for instant DPR for UER - II, provides that for the past assignments to fall in category of completed projects, either a completion certificate should have been got issued or the related civil work should have been bidden out.

However, where a DPR project, like in the case of Muzaffarpur to Begusarai, which we had in our bid, was held in abeyance well after



commencement, for a number of years, the said Draft Consultancy Agreement/ RFP for instant DPR for UER-II goes silent.

In case of Muzzafarpur to Begusarai, the DPR had been held in abeyance and seven years had elapsed since its commencement, though the scheduled period of the DPR was less than one year i.e. just 300 days. The instant DPR/ EFP for UER-II was silent on this issue. For such a situation NHAI has issued a circular to clarify this situation.”

8. A perusal of the Appellate Authority order passed on the aforesaid appeals, reveals that the same is unreasoned in material respects inasmuch, as the aforesaid aspects highlighted by the petitioner in the appeal have not been taken into consideration. Further, there is no rationale disclosed for imposing a penalty of Rs. 19,72,250/- on the petitioner. Concededly, the show cause notice dated 15.07.2025 issued to the petitioner did not even to refer to any such penalty.

9. In the circumstances, the impugned order dated 09.10.2025 passed by the Appellate Authority is set aside, the matter is remanded back to the Appellate Authority to consider the matter afresh and pass a reasoned order specifically taking into account the aforesaid aspects highlighted by the petitioner in its appeal. The appellate authority shall also give an opportunity of hearing to the petitioner and thereafter, pass a reasoned order under intimation to the petitioner. Let the aforesaid exercise be done as expeditiously as possible.

10. In the meantime, till conclusion of the aforesaid exercise, the debarment/ penalty sought to be imposed on the petitioner shall remain in abeyance.

11. It is made clear that the Appellate Authority shall consider the matter afresh taking into account all relevant facts and circumstances, including those highlighted by the petitioner in the present writ petition.

12. The petition is disposed of in the above terms.”

6. It is informed that the exercise directed to be conducted in terms of the said order is still underway before the Appellate Authority. It is also evident from the perusal of the order dated 14.10.2025 passed by this Court that as on date, no debarment order/s *qua* the petitioner is in operation. As such, the action of the respondents in cancelling LOAs already issued in



favour of the petitioner and in seeking to reject the bids of the petitioner (for reasons of debarment) is *ex facie* unjustified.

7. Learned counsel for the respondents is not in a position to controvert that, as on date, there is no debarment order in operation *qua* the petitioner. However, he submits that the petitioner has not been forthcoming in appearing for hearing before the Appellate Authority so as to conclude the exercise as directed to be conducted by this Court *vide* order dated 14.10.2025.

8. Considering the submissions made, the following directions are issued:-

- i. The orders dated 08.10.2025, 09.10.2025 and 13.10.2025 and also the orders/action on the part of the respondent no.2/ NHAI in seeking to disqualify/treat the petitioner's bid/s as unresponsive (annexed as Annexure P-2) in the existing/ongoing tender processes, on the basis of the debarment order, is stayed till conclusion of the exercise as directed to be conducted *vide* order dated 14.10.2025;
 - ii. For the purpose of completion of exercise as directed *vide* order dated 14.10.2025, the petitioner shall appear before the Appellate Authority on 10.11.2025 or on a suitable date/time to be intimated by the Appellate Authority. It is agreed that the hearing before the Appellate Authority shall be concluded on the said date, and no further adjournment shall be sought by the petitioner.
9. It shall be open for the petitioner to urge all relevant aspects, including those sought to be canvassed in the present petition, before the



Appellate Authority. The Appellate Authority shall pass a reasoned order under intimation to the parties.

10. The petition is disposed of in the above terms.

11. Needless to say, if either of the parties is aggrieved with the aforesaid exercise, it shall be at liberty to avail appropriate remedies in accordance with law.

SACHIN DATTA, J

NOVEMBER 4, 2025/uk