

GAHC010033452026



2026:GAU-AS:4273

THE GAUHATI HIGH COURT

(THE HIGH COURT OF ASSAM, NAGALAND, MIZORAM & ARUNACHAL PRADESH)

Writ Petition (C) No. 958/2026

Jind Surgicals, having its registered Office at 24-27, HSIDC Industrial Estate, Hansi Road, Jind 126102 in the State of Haryana and is represented by one of its partner Mr. Sushil Kumar, S/o Banwari Lal, 181/19, Vivekanand Nagar, near Head Post Office, Jind 126102 in the State of Haryana.

.....***Petitioner***

-Versus-

1. The State of Assam, represented by the Commissioner Secretary to the Government of Assam, Health & Family Welfare Department, Dispur, Guwahati, Assam - 781006.
2. Assam Medical Services Corporation Ltd., represented by the Managing Director, having its registered address at Central Drug Ware House Campus, Patherquery, Narengi, Guwahati, Assam - 781026.
3. The Managing Director, Assam Medical Services Corporation Ltd., having its registered address at Central Drug Ware House

Campus, Patherquery Narengi, Guwahati, Assam -781026.

4. The General Manager, Procurement QC IT Logistics, Assam Medical Services Corporation Ltd.

.....Respondents

BEFORE
HON'BLE MR. JUSTICE MANISH CHOUDHURY

Advocates :

Petitioner : Mr. G.N. Sahewalla, Senior Advocate
Mr. M. Sahewalla, Advocate

Respondents : Mr. D.P. Borah, Standing Counsel,
Health & Family Welfare Department

Date on which judgment is reserved : 13.03.2026

Date of pronouncement of judgment : 25.03.2026

Whether the pronouncement is of the
Operative part of the judgment? :

Whether the full judgment has been
Pronounced ? : Yes

JUDGMENT & ORDER

Taking exception to a Firm Debarment Notice bearing no. 746365 dated 02.02.2026 [‘Debarment Notice’] passed by the Managing Director, Assam Medical Services Corporation Limited [the respondent no. 3], the petitioner has instituted the present writ petition under Article 226 of the Constitution of India. By the impugned Debarment Notice, the respondent no. 3 has blacklisted and debarred the petitioner from participating in any tender for any item[s] issued by the Tender Inviting Authority [TIA] for a period of three years, with immediate forfeiture of the Bid Security and Performance Security, in accordance with the provisions of the Assam Public Procurement Act, 2017, from the date of the said intimation.

2. The petitioner is a partnership firm having its registered office at HSIDC Industrial Estate, Jind, Haryana. The petitioner has stated that it specializes in primary manufactures and supplies of ‘Absorbent Cotton Wool’, a versatile, sterilized and bleached cotton product used extensively in healthcare for wound cleaning and bandaging as well as for personal care, hygiene, baby care and make-up removal, being known for its high absorbency and purity. The petitioner has claimed experience in the field of supplying cottons, both in Government and non-Government sectors and it has successfully completed supplies of various orders issued by departments / agencies of the Government of India and various State Governments across the country.

3. The Assam Medical Services Corporation Limited [AMSCL] by publication of a Notice Inviting Tender [National Competitive Bidding] dated 07.03.2024 [‘the NIT’, for short] invited online tenders under two-bid system from eligible parties for supply of essential surgical items by entering into a Rate Contract valid for one year from the date of issue of Letter of Intent [LoI]. The eligibility criteria for the prospective bidders were laid down in Clause 2 of the Bidding Document. The bidders were required to submit online bids through the designated e-Tender portal and the bids were to be submitted in two-bid system [Technical Bid & Price Bid].

4. Clause 4 of the Bidding Document provided for 'Evaluation, Selection & Acceptance of Tender'. The bids [Technical Bid & Price Bid] were to be opened online on the prescribed date. Price Bids of only those bidders whose Technical Bids were found acceptable / eligible after technical and commercial evaluation, were to be opened online. Price Bids of technically qualified bidders were to be evaluated with reference to the quoted price [landed price, for destination] of each item to determine the L-1 [lowest] price. After conclusion of the Price Bid opening, the lowest bid [quoted] among the bids received for each item was to be discovered and declared as L-1 rate and the corresponding bidder as L-1 bidder for that item for which the bids were invited. The bidder declared as L-1 for certain item[s] was to be invited to execute a Rate Contract for a period of one year to supply the item[s] of required quantity, quality and specification at the agreed rate within the prescribed delivery period. The shortlisted firm was required to commit contractually to furnish performance security of 5% of the order value within ten days of receipt of the Purchase Order, failing which the contract was liable for cancellation, followed by recovery of the penalty in the form of forfeiture of the Earnest Money Deposit [EMD] or security. In the terms and conditions of the Bidding Document, there was a provision for Parallel Rate Contract.

5. The NIT mentioned that the tender process would be governed by the Assam Public Procurement Act, 2017 ['the Procurement Act', for short] and the Assam Public Procurement Rules, 2020 ['the Procurement Rules', for short].

6. In the Bidding Document, the definition of Firm Rate / Contract was provided for. The bidder shall quote the rate [inclusive of all taxes, transportation, insurance, packaging charges, NABL testing charges and any incidental charges] for each of the item or items it intended to bid for. The delivery should be made at the location[s] as stipulated in the Purchase Order placed with the successful bidders. The rates as quoted, accepted and contracted shall remain firm or binding on the bidder for the contract period. The ordered items shall be delivered at the State Warehouse based at Guwahati or at different District Drug Stores / Medical College Stores in accordance with the instructions in the Purchase Orders within best possible time from the date of Purchase Order. In respect of security deposit, it was provided in the Bidding Document that a security deposit @ 5% of the

Purchase Order value was to be deposited within ten working days from the date of receipt of the Purchase Order in favour of the AMSCL.

7. In response to the NIT, the petitioner submitted its bid for the item, 'Absorbent Cotton Wool IP 100 gm, Roll of 100 gm, net weight' and was adjudged successful [L-1] for supply of the said item after evaluation of the bids. A Letter of Intent [LoI] was issued by the respondent no. 3 on 16.07.2024 informing the petitioner and other successful bidders for other items that they were selected for entering into Rate Contracts to supply essential items as per the rate and specification detailed at Annexure-A attached to the LoI. It was mentioned that the duration of the Rate Contract would be valid for one year from the LoI. On the Scope of Work, it was provided that the ordered items shall have to be delivered at different District Drug Stores / Medical College Stores / Central Drug Store or any other destinations specified in the Purchase Order[s] located in different districts of Assam in accordance to the instructions in the Purchase Order[s]. The supply shall commence within the best possible time from the date of the Purchase Order[s] and the supply of full quantity shall be completed within the best possible time, maximum seventy-five days from the date of issuance of the Purchase Order[s]. The petitioner's name figured at Serial no. 1 in Annexure-1 as L-1 for supply of the following item in the following manner :-

Sl. No.	Tender Sl. No.	Name of the item	Name of the L-1 bidder	Rate without Tax	L-1 rate with Tax
1.	1.	Absorbent Cotton Wool IP 100 gm, Roll of 100 gm, Net Weight.	Jind Surgicals	22.50	25.20

8. The selected bidders were asked to execute the Rate Contract within ten working days from the date of the LoA with the Tender Inviting Authority [TIA]. On being selected as the L-1 bidder for the quoted item, 'Absorbent Cotton Wool 100 gm, Roll of 100 gm, Net Weight' ['Absorbent Cotton Wool', for short] a Rate Contract Agreement was executed by the petitioner with the AMSCL, represented by the respondent no. 3, on 17.07.2024. The Rate Contract Agreement was deemed to have come into force w.e.f. 16.07.2024 with validity up to

15.07.2025. It has been mentioned that in case the petitioner as the supplier fails or neglects or refuse to faithfully perform any part of the conveyance on his part contained in the Rate Contract Agreement, it would be lawful for the AMSCL for forfeit the amount deposited by the supplier as performance security and cancel the contract. Situations which would call for debarment / blacklisting for failure in execution of supply / non-supply / default in supply were mentioned in the LoI.

9. After execution of the Rate Contract Agreement, the petitioner was issued Purchase Order[s] from time to time for supply of the item, 'Absorbent Cotton Wool'. The petitioner has claimed that all the Purchase Orders were satisfactorily executed by delivering the ordered quantity of 'Absorbent Cotton Wool' at the designated warehouses and locations as per the requirements of the respondent authorities. The petitioner has stated that it had completed delivery in respect of eight nos. of Purchase Orders including the two Purchase Orders, mentioned in the impugned Debarment Notice. The Purchase Orders which were issued to the petitioner and executed by it were as under :-

Item - Absorbent Cotton Wool IP 100 gm, Roll of 100 gm, Net Weight			
Purchase Order Number	Purchase Order Date	Purchase Order Quantity	Purchase Order Value
2020102385182	2024-07-24	19,950	Rs. 5,02,740/-
2020102385185	2024-07-25	20,200	Rs. 5,09,040/-
2020102386705	2024-11-25	20,200	Rs. 5,09,040/-
2020102386748	2024-11-25	19,950	Rs. 5,02,740/-
2020102388027	2025-03-02	12,800	Rs. 3,22,560/-
2020102388109	2025-03-02	17,100	Rs. 4,30,920/-
2020102388298	2025-05-22	6,600	Rs. 1,66,320/-
2020102388316	2025-05-22	12,100	Rs. 3,04,920/-

10. The impugned Debarment Notice is in connection with two Purchase Orders, that is, Purchase Order no. P-619308/2020102388027 dated 02.03.2025 and Purchase Order no. P-619308/2020102388109 dated 02.03.2025. Both the Purchase Orders were for supply of the item, 'Absorbent Cotton Wool'. The first Purchase Order was for a quantity of 12,800 and the

value of the Purchase Order was Rs. 3,22,560/-. The second Purchase Order was for a quantity of 17,100 and the value of the Purchase Order was Rs. 4,30,920/-.

11. According to the petitioner, it had delivered the ordered quantities of the item by complying with all the formalities at the destinations as per the Purchase Orders. The ordered quantities were duly received under acknowledgement by the respondent authorities. In the following months, there was no complaint about the quantities of the item delivered. But all on a sudden, the impugned Debarment Notice came to be issued on 02.02.2026.

12. I have heard Mr. G.N. Sahewalla, learned Senior Counsel assisted by Mr. M. Sahewalla, learned counsel for the petitioner; and Mr. D.P. Borah, learned Standing Counsel, Health & Family Welfare Department for all the respondents.

13. Mr. Sahewalla, learned Senior Counsel appearing for the petitioner has submitted that there was no show cause notice prior to issuance of the impugned Debarment Notice. As the allegations for which the petitioner has been blacklisted and debarred are serious, the respondent authorities were obligated to afford a prior opportunity of being heard to the petitioner so as to enable the petitioner to give a proper and effective reply to such allegations. The action taken is, therefore, clearly in violation of the principles of natural justice. It is his contention that the ordered quantities of the item, as per the two Purchase Orders, were duly delivered at the destinations along with all the requisite certifications. He has further contended that there was an investigation behind the back of the petitioner and from the impugned Debarment Notice, it is evidently clear that the Investigation Report submitted subsequent to the investigation had influenced the decision of the respondent authorities. It was, therefore, imperative on the part of the respondent authorities to provide a copy of the Investigation Report to enable the petitioner to respond to the adverse findings, if any, recorded therein. In the impugned Debarment Notice, it is mentioned that the action has been taken in accordance with the provisions of the Assam Public Procurement Act, 2017. The action of blacklisting and debarment which have been taken against the petitioner, according to Mr. Sahewalla, could not have been taken under the provisions of the Procurement Act and therefore, the action is beyond the authority and jurisdiction of the

Procuring Authority. Even in the provisions of sub-section [5] of Section 46, a mandate is contained to give an opportunity of being heard. As the action of blacklisting and debarment is extremely harsh and there is clear violation of the principles of natural justice due to denial of any prior, reasonable and effective opportunity of being heard, the impugned Debarment Notice is not sustainable in law and the same is liable to be set aside and quashed.

14. In response, Mr. Borah, learned Standing Counsel, Health & Family Welfare Department appearing for the respondents has referred to the allegations reported in the impugned Debarment Notice to canvass that the transgression committed by the petitioner in supplying the item was serious in nature as the item, 'Absorbent Cotton Wool' was procured in large quantities for patients in Government health facilities / hospitals, etc., who belong to the economically weaker or downtrodden section of the society. Supply of large quantities of 'Absorbent Cotton Wool' which are used for wound cleaning and bandaging, etc., beyond expiry date had the possibility of causing adverse impact in the medical treatment of the patients. In a serious matter like the case in hand, the measure as taken through the Debarment Notice, was called for against an erring supplier like the petitioner. He has further contended that even if it is assumed that the provisions of the Procurement Act are not applicable after the award of contract subsequent to the procurement process, it is still within the authority and jurisdiction of the employer / procuring authority to take appropriate action against an erring and delinquent supplier. It is only after carrying out an investigation and receipt of an Investigation Report, the action was taken against the petitioner. He has, thus, contended that no interference with regard to the order of blacklisting and debarment of the petitioner as well as other consequential actions taken against the petitioner is called for.

15. I have duly considered the rival submissions of the parties and have also gone through the materials brought on record by the parties through their pleadings apart from the authorities cited in support of their respective submissions.

16. The NIT mentioned that the tender process would be governed by the Assam Public Procurement Act, 2017 [the Procurement Act] and the Assam Public Procurement Rules, 2020 [the Procurement Rules]. The Assam Public Procurement Act has been enacted to

establish legal foundations for procurement by public entities so as to ensure timely delivery of intended outcome with efficiency, economy, integrity and accountability; transparency, fair and equitable treatment of bidders; public confidence regarding good governance in the process and for matters connected therewith or incidental thereto.

17. As per the definition provided for 'procurement' of 'public procurement' in Section 2[u], it means acquisition by purchase, lease, license or otherwise of works, goods or services, including award of public private partnership projects, by a procuring entity whether directly or through an agency with which a contract for procurement services is entered into, but does not include any acquisition without consideration. It is further provided that 'procure' or 'procured' shall be construed accordingly. As per Section 2[w] 'procurement process' means the process of procurement extending from the issue of invitation to pre-qualify or to register or to bid till the award of the procurement contract or cancellation of the procurement process, as the case may be.

18. In the case in hand, the action taken by the procuring authority is after the procurement process is complete and the petitioner as the seller and the procuring authority as the purchaser had entered into a Rate Contract Agreement on 17.07.2024. After execution of the Rate Contract Agreement, the petitioner was issued Purchase Orders from time to time for supply of the item, 'Absorbent Cotton Wool'. The dispute arose specifically in connection with two Purchase Orders, that is, Purchase Order no. P-619308/2020102388027 dated 02.03.2025 and Purchase Order no. P-619308/2020102388109 dated 02.03.2025.

19. The Rate Contract Agreement is between the petitioner, a private entity, on one part and the Assam Medical Services Corporation Limited [AMSCL], which is an instrumentality of the State, on the other part. The Rate Contract Agreement does not specifically mention about applicability of the provisions of the Procurement Act. The Rate Contract Agreement is not a statutory contract. The Rate Contract Agreement contains a condition that in case the supplier fails or neglects or refuse to faithfully perform any of the covenants on his part contained therein, it shall be lawful for the purchaser to forfeit the amount deposited by the supplier as performance security and cancel the contract.

20. The contention advanced on behalf of the petitioner that the action of blacklisting and debarment could not have been taken under the provisions of the Procurement Act and therefore, the action of blacklisting and debarment is without authority and jurisdiction is found unacceptable. It is a settled position of law, as held in *Kulja Industries Limited vs. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited and others*, [2014] 14 SCC 731, that the power to blacklist a contractor whether the contract be for supply of material or equipment or for the execution of any other work whatsoever is inherent in the party allotting the contract. There is no need for any such power being specifically conferred by statute or reserved by contractor. Blacklisting simply signifies a business decision by which the party affected by the breach decides not to enter into any contractual relationship with the party committing the breach. Between two private parties the right to take any decision is absolute and untrammelled by any constraints whatsoever. The freedom to contract or not to contract is unqualified in the case of private parties. But any such decision is subject to judicial review when the same is taken by the State or any of its agencies / instrumentalities. It has been held categorically therein that any such decision would be open to scrutiny not only on the touchstone of the principles of natural justice but also on the doctrine of proportionality. A fair hearing to the party being blacklisted is an essential pre-condition for a proper exercise of the power and a valid order of blacklisting.

21. For proper appreciation of the nature of challenge made, it is apposite to refer to the impugned Firm Debarment Notice dated 02.02.2026 at this juncture. For ready reference, the contents of the impugned Firm Debarment Notice are extracted hereinbelow :-

**OFFICE OF THE MANAGING DIRECTOR
ASSAM MEDICAL SERVICES CORPORATION LIMITED**

From : xxxxx

Managing Director

Assam Medical Services Corporation Limited.

To : Jind Surgicals

24-27, HSIDC Industrial Estate, Hansi Road, Jind, HR-126102.

Sub :- Firm Debarment Notice due to the supply of expired and fraudulently re-labelled product-reg.

Ref :

1. Investigating Report vide no. HSD/NSQ/Action/2021/386/133 dated 06.01.2026.
2. Purchase Order no. 202010388027 and 2020102388109 dated 02.03.2025.
3. Tender no. 458501/35523 dated 08.03.2024.

Sir/Madam,

With reference to the subject cited above, this is to inform you that the supplied item Absorbent Cotton Wool I.P. Batch no. 2085 contains two labels : an outer label pasted over the inner label, with the two labels mentioning different manufacturers. The outer label shows the manufacturer as Jind Surgicals, while the inner label shows Om Surgical Industries. It is further observed that the expiry date mentioned on the inner label is May, 2025 and January, 2026 [in two different packets of the same batch]. The mentioned batch was supplied against Purchase Order nos. 2020102388027 and 2020102388109, both dated 02.03.2025.

As your firm has supplied an expired and fraudulently re-labelled product, your firm has been blacklisted and debarred from participating in any tender for any item[s] issued by the TIA [Tender Inviting Authority] for a period of 3 years, with immediate forfeiture of the bid security and performance security, in accordance with the provisions of the Assam Procurement Act, 2017, from the of this intimation.

This is for information and necessary action.

Your's Sincerely

xxxxx

Managing Director

Date – 02.02.2026

22. By the Notice, it was informed to the petitioner that by the two Purchase Orders, its supplied the item, 'Absorbent Cotton Wool' containing two labels – an outer label pasted over the inner label, with two labels mentioning different manufacturer's name. The outer label showed the manufacturer as 'Jind Surgicals' [the petitioner], while the inner label showed the manufacturer's name as 'Om Surgical Industries'. It was further observed that the expiry date mentioned on the inner label was May, 2025 and January, 2026 [in two different packets of the said batch]. The mentioned batch was supplied against two Purchase Orders, that is, Purchase Order no. P-619308/2020102388027 dated 02.03.2025 and Purchase Order no. P-619308/2020102388109dated 02.03.2025. Holding that the petitioner had supplied an expired and fraudulently re-labeled product, the petitioner has been blacklisted and debarred from participating in any tender for any item[s] issued by the Tender Inviting Authority [TIA] for a period of three years, with immediate forfeiture of the Bid Security and Performance Security w.e.f. 02.02.2026.

23. In the affidavit-in-opposition filed by the respondent no. 4, a stand has been taken to the effect that the action of debarment has to be taken on account of serious allegations of supply of misbranded / spurious and fraudulently re-labelled medical goods. The respondents entrusted with the duty to safeguard the health of vulnerable patients dependent upon public healthcare institutions cannot afford to treat such misconduct lightly. The incorporation of stringent quality assurance in the Bidding Document is for the obligation of the State to protect life and health. Any act compromising the safety and authenticity of medical goods strikes at the foundation of public trust. The action of debarment has been supported by saying that it is neither arbitrary nor excessive. It is a proportionate and preventive measure, taken strictly abiding by the statutory prescriptions and limits and in public interest to preserve the integrity of the procurement system and prevent recurrence of similar incidents. A stance is taken that the commission or omission on the part of the petitioner is prejudicial to the sanctity of public health and the integrity of the State's medical supply chain.

24. On the factual aspects, as mentioned above, the respondents have contended that the action relates to two specific Purchase Orders. It is stated that an inspection by the Drug

Control Authority revealed that – [i] the outer label indicated Batch no. 2085, Manufacture Date – 14.03.2025 and Expiry Date – February, 2027; and [ii] the inner label showed different manufacturer [Om Surgical Industries – Jan Aushadhi] with Manufacture Year – 2022 and Expiry Date – May, 2025 / January, 2026. Though Dispatch Clearance Certificate [DCC] was issued but the NABL Test Report submitted by the petitioner cannot validate re-labelling because such Report was submitted by the petitioner as the supplier and the Report only pertained to samples declared by the petitioner. The Report did not authenticate the tampered product physically seized and fraudulent re-labelling can only be detected during physical inspection.

25. From the Firm Debarment Notice, extracted hereinabove, it is noticed that there is a reference of an Investigation Report dated 06.01.2026. The said Inspection Report has been annexed to the affidavit-in-opposition. On a bare perusal of the Inspection Report, it transpires that the same was submitted by the Drugs Controller, Assam as the Licensing and Controlling Authority on 06.01.2026 to the Drugs Controller & State Licensing Authority, Haryana after carrying out an inspection and collection of sample for test / analysis by the Inspector of Drugs, Kamrup [R] by visiting District Drug Warehouse at Amingaon on 23.12.2025. The Inspector of Drugs after the inspection on 23.12.2025, submitted a complaint before the Drugs Controller, Assam against the petitioner's supplied item, 'Absorbent Cotton Wool' having Batch no. 2085 and a spot report recording his findings that the item, 'Absorbent Cotton Wool' was purportedly spurious. In the spot report, it was reported that the sample checked was found containing two labels – an outer label and an inner label. The two labels contained different information. As regards the contention of the petitioner that the Investigation Report dated 06.01.2026 was never handed over to the petitioner prior to the impugned Debarment Notice dated 02.02.2026, the respondents have contended that the findings of the Investigation Report were summarized in the Debarment Notice. A stand has been taken, thereby, to the effect that when the material facts are documentary and undisputed in nature, the same would not invariably necessitate a personal oral hearing and by allowing the petitioner to submit a written representation post-blacklisting / debarment, the requirement of reasonable opportunity had been complied with.

26. Undoubtedly, an order of blacklisting and debarment visits the person or entity blacklisted and debarred with adverse civil consequences. It is a principle of the rule of law that any order which brings adverse civil consequences to a person or an entity, should be passed only after following the principles of natural justice. Blacklisting and debarment is considered to be an effective tool available at the hand of the employer or the procuring entity to take an erring and delinquent supplier / contractor to task if the supplier / contractor is found to have indulged in acts of omission or commission against the employer by way of acts like fraud, misrepresentation, falsification or other transgressions qua the underlying contract between them. If the supplier / contractor is engaged in dealings with the Government or agencies / instrumentalities of the State only, then an order of blacklisting and debarment passed against it by any Government or any such agency / instrumentality has cascading and long-lasting effect in that its business dealings comes to a grinding halt not only with the employer or the procuring entity but also with all other Governments and agencies / instrumentalities of the State. The blacklisted and debarred person or entity stays stuck in a state of inactivity during the period the order of blacklisting and debarment subsists. As blacklisting and debarment also tarnishes the image of the person or entity in the business sphere, it becomes very difficult for the person or entity to regain its earlier image and momentum even after the period of blacklisting and debarment is over. In *M/s Erusian Equipment & Chemicals Ltd. vs. State of West Bengal and another*, [1975] 1 SCC 70, the Hon'ble Supreme Court has observed that a blacklisting order casts a slur and the black lists are instruments of coercion. 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.

27. It has been laid down in a catena of decisions of the Hon'ble Supreme Court that the procedure to be followed anterior to an order of blacklisting and debarment should be in conformity with the principles of natural justice. In *Gorkha Security Services vs. Government [NCT of Delhi] and others*, [2014] 9 SCC 105, the Hon'ble Supreme Court has observed on the aspects of necessity of serving a show cause notice as a requisite of the principles of natural justice and the contents of the show cause notice in the following manner :-

Necessity of serving show-cause notice as a requisite of the principles of natural justice.

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.

* * * * *

Contents of the show-cause notice

21. The central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of show-cause notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the defaults/breaches complained of are not satisfactorily explained. When it comes to blacklisting, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action.

22. To put it otherwise, we are of the opinion that in order to fulfil the requirements of principles of natural justice, a show-cause notice should meet the following two requirements viz :

[i]The material / grounds to be stated which according to the department necessitates an action;

[ii] Particular penalty / action which is proposed to be taken.....

We may hasten to add that even if it is not specifically mentioned in the show-cause notice but it can clearly and safely be discerned from the reading thereof, that would be sufficient to meet this requirement.

28. As the consequences of blacklisting and debarment travel far beyond the dealings of the blacklisted and debarred person or entity with one particular Government or an agency / instrumentality of the State, the Hon'ble Supreme Court in *UMC Technologies Private Limited vs. Food Corporation of India and another*, [2021] 2 SCC 551, has stressed for strict adherence to principles of natural justice in the following words :

13. At the outset, it must be noted that it is the first principle of civilised jurisprudence that a person against whom any action is sought to be taken or whose right or interests are being affected should be given a reasonable opportunity to defend himself. The basic principle of natural justice is that before adjudication starts, the authority concerned should give to the affected party a notice of the case against him so that he can defend himself. Such notice should be adequate and the grounds necessitating action and the penalty / action proposed should be mentioned specifically and unambiguously. An order travelling beyond the bounds of notice is impermissible and without jurisdiction to that extent. This Court in *Nasir Ahmad vs. Custodian General, Evacuee Property* [*Nasir Ahmad vs. Custodian General, Evacuee Property*, (1980) 3 SCC 1] has held that it is essential for the notice to specify the particular grounds on the basis of which an action is proposed to be taken so as to enable the noticee to answer the case against him. If these conditions are not satisfied, the person cannot be said to have been granted any reasonable opportunity of being heard.

14. Specifically, in the context of blacklisting of a person or an entity by the State or a State

Corporation, the requirement of a valid, particularised and unambiguous show-cause notice is particularly crucial due to the severe consequences of blacklisting and the stigmatisation that accrues to the person / entity being blacklisted. Here, it may be gainful to describe the concept of blacklisting and the graveness of the consequences occasioned by it. Blacklisting has the effect of denying a person or an entity the privileged opportunity of entering into government contracts. This privilege arises because it is the State who is the counterparty in government contracts and as such, every eligible person is to be afforded an equal opportunity to participate in such contracts, without arbitrariness and discrimination. Not only does blacklisting take away this privilege, it also tarnishes the blacklisted person's reputation and brings the person's character into question. Blacklisting also has long-lasting civil consequences for the future business prospects of the blacklisted person.

29. An adjudicatory authority, be it administrative or quasi judicial, is not to base its decision if such decision has an impact on right of a party, on any material unless the person against whom it is going to be used has been apprised of it and given an opportunity to respond to it. If the authority is to rely on any material or document for its decision against a party, then the same must be brought to his notice and he should be given an opportunity to respond to it. It is regarded as fundamental principle of natural justice that no material ought to be relied on against a party without giving him an opportunity to respond to the same. The right to know the material on which the authority is going to base its decision is an element of the right to defend oneself. If without disclosing any material to the party, the authority takes it into its consideration, and decides the matter against the party basing on such material then the decision is vitiated for its amounts to denial of a real and effective opportunity to the party to meet the case against him.

30. In *T. Takano vs. Securities and Exchange Board of India and another*, [2022] 8 SCC 162, a show cause notice was issued to the appellant based on a report after conducting an investigation. The appellant responded to the show cause notice stating inter alia that the investigation report was not received by him. The respondent authority denied to share the investigation report with the appellant stating that the report is an internal document. The

investigation report was found to have been taken into consideration by the respondent authority in arriving at its satisfaction for taking action against the appellant. In that context, the Hon'ble Supreme Court has observed that as the investigation report has been relied upon at the stage of adjudication by the authority, then the principle of natural justice required its due disclosure.

31. Reverting back to the case in hand, it is an admitted position that prior to the impugned Debarment Notice, no show cause notice meeting the twin requirements was issued to the petitioner. From the impugned Debarment Notice wherein specific reference was made to the Investigation Report dated 06.01.2026, and also from the averments made in the affidavit-in-opposition, it has been evidently clear that the findings recorded in the Investigation Report have influenced the decision of the respondent no. 3 to take the drastic measure of blacklisting and debarment against the petitioner on 02.02.2026 apart from forfeiture of the Bid Security and the Performance Security. The Investigation Report was prepared after carrying out an inspection in the District Drug Warehouse on 06.01.2026 and such inspection was carried out in absence of the petitioner. As the Investigation Report was prepared behind the back and without the knowledge of the petitioner and the same was never brought to the notice of the petitioner at any point of time earlier to 02.02.2026, it was all the more necessary to serve a copy of the Investigation Report to the petitioner prior to taking adverse action. Even while serving the impugned Debarment Notice dated 02.02.2026, the copy of the Investigation Report was not supplied to the petitioner to afford any real and effective opportunity to the petitioner to meet the case against it for any post-decisional hearing.

32. By not serving any prior show cause notice meeting the twin requirements, the respondent authorities have denied the petitioner a real and effective opportunity of being heard before being visited with the penalty of blacklisting and debarment. By non-disclosure of the Investigation Report dated 06.01.2026 to the petitioner and at the same time, placing reliance on it to reach its satisfaction for taking the drastic measures of blacklisting and debarment, the respondent authorities have violated the principles of natural justice. For the above reasons, the impugned Firm Debarment Notice dated 02.02.2026 is found not sustainable in law. Therefore, the impugned Firm Debarment Notice is set aside and quashed.

33. As the allegations made against the petitioner with regard to supply of the item, 'Absorbent Cotton Wool' are serious in nature for the fact that the items were supplied for use of patients belonging to the weaker section of the society, who take treatments in public healthcare institutions, the respondent authorities are at liberty to proceed afresh against the petitioner if they choose to do so, by issuing a fresh show cause notice, thereby, affording a real and effective opportunity to the petitioner to show cause. In the event of initiation of a fresh show cause proceeding, the petitioner shall be entitled to a copy of the Investigation Report and other materials on which the respondent authorities would rely upon at the stage of adjudication.

34. Summing up with the observations made and the directions given hereinabove, the writ petition stands allowed to the extent indicated above, along. There shall, however, be no order as to cost.

JUDGE

Comparing Assistant