

O-1

ORDER SHEET

IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

WPO/157/2026

JAIHWAL IRON AND STEEL COMPANY AND ORS.
VS
BOARD OF TRUSTEES FOR SYAMA PRASAD
MOOKERJEE PORT OF KOLKATA AND ORS.

BEFORE:

The Hon'ble JUSTICE KRISHNA RAO

Date : 6th April, 2026.

Appearance:

Mr. Chayan Gupta, Adv.
Mr. Pourush Bandhyopadhyay, Adv.
Mr. Uttam Sharma, Adv.
Mr. Vrinda Kediua, Adv.
...for the petitioners

Mr. Dhiraj, Trivadi, Adv.
Mr. Ashok Kumar Jena, Adv.
...for the respondent no. 1 to 7

1. Affidavit of service filed by the petitioners be kept with the records.
2. The petitioner has filed the present writ petition challenging the impugned order dated 19th August, 2025 wherein the respondent authorities have forfeited the entire sale value deposited by the petitioner without any refund against the undelivered portion of the sold lot and the petitioner's firm is debarred from participating any future tenders, auctions or tender-cum-auctions conducted by the Syama Prasad Mookerjee Port, Kolkata (SMPA) for a period of two years effecting from

the date of receipt of letter. In the said letter the petitioner was also refrained from engaging in any further dealings with the Port during the debarment period.

3. The respondent no. 8 had floated a tender wherein e-auction process was held for sale of one number of condemned Pontoon lying at Takta Ghat and two members of condemned pontoons lying at Outram Jetty-2 on 29.11.2023. The petitioner no. 1 had participated in the said tender and the bid submitted by the petitioner no. 1 was found to be the highest and was declared as successful bidder. The petitioner no. 1 deposited entire sale consideration alongwith applicable taxes. On receipt of payment, the Office of the respondent no. 5 issued daily gate pass/Block gate pass on 11.1.2024.
4. Mr. Chayan Gupta, learned Advocate representing the petitioner submits that in the gate pass dated 11.1.2024 it is mentioned that the same must be treated as Block gate pass and not to be treated as daily gate pass, the petitioner has made several requests for issuance of daily gate pass but the same was not provided to the petitioners.
5. Mr. Gupta submits that the petitioners have mobilized the labourers for transportation of pontoons as per Block gate pass and oral permissions as the daily gate pass has not been issued inspite of several oral request made by the petitioners. He submits that Pontoons were already afloat on the river water surface. He submits that the authorities permitted the

petitioners to proceed with cutting operations without insisting upon fire clearance.

6. Mr. Gupta submits that on 6th February, 2024, the Assistant Mooring Master stopped the work without any notice. The petitioners on the same date made an application requesting for waiver of Clause -2 of the delivery note dated 11.1.2024 but the respondents have not considered the request of the petitioners and again on 8.2.2024 a request was made to the respondent no. 3 for waiver of Clause -2. On 8.2.2024, the petitioners have also filed a complaint making allegation of Prevention of Corruption Act.
7. The petitioners have withdrawn the allegation of Prevention of Corruption Act. The respondents have issued show cause notice to the petitioners on 6th March, 2024.
8. On receipt of the said notice, the petitioners have submitted a reply requesting 12 days time to submit comprehensive reply and subsequently the petitioners have made detailed representation to the authority on 3rd of June, 2024. The respondent authorities have issued the impugned order on 19th August, 2025. Now the petitioners have filed the present writ application mainly on the ground that the respondent authorities have issued a fresh tender for the similar materials without considering the fact that on the earlier tender process, the petitioners have paid the total tender amount to the authorities with respect to the said materials. Now the authorities by way of the fresh tender process

intend to re-sale the said materials and the last date of the auction is of 7th April, 2026.

9. Mr. Gupta, learned Advocate appearing for the petitioners submitted that by the impugned order dated 19th August, 2025, the respondents have blacklisted the petitioners without issuing any show cause notice and without affording any opportunity of hearing. He further submitted that the respondent authorities while issuing the impugned order failed to appreciate that the petitioners have already paid the total tender amount with respect to the materials in question but the authorities have cancelled the said tender, work order and proceeded for a new tender process for the same work for which the petitioners are suffering severe financial loss.
10. The petitioners further submit that as per the tender condition, in case of any default in lifting of the materials by the petitioners within the specified date, the outstanding materials may be lifted on payment of the rate at 1% per week or part thereof of the total material value for such default period beyond the specified delivery period as stipulated in the delivery order at the sole discretion of the SMP, Kolkata. He submitted that the respondent authorities without considering the said clause have cancelled the delivery order of the petitioners and issued fresh tender for the same materials.

11. Learned Counsel for the petitioners submitted that if an interim order is not passed and the respondents are allowed to continue with the tender process, the petitioners will suffer severe financial loss.
12. Per contra, learned advocate appearing for the respondent authorities submits that the petitioners have suppressed the document while filing the present application.
13. The learned Advocate appearing for the respondents has handed over the auction catalogue report and submits that in the said catalogue it is categorically mentioned that “For scrap material to be delivered in weight, no cutting will be allowed unless certified by the concerned custodian. For equipment, cutting may be allowed for facilitating transportation of the same on receipt of the application by the purchaser and such permission may be granted at the discretion of KOPT for which clearance is to be obtained from the Port Fire Service and payment of requisite charges is to be made by the buyer on compliance of related formalities as might be necessary as well.”
14. He submits that in the present case, the petitioners have not followed the said condition and have not obtained any permission from the concerned authority in terms of the Conditions of the Contract. He further submits that as per the Contract condition, there is a clause of forfeiture and as per the said clause in case the whole or any part of the goods sold remain uncleared, even after the authorized period stated in the delivery schedule, the purchaser shall have no claim whatsoever on

the goods remaining uncleared and the amount paid towards EMD shall stand forfeited at the expiry of the said period. He further submits that in the present case the petitioners have failed to clear the sold materials even after receipt of the show cause notice and under such circumstances the respondent authorities have invoked the provisions of Clause 8.1 of the Tender Conditions.

15. Learned Counsel appearing for the respondent authorities has further brought to the notice of this Court that the tender documents provides an arbitration clause but the petitioners instead of invoking the provisions of arbitration, have filed the present writ application which is not maintainable. He further submits that the impugned order is issued on 19th August, 2025 but the petitioners have not challenged the said order till the filing of the instant writ application. Only after issuance of the tender notice by the respondent authorities and at the fag end when the last date of the tender is on 7th April, 2026, the petitioners have filed the present writ application only with the intention to stall the tender process.

16. Learned Counsel for the respondents submits that the writ petition is not maintainable and the same is liable to be dismissed.

17. Heard the Learned Counsel for the respective parties. Perused the materials on record.

18. Admittedly, the petitioners have not removed the materials within the delivery period. The ground taken by the petitioners for not taking

out the materials within the delivery period is that the respondent authorities have not provided a gate pass. The authorities have issued the show cause notice to the petitioners on 6th March, 2024, wherein it is alleged that the petitioners had commenced the subject work without following the prescribed procedure and documentation as mentioned in the subject delivery order. It is also the allegation that the petitioners have not taken any permission from the Port Fire Services for cutting the auctioned materials. It is also the allegation that the petitioners have commenced taking away SMPK's materials without any daily gate pass. In the show cause notice it is also alleged that the petitioners unauthorisedly resorted to stacking gas cylinder after trespassing into the port premises, for cutting of pontoon within the Port premises at Outram Jetty-II in front of Riverside Officers Club, without any permission from the Port authorities.

19. It is also at the allegation that the petitioners instead of taking out the materials in accordance with the work order issued, the petitioners have made several allegations against the Port Officers. In the show cause notice the petitioners were given an opportunity to regularize the irregularities within 10 days from the date of receipt of this communication.

20. The petitioners have submitted their reply to the show cause notice on 16.05.2024 but this Court finds that the petitioners have not given any justification to the allegations made in the notice dated 6th March,

2024. In the reply the petitioners have prayed for 12 days time to file a comprehensive representation. On 3rd of June, 2024 the petitioners have made a detailed reply. The respondents have considered the detailed reply and passed the impugned order dated 19th August, 2025.

21. The petitioners have raised two issues that in the tender document in one place the respondents have stated that in Clause 8.1 that in case whole or any part of the goods sold remain uncleared or even after the period stated in the delivery schedule, the purchaser shall have no claim whatsoever on the goods remaining uncleared and the amount paid towards the EMD shall stand forfeited.
22. On the other hand, in Clause 7.2 it is mentioned that the ground rent in case of default in lifting of the materials by the petitioner within the specified time limit, the outstanding materials may be lifted on payment of ground rent at the rate of one (1) percent per week or part thereof, of the total material values for such defaulted period, beyond the specified delivery period, as stipulated in the delivery order, at the sole discretion of the SMP Kolkata.
23. The authorities have issued the notice to the petitioner on 6th March, 2024. On 16th May, 2024 the first reply was submitted by the petitioners, the petitioners have not given any explanations to the allegation in the said reply. Subsequently, on 3rd June, 2024 the petitioners have submitted a detailed representation but in the said representation also the petitioners have not stated that they are ready to

pay interest @ 1% per week, or part thereof, of the total material value for such defaulted period beyond the specified delivery period as stipulated in the delivery order. Thus, the respondent authorities have not considered the request of the petitioners.

24. Considering the above, this Court finds that when the petitioners have made a detailed representation, the petitioners should have opted clause 7.2 which the petitioners intend to take the benefit of the said clause after the period of delivery. The petitioners have also not pleaded for the benefit of the said clause in the writ application that the petitioners are ready to pay the 1% of per week charge as per the Clause 7.2 of the Tender conditions, only at the time of hearing the petitioners have pointed out the said clause.

25. As regards the arbitration is concerned, this Court finds that the impugned order was passed in the month of August, 2025. The petitioners have not challenged the said order till the filing of the writ application. Though this writ application was filed only on 1st April, 2026, when the last date of auction schedule was 7th April, 2026, from the said act of the petitioners, this Court is of the view that the petitioners only to stall the re-tender process of the respondents have filed the present writ application actually the petitioners are not aggrieved with the impugned notice dated 19.08.2025.

26. As regards the blacklisting of the petitioners, this Court finds that though the respondents have issued the notice on 6th March, 2024, but

in the said notice the respondents have not informed the petitioners that the respondents are going to blacklist the firm of the petitioners.

27. Thus, it is settled law unless and until the petitioners are not given an opportunity of hearing with regard to the blacklisting of the firm, the order of the blacklisting cannot be sustained.

28. In view of the above, the writ petition is disposed of only by setting aside the part of the order wherein the petitioner firm have been blacklisted and other portion of the order is not interfered by this Court.

29. This writ application is disposed of at the stage of motion. Since no affidavit is called for, the allegations made in the writ application are deemed to have been denied. However, the petitioners are at liberty to take appropriate steps for initiation of arbitration proceeding in accordance with law.

(KRISHNA RAO, J.)