



2025:DHC:2758-DB



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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 27.03.2025

Judgment delivered on: 22.04.2025

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W.P.(C) 6460/2024, CM APPL. 26931/2024 & CM APPL. 26932/2024

M S DEEPAK AND CO THROUGH ITS PARTNER SMT POONAM PORWAL
.....Petitioner

Through: Mr. Kirti Uppal, Sr. Advocate with Mr. Himanshu Pathak, Ms. Riya Gulati, Mr. Amit Singh and Ms. Archisha Satyarthi, Advocates.

Versus

INDIAN RAILWAY CATERING AND TOURISM CORPORATION LIMITED THROUGH ITS CHAIRMAN AND MANAGING DIRECTOR & ANR
.....Respondents

Through: Mr. Tushar Mehta, Solicitor General with Mr. Saurav Agrawal, Mr. Anshuman Chowdhury and Mr. Aarya Bhat, Advs. for R-1.

Mr. Sandeep Sethi, Sr. Advocate, Mr. Jayant Mehta, Sr. Advocate alongwith Mr. Jasmeet Singh, Mr. Gautam Khazanchi, Mr. Mahinder Singh Hura, Mr. Saif Ali, Mr. Pushpendra S. Bhadoriya, Mr. Vijay Sharma, Ms. Riya Kumar, Mr. Rajat Sinha, Mr. Pranav Menon, Mr. Vaibhav Dubey and Mr. Saurav, Advocates for R-2.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA



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J U D G M E N T

DEVENDRA KUMAR UPADHYAYA, C.J.

C H A L L E N G E

1. The petitioner, which is a partnership firm duly registered with the Registrar of Firms, and is engaged in and carrying on the business of operation and management of catering services and other on board services being rendered in various trains, has instituted the proceedings of instant petition under Article 226 of the Constitution of India assailing the validity of the Letter of Award dated 17.04.2024 (hereinafter referred to as 'LoA') issued by the respondent no.1 in favour of respondent no.2 for commissioning and operation of base kitchens at pre-notified locations along with provision of on board catering services for a period of five years, which is further extendable up to two years.

2. The respondent no.1 issued a notice inviting e-open tender bearing no.2024/IRCTC/P & T/CLUSTER/FEB/NR/CLT/A-1 for providing on-board catering services in trains for a period of five years, which is further extendable up to two years, in the month of February 2024.

3. The last date of submissions of the bid was 22.02.2024 up to 12:00 Hrs., and the date of opening of the technical bid was 22.02.2024 at 12:15 Hrs. As per the tender notice, the date and time of opening of the financial bid were to be communicated later. The petitioner submitted its bid, which, as per the tender document, was in two parts: a techno-commercial bid (Packet 'A') and a financial bid (Packet 'B').

4. The techno-commercial bids of the tenderers were opened on 22.02.2024 at 01:05 p.m., wherein the techno-commercial bid submitted by



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the petitioner as also by the respondent no.1 were found to be in order and they were, accordingly, declared responsive. The financial bid was opened on 08.04.2024 at 11:15 a.m., wherein the respondent no.2 was found to be the highest bidder followed by the petitioner.

5. On 08.04.2024 at 01:11 p.m., the respondent no.1 sent an e-mail to respondent no.2 mentioning therein that though the respondent no.2 had submitted the Integrity Pact as per Annexure 'G' along with the bid, but the said annexure is without the signatures of the witnesses and, therefore, through the said e-mail the respondent no.2 was instructed to submit duly filled and signed Annexure 'G' by the authorized signatory of the company along with signatures of the witnesses immediately.

6. Once in response to the said e-mail dated 08.04.2024, the respondent no.2 submitted Annexure 'G' duly signed by the witnesses, the respondent no.1 issued the impugned LoA dated 17.04.2024. It is this LoA issued by the respondent no.1 in favour of the respondent no.2, that is under challenge herein.

**CONTENTIONS IMPEACHING IMPUGNED LOA DATED 17.04.2024
RAISED ON BEHALF OF THE PETITIONER**

7. Impeaching the impugned LoA issued in favour of the respondent no.2 learned Senior Counsel representing the petitioner, Mr. Kirti Uppal has submitted that such an award is in clear violation of certain terms and conditions of the tender document.

8. Drawing our attention to clause 3.3 of the procedure for evaluation of bids as given in the tender document, which is available at page 106 of the



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writ petition, it has been argued on behalf of the petitioner that as per the said clause financial bids were to be opened only for techno-commercial qualified bids, however, in the instant case though the respondent no.2 was not technically qualified for reason that Annexure 'G', which is a format of Integrity Pact, did not admittedly bear the signatures of the witnesses, the respondent no.1 acted illegally in as much as that instead of declaring the respondent no.2 to be technically not qualified, it provided an opportunity to the respondent no.2 to submit Annexure 'G' vide e-mail dated 08.04.2024, pursuant to which the said flaw appears to have been made good by the respondent no.2. Clause 3.3 of the procedure for evaluation of bid as per tender document is extracted herein below:-

“3.3. Financial bids will be opened for techno- commercially qualified bids only. The date, time and venue of opening of financial bid will be intimated to the techno commercially qualified bidders. The bids will be opened electronically and will be available on e-tender website to the bidders for viewing.”

9. Elaborating further about the technical non-qualification of the respondent no.2 on the ground that Annexure 'G' submitted by it did not bear the signatures of the witnesses and the respondent no.1 provided an opportunity to the respondent no.2 for making the said deficiency good by instructing the respondent no.2 through e-mail dated 08.04.2024, it has been argued that the financial bid was opened on 08.04.2024 at 11:15 a.m, whereas the e-mail requiring the respondent no.2 to make the aforesaid deficiency good was sent on the same date i.e. 08.04.2024 at 01:11 p.m., which was impermissible in view of clause 3.3 of the procedure for evaluation of bid as quoted above. In this regard, the contentions on behalf



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of the petitioner is that clause 3.3 provided that financial bid will be opened only for techno-commercially qualified bids and since Annexure 'G' submitted by the respondent no.2 along with its bid was not signed by the witnesses, the respondent no.2 was not technically qualified and, therefore, the financial bid of the said respondent could not have been opened. Instead, its financial bid was opened and thereafter, the respondent no.2 was given time to make good the deficiency in Annexure 'G', in the absence whereof respondent no.2 would not have technically qualified.

10. On the aforesaid ground, it has been argued by Mr.Uppal that by instructing the respondent no.2 *vide* its e-mail dated 08.04.2024, which was sent after the opening of the technical bid, the provision contained in clause 3.3 has been apparently violated, which was otherwise impermissible and, therefore, based on this ground alone the LoA issued in favour of the respondent no.2 is liable to be struck down.

11. The second ground on which the impugned action on the part of the respondent no.1 in issuing the LoA has been challenged is that the bid submitted by the respondent no.2 was in contravention of the Standard Operating Procedure for implementation of Integrity Pact circulated by the Central Vigilance Commission (CVC) *vide* circular dated 14.06.2023 (hereinafter referred to as 'SOP 2023').

12. It has been stated by the learned Senior Counsel for the petitioner that the SOP 2023 clearly mandates that bidders shall disclose any transgression with any other public/government organisation, which may impinge on the anti-corruption principle. It further provides that the date of such transgression for the purpose of disclosure in this regard would be the date



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on which cognizance of the said transgression was taken by the competent authority. The said provision also states that the period for which such transgression is to be reported shall be last three years from the date of bid submission. It also, however, provides that the transgression for which cognizance was taken even before the said period of three years but are pending conclusion, shall also be reported by the bidders. The last bullet point in clause 2 of the SOP 2023 requiring the bidders to disclose transgression that may impinge on the anti-corruption principle, which is available at page 129 of the writ petition, is extracted herein below:-

“2.0 INTEGRITY PACT”

2.1 The Pact essentially envisages an agreement between the prospective vendors/bidders and the buyer, committing the persons/officials of both sides, not to resort to any corrupt practices in any aspect/stage of the contract. Only those vendors/bidders, who commit themselves to such a Pact with the buyer, would be considered competent to participate in the bidding process. In other words, entering into this Pact would be a preliminary qualification. The essential ingredients of the Pact include:

- *Promise on the part of the Principal not to seek or accept any benefit, which is not legally available;*
- *Promise on the part of bidder not to offer any benefit to the employees of the Principal not available legally;*
- *Principal to treat all bidders with equity and reason;*
- *Bidders not to enter into any undisclosed agreement or understanding with other bidders with respect to prices, specifications, certifications, subsidiary contracts, etc.*



- *Bidders not to pass any information provided by Principal as part of business relationship to others and not to commit any offence under PC/IPC Act;*
- *Foreign bidders to disclose the name and address of agents and representatives in India and Indian Bidders to disclose their foreign principals or associates;*
- *Bidders to disclose the payments to be made by them to agents / brokers or any other intermediary;*
- *Bidders to disclose any transgressions with any other public/government organization that may impinge on the anti-corruption principle. The date of such transgression, for the purpose of disclosure by the bidders in this regard, would be the date on which cognizance of the said transgression was taken by the competent authority. The period for which such transgression(s) is/are to be reported by the bidders shall be the last three years to be reckoned from date of bid submission. The transgression(s), for which cognizance was taken even before the said period of three years, but are pending conclusion, shall also be reported by the bidders.*

13. Mr.Uppal has further stated that as per the provisions contained in clause 2.2 of SOP 2023, any violation of Integrity Pact would entail disqualification of the bidders and his exclusion from future business dealings as per the financial rules/guidelines, etc., which may be applicable to the organisation concerned. Clause 2.2 of the SOP 2023 reads as under:-

“2.2 Any violation of Integrity Pact would entail disqualification of the bidders and exclusion from future business dealings, as per the existing provisions of GFR, 2017, PC Act, 1988 and other Financial Rules/Guidelines etc. as may be applicable to the organization concerned.”

14. Referring to the aforesaid provisions contained in the SOP 2023, it has been submitted by Mr.Uppal representing the petitioner that any non-



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disclosure of transgressions in respect of the anti corruption principle of a bidder, therefore, would result in disqualification of such a bidder and his exclusion even for future business dealings. Further submission is that however, though the respondent no.2 has been facing criminal cases on certain charges including the charge under the Prevention of Corruption Act, 1988 (hereinafter referred to as 'PC Act') and under the Prevention of Money Laundering Act, 2002 (hereinafter referred to as 'PMLA'), no such disclosure was made by the respondent no.2 while submitting its bid which disqualifies the respondent no.2. He stated that instead of disqualifying the respondent no.2 on the ground of its non-disclosure of the criminal matters against it, the same were ignored and the respondent no.2 has been issued the impugned LoA, which is in clear violation of the SOP 2023 issued by the CVC *vide* its letter dated 14.06.2023.

15. To bring home the ground of disqualification of respondent no.2 based on the pendency of criminal cases, it has been submitted by the learned Senior Counsel for the petitioner that an FIR bearing RC-DAI-2015-A-00-32 was registered by the Central Bureau of Investigation (hereinafter referred to as 'CBI') on 14.10.2015 for offences under Section 120-B read with Section 420 Indian Penal Code, 1860 (hereinafter referred to as 'IPC') and also under Section 13(2) read with 13(1)(d) of PC Act. The said FIR was registered against the railway officials and some private licensees, including the respondent no.2. In the said case instituted by the CBI, a chargesheet was filed on 16.12.2015, and an order dated 01.07.2017 was passed by the learned Trial Court taking cognizance. The sanction to prosecute the railway officials in the said criminal cases was also granted,



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however, the order of sanction, as also the order taking cognizance were challenged before this Court in a batch of petitions, namely CRL. MISC. Case Nos.3137/2017, 3141/2017, 5094/2017 and 5095/2017 filed under Section 482 of the Code of Criminal Procedure, 1973 (hereinafter referred to as 'CrPC'). The said petitions were decided by a common judgment and order by the learned Single Judge of this Court *vide* judgment dated 15.03.2019, whereby the sanction for prosecution as also the order taking cognizance were quashed. The Special Leave Petition preferred by the CBI, namely SLP (Crl) Diary no.28717/2020, was also dismissed by the Hon'ble Supreme Court by means of the order dated 19.03.2020. In view of the quashing of the order of cognizance, the Special Judge, CBI Court, transferred the criminal case to the Court of Chief Metropolitan Magistrate.

16. Learned Senior Counsel representing the petitioner, Mr.Uppal has also stated that Special Judge, PMLA *vide* order dated 23.08.2019 took cognizance of the prosecution complaint filed by the Enforcement Directorate (hereinafter referred to as 'ED') in Case No.25/2019.

17. It may be noticed that the learned Single Judge *vide* judgment dated 15.03.2019 had remanded the matter back to the Sanctioning Authority to reconsider the grant of sanction for prosecution against the railway officials, and on remand, the matter was again considered by the Railway Board, which *vide* its order dated 22.09.2020 declined to grant sanction for prosecuting the railway officials and also ordered closure of said cases.

18. Thereafter, the respondent no.2 approached this Court for quashing of the FIR lodged by the CBI, however, the said challenge was rejected by means of the order dated 04.07.2023. Challenging the said order passed by



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this Court dated 04.07.2023, the respondent no.2 filed a Special Leave to Appeal (Criminal) No.9115/2023 before the Hon'ble Supreme Court. The Hon'ble Supreme Court, by means of an order dated 07.08.2023, passed an interim order staying the trial qua the respondent no.2. The said interim order was made absolute by the Hon'ble Supreme Court by means of a subsequent order dated 24.11.2023, whereby it has been directed that the interim order dated 07.08.2023 shall be continued during the pendency of the matter before the Hon'ble Supreme Court. The respondent no.2 thereafter approached this Court by instituting CRL.M.C. No.85/2025 under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023, read with Section 482 CrPC, wherein an order has been passed on 10.01.2025 by learned Single Judge providing therein that the proceedings of the PMLA complaint case no.25/2019 titled ***Enforcement Directorate v. M/s R.K. Associates and Hoteliers Pvt. Ltd. and Ors*** shall remain stayed.

19. Referring to the aforesaid orders passed by this Court and Hon'ble Supreme Court, it has been argued by Mr.Uppal, representing the petitioner, that the pendency of the SLP before the Hon'ble Supreme Court in respect of the criminal case instituted by CBI or pendency of petition instituted by the respondent no.2 before this Court in respect of the PMLA case, wherein interim orders have been passed, does not absolve the petitioner of its duty and responsibility to make disclosure of these criminal cases while submitting the bid pursuant to the subject tender.

20. It has been argued that in terms of the SOP 2023 issued by CVC, it was incumbent upon the respondent no.2 to make disclosure along with its bid about the pendency of the aforesaid criminal cases, the one instituted by



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the CBI and the other by the ED for the reason that the SOP 2023 required that transgression for which cognizance was taken even before a period of three years prior to the date of bid submission was to be disclosed in respect of anti-corruption principle and by not doing so, the respondent no.2, in fact, was technically not qualified and, therefore, the respondent no.1 has acted illegally and arbitrarily by ignoring such non-disclosure, which is mandatory in terms of SOP 2023.

21. Our attention has also been drawn by learned Senior Counsel representing the petitioner to Section 2(g) of Annexure 'G' (Integrity Pact), which states that bidders/contractors will disclose any transgression with any other company that may impinge on the anti-corruption principle. Reference has also been made to Section 3 of Annexure 'G', which provides that if a bidder or a contractor, before award or during execution, has committed a transgression through violation of Section 2 or in any other form such as to put its reliability or credibility in question, the respondent no.1 shall be entitled to disqualify such bidder/contractor from the tender process or it may take action as per the procedure mentioned in 'Guidelines of Banning Of Business Dealings'.

22. Section 2(g) and Section 3 of Annexure 'G' (Integrity Pact), which are available at page 117 of the writ petition are extracted hereinbelow:-

"Section 2- Commitments of the Bidder(s)/Contractor(s)

(g) The Bidders(s) Contractors to disclose any transgressions with any other company that may impinge on the anti-corruption principle.

Section 3- Disqualifications from tender process and exclusion from future contracts



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If Bidder(s) Contractor(s) before award or during execution has committed a transgression through a violation of Section 2, above or in any other form such as to put their reliability or credibility in question, the IRCTC is entitled to disqualify the Bidder(s) Contractor(s) from the tender process or take action as per the procedure mentioned in the "Guidelines on Banning of business dealings".

23. Taking us to the aforesaid quoted Section 2(g) and Section 3 of Annexure 'G' (Integrity Pact), learned Senior Counsel has vehemently argued that non-disclosure of the criminal matters by the respondent no.2 along with its bid clearly disqualified the respondent no.2 even technically. His submission is that the charge in the FIR lodged by the CBI is not only confined to the offence under Section 120-B and 420 of IPC, but it also contains a charge under the provisions of the PC Act. He has argued that the FIR was lodged and even the cognizance was taken and, therefore in terms of the provisions contained in Section 2(g) and Section 3 of Annexure G, it was mandatory for the respondent no.2 to have disclosed the said criminal cases and by not disclosing the same, the respondent no.2 has in fact earned technical disqualification and, therefore, the financial bid of respondent no.2 could not have been opened.

24. Mr.Uppal has also drawn our attention to Section 5 of Annexure 'G', which requires the bidders to disclose that no previous transgression had occurred in the last three years with any other company in any country conforming to the anti corruption approach or with any public sector enterprises in India that could justify bidder's exclusion from the tender process. Section 5(2) has also been referred to on behalf of the petitioner,



according to which if the bidder makes any incorrect statement on the subject of transgression in respect of anti corruption approach, such a bidder can be disqualified from the tender process or action can be taken as per the procedure mentioned in the guidelines on banning of business dealings. Section 5 as it occurs in Annexure ‘G’ is quoted herein below:

“Section 5- Previous Transgression

(1) The bidder declares that no previous transgressions occurred in the last three years with any other company in any country conforming to the anti-corruption approach or with any public sector enterprises in India that could justify his exclusion from the tender process.

(2) If the bidder makes incorrect statement on this subject, he can be disqualified from the tender process or action can be taken as per the procedure mentioned in “Guidelines on Banning of Business dealings”.”

25. Accordingly, the submission is that if a bidder did not disclose the criminal cases of the nature which the respondent no.2 has been facing, such a bidder ought to have been declared technically non-qualified, and the bid ought to have been declared non-responsive at the time of evaluation of the technical bid itself. His submission is that instead of disqualifying the respondent no.2 on evaluation of its technical bid for the reasons disclosed above, the respondent no.1 has not only permitted the respondent no.2 to make good the deficiency in Annexure ‘G’ (Integrity Pact) but also completely ignored the admitted fact that the respondent no.2 had not disclosed any information about the pendency of the criminal matters. His submission, thus, is, that in such a situation, impugned LoA issued in favour of respondent no.2 cannot be justified; rather, it is completely unlawful being in violation of the terms and conditions of the tender



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document. He has, accordingly, prayed that the LoA issued in favour of respondent no.2 be set aside and the LoA be issued in favour of the petitioner as it is the second highest bidder and is technically qualified as well.

ARGUMENTS MADE ON BEHALF OF RESPONDENT NO.1 (IRCTC)

26. Opposing the prayers made by the petitioners in the writ petition, Mr. Tushar Mehta, learned Solicitor General of India representing the respondent No.1 has argued that the submissions made on behalf of the petitioner are highly misconceived and further that there has not been violation of any terms and conditions of the tender document and, accordingly, the petition is liable to be dismissed.

27. It has been stated by Mr. Mehta that the Government of India introduced the provisions for Integrity Pact in all Requests for Proposals/ Tender Documents in respect of procurements/ contracts *vide* Office Memorandum 20.07.2011. Drawing our attention to Clause 3 of the Office Memorandum dated 20.07.2011, it has been stated on behalf of respondent No.1 that instructions for making provision for the Integrity Pact was required to be issued by the public sector undertakings. The Office Memorandum dated 20.07.2011 issued by the Ministry of Finance, Department of Expenditure, Government of India is extracted herein below:

*“ No. 14(12)/ 2008-E-II(A)
Government of India
Ministry of Finance
Department of Expenditure*

New Delhi, dated the 20th July, 2011



OFFICE MEMORANDUM

*Subject: Use of Integrity Pact by Public Sector Undertakings(PSUs)–
Implementation of ARC Recommendation – regarding*

The Administrative Reforms Commission in its report titled 'Ethics in Governance' had made the following recommendation in relation to Integrity Pacts :

“The Commission recommends encouragement of the mechanism of 'Integrity Pacts'. The Ministry of Finance may constitute a Task Force with representative from Ministry of Law and Personnel to identify the type of transactions requiring such Pacts and to provide for a protocol for entering into such a pact. The Task Force may, in particular, recommend whether any amendment in the existing legal framework like the Indian Contract Act, and the Prevention of Corruption Act is required to make such agreements enforceable”.

2. Accordingly, a Task Force was constituted in the Ministry of Finance with representatives of Ministries of Law and Defence and Department of Personnel & Training. After examining the recommendations of the Task Force it has been decided that :

(i) All Government Ministries/Departments, including their attached/subordinate offices, may use the generally applicable Integrity Pact as at Annexure in their procurement transactions/ contracts with suitable changes specific to the situation in which the Pact is to be used.

(ii) Ministries/ Departments may, in consultation with the respective Financial Adviser and with the approval of the Minister-in-charge, decide on and lay down the nature of procurements/ contracts and the threshold value above which the Integrity Pact would be used in respect of procurement transactions/ contracts concluded by them or their attached/subordinate offices. This activity should be completed by 31st August, 2011.

(iii) The provision for the Integrity Pact should be included in all Requests for Proposal/ Tender Documents issued in future in respect of the procurements/ contracts that meet the criteria decided in terms of (ii) above.

(iv) The aforesaid provisions may also be applied to procurements made by autonomous bodies for which also the concerned administrative Ministry/ Department may lay down the nature of procurements/ contracts and the threshold value above which the Integrity Pact would be used.



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3. *Instructions have been issued for, use of the Integrity Pact in Government Ministries/Departments (Copy of O.M. of even No. dated 19.7.2011 is enclosed). It is requested that similar instructions may be issue for the use of the generally applicable Integrity Pact by Public Sector Undertakings(PSUs). It may be mentioned that in the context of the use of the integrity Pact by PSUs, the Task Force has, inter-alia, recommended that "as the title page of the said Pact is in the name of the President of India, PSUs may change the title page suitably for their use".*

(Sd/-)

Under Secretary to the Government of India"

28. He further submitted that the Department of Public Enterprises, Government of India referring to the Office Memorandum dated 20.07.2011 issued an Office Memorandum dated 09.09.2011 providing therein that "all Central Public Sector Enterprises will enter into Integrity Pact in the form enclosed as Annexure, in their procurement transactions/contracts with suitable changes specific to the situations in which the pact is to be used". The Office Memorandum dated 09.09.2011 is extracted herein below:

"F. No. DPE/13(12)/11-Fin

Government of India

Ministry of Heavy Industries & Public Enterprises

Department of Public Enterprises

Public Enterprises Bhavan

Block No. 14, CGO Complex

Lodhi Road, New Delhi-110003

Dated 9th September, 2011

OFFICE MEMORANDUM

*Subject: Use of Integrity Pact by Public Sector Undertakings(PSUs) —
Implementation of ARC Recommendation — regarding.*

The undersigned is directed to refer to the Department of Expenditure OM No.14(12)/2008-E.II(A) dated 20.07.2011 (copy enclosed) on the above mentioned subject and to state as under



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(i) All CPSEs will enter into Integrity Pact in the form enclosed as Annexure in their procurement transactions/contracts with suitable changes specific to the situations in which the pact is to be used.

(ii) CPSEs in consultation with the Financial Advisers of the concerned administrative Ministries shall decide and lay down the nature of procurements/contracts and the threshold value above which the Integrity Pact would be used in respect of procurement transactions/contracts concluded by them. This activity should be completed by 30th Sept, 2011.

(iii) As the title page of the said Pact is in the name of the President of India, CPSEs may change the title page suitably for their use.

2. This issues with the approval of Minister (HI&PE).

Encl: As above.

(Sd/-)
Director”

29. The Annexure enclosed with the said Office Memorandum dated 09.09.2011 was a format of Pre-Contract Integrity Pact. Clause 4 of the said format of Integrity Pact, which is part of the Office Memorandum dated 09.09.2011, required the bidders to declare that no previous transgression occurred in the last three years immediately before signing of the Integrity Pact. Clause 4 of the format of Pre-Contract Integrity Pact, which is part of the Office Memorandum dated 09.09.2011, is extracted herein below:

“4. Previous Transgression

4.1 The BIDDER declares that no previous transgression occurred in the last three years immediately before signing of this Integrity Pact, with any other company in any country in respect of any corrupt practices envisaged hereunder or with any Public Sector Enterprise in India or any Government Department in India that could justify BIDDER's exclusion from the tender process.

4.2 The BIDDER agrees that if it makes incorrect statement on this subject, BIDDER can be disqualified from the tender process or the contract, if already awarded, can be terminated for such reason.”



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30. Mr. Mehta has further stated that thereafter, the CVC circulated revised Standard Operating Procedure for adoption of Integrity Pact in Government Departments/ Organizations *vide* its circular dated 13.01.2017. However, *vide* subsequent circular dated 28.09.2018, the CVC issued a Revised Integrity Pact with the stipulation therein that the Revised Integrity Pact may be used with suitable modifications to meet the individual organization's requirement for Integrity Pact. Section 5 of the Revised Integrity Pact circulated by CVC by its circular dated 28.09.2018 provided that the bidders shall declare that no previous transgression has occurred in the last three years with any other company in any country conforming to the anti-corruption approach or with any other public sector enterprise in India that may justify exclusion from the tender process. Section 5 also provided that if the bidder makes any incorrect statement, he can be disqualified from the tender process. Section 5 of the Revised Format of the Integrity Pact circulated by the CVC *vide* its circular dated 28.09.2018 is extracted herein below:

“Section 5 – Previous transgression”

(1) The Bidder declares that no previous transgressions occurred in the last three years with any other Company in any country conforming to the anti-corruption approach or with any Public Sector Enterprise in India that could justify his exclusion from the tender process.

(2) If the Bidder makes incorrect statement on this subject, he can be disqualified from the tender process or action can be taken as per the procedure mentioned in “Guidelines on Banning of business dealings”.

31. Our attention has also been drawn by the learned Solicitor General to yet another circular dated 25.01.2022 issued by the CVC whereby Standard



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Operating Procedure for adoption of Integrity Pact (hereinafter referred to as the SOP 2022) was circulated. It has been stated that the said circular dated 25.01.2022 was issued with the stipulation therein that the SOP 2022 would be applicable for adoption and implementation of the Integrity Pact by the organization concerned. Clause 2 of the SOP 2022 circulated by the CVC vide circular dated 25.01.2022, inter alia, provided that the bidders shall disclose any transgression with any other company that may impinge on the anti-corruption principle. It further provided that any violation of the Integrity Pact may entail disqualification of the bidder and even his exclusion from future business dealings. The relevant portion of Clause 2 of the Format of the Integrity Pact circulated by the CVC vide its circular dated 25.01.2022 is extracted herein below:

“Bidders to disclose any transgressions with any other company that may impinge on the anti corruption principle.

Any violation of Integrity Pact would entail disqualification of the bidders and exclusion from the future business dealings, as per the existing provisions of GFR, 2017, PC Act, 1988 and other Financial Rules/ Guidelines etc. as may be applicable to the organization concerned.”

32. Mr. Mehta has argued that in the subject tender, the respondent No.1 has adopted the 2018 Integrity Pact Format circulated by the CVC along with proper modifications as per the SOP 2022. It is also submitted that the SOP 2022 and 2023 did not contain an updated format of Integrity Pact and since the circular *vide* which these SOP's were issued by the CVC provided that the SOP's may be used with suitable modifications to meet the individual organization's requirement for Integrity Pact, the respondent No.1 adopted the 2018 Integrity Pact Format which formed part of the



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subject tender as Annexure G. He has further stated that requirement as per SOP 2022 circulated by the CVC *vide* circular dated 25.01.2022 was for the bidders to disclose any transgression with any other company that may impinge on anti-corruption principle, however, SOP 2022 was adopted by the IRCTC with modification and requirement of such disclosure was made in Section 2(g) in the Format of the Integrity Pact which formed part of the subject tender.

33. It has been stated further on behalf of the respondent No.1 that the SOP 2023 has been adopted and incorporated by the respondent No.1 subsequently in the year 2025 which will apply to the fresh tenders. Mr. Mehta has argued that the SOPs issued by the CVC are not in the nature of binding requirements and they do not apply automatically to the Integrity Pact, which is to be used by the Central Public Sector Undertaking concerned after suitable modification and adoption. He has argued that the petitioner has completely failed to bring to fore any legal or factual basis for its contention that the SOPs are to be automatically read into existing or past integrity formats. He has also stated that as per the format of Integrity Pact (Annexure G) adopted while issuing the subject tender, it has been provided in Section 2(g) of the Integrity Pact that the bidders shall disclose transgression with another company that may impinge on anti-corruption principle, however, Section 5 of Annexure 'G' provides that the bidder shall declare that no previous transgression has occurred in the last three years with any other company in any country conforming to the anti-corruption approach or with any public sector enterprises in India that could justify bidder's exclusion from the tender process. His submission thus is



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that the bidders, in terms of the conditions of the tender document (Annexure 'G' – Integrity Pact Format), were required to make the disclosure only if the previous transgression had occurred in the last three years prior to submission of the bid.

34. On behalf of respondent No.1, it has further been argued that in view of these facts and reasons, reliance placed by learned counsel for the petitioner to the SOP 2023 is not tenable.

35. The submission in this regard further is that SOPs issued by the CVC do not get incorporated in the Integrity Pact which is to be adopted by the Central Public Sector Undertakings, automatically. It has been stated that after an SOP is issued, a Revised Integrity Pact has to be prepared and made part of the tender. In his submission, Mr. Mehta has argued that the requirement of the condition of the tender as per Annexure 'G' (Format of the Integrity Pact) was disclosure of transgression in the past three years. In this view, his submission is that the ground raised by the petitioner challenging the impugned action merits rejection. Mr. Mehta has stated that in view of the law laid down by the Hon'ble Supreme Court in *Agmatel India Private Limited v. Resoursys Telecom and Others*, (2022) 5 SCC 362, it is the author of the tender document who is the best person to understand and appreciate its requirement and if its interpretation is manifestly in consonance with the language of the tender documents, the Court would prefer to keep restraint. He has also stated that the technical evaluation or comparison by the Court is impermissible, and even if interpretation given to the tender document by the tendering authority is not acceptable as such to the Court, that by itself would not be a reason for



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interfering with the interpretation given. Reliance is placed on paragraph 26 of the said judgment, which is extracted herein below:

“26. The abovementioned statements of law make it amply clear that the author of the tender document is taken to be the best person to understand and appreciate its requirements; and if its interpretation is manifestly in consonance with the language of the tender document or subserving the purchase of the tender, the Court would prefer to keep restraint. Further to that, the technical evaluation or comparison by the Court is impermissible; and even if the interpretation given to the tender document by the person inviting offers is not as such acceptable to the constitutional court, that, by itself, would not be a reason for interfering with the interpretation given.”

36. Mr. Mehta has also brought to the notice of the Court the judgment dated 02.07.2024 rendered by a learned Single Judge of Hon’ble High Court of judicature at Calcutta in WPA 16635 of 2024, ***M/s. Araha Hospitality Private Limited v. Indian Railway Catering and Tourism Corporation Limited and Others***, and has stated that a similar challenge has been rejected by the Calcutta High Court by the said judgment. He has laid emphasis on paragraphs 10, 16 and 21 of the said judgment, which are extracted herein below:

“10. According to Mr. Mehta, a combined reading of Section 2(g) and Section 5(1) do not require disclosure of cases/corruption charges relating to a period beyond three years from initiation of the tendering process. Moreover, emphasis should be put on the term “other” which indicates that cases relating to contracts with IRCTC were within the knowledge of the tendering authority. In this case, FIR was registered in 2015 which was nine years prior to the initiation of the tendering process.

11.....

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16. However, even with regard to the merit of the questions raised by the petitioner, I find that the tendering authority i.e. IRCTC has



categorically expressed a view by interpreting the clauses of the tender document. The tendering authority interprets the integrity pact as the requirement for disclosure of corruption cases registered against a bidder in respect of any other company or public sector undertaking, in the last three years. The interpretation is a plausible one. The authors of the document in their wisdom have laid down certain clauses, which a bidder is required to fulfill to be successful in any tendering process. The author has the domain knowledge. Interpretation of the terms should be left to the tendering authority. If the authority is of the view that Section 2(g) read with Section 5(1) of the Integrity Pact require disclosure of any transgression with “other” companies or “other” public sector undertakings and the period has been restricted to the previous three years from participation in the bidding process, the writ court, sitting in judicial review, should not attempt to interpret the clauses by giving them a meaning which the authors did not intend to.

17.....

18.....

21. The petitioner has not been able to satisfy that the action of the authority suffers from arbitrariness, perversity or favouritism. The court should not normally interfere with the policy of the tendering authority. If the petitioners or the court think that charges of corruption prior to three years should be a relevant factor in the decision making process, such opinion cannot be a reason for exercise of power of judicial review. When technically qualified and experienced people have formulated the terms and conditions of the tender, the court should not interfere because the court feels that a more stringent interpretation of the terms would be wiser or more logical or fair. All participating bidders are entitled to a fair, equal and non-discriminatory treatment in the matter of evaluation. The petitioner was also successful in the technical round. The reason why the petitioner was not selected ultimately, was that the respondent no.2 offered Rs.3 crores more than the petitioner.”

37. We may notice that the judgment in ***M/s. Araha Hospitality Private Limited*** (supra) by the learned Single Judge was affirmed by the Division Bench of the Hon’ble Calcutta High Court *vide* judgment dated 05.07.2024 rendered in M.A.T. 1343 of 2024, titled ***M/s. Araha Hospitality Private***



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38. In addition to the aforesaid submissions, Mr. Mehta representing the respondent No.1 has also argued that as a matter of fact, the FIR lodged by the CBI and subsequent complaint made by ED are the matters in relation to similar nature of work performed by the respondent No.2 with the respondent No.1 itself and accordingly since respondent No. 1 has been in know of all such matters, disqualifying the respondent No.2 for non-disclosure of the criminal matters, as aforesaid, is misconceived.

39. He has also argued that the petitioner is not entitled to any relief prayed for in this writ petition for the reason that though the petitioner participated in the pre-bid meetings, including the one held on 30.01.2024 where multiple queries were raised by the petitioner and clarifications were sought but the objection regarding format or the content of the Integrity Pact was never raised by the petitioner. He has stated that it is only after losing the bid that the petitioner has questioned the integrity of the process by instituting the present petition, which disentitles him to seek the relief prayed for.

40. Mr. Mehta has also brought to the notice of the Court that the petitioner had submitted a bid of Rs. 41.05 crores which is lower than the winning bid offered by respondent No.2 of Rs. 56.06 crores and since the petitioner participated without raising any objection as to the contents of the Integrity Pact, the writ petition is highly misconceived and no relief can be granted in these proceedings to the petitioner.



SUBMISSIONS ON BEHALF OF RESPONDENT NO.2

41. Mr. Sandeep Sethi and Mr. Jayant Mehta, learned senior advocates while adopting the submissions made by the learned Solicitor General have argued further on behalf of respondent No.2 that it is true that the Integrity Pact in Annexure 'G' submitted by respondent No.2 did not bear the signature of the witnesses at the time of submission of bid, however, this was not such an infirmity which will render the respondent No.2 technically disqualified from participation in the tender.

42. Buttressing the said argument, reliance has been placed by learned senior counsel representing the respondent No.2 on a judgment of a coordinate Bench of this Court dated 26.04.2024, rendered in W.P.(C) No. 5164/ 2024, titled *Sankalp Recreation Pvt Ltd v. Union of India Through Ministry of Railways and Anr.*

43. He has also argued that the respondent No.2 was supposed to comply only with the terms and conditions of the Notice Inviting Tender and not by the circulars issued by the CVC for the reason that it cannot be presumed that tenderers would know if the SOPs issued by the CVC has been adopted or not by the tendering authority, namely IRCTC.

44. He has also submitted that if there was any flaw in the Notice Inviting Tender, as argued by learned counsel for the petitioner, to the effect that it was not in tune with the SOP issued by the CVC, the petitioner ought to have challenged the same before closure of the bidding process and not after he failed in the bid. He has also stated that pursuant to the impugned LOA issued on 17.04.2024, the respondent No.2 has been operating since



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01.06.2024, and any interference by the Court at this juncture would not be in public interest.

45. Mr. Sethi has also placed reliance on the judgment of the Hon'ble Supreme Court in *G.J. Fernandez v. State of Karnataka and Others*, (1990) 2 SCC 488, and has submitted that in the said judgment it has been held that in case any document was belatedly entertained by the tendering authority from one of the applicants in deviation of the time frame originally prescribed, unless such action results in any substantial prejudice to another party, interference by the Courts will not be permissible.

46. Mr. Jayant Mehta, learned senior advocate in addition to the submissions made by Mr. Sethi appearing for respondent No.2 has argued that SOP's issued by the CVC are suggestive in nature and are for guidance and, therefore, it was will within the authority of respondent No.1 to have prescribed a particular format for Integrity Pact while issuing the tender notice with permissible modifications. He has stated that there has not been violation of any of the terms and conditions of the tender document and, accordingly, the writ petition deserves to be dismissed.

ARGUMENTS IN REJOINDER ON BEHALF OF THE PETITIONER

47. Mr. Uppal, learned senior counsel for the petitioner has countered the submissions made by the learned Solicitor General and learned senior counsels representing the respondent Nos. 1 and 2 and has stated that the issue in the instant case is whether due disclosure by the respondent No.2 was made while submitting its bid in tune with the requirement of the SOP issued by the CVC or not. He has reiterated his submission that in terms of Clause 3.3 of the procedure of evaluation of bids as per the tender document,



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financial bid could be opened only for techno-commercial qualified bids and in the instant case though the bid submitted by respondent No.2 did not technically qualify, however, its financial bid was opened and the apparent deficiency in Annexure 'G' (Integrity Pact) i.e. the absence of signatures of the witnesses on this document, was instructed to be made good even after opening of the financial bid. In his submission, he has argued that such a course does not conform to the principle of fairness and, accordingly, the LOA issued in favour of the respondent No.2 deserves to be set aside. He has further argued on behalf of the petitioner that the case of debarment of respondent No.2 has not been pleaded, rather it is only about non-disclosure as per the CVC circular.

48. In respect of the decisions cited on behalf of respondent No.1 in *M/s. Araha Hospitality Private Limited* (supra), it has been argued that the Calcutta High Court did not have the territorial jurisdiction to entertain the said writ petition and that in the said judgment, the CVC guidelines and the issue as to whether adoption of the same is compulsory or not was not considered. He has further argued that the interpretation given to Section 2(g) of the Integrity Pact by Hon'ble High Court of Calcutta is not in consonance with the CVC guidelines, and hence, the issue has wrongly been decided.

49. He has also relied upon a Division Bench judgment of the Hon'ble High Court of Calcutta, dated 03.07.2023, rendered in MAT No. 894 of 2023 and MAT No. 895 of 2023, titled *Damodar Valley Corporation and Others v. BLA Projects Private Limited and Another*. Mr. Uppal has contended that the terms and conditions regarding disclosure of past



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transgression by the participating tenderers in ***Damodar Valley Corporation*** (supra) were almost similar to the terms and conditions in that respect in the instant case. He has stated that for non-disclosure of transgression beyond the last three years, the tender submitted by the tenderer in the said case was cancelled, which decision, in ***Damodar Valley Corporation*** (supra), became the subject matter of challenge before the learned Single Judge of Calcutta High Court, who quashed the same. However, in appeal before the Division Bench the judgment of the learned Single Judge was set aside and it was held by the Division Bench that the time limit prescribed in Section 5 cannot be interpolated in Section 3 and accordingly even if the transgression had not occurred within the last three years, the tendering authority was not precluded to take recourse to Section 3 which provided for disclosures from tender process and exclusion of the tenderer. His submission, thus, is that the judgment in ***Damodar Valley Corporation*** (supra) squarely covers the issue in this case as well, and hence the writ petition deserves to be allowed.

50. Reliance has also been placed by Mr. Uppal on the judgment of the Hon'ble Supreme Court in ***Haffkine Bio-Pharmaceutical Corporation Limited, A Government of Maharashtra Undertaking Through Manager v. Nirlac Chemicals through Its Manager and Others***, (2018) 12 SCC 790 wherein it has been held that violation of CVC guidelines is itself sufficient to vitiate the entire tender process. Paragraph 10 of the said judgment is extracted herein below:

“10. Even before us no record could be produced to show that the bid of Bionet was opened in the presence of the representatives of Nirlac. In this view of the matter, we are clearly of the opinion that



the entire tender opening process is vitiated since the CVC guidelines have not been followed. We may also add that opening of the tender without showing the documents is also meaningless. When a technical bid is opened, it is the right of the rival bidders to see whether the documents attached by a bidder meet the technical requirements or not. This can only be done if the documents attached to the bid are shown to the other side. According to us, the violation of CVC guidelines is itself sufficient to vitiate the entire tender process. We, therefore, find no merit in the appeals filed by Haffkine and Bionet.”

51. On the aforesaid counts, it has been argued by Mr. Uppal that the submissions made on behalf of the respondents are misconceived and untenable and, accordingly, the writ petition deserves to be allowed.

ISSUES FOR DETERMINATION

52. On the basis of the pleadings available on record and the submissions made by learned counsel representing the respective parties, the following issues emerge in this case for our determination.

A. Whether the action on the part of the respondent No.1 whereby the petitioner No.2 was instructed to make the deficiency good in the document submitted as Annexure ‘G’ to the bid by furnishing the same afresh with the signatures of the witnesses thereon, vitiates the tender process, which can be termed to be so unfair as to entail cancellation of the technical bid of the petitioner No.2.

B. As to whether the SOP circulated by the CVC *vide* circular dated 14.06.2023 will be applicable to the tender process in the instant case, or the subject tender is to be governed by the SOP circulated by the CVC *vide* its circular dated 25.01.2022.

C. As to whether the tender document contained a condition of mandatory disclosure of criminal antecedents of the tenderers even in



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respect of the period prior to past three years, impinging upon the anti-corruption principle, and further, as to whether the admitted non-disclosure of the criminal cases pending against the respondent No.2 would result in its technical disqualification and, consequently, the issuance of impugned Letter of Award dated 17.04.2024 would be illegal.

DISCUSSION, ANALYSIS AND FINDINGS

ISSUE: A

53. The argument in respect of issue 'A' culled out above, on behalf of the petitioner is that admittedly after opening up of the financial bid the respondent No. 1 had intimated the respondent No.2 to make good the deficiency in Annexure 'G' (Format of Integrity Pact) by furnishing the said document afresh with signatures of the witnesses appended thereon which is clearly in contravention of Clause 3.3 of the Procedure for Evaluation of bid. The submission is that in terms of the said Clause, financial bids of only those tenderers would be opened which qualify for techno-commercial bid and, since Annexure 'G' as required by the tender documents was not furnished by the respondent No. 2 in the sense that the said document furnished did not contain the signatures of the witnesses, the technical bid of the respondent No.2 ought to have been rejected at that stage itself i.e. before opening of the financial bid. It is, thus, the contravention of Clause 3.3 which has been pleaded by the petitioner. The said issue, however, is no more *res integra* and stands settled by a Division Bench judgment of this Court in *Sankalp Recreation Pvt Ltd* (supra).



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54. The facts of the said case (*Sankalp Recreation Pvt Ltd*) are that one of the parties which participated in the bid was permitted to make good the deficiency in the document submitted as Annexure 'G' to the bid, and thereafter was declared as the highest bidder and subsequently was awarded the contract. The arguments made on behalf of the petitioner in the said matter was that Annexure 'G' (Integrity Pact) was to be signed by the bidder, however, it was informed to the bidder concerned by the tendering authority that Annexure 'G' submitted by it did not bear the signatures of the witnesses and, accordingly the tendering authority instructed the bidder to submit a duly filled signed copy of Annexure 'G' bearing signatures of the authorized signatory and its witnesses, which could not be permitted. It was argued further on behalf of the petitioner that Annexure 'G' (Integrity Pact) falls under the category of mandatory criteria and since it was deficient for want of signatures of the witnesses it ought to have led to rejection of bid, and further that the tendering authority could not have permitted the bidder to make good the deficiency of missing signatures of the witnesses.

55. This Court in the said judgment viewed the challenge made on the said count as unsustainable and held that the Integrity Pact (Annexure G) cannot be governed by the instructions relating to mandatory criteria and further that the requirement of submitting the Integrity Pact in the Format (Annexure G) is not an information about the bidder and is, in fact, a compliance in anticipation of the award of the bid. The Court further held that the requirement of signature of witnesses on Annexure 'G' on 30.03.2024 when the tendering authority intimated the bidder about the absence of signatures of the witnesses, was pre-mature for the reason that



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the Integrity Pact was to be signed after the award of the contract in favour of the successful bidder and thus signatures of the witnesses could/ should be affixed at the time when the Integrity Pact was signed. It has further been held that the Integrity Pact, as submitted by the tenderer initially under the signatures of its authorized signatory itself was duly compliant with the requirement of the technical bid. Paragraph 23 and 24 of the said judgment in ***Sankalp Recreation Pvt Ltd*** (supra) are extracted herein below:

“23. In the present petition, we are concerned with respect to the compliance sought from the bidder at Serial No. 13 i.e., the Integrity Pact, Annexure-G. The entry at Serial No. 13 cannot be governed by the instruction ‘Mandatory Criteria’ appearing at Serial No. 6. Further, the requirement of submitting of Integrity Pact in the format provided at Annexure-G of the tender is not information about the bidder and is, in fact, a compliance in anticipation of the award of the bid. In the facts of this case, Respondent No. 3 had admittedly, duly submitted an Integrity Pact, Annexure-G signed by the authorised signatory.

24. The Respondent No. 2 wrote the e-mail dated 30th March, 2024 recording that the signatures of the witnesses were missing on the said Annexure-G. In our considered opinion, the requirement of the signatures of the witnesses on 30th March, 2024 was pre-mature as the said Integrity Pact is to be signed by an officer of Respondent No. 2 as well after the award of the contract in favour of the successful bidder, and thus, the signatures of the witnesses could/should have been affixed at the time when the Integrity Pact was signed by the officer of Respondent No. 2. The witnesses to the agreement are also to witness the signature of the officer executing on behalf of Respondent No. 2. Thus, the Integrity Pact as submitted by Respondent No. 3 initially under the signatures of its authorised signatory, with its technical bid itself was duly compliant.”

56. In view of the law laid down in ***Sankalp Recreation Pvt Ltd*** (supra), we do not find any illegality in permitting the respondent No.2 to furnish



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Annexure 'G' afresh with the signatures of the witnesses. Such a submission made on behalf of the petitioner, thus, cannot be accepted.

ISSUE: B

57. Lengthy arguments have been made on behalf of the petitioner as also on behalf of the respondents about the applicability of the SOP 2022/ SOP 2023 issued by the CVC *vide* its circulars dated 25.01.2022 and 14.06.2023 respectively. These circulars are on record, certain excerpts of which have also been extracted in the preceding paragraphs. However, for the reasons given and discussions made in respect of Issue 'C' hereunder, this issue may not be relevant for the purposes of the resolution of the dispute which has arisen in this matter.

ISSUE: C

58. Without adverting to the provisions contained in the CVC circulars dated 25.01.2022 and 14.06.2023, we would only refer to certain provisions of the tender document. Section 2(g), Section 3, and Section 5 of Annexure 'G' (Integrity Pact), which forms part of the subject tender document, have already been extracted hereinabove in paragraphs 22 and 24 of this judgment, respectively.

59. Thus, Section 3 and Section 5, both form part of the tender document itself and any violation thereof, in our considered opinion, would entail disqualification of the tenderer concerned.



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60. Section 2(g) of Annexure 'G' clearly mandates that the bidders/contractors shall disclose any transgression with any other company that may impinge on the anti-corruption principle.

61. Section 3 provides for disqualification from the tender process and even exclusion from future contracts, in case a bidder, before award or during execution of the work, has or is found to have committed a transgression through violation of Section 2. It is noteworthy that Section 3 of Annexure 'G' envisages two distinct situations, one, where a bidder/contractor is found to have committed a transgression through violation of Section 2 either before award or during execution of the tender and secondly, if a bidder or contractor is found to have committed a transgression in any other form (apart from violation of Section 2), such as to put its reliability or credibility in question. In both these situations, IRCTC is entitled to disqualify the bidders/contractors from the tender process or take action as per the procedure provided therefor.

62. A bare reading of Section 3 of Annexure 'G', thus, makes it clear that under the conditions of the tender document itself, respondent No.1 is entitled to disqualify the bidder/contractor in two situations as detailed above, namely, (i) in a situation where violation of Section 2 is found and also (ii) in a situation where transgression is found otherwise, that is to say, in any form other than violation of Section 2. Accordingly, our reading of Section 3 is very clear, which is that apart from transgression by a bidder/contractor through violation of Section 2, disqualification can take place in case of transgression of the integrity principle in any other form i.e. in a form not mentioned in Section 2.



63. As already noted above, Section 5 also forms part of the tender conditions which is applicable in case of previous transgressions. Section 5 provides that the bidder is to declare that no previous transgressions had occurred in the last three years conforming to the anti-corruption principle. It also provides that in case the bidder makes an incorrect statement on this subject, he can be disqualified from the tender process, or action can be taken as per the procedure prescribed. Accordingly, Section 5 operates in case of non-disclosure of previous transgressions conforming to the anti-corruption approach in the last three years. However, what is noticeable is that Section 3 does not contain the clause, “last three years” which occurs in Section 5.

64. Section 3, thus, cannot be said to be confined to consequences in case of transgressions by a bidder or contractor with the anti-corruption principle in the last three years alone.

65. The difference of the language occurring in Section 3 and Section 5 is clear. Any action under Section 5 shall ensue in case the bidder or the contractor makes incorrect statement in respect of transgression in past three years, however, for entailing an action under Section 3, this time period of transgression in past three years is absent.

66. It is further noticeable that both Section 3 and Section 5 mandate disclosures of transgressions. Section 3 is to be read in conjunction with Section 2, especially Section 2(g), which mandates the bidders/ contractors to disclose “any transgression” that may impinge on the anti-corruption principle.



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67. In our considered opinion, the time period of “last three years” occurring in Section 5 cannot be interpolated or imported to Section 3.

68. Section 3, as already observed above, operates in two situations, namely in the case of violation of Section 2 or in the case of transgression in any other form since Section 3 is to be read in conjunction with Section 2(g). In our considered opinion for enabling the IRCTC/ respondent No.1 to evaluate as to whether any contractor/ tenderer is guilty of transgression such as to put their reliability and credibility in question, the bidder/ tenderer is under a mandate of the tender condition to disclose all such transgressions irrespective of the period when they are said to have occurred.

69. Section 5, on the other hand, is confined to transgressions occurring in the last three years, however, we have already opined above that this period of the last three years cannot be imported to Section 3.

70. At this juncture, it is also to be noticed that Section 2 of Annexure ‘G’ commences with the heading “commitments of the bidder(s)/ contractor(s)”. Thus, Section 3 also provides for certain commitments to be made by the bidders/ contractors which include disclosure of any transgression that may impinge on anti-corruption principle irrespective of the period when it had occurred. It is, in fact, not possible to read the phrase “last three years” in Section 3 by importing the same from Section 5.

71. The Hon’ble High Court of Judicature at Calcutta in its judgment dated 03.07.2023 in *Damodar Valley Corporation* (supra) had the occasion to consider the provisions which are akin to Section 3 and Section 5 in the



instant case. Section 3, as quoted in *Damodar Valley Corporation* (supra) runs as under:

**“SECTION-3: DISQUALIFICATION FROM TENDER PROCESS
AND EXCLUSION FROM FUTURE CONTRACTS**

If the Bidder(s)/Contractor(s), before award or during execution has committed a transgression through a violation of section-II above, or in any other form such as to put his reliability or credibility in question, the Principal is entitled to disqualify such Bidder(s)/Contractor(s) from the tender process or to terminate the contract, if already signed and to take action as per the procedure or “Banning of business dealings” of the Principal.”

72. Section 5, as extracted in *Damodar Valley Corporation* (supra) is also quoted hereunder:

“SECCTION-5: PREVIOUS TRANSGRESSION

(1) The Bidder declares that no previous transgressions occurred in the last three years with any other Company in any country conforming to the anti-corruption approach or with any Public Sector Enterprise in India that court justify his exclusion from the tender process.

(2) If the Bidder makes incorrect statement on this subject, he can be disqualified from the tender process or action can be taken as per the procedure of “Banning of business dealings” of the Principal.”

73. If we, thus, compare Section 3 and Section 5 which have been considered in *Damodar Valley Corporation* (supra) with Section 3 and Section 5 which have been extracted above from the tender document of the subject tender in this case, what we find is that they are *pari materia* with each other. Elaborately discussing the import of Section 3 and Section 5 in *Damodar Valley Corporation* (supra), it has been held that Section 5



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mandates the bidder to declare that no previous transgression occurred in the last three years and that Section 5 is a standalone provision. The Calcutta High Court also held in this judgment that time limit of three years is qua the previous transgression with any other company whereas the second limb of Section 3 empowers the tendering authority to disqualify a bidder if any action of the bidder is found to be in a form so as to put its credibility and reliability in question. The Calcutta High Court has further held that the time limit prescribed in Section 5 of the tender conditions could not be interpolated in Section 3.

74. While expressing our complete agreement with the interpretation given by the Calcutta High Court in *Damodar Valley Corporation* (supra) to the effect that time period prescribed in Section 5 cannot be imported in Section 3, we are also of the opinion that had the criminal antecedents relating to the period prior to past three years been disclosed, as is mandated by Section 2(g) read with Section 3, the respondent No.1 would have been in a position to take a decision as to whether the “reliability and credibility” of respondent No.2 was in question or not and depending on such decision the tender process could/ should have proceeded further. However, in the instant case, what we find is that there is no disclosure of the criminal antecedents by the respondent No.2 in its bid submitted in pursuance of the subject tender which prevented the respondent No.1 to have an occasion to consider and take a decision as to whether the reliability or credibility of respondent No.2 was in question on account of the transgressions which occurred even prior to past three years. (emphasis supplied by the Court)



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75. We may also note that against the judgment of the Division Bench of the Calcutta High Court in ***Damodar Valley Corporation*** (supra), a Special Leave Petition (Civil) Diary No. 40417/ 2023 was disposed of by the Hon'ble Supreme Court vide its order dated 11.12.2023 wherein the Hon'ble Supreme Court noted that the allegation against the tenderer was of non-disclosure of relevant facts, namely the pendency of charge sheet in respect of contract in relation to prior tender and further that based on the said position and the fact that the contract for the subsequent tender process had already been awarded, the Hon'ble Supreme Court did not entertain the SLP. The order passed by the Hon'ble Supreme Court dated 11.12.2023 is extracted herein below:

"1 Delay condoned.

2 Following the impugned judgment of the Division Bench of the High Court of Calcutta in Writ Appeal on 3 July 2023, the contract has admittedly been awarded for one year. The allegation against the petitioner, which has weighed with the High Court in the writ appeal, is that the petitioner had failed to disclose the pendency of a charge-sheet in respect of an earlier tender.

3 Mr Ranjit Kumar, senior counsel appearing on behalf of the petitioner submits that the proceedings in pursuance of the charge-sheet have been stayed at the behest of the petitioner by the High Court and in addition, there is an arbitral award which has also enured to the benefit of the petitioner.

4 At this stage, it needs to be noted that the allegation against the petitioner was of non-disclosure of the relevant facts, namely, the pendency of the charge-sheet in respect of the contract of the petitioner in relation to a prior tender.

5 Based on the above position and the fact that the contract for the subsequent tender process has already been awarded, we are not



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inclined to entertain the Special Leave Petition under Article 136 of the Constitution.

6 Mr Ranjit Kumar, senior counsel submitted that the exclusion of the petitioner in the present case would effectively amount to a permanent act of black listing without an opportunity being given to the petitioner to show cause.

7 Ms Meenakshi Arora, senior counsel appearing on behalf of the respondent, on the other hand, submitted that (i) no order of black listing has been passed against the petitioner; (ii) the bid was disqualified only on the ground of a failure to disclose material facts; and (iii) consequently, it is open to the petitioner to make a proper disclosure in the future should any fresh tender be issued and any such tender would be considered on its own merits by the authority.

8 The above submission which has been urged on behalf of the respondent sufficiently meets the grievance of the petitioner that there is de facto an order of permanent black listing. As a matter of fact, it has been clarified that there is no order of black listing against the petitioner. Consequently, should the petitioner make a proper disclosure while bidding in the future, in view of the assurance which has been placed on the record by the respondent through senior counsel, the bid shall be considered in accordance with law. We clarify that this will not affect the award of the contract which forms the subject matter of dispute in these proceedings.

9 Subject to the aforesaid, the Special Leave Petitions are disposed of.

10 Pending applications, if any, stand disposed of.”

76. The observations made by Hon’ble Calcutta High Court in paragraph 20 of ***Damodar Valley Corporation*** (supra) are extracted herein below:

“20. It is an admitted fact that for certain transgression action was initiated against the respondent writ petitioner and a criminal case was registered against its Managing Director. The FIR was investigated and offence having been made out, charge sheet has



been laid. The matter has not attained finality primarily for the reason that the writ petitioner has obtained stay of the proceedings by approaching this Court. The question would be as to whether non-declaration of the adverse information against the writ petitioner would be a justifiable reason for rejecting the technical bid of the writ petitioner by the technical evaluation committee. As pointed out earlier, the learned Writ Court was of the view that alleged transgression had occurred 3 years prior to the notice inviting the subject tender and therefore, there was no such embargo on the part of the writ petitioner requiring to disclose such information. Thus, the question would be whether the time limit which is mentioned in Section 5 of the Tender Conditions could be interpolated in Section 3 of the Tender Conditions. Section 3 of the Tender Conditions deals with disqualification from tender process and exclusion from future contracts. Section 3 contains two limbs, the first of which being, if the bidder before the award or during the execution has committed a transgression through violation of Section 2, it would result in disqualification. The second limb is that if the bidder has acted in any other form such as to put his reliability and credibility in question, that would also result in disqualification. Section 5 deals with previous transgression. In terms of Clause (1) of Section 5, it is mandatory for the bidder to declare that no previous transgression occurred in the last 3 years with any other company in any country confirming to the anti-corruption approach or with any public sector enterprises in India that could justify the exclusion from the tender process. Therefore, Section 5 is a stand alone provision dealing with previous transgression mandating the bidder to make a self-declaration of any such previous transgression occurred in the last 3 years with any other company in the country or with any other public sector enterprises in India. Therefore, the time limit of 3 years stipulated, is qua the previous transgression with any other company in the country or any other private sector enterprises in India in the last 3 years whereas the second limb of Section 3 empowers the DVC to disqualify a bidder if the action of the bidder is in a form so as to put his reliability or credibility in question. Admittedly, criminal case has been registered and charge sheet has been laid. We see no reason to fault the decision of the appellant in doubting the reliability or credibility of the



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respondent writ petitioner at this stage of the matter. This is so because the criminal proceedings have not attained finality and the matter has been stayed in a proceeding initiated by the writ petitioner. Therefore, unless and until the writ petitioner gets himself absolved of all the charge, it cannot be stated that DVC were wrong in doubting the reliability and credibility of the writ petitioner in participating as a bidder in the subject tenders. Therefore, the time limit prescribed in Section 5 of the Tender Conditions cannot be interpolated in Section 3 of the Tender Conditions. With regard to the Policy for Withholding and Banning of Business Dealings is concerned, though the matter has not travelled upto the said stage, in terms of Clause 2.3(iii) the time limit of 3 years is with regard to any other entity in the country or any debarment by any other procuring entity and this should be mandatorily disclosed by the bidder by way of a self-declaration. The learned Writ Court was of the view that the Clause 2.3(iii) has diluted the rigour of the debarment. We are unable to persuade ourselves to agree with the said conclusion as sub-clause (iii) of Clause 2.3 gives discretion to the tender inviting authority namely, the appellant. It has been clarified that such disqualification would not be meant automatic disqualification, the declared conflict of interest may be evaluated and mitigating steps, if possible, may be taken by the procuring entity. Similarly voluntary reporting of previous transgression of Code of Integrity elsewhere may be evaluated and barring cases of various grades of debarment, an alert watch may be kept on the bidder's action in the tender and subsequent contract. We find there is no dilution of the rigour of the provisions of debarment and all that Sub-clause (iii) of Clause 2.3 gives is a discretion to the procuring entity to evaluate the mitigating steps or to evaluate the voluntary report reporting of previous transgression. Admittedly the writ petitioner has not voluntarily reported the previous transgression. Therefore, the stand taken in the writ petition is a clear afterthought and the writ petitioner seeks to interpret the terms and conditions of tender to suit its convenience which they are not entitled to do. Above all, the Court exercising jurisdiction under Article 226 of the Constitution is not the authority to decide as to who would be best suited to perform the contract. The Court cannot take a decision sitting in the arm chair of the tender inviting authority as it is the exclusive domain of the



tender inviting authority to decide upon the tenderer who would be best suitable. The learned Writ Court was of the view that the decision of the appellant was arbitrary and unreasonable and if it is so, it was permissible for the Writ Court to interfere. In the light of the conclusion which we have arrived at namely, that the time limit prescribed in Section 5 cannot be interpolated in Section 3, we find no arbitrariness in the decision making process. Secondly, there can be no unreasonableness in the decision itself. It is not for the Writ Court to question the decision of the appellant and it is only the decision making process that that needs to be examined. The transgression which had been committed is admitted and the writ petitioner seeks to escape out of the rigour of the terms and conditions of tender by referring to the time limit prescribed in Section 5 which we have held has no application to the facts and circumstances of this case. Similarly, the time limit in Subclause (ii) of Clause 2.3 of the Banning Policy would apply to cases where the bidder makes voluntary declaration of the previous transgression with any other entity in the country or by any other procuring entity during the last 3 years. In the instant case, the transgression is with the procuring entity itself. One other reason which has been set out in the reasons for rejection is that repeatedly the writ petitioner has suppressed the transgression. It is an admitted fact that the writ petitioner had participated in 14 tenders floated by the appellant organization; however appears to have been unsuccessful but the fact remains that in the 14 tenders this transgression has not been disclosed. Therefore, this is one more reason for the appellant to doubt the reliability and credibility of the writ petitioner. The learned Writ Court has referred to the stand taken by the appellant to state that the starting point of the alleged transgression was when the FIR was registered and not when the charge-sheet was laid. Though, we have held the said time limit prescribed in Section 5 of the Tender Conditions, has no application to the case on hand. That apart, the transgression is continuing and the matter has not attained finality largely attributable to the writ petitioners themselves as they have obtained stay of those proceedings. Therefore, the writ petitioner cannot be permitted to probate and reprobate and take advantage of their own action and to fault the decision of the appellant in rejecting their technical bid. It was submitted by the learned Senior Advocate for the respondent writ



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petitioner that it is the Director of the company who has been charge-sheeted and the company is not the accused. To verify the correctness of the said submission we have perused the charge-sheet which was laid on 24.10.2019 wherein it has been mentioned that the writ petitioner had violated various provisions of the Contract and that it has been noticed that the writ petitioner had created a heap of inferior coal mixed with extraneous material with intent to commit fraudulent and corrupt practice. The Managing Director of the company has been named as the “owner” in the charge-sheet who is said to have voluntarily surrendered before the Trial Court on 13.02.2019. Therefore, it is incorrect to state that the company has not been mentioned in the chargesheet which has been laid.”

77. We have already noted our agreement with the findings recorded by the Hon’ble Calcutta High Court to the effect that time limit of “past three years” occurring in Section 5 of Annexure ‘G’ (Integrity Pact) cannot be imported to Section 3 and that non-disclosure of criminal antecedents by respondent No.2, in fact, deprived the respondent No.1 to evaluate as to whether reliability or credibility of the respondent No.2 was in question, as required by Section 3 read with Section 2(g) of Annexure ‘G’ (Integrity Pact).

78. Thus, in our opinion, the process by which the respondent No.2 has been issued the Letter of Award is vitiated being in contravention of the conditions of the tender documents, that too, touching upon the need and duty of the tendering authority, which in this case is a public authority, to evaluate as to whether reliability or credibility of the respondent No.2 qua transgressions impinging on anti-corruption principle, were questionable or not. Such a failure, in our opinion, on the part of the respondent No.1 which occurred on account of non-disclosure of criminal antecedents by respondent



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No.2 along with its bid, is undoubtedly not in conformity with the principle of fairness in public tenders where every possible steps need to be taken to remove any chances of any transgression which may impinge on anti-corruption approach.

79. For the reasons given and discussions made above, the writ petition is allowed in the following terms:

- i.) The Letter of Award dated 17.04.2024 issued by respondent No.1 in favour of respondent No.2 is hereby quashed.
- ii.) The respondent No.1 is directed to initiate the tender process afresh for the work allotted to the respondent No.2 forthwith and complete the same within a period of three months from the date of this order.
- iii.) Till the work is allotted in terms of fresh tender to be floated under this order, the respondent No.2 shall be allowed to carry on the work allotted to it.

80. Miscellaneous application(s), if any, also stand disposed of.

81. There shall be no order as to costs.

(DEVENDRA KUMAR UPADHYAYA)
CHIEF JUSTICE

(TUSHAR RAO GEDELA)
JUDGE

APRIL 22, 2025
S.Rawat/ N.Khanna