

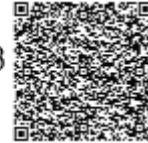


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**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH.**

CWP-13379-2024

Reserved on: 25.02.2025

Pronounced on: 01.04.2025

M/S FLORAL ELECTRICAL PVT. LTD.

.....Petitioner

Versus

HARYANA VIDYUT PRASARAN NIGAM LTD. AND ANR.

.....Respondents

**CORAM: HON'BLE MR. JUSTICE SURESHWAR THAKUR
HON'BLE MR. JUSTICE VIKAS SURI**

Argued by: Mr. Sanjay Kaushal, Sr. Advocate with
Ms. Dawelpreet Kaur, Advocate
Mr. Rajan Chawla, Advocate
Ms. Bhawna Thakur, Advocate
Mr. Munish K. Garg, Advocate
for the petitioner.

Mr. Ankur Mittal, Advocate
Ms. Kushaldeep Kaur Manchanda, Advocate
Ms. Gurcharan Kaur, Advocate
Mr. Sandeep Chhabra, Advocate and
Ms. Saanvi Singla, Advocate
for respondent No. 1.

SURESHWAR THAKUR, J.

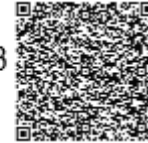
1. Through the instant writ petition, the petitioner herein –
M/s Floral Electrical Private Limited, prays for the quashing of the
letter dated 24.05.2024 (Annexure P-20), whereby, the petitioner-
Company is blacklisted/debarred from doing any business with
respondent No. 1-HVPNL for one year, individually or with any other



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entity in partnership. The relevant contents of Annexure P-20 becomes extracted hereinafter.

To

M/s Gupta Industries

JV M/s Floral Electrical Pvt. Ltd.

(Lead Partner)

(JV Partner)

18/1, Balbir Road, Dehradun

223, W K Road, Meerut.

Memo No. Ch-214/HDP-09/EPC-D-281/Vol-II/XEN/Tr. (P)

Date :-24/05/2024

Subject : Termination of contract for Construction of 132 kv AIS S/Stn., Hansi alongwith termination arrangement of 132 KV Circuits against P.O. No. HDP-09/EPC-D-281/Xen/Tr. (P) dated 01.02.2021 and debarring for one year.

P.O. No. HDP-09/PD&C/EPC-D-281/PD & C/Xen/Tr.(P) dated 01.02.2021 for construction of 132 kV S/Stn. Hansi alongwith termination arrangement of 132 KV circuits was awarded to M/s Gupta Industries, Dehradun JV M/s Floral Electrical, Meerut on turnkey basis with completion period of 15 months i.e. upto 01.06.2022. The contract was signed on 02.03.2021. The timelines of the project are as under :-

Date of issue of P.O.	01.02.2021
Date of signing of contract	02.03.2021
Completion period	15 months
Contract value of work	17.20 Crore
Contractual start date	02.03.2021
Contractual completion date	01.06.2022
Contractual completion date after time extension	30.08.2022

2. The contractual date of completion was 30.08.2022 (after interim time extension). However, till date, major electrical and civil activities are still pending including commissioning of 2 Nos 16/20MVA 132/11kV T/F (supplied by HVPNL) and 1 Nos 20/25MVA 132/33 kV T/F (supplied by HVPNL). As such, it is clear that the work is lagging far behind the schedule and your firm would not be able to complete the work of ibid substations, at such snail pace.

3. The approach of your firm was lethargic since beginning, owing to the various issues of your firm. Your firm was continuously persuaded by field as well as head office officers for completion of work at the earliest. However, even after lapse of contractual period, the progress of work at site was not satisfactory and there had been a lack of dedication of firm in executing the project.

4. In view of above and also as per clause 44.1 of GCC, a notice was served upon your firm on 07.11.2023 to make good the deficiency in the progress of work within 15 days from the date of receipt of the notice.

5. Instead of giving response to the notice dated 07.11.2023 or showing progress in execution or completion of work, your firm vide memo dated 17.11.2023 requested to allow time of one week to present the case before HVPNL. A meeting was scheduled by HVPNL on 22.11.2023 granting opportunity to your firm to clarify its position. It was requested by your firm during the meeting on 22.11.2023 to allow

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you 10 more days to reassess your financial position and arrange the funds for completion of work. HVPNL considered the request and granted your firm 10 days vide letter dated 24.11.2023 to reassess your financial position and taking steps for execution of work.

6. Instead of submitting the action plan for completion of work, your firm vide letter dated 01.12.2023 again requested to provide one more hearing. The hearing was again granted by Nigam and a meeting was held on 04.12.2023 to deliberate the action plan for completion of balance work. However, no such plan was submitted by your firm during the meeting, even after granting so many opportunities.

7. Thereafter, a notice of 15 days under clause 44.2 of GCC served upon your firm on 08.12.2023, to show cause as to why actions ie termination of contract, forfeiture of bank guarantees, carrying out balance work at risk & cost of your firm, blacklisting/debarring of your firm for one year etc may not be taken against your firm by HVPNL as per terms & conditions of the contract.

8. The matter regarding additional claim of price variation of tower & equipment structures on account of IEEMA had been raised by your firm on various occasions among other issues. The decision of Empowered Officer in this regard, had already been intimated to your firm on 12.05.2023 whereby it was held that the demand for higher price variation of firm is unjustified. Now the case for additional claim of price variation of tower & equipment structures is pending before sole Ld. Arbitrator.

9. On the application of your firm Ld. Sole Arbitrator, vide order dated 11.12.2023 had granted stay on termination notice dated 08.12.2023 issued by HVPNL. Ld. Sole Arbitrator vacated the stay vide order dated 07.03.2024

10. Earlier, your firm vide letter dated 11.02.2024 represented that work of construction of 132 KV substation Hansi was delayed due to many reasons mainly Covid Pandemic, price Inflation, closure of mining by NGT & State Govt. of India, delay in material verification, terror of locals at Hansi site, delay in full payment of price variation, paucity of working funds etc and requested further to arrive mutually at reasonable settlement. Further, your firm vide letter dated 08.03.2024 and followed by another letter dated 19.04.2024 had requested to provide last opportunity of personal hearing so that your firm can finally put up the plea. The representation of M/s Gupta Industries for mutual settlement alongwith other request was not found feasible for acceptance & hence rejected in view of firm's failure to honor the contractual obligations despite of multiple opportunities.

11. M/s Floral Electrical (JV Partner) vide letter dated 11.03.2024, 12.03.2024 and 25.04.2024 had represented its case and requested not to take any administrative action against them and allow them personal hearing in the matter, however, same was not entertained as all partners are jointly and severally responsible for execution of contract.

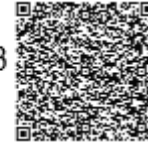
12. It may kindly be noted that time is essence of contract. In absence of completion of work awarded to you, power evacuation is not possible and therefore the expenditure incurred on associated transmission lines is of no use to Nigam. Delay in completion of project leads to technical & commercial losses to HVPNL and deprived general public to have quality service of Nigam.

13. Attention in this regard, is drawn towards clause 44.0 of GCC of the Contract-

"44.0 CONTRACTOR'S DEFAULT

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**44.1 Notice of Default**

If the contractor is not executing the works in accordance with the contract or is neglecting to perform his obligations thereunder so as seriously to affect the programme for carrying out of the works, the Employer may give notice to the contractor requiring him to make good such failure or neglect.

44.2 Nature of Contractor's Default

If the contractor-

- a) has failed to comply within a reasonable time with a notice sub-clause 44. 1, or
- b) assigns the contract or subcontracts the whole of the works without the Employer's written consent, or
- c) becomes bankrupt or insolvent, has a receiving order made against him or compounds with his creditors, or carries on business under a receiver, trustee or manager for the benefit of his creditors or goes into liquidation.

The Employer may, after giving 15 days notice to the contractor, terminate the contract and expel the contractor from the site.

Any such expulsion and termination shall be without prejudice to any other rights or powers of the Employer, or the contractor under the contract.

The Employer may upon such termination complete the works himself or by any other contractor partially or total depending upon the site requirement at the risk and cost of the contractor. The Employer or such other contractor may use for such completion any contractor's equipment which is upon the site as he or they may think proper, and the Employer shall allow the contractor a fair price for such use.

The employer may take administrative action such as debarring, blacklisting along with forfeiting of bank guarantees etc.

14. As is evident from above, your firm has failed to execute the contract/work within specified timelines and in further multiple extended chances. Due to your lapses, people of our state are deprived from the benefit of quality power supply. On account of your failure to execute the project within specified time, HVPNL has suffered setback, and has also suffered damages and losses. Thus your firm has committed breach of contract and accordingly :-

- i. Contract No HDP-09/EPC-D-281/Xen/Tr (P) dated 01.02.2021 awarded to M/s Gupta Industries, Dehradun JV M/s Floral Electricals, Meerut is hereby terminated.
- ii. Balance work under HDP-09/EPC-D-281/Xen/Tr (P) dated 01.02.2021 shall be got executed departmentally at the risk & cost of M/s Gupta Industries Dehradun JV M/s Floral Electricals, Meerut.
- iii. Performance Bank Guarantees submitted against HDP-09/EPC-D-281/Xen/Tr. (P) dated 01.02.2021 on account of non-performance is hereby forfeited/encashed.
- iv. Advance Bank Guarantees submitted against HDP-09/EPC-D-281/Xen/Tr. (P) dated 01.02 2021, if any, is hereby forfeited/encased for recovery of advance and recovery of interest thereof from other due of the firm.
- v. On account of delay in completion of work, your firm is liable to pay for charges of Liquidated Damages (LD) as per clause 14.0 of GCC of the contract.
- vi. M/s Gupta Industries, Dehradun JV M/s Floral Electricals, Meerut is hereby debarred for the period of 1 year with immediate effect for doing further business with HVPNL.



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2. The petitioner further seeks directions for removing/deleting the blacklisting/debarring status in the records.

Factual Backdrop of the case.

3. Respondent No. 1-HVPNL for the purposes of constructing 132 KV sub station at Hansi, invited E-Tender No. 1093 having the last date of submission as 03.03.2020.
4. The relevant clauses of the E-Tender are extracted hereinafter.

Clause 2.5	<p><i>Bids may be submitted by individual firms or joint ventures or one of the following :</i></p> <p><i>a) A single firm that meets all the qualification requirements set forth in para 2.0 to 2.4 above.</i></p> <p><i>b) A joint venture of firms having one partner as lead partner who shall meet all the qualification requirements set forth in para 2.1, 2.2 and 2.4 above.</i></p> <p><i>Regarding financial criteria, the figures of each of the partner of joint venture shall be added together to determine the bidder's compliance with minimum qualification criteria set out in para 2.3 above.</i></p> <p><i>c) All the commercial transactions shall be made with only lead partner.</i></p>
Clause 2.9	<p><i>Bids submitted by a joint venture of firms, as partners shall comply with following requirements:</i></p> <p><i>a) The bid shall include all the information listed in sub clause 2.8 (a) to (i) above for each joint venture partner.</i></p> <p><i>b) The bid and the form of agreement in case of successful bid, shall be signed so as to legally binding on all partners.</i></p> <p><i>c) One of the partners shall be nominated as lead partner, and this authorization shall be evidenced by submitted a power of attorney signed by legally authorized signatories of all the partners.</i></p> <p><i>d) The lead partner shall be authorized to incur liabilities and receive instructions for and on behalf of any and all partners of the joint venture and the entire execution of the contract including payment shall be</i></p>



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	<p><i>done exclusively with the lead partner as per performa enclosed in Section – V.</i></p> <p><i>e) All partners of the joint venture shall be liable jointly and severally for the execution of the contract in accordance with the contract terms and a statement to this effect shall be included in the authorization. Mentioned under (c) above as well as in the Bid Form and in the contract Form (in case of successful bid).</i></p> <p><i>f) A copy of the agreement entered in to by the joint venture partners shall be submitted with the bid. Failure to comply with this requirement will result in rejection of the joint venture's bid.</i></p>
<p>General Conditions of Contract</p>	
<p>Clause 44 provides the power with the employer to terminate the contract and to get the work done at the risk and cost of the contractor, beside taking administrative actions such as debarring, blacklisting along with forfeiting of bank guarantee etc.</p>	
<p>Clause 45 provides for termination of the contract by the HVPNL.</p>	
<p>Clause 49 provides for Arbitration in case of dispute or difference between the parties.</p>	

5. Respondent No. 2 after entering into a joint venture Agreement dated 02.03.2020 with the petitioner herein, duly participated in the aforesaid bidding process and therebys submitted his bid alongwith price schedules, data requirements, payment terms and work schedules with respondent No. 1.

6. As per the agreement, the partners were jointly and severally liable to perform the contract and all the obligations created thereons. The relevant clauses, as occur in the agreement (supra) are extracted hereinafter.

<p>Clause 1</p>	<p><i>In consideration of the award of the Contract by the Employer to the Joint Venture partners, we the Partners to the Joint Venture agreement do hereby agree that M/S Gupta Industries shall act as “Lead Partner” and further declare and confirm that we shall jointly and severally be bound onto the Employer for the successful</i></p>
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	<i>performance of the Contract and shall be fully responsible for the successful execution of the contract.</i>
Clause 2	<i>In case of any breach of the said contract by the Lead Partner or other partner(s) of the Joint Venture Agreement, the partner(s) do hereby agree to be fully responsible for the successful performance of the contract and to carry out all the obligations and responsibilities under the Contract in accordance with the requirements of the Contract.</i>
Clause 3	<i>Further, it the Employer suffers any loss or damage on account of any breach in the contract, the partner(s) of these undertake to promptly make good such loss or damages caused to the Employer, on its demand without any demur. It shall not be necessary or obligatory for the Employer to proceed against lead Partner to these presents before proceeding against or dealing with the other Partner(s)</i>
xxxx	
Clause 7	<i>In case of an award of a Contract, we the partners to the Joint Venture Agreement do hereby agree that we shall be jointly and severally responsible for furnishing a contract performance security from a bank in favour of the Employer in the forms acceptable to the Employer for value of 10 % of the Contract Price.</i>
Clause 8	<i>It is further agreed that the Joint Venture Agreement shall be irrevocable and shall form an integral part of the Contract and shall continue to be enforceable till the Employer discharges the same. It shall be effective from the date first mentioned above for all purposes and intents.</i>

7. The Board of Directors of the petitioner Company vide resolution dated 10.06.2020 (Annexure P-3), resolved that the company shall participate as a joint partner with M/s Gupta Industries, however, all the financial and contractual obligations/implications shall become encumbered upon M/s Gupta Industries.

8. Respondent No. 1- HVPNL issued work order (Annexure P-5) in favour of M/s Gupta Industries (lead partner) and M/s Floral Electricals Pvt. Ltd. (JV Partner) to complete the project within 18



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months from the signing of the contract. Thereafter, work contract agreement (Annexure P-6) was executed between the petitioner-company and respondent No. 2.

9. Clause 4.0 of the Work Contract Agreement (Annexure P-6) becomes extracted hereinafter.

“4.0 Settlement of Disputes

It is specifically agreed by and between the parties that all the differences or disputes arising out of the Agreement or touching the subject matter of the Agreement shall be decided by the process of settlement and arbitration as specified in clause 48 and 49 of the General Conditions of Contract and of the provisions of the Indian Arbitration and Conciliation Act, 1996 shall apply and Panchkula Courts alone shall have exclusive jurisdiction over the same.”

10. After the awarding of the work contract, the respondent No. 2 after submitting the Performance Bank Guarantee, began the execution of the allotted work contract, but later on certain disputes arose between respondent No. 1-HVPNL and respondent No. 2, regarding the satisfactory execution of the work contract, thus within the time schedule mentioned in the contract.

11. Respondent No. 1 – HVPNL vide letter dated 03.08.2023 (Annexure P-9) addressed to the joint venture i.e. both the partners, thus proposed the names of Arbitrators, who may be appointed, to adjudicate upon the dispute as arose between the Joint Venture Firm and the HVPNL. Thereafter, a communication was received from M/s Gupta Industries for appointing Mr. P.L. Ahuja, District and Sessions Judge, (Retd.) as an Arbitrator.

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12. The claim petition (Annexure P-11) was filed by M/s Gupta Industries before the sole Arbitrator. Statement of defence was filed by HVPNL, whereby, a specific objection was taken that a sole claimant is maintaining the claim, whereas, the contract becomes awarded to a joint venture.

13. An amendment application was moved by the claimant for changing the claimant's name in the array of parties from Gupta Industries to Gupta Industries JV Floral Electrical Pvt. Ltd. (Joint Venture) through its lead partner. Further, amendment was sought qua the term 'sole proprietorship' becoming deleted and the term 'Joint Venture' between M/s Gupta Industries and Floral Electrical Pvt. Ltd.', being replaced qua 'sole proprietorship'.

14. The learned Arbitrator rejected the said application vide order dated 07.03.2024 (Annexure P-18). The operative part of the said order is extracted hereinafter.

“ 22. Adverting to the application dated 09.02.2024 for amendment of the Claim Petition, it is pertinent that the claimant was aware since the very beginning that the contract work agreement was executed by the Joint Venture and not by it in its individual capacity. There is no resolution of the Board of Directors of JV to authorize the claimant to implead M/s Floral Electricals Pvt. Ltd. and to amend the Claim Petition at this stage. I am of the view that a valuable right has accrued in favour of the respondent and if the amendment of Claim Petition is allowed at this stage, respondent cannot be compensated with by cost.



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23. *For the reasons recorded above, I do not find any merit either in the application dated 11.12.2023 for staying the impugned notice dated 08.12.2023 or in the application dated 09.02.2024 for amendment of the Claim Petition and the same are dismissed leaving the parties to bear their own costs.*

15. Against the aforesaid order, ARB 30 of 2024 has been instituted before the Court below, which is pending adjudication.

Contentions of the learned counsel for the parties.

16. The petitioner herein has challenged the order whereby the contract awarded to the joint venture has been terminated, besides whereby the performance guarantee became forfeited. Moreover, the petitioner has also challenged the order, whereby, the petitioner company has been debarred from doing any business with respondent No. 1-HVPNL, thus for one year.

17. The primary contention of the petitioner herein, is that, the petitioner was not a lead partner in a joint venture and all the transactions were being done by M/s Gupta Industries, therefore, it cannot be held liable for any omissions made by M/s Gupta Industries.

18. On the other hand, the learned counsel for respondent No.1 submits that the contention (supra) is misconceived and is mis-constituted, as the terms and conditions of the bid document, show that it was submitted as a Joint Venture Agreement, and, also the work order, shows that once the contract is awarded to a joint venture, thereupon, all partners are jointly and severally liable for the performance of the contractual obligations.



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Inferences of this Court.

19. At the outset, the hereinafter extracted judicial precedents covering the subject matter are required to be alluded to.

Civil Appeal arising out of SLP (C) No. 10042/2023 titled as M/s Techno Prints Vs. Chhattisgarh Textbook Corporation and Another

27. This Court in *The Blue Dreamz Advertising Pvt. Ltd. & Anr. v. Kolkata Municipal Corp. & Ors.* reported in 2024 INSC 589 while quashing and set asiding the blacklisting order as affirmed by the High Court in almost identical facts observed as under:

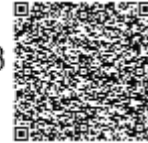
1. In case there exists a genuine dispute between the parties based on the terms of the contract, blacklisting as a penalty cannot be imposed.
2. The penalty of blacklisting may only be imposed when it is necessary to safeguard the public interest from irresponsible or dishonest contractors, and
3. The Corporation being a statutory body, have a higher threshold to satisfy before passing such blacklisting order and therefore, the measures undertaken by it should be reasonable.

28. Again, the aforesaid decision of this Court was rendered in a case where the blacklisting order was already passed.

xxxx xxxx

34. Plainly, if a contractor is to be visited with the punitive measure of blacklisting on account of an allegation that he has committed a breach of a contract, the nature of his conduct must be so deviant or aberrant so as to warrant such a punitive measure. A mere allegation of breach of contractual obligations without anything more, per se, does not invite any such punitive action.

35. Usually, while participating in a tender, the bidder is required to furnish a statement undertaking that it has not been blacklisted by any institution so far and, if that is not the case, provide information of



such blacklisting. This serves as a record of the bidder's previous experience which gives the purchaser a fair picture of the bidder and the conduct expected from it. Therefore, while the debarment itself may not be permanent and may only remain effective for a limited, pre-determined period, its negative effect continues to plague the business of the debarred entity for a long period of time. As a result, it is viewed as a punishment so grave, that it must follow in the wake of an action that is equally grave.

Civil Appeal arising out of Special Leave Petition (Civil) No. 11682 of 2018 titled as The Blue Dreamz Advertising Pvt. Ltd. and Another Vs. Kolkata Municipal Corporation and Others

Questions for consideration:

21. *The following questions arise for consideration:*
 - a. *Whether in the facts and circumstances of the case, the order of the Corporation dated 02.03.2016, debarring the appellant for a period of five years is valid and justified in the eye of the law?*
 - b. *If so, what reliefs is the appellant entitled to?*

Reasons and conclusions:

22. *Blacklisting has always been viewed by this Court as a drastic remedy and the orders passed have been subjected to rigorous scrutiny. In Erusian Equipment & Chemicals Ltd. vs State of West Bengal & Anr. (1975) 1 SCC 70, this Court observed that*

“20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction....”

23. *In Mr. B.S.N. Joshi (supra), this Court held that*

“41. ... When a contractor is blacklisted by a department he is debarred from obtaining a contract, but in terms of the notice inviting tender when a tenderer is declared to be a defaulter, he may not get any contract at all. It may have to wind up its business. The same would, thus, have a disastrous effect on him. Whether a person defaults in making payment or not would depend upon the context in which the allegations are made as also the relevant statute operating in the field. When a demand is made, if the person concerned raises a bona fide dispute in



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regard to the claim, so long as the dispute is not resolved, he may not be declared to be defaulter.” (Emphasis supplied)

24. xxxx

25. xxxx

26. *In other words, where the case is of an ordinary breach of contract and the explanation offered by the person concerned raises a bona fide dispute, blacklisting/debarment as a penalty ought not to be resorted to. Debarring a person albeit for a certain number of years tantamounts to civil death inasmuch as the said person is commercially ostracized resulting in serious consequences for the person and those who are employed by him.*

27. *Too readily invoking the debarment for ordinary cases of breach of contract where there is a bona fide dispute, is not permissible. Each case, no doubt, would turn on the facts and circumstances thereto.*

xxxx

30. *All these reasons fall far short of rendering the conduct of the appellant in the present case, so abhorrent as to justify the invocation of the drastic remedy of blacklisting/debarment. The appellant very clearly has been subjected to a disproportionate penalty. The Corporation has lifted a sledgehammer to crack a nut. We disapprove of the said course of action on the facts of this case.”*

20. The expostulations of law, as underlined in the supra verdicts inter alia are that :

1) Where breach to a concluded contract becomes bonafidely explained besides when a bonafide dispute is raised by the person/entity concerned, against his/its purportedly omitting to perform its contractual obligation, thereupons, the appositely made penalty of blacklisting/debarment, thus ought not to be resorted to.

2) The penalty of debarring or blacklisting as becomes imposed upon a person or an entity but has drastic consequences, as therebys, it



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adversely affects the business of the person or the entity concerned besides materially prejudices the employments of the persons who render employment under it/them.

3) The derelict conduct or the omission of the person or the entity concerned, is to be so palpably abhorrent, so as to justify the invocation of the drastic remedy of blacklisting/debarment.

4. That a slipshod and hurried manner/approach, thus to impose the drastic penalty of debarment/blacklisting rather is to be avoided, as the same may be disproportionate, to the otherwise resolveable dispute through the invocation of an arbitration remedy, whereupons, also the apposite omission may become ultimately condoned.

21. Now the further relevant underpinnings of the said judgment, is the occurrence therein of the expostulation of law, inasmuch as, there is a requirement of strictest adherence becoming made to the principles of natural justice, thus, all throughout the appositely undertaken proceedings.

22. Now for testing whether all the supra expostulations of law becomes completely satisfied besides to also determine that the conduct of the present petitioner, was so abhorrent, wherebys, the imposition of penalty of blacklisting upon it, but was a necessary sequel thereof, it is relevant to bear in mind the following :

a) Their existing an arbitration clause in the contract executed between the present petitioner and the respondent.



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b) The contractually agreed dispute resolution mechanism, inasmuch as, of arbitration becoming opted to by the contracting parties.

23. Now applying the above expostulations of law to the supra evident facts, but naturally brings forth an inference, that therebys not only a bona fide explanation, did *prima facie*, became attempted to become afforded by the present petitioner vis-a-vis the attribution of misconduct qua it. Moreso, when for assigning veracity to the relevant explanation, the parties have opted thus for the arbitration mechanism. Resultantly therebys, until the conclusion of the arbitration proceedings, the imposition of the harshest penalty of blacklisting/debarment, upon, the present petitioner, but was to be avoided. Moreover, without the culmination of the arbitration proceedings, it was unamenable for the respondents, to in a slip shod and ill informed manner rather conclude, that excepting the imposition of the harshest penalty of blacklisting upon the present petitioner, there was no other imposable levy upon the present petitioner nor therebys the respondent could conclude, that the conduct of the present petitioner was so abhorrent, so as to straightway, thus reiteratedly without awaiting for the conclusion of the arbitration proceedings, to further concomitantly infer qua only the penalty of blacklisting/debarring was imposable upon it.

24. In case, this Court yet validates the imposition of the penalty of blacklisting/debarring upon the present petitioner, despite the



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dispute resolution mechanism of arbitration, thus becoming consensually undertaken by both the parties, thereby, the said undertaken dispute resolution mechanism rather would become rendered both meaningless as well as redundant.

25. The said has to be avoided, as on the conclusion of the said arbitration proceedings, it may emanate whether the relevant omission as attributed to the present petitioner was bonafide or whether there was any intentional or deliberate fault on the part of any concerned. If so, the penalty of blacklisting/debarring, as imposed upon the present petitioner, is a prematurely imposed penalty, besides at this stage, is both harsh and disproportionate, to the yet explicable misconduct, as attributed to the present petitioner.

26. Even otherwise, there is no evidence on record suggestive that in the invocation of the relevant clause by the contesting respondents, whereunders the penalty of blacklisting/debarment is ordained, thus, the contesting respondent prior thereto undertook such proceedings, whereby, completest compliance was made to the principles of natural justice. The absence of the said material brings home an inference, that the invocation of the relevant clause, at the instance of the respondent, has been done most capriciously and arbitrarily, and, thereby, the impugned order is required to be quashed and set aside.



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**Final Order of this Court.**

27. In aftermath, this Court finds merit in the writ petition and with the observations above, the same is allowed.

28. The impugned letter (Annexure P-20) as passed by the Authority concerned is quashed and set aside besides the respondent concerned is directed to remove/delete the ***blacklisting/debarring status*** in the records qua the petitioner company, as made on the basis of the impugned letter (Annexure P-20).

29. Since the main case itself has been decided, thus, all the pending application(s), if any, are disposed of as such.

(SURESHWAR THAKUR)
JUDGE

01.04.2025
kavneet singh

(VIKAS SURI)
JUDGE

Whether speaking/reasoned	:	Yes/No
Whether reportable	:	Yes/No