



2025:DHC:7711



\$~J

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

% **Judgment pronounced on: 04.09.2025**

+ **W.P.(C) 9067/2025, CM APPL. 38591/2025**

CEMBOND CONSTRUCTIONS PVT LTDPetitioner

Through: Mr. Sanjeev Sagar (Sr. Adv.) along
with Mr. AVS Subramnayam, Mr.
Niraj Kumar, Ms. Nazia Parveen,
Advts.

versus

NATIONAL THERMAL POWER CORPORATION LIMITED

.....Respondent

Through: Mr. Chetan Sharma (ASG) along with
Mr. Kaustubh Anshuraj, Mr. Amit
Gupta, Mr. R.V. Prabhat, Mr. Saurabh
Tripathi, Mr. Vinay Yadav, Mr.
Vikram Aditya, Mr. Shubham
Sharma, Mr. Naman, Advts. Mr.
Adarsh Tripathi, Mr. Vikram Singh
Baid, Mr. Ajitesh Garg, Advts. for R2
Mr. Viraj Datar (Sr. Adv) along with
Mr. Karan Batura, Ms. Meenal
Duggal, Advts. for R4.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

1. The present petition has been filed by the petitioner assailing a “banning circular” bearing Ref. No. CS-QS-C-B-2025/3 dated 07.03.2025 issued by the respondent no.1/ M/s National Thermal Power Corporation Limited (NTPC) whereby, the business dealings between respondent no.1 and the petitioner have been banned for a period of one year with effect



from 26.02.2025 to 25.02.2026. The said circular reads as under:

“NTPC Ltd.
(Corporate Contracts- Planning & Systems Group)

Ref No. CS-QS-C-B-2025/3

Date 07.03.2023

CIRCULAR NO. B-2025/3

Sub. Banning of Business dealings with M/s Cembond Constructions Pvt. Ltd. for a period of one year from 26.02.2025 to 25.02.2026

1.0 It has been decided to ban business dealings with M/s Cembond Constructions Pvt. Ltd, 1st Floor, House No. 37, Road No-7, East Punjabi Bagh, New Delhi-110026 (Pan NO. AACCC0337K) for a period of one year from 26.02.2025 to 25.02.2026.

2.0 Accordingly, no bidding/ tender documents shall be issued and/ or award shall be made to M/s Cembond Constructions Pvt. Ltd. for any tender floated from Corporate Centre/ USSC/ Regional Offices/ Projects/ Stations and JVs/ Subsidiaries of NTPD hereafter, unless this circular is withdrawn or modified earlier than 25.02.2026.

2.1 The Agency would not be allowed to participate in any future tender enquiry and if the Agency has already participated in any tender process and price bids are not opened, its techno-commercial bid will be rejected and price bid will not be opened. Further, where price bid of the Agency has been opened, the price bid of Agency shall be rejected.

2.2 In case award recommendation on the agency has been put up for approval or the award recommendation is approved but award is yet to be placed, then award recommendations on the agency shall stand cancelled and the price bid of the Agency shall be rejected.

Bid Security of the agency shall be returned after rejection of bids in these cases.

3.0 This has the approval of Competent Authority.”

2. The present petition has been filed in the background of a purchase order dated 01.07.2023 awarded to the petitioner by respondent no.2/Aravali Power Company Private Limited (hereinafter “APCPL”) under a Notice Inviting Tender dated 03.02.2023 “for Structure Strengthening & Life Enhancement of NDCT-II” at Indira Gandhi Super Thermal Power Project



(IGSTPP), Jharli, Jhajjar (Haryana), at a tender cost of Rs.10,20,80,450.33/-.

Disputes arose between the petitioner and respondent no.2, allegedly due to the failure of the respondent no.2 to provide necessary site access and requisite permissions, as a result of which the execution of the said contract was allegedly rendered impossible. Subsequently, the petitioner invoked the arbitration in terms of the relevant contractual stipulation in the contract agreement between the petitioner and the respondent no.2. The same is pending adjudication before the learned sole Arbitrator.

3. In the meantime, a speaking order dated 26.02.2025 came to be issued by respondent no.2, banning the petitioner from business dealings with respondent no.2, for a period of one year. The same reads as under: -

“Taking into account the facts and attending circumstances in the matter, it has been decided to ban business dealings with M/S CEMBOND CONSTRUCTION PVT. LTD. for a period of 01 (one) year with APCPL considering the nature of the default. As per the policy the ban shall extend to NTPC, its subsidiaries and Joint Ventures.

Effect of Banning:

Agency M/S CEMBOND CONSTRUCTION PVT. LTD. after issuance of the Order of Banning of business dealings would not be allowed to participate in any future tender enquiry and if the Agency has already participated in another tender process and the price bids are not opened, its techno-commercial bid will be rejected and price bid will not be opened.

Further, where the price bid of Agency has been opened prior to issuance of Banning Order, the price bid of Agency shall be rejected.

The subject Speaking order is being issued to you with the approval of the Competent Authority, under the provisions of Clause no.5.1 of the Policy for Debarment from Business Dealings with vendors on the grounds mentioned above and is without prejudice to any other rights or remedy available to APCPL.

The appeal, if any, against this Speaking Order shall be dealt as per the provision of 5.12 of the Policy of Debarment of Business dealings. The



appeal, if any, against the subject order may be made to the Board of Director of APCPL within a period of one month from the date of receipt of this order by M/s CEMBOND CONSTRUCTION PVT. LTD.”

4. An appeal against the aforesaid order is stated to have been filed by the petitioner and the same is pending consideration.

5. It is submitted that despite the pendency of the appeal and the arbitration proceedings, the respondent no.1 has issued the impugned “banning circular”.

6. In the aforesaid conspectus, the petitioner has filed the present petition before this Court assailing the impugned order on the ground that there exists no legal, contractual relationship or dealings between the petitioner and respondent no.1/NTPC. It is submitted that contractual dealings of the petitioner are confined to respondent no.2 and the impugned banning order cannot take within its sweep the business dealings of the petitioner with respondent no.1/NTPC or any other third-party with whom the petitioner has no contractual relationship.

7. Further, it is submitted that the impugned order was neither preceded by a show cause notice (issued by NTPC) nor an opportunity of hearing to the petitioner. Moreover, the impugned order was never communicated to the petitioner and the same came to the knowledge of the petitioner only when its name was reflected as ‘banned party’ on the website of respondent no.1. It is contended that even if the respondent no.1 sought to ban the petitioner on the basis of an order dated 26.02.2025 passed by the respondent no.2, it was incumbent upon the respondent no.1 to give a fresh show cause notice to the petitioner, in order to enable the petitioner to present its case/defend itself. It is submitted that failure in doing so, results



in gross denial of principles of natural justice. Reliance in this regard, is placed on the judgments of the Supreme Court in *Gorkha Security Services vs. Govt. (NCT of Delhi)*, (2014) 9 SCC 105 and *UMC Technologies Private Limited vs. Food Corporation of India and Anr.* (2021) 2 SCC 551.

8. It is also submitted that the impugned action is in contravention of the rights guaranteed to the petitioner under Article 19 of the Constitution of India inasmuch as the same causes irreparable and grave prejudice to the business prospects of the petitioner and its shareholders.

9. Learned counsel for the respondent no.1 submits that the respondent no.2/APCPL is a Joint Venture (JV) company of respondent no.1/NTPC Ltd., Haryana Power Generation Company Ltd (HPGCL) (company wholly owned by Government of Haryana), and Indraprastha Power Generation Company Ltd (IPGCL) (a company wholly owned by Government of NCT of Delhi). The respondent no.1 holds 50% shares of JV and exercises pervasive administrative control over the affairs of respondent no.2. It is submitted that the impugned order dated 07.03.2025 bearing Ref. No. CS-QS-C-B-2025/3 is merely a “banning circular” issued as “system circular” for hosting the name of petitioner with whom business dealings have been banned.

10. It is submitted that in view of the banning order passed by the respondent no.2 against the petitioner, as per the extant policy of NTPC i.e., “policy for debarment from business dealing” [hereafter referred to as ‘NTPC debarment policy’] it was incumbent for the banning order to be extended to, and hosted on the NTPC website. Attention is drawn to Point 5.10 of the said policy which provides as under:

“5.10 Hosting at NTPC website



The names of the Agencies with whom Business Dealings have been banned shall be hosted at NTPC website by CC&M.”

11. It is submitted that in terms of the aforesaid policy, the banning order issued by the respondent no.2, automatically extends to the petitioner's dealing with NTPC/its subsidiary and JVs.

12. It is submitted that the present challenge is an indirect challenge to debarment order as passed by the APCPL, for which the petitioner has already preferred an appeal which is pending before the appropriate authority. The petitioner is also agitating its contractual disputes before an arbitral tribunal. As such, it is contended that the present petition ought not to be entertained. The respondent no.1 also alleges that the petitioner sought to wilfully conceal the extant 'NTPC debarment policy', and as such, has approached the Court with unclean hands.

13. The respondent no.2 also reiterates the submissions advanced by the learned counsel on behalf of respondent no.1 and states that the banning order *qua* the petitioner is strictly in terms of the applicable policy. It is submitted that the show cause notice originally issued by the respondent no.2 to the petitioner proposed banning for a period of 2 years. However, the respondent no.2 took a lenient view and the petitioner was banned only for a period of one year.

14. Having given my anxious consideration to the facts and circumstances of the case, I find merit in the contention raised on behalf of the petitioner that the impugned circular dated 07.03.2025, inasmuch as it seeks to ban the business dealings between the petitioner and NTPC and other JVs/subsidiaries of NTPC, is unsustainable. The reasons are as follows:-

(i) Admittedly, the petitioner's privity of contract is only with



respondent no.2/APCPL. The petitioner has no contractual association with respondent no.1. The petitioner's dealing with respondent no.2/APCPL, which is an independent corporate entity, cannot have any bearing or impinge upon the petitioner's rights to pursuing business dealings with entities other than respondent no.2/APCPL.

It has been emphasised by the Supreme Court time and again, that banning/debarment is akin to civil death and that such an action must be taken with extreme circumspection and after adhering to procedural safeguards as mandated under law, and in consonance with principles of natural justice. The extension of banning order passed by the respondent no.2, to proscribe business dealings of the petitioner *qua* entities which do not have any contractual dealings with petitioner, constitutes an arbitrary, disproportionate and unwarranted restriction of the legal and fundamental rights of the petitioner and its shareholders. The same cannot be countenanced.

(ii) In any event, in case respondent no.1/NTPC or any other JVs/subsidiaries seeks to debar the petitioner, a mandatory prerequisite is to issue an independent show cause notice with regard thereto. The same is mandated in terms of judgment of *Gorkha Security Services* (supra), in which it has been observed as under:

“16. It is a common case of the parties that the blacklisting has to be preceded by a show-cause notice. Law in this regard is firmly grounded and does not even demand much amplification. The necessity of compliance with the principles of natural justice by giving the opportunity to the person against whom action of blacklisting is sought to be taken has a valid and solid rationale behind it. With blacklisting, many civil and/or evil consequences follow. It is described as “civil death” of a person who is foisted with the order of blacklisting. Such an order is stigmatic in nature and debars such a person from participating in government tenders which means precluding him from the award of



government contracts.”

The same is also mandated in terms of judgment of the Supreme Court in ***UMC Technologies Private Limited vs. Food Corporation of India and Anr.*** (2021) 2 SCC 551. It was, *inter alia*, held as under:

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

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

XXX

XXX

XXX



21. Thus, from the above discussion, a clear legal position emerges that for a show-cause notice to constitute the valid basis of a blacklisting order, such notice must spell out clearly, or its contents be such that it can be clearly inferred therefrom, that there is intention on the part of the issuer of the notice to blacklist the noticee. Such a clear notice is essential for ensuring that the person against whom the penalty of blacklisting is intended to be imposed, has an adequate, informed and meaningful opportunity to show cause against his possible blacklisting.

22. To test whether the above stipulations as to the contents of the show cause have been satisfied in the present case, it may be useful to extract the relevant portion of the said show-cause notice dated 10-4-2018 wherein the Corporation specified the actions that it might adopt against the appellant:

“Whereas, the above cited clauses are only indicative and not exhaustive.

Whereas, it is quite evident from the sequence of events that M/s UMC Technologies Pvt. Ltd., Kolkata has violated the condition/clauses governing the contract due to its abject failure and clear negligence in ensuring smooth conduct of examination. As it was the sole responsibility of the agency to keep the process of preparation and distribution of question paper and conducting of exam in highly confidential manner, the apparent leak points towards, acts of omission and commission on the part of M/s UMC Technologies Ltd., Kolkata.

Whereas, M/s UMC Technologies Pvt. Ltd., Kolkata is hereby provided an opportunity to explain its position in the matter before suitable decision is taken as per T&C of MTF. The explanation if any should reach this office within a period of 15 days of receipt of this notice failing which appropriate decision shall be taken ex parte as per terms and conditions mentioned in MTF without prejudice to any other legal rights and remedies available with the Corporation.”

23. It is also necessary to highlight the order dated 9-1-2019 passed by the Corporation pursuant to the aforesaid notice, the operative portion of which reads as under:

“After having examined the entire matter in detail, the shortcomings/negligence on the part of M/s UMC Technologies Pvt. Ltd. stands established beyond any reasonable doubt. Now, therefore in accordance with Clause 42.1(II) of the governing MTF, the competent authority hereby terminates the contract at the risk and cost of the



Agency. As per Clauses 10.1 & 10.2 the said M/s UMC Technologies Pvt. Ltd. is hereby debarred from participating in any future tenders of the Corporation for a period of five years. Further, the security deposit too stands forfeited as per Clause 15.6 of MTF. This order is issued without prejudice to any other legal remedy available with FCI to safeguard its interest.”

24. A plain reading of the notice makes it clear that the action of blacklisting was neither expressly proposed nor could it have been inferred from the language employed by the Corporation in its show-cause notice. After listing 12 clauses of the “Instruction to Bidders”, which were part of the Corporation's bid document dated 25-11-2016, the notice merely contains a vague statement that in light of the alleged leakage of question papers by the appellant, an appropriate decision will be taken by the Corporation. In fact, Clause 10 of the same Instruction to Bidders section of the bid document, which the Corporation has argued to be the source of its power to blacklist the appellant, is not even mentioned in the show-cause notice. While the notice clarified that the 12 clauses specified in the notice were only indicative and not exhaustive, there was nothing in the notice which could have given the appellant the impression that the action of blacklisting was being proposed. This is especially true since the appellant was under the belief that the Corporation was not even empowered to take such an action against it and since the only clause which mentioned blacklisting was not referred to by the Corporation in its show-cause notice. While the following paragraphs deal with whether or not the appellant's said belief was well-founded, there can be no question that it was incumbent on the part of the Corporation to clarify in the show-cause notice that it intended to blacklist the appellant, so as to provide adequate and meaningful opportunity to the appellant to show cause against the same.

25. The mere existence of a clause in the bid document, which mentions blacklisting as a bar against eligibility, cannot satisfy the mandatory requirement of a clear mention of the proposed action in the show-cause notice. The Corporation's notice is completely silent about blacklisting and as such, it could not have led the appellant to infer that such an action could be taken by the Corporation in pursuance of this notice. Had the Corporation expressed its mind in the show-cause notice to blacklist, the appellant could have filed a suitable reply for the same. Therefore, we are of the opinion that the show-cause notice dated 10-4-2018 does not fulfil the requirements of a valid show-cause notice for blacklisting. In our view, the order of blacklisting the appellant clearly traversed beyond the bounds of the show-cause notice which is impermissible in law. As a result, the consequent blacklisting order dated 9-1-2019 cannot be sustained.”



15. In the present case, the banning of the petitioner *qua* NTPC and other entities (besides APCPL) is not preceded by any show cause notice. As such, such action falls foul of the dicta laid down in ***Gorkha Security Services*** (supra) and ***UMC Technologies Private Limited*** (supra).

(iii) Even as per the policy for debarment relied upon by the petitioner, it is pertinent to note that the scope of the policy *viz.* debarment is as under:

“2. Scope

2.1 NTPC reserves its right to withhold or ban or suspend business dealings with any Agency, if such Agency is found to have committed misconduct or any of its action(s) fall into any such categories as laid down in this policy.”

Thus, the said policy clearly deals with the right of NTPC to withhold or ban or suspend the business dealings with an agency. Insofar as the contracts which are not handled by the NTPC corporate centre, the policy in term of Clause 9(ii) clearly contemplates that concerned JVs/subsidiaries shall be free to adopt the procedure prescribed in the policy.

Clause 9 thereof provides as under:

“9. Treatment in Tender/ Contracts of JVs/Subsidiaries of NTPC

(i) Tenders/Contracts of JVs/Subsidiaries, whose Pre-award and/or Post award activities are handled by NTPC Corporate Centre

The Tenders/Contracts of JVs/Subsidiaries, whose pre-award and/or post award activities are handled by NTPC Corporate Centre, the cases of non/under performance and/or irregularities and/or misconduct and/or unethical practice observed in such tenders/contracts may be processed in NTPC under the Policy and Procedure for Debarment from business dealings and/or Contractor Performance Feedback and Evaluation System. The Notice of Default or Order for Withholding of business dealings (under Para 4.3) / Show Cause Notice or Speaking Order for banning of business dealings (under Para 5.3, 5.4) / Suspension order for suspension of Business Dealings (Under para 6.3), after approval in NTPC, shall be forwarded to CEO of concerned JVs/Subsidiaries for



issuance of such Notice or Order to the delinquent agency.

Further, the appeal of the Agency against the above Order (under Para 5.12) shall be reviewed by Appellate Authority in NTPC. Appellate Authority would consider the appeal and pass appropriate order which shall be communicated to the Agency as well as the Competent Authority and CEO of concerned JVs/Subsidiaries.

(ii) The Tenders/Contracts which are handled by JVs/Subsidiaries themselves

The procedure prescribed in the Policy shall appropriately be used by concerned JVs/Subsidiaries to deal with the cases of non/under performance and/or irregularities and/or misconduct and/or unethical practice observed in tenders/contracts handled by them.”

In the present case, it is significant to note that the concerned contract between the respondent no.2/APCPL and the petitioner was not handled by respondent no.1/NTPC corporate centre nor was respondent no.1/NTPC involved in any way with the dealings between the petitioner and the respondent no.2/APCPL. As such, it was for the respondent no.2 to take action against the petitioner (which was done and against which appeal is pending). However, the policy does not expressly, contemplate that the decision taken by the said JVs would be applicable to spectrum of entities who are not involved in the decision-making process, even where the concerned contracts are not handled by NTPC Corporate Centre.

(iv) In any event, a debarment order issued by one entity cannot be extended to other group companies without any independent opportunity of hearing through a separate show cause notice. The principles of natural justice do not contemplate a cascading penalty in the absence of reasoned determination, (after procedural due process) by each entity proposing to inflict penalty.



2025:DHC:7711



16. For the above reasons, the impugned order cannot sustain; the same is, accordingly, set aside. Pending application also stands disposed of.

SACHIN DATTA, J

SEPTEMBER 04, 2025/at/sl