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* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Judgment pronounced on: 09.10.2025*+ W.P.(C) 10806/2022, CM APPLs.31396/2022, 36673/2022, 52801/2022 & 52802/2022

TEXMACO RAIL AND ENGINEERING LTD. & ANR.....Petitioner

Through: Mr. Ashish Dholakia, Sr. Advocate
along with Mr. Ankur Chawla, Ms.
Kanika Singh and Ms. Purna
Mahajan, Advocates.

versus

IRCON INTERNATIONAL LTD.Respondent

Through: Mr. Chandan Kumar and Mr. Vikram
Sharma, Advs. for R-1.**CORAM:****HON'BLE MR. JUSTICE SACHIN DATTA****JUDGMENT**

1. The present petition has been filed by the petitioner *inter-alia* assailing letters/communications bearing No. CGM(S&T)/2022/1/Conf dated 09.03.2022 and No. IRCON/CC/TNS 129 dated 04.04.2022 issued by the respondent/Indian Rail Construction Company Limited (IRCON). By way of the impugned letters/communications, the respondent communicated to the Northern Railways Headquarters, New Delhi that the petitioner has been debarred by the respondent for a period of two years and has been listed under "list of agencies suspended/banned for business dealings by IRCON" (as published on the website of respondent).

The letter / communication dated 09.03.2022 bearing no. CGM(S&T)/2022/1/Conf, addressed by the respondent to Northern Railway



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Headquarters, Baroda House, New Delhi reads as under:

No. CGM(S&T)/2022/1/Conf

Date: 09.03.2022

CSTE(Project-East)
Northern Railway Hq
Baroda House, New Delhi

Sub: Banning of Business Dealing by IRCON.

Ref: Your letter no. E-205/SIG/C/4, dated 09.03.2022

The list of firms suspended / banned for business dealings by IRCON, as available on website <https://intranet.ircon.org/agency/SB.pdf> is pasted below for your information.

List of agencies suspended/banned for business dealings by IRCON
(updated upto 11.01.2022, as per information received so far):-

S. No.	Ref. No.	Name & Address of the agency	Period	Banning effective from	Remarks
1	IRCON/Contract Cell/TDR/1225 dtd 12.6.2015	M/s Skirra Construction, E-109, Shanti Nagar, New Delhi	Nil further order		
2	IRCON/Contract Cell/SLAC/1, LIST - CONT/21/11 dtd 07.01.2022	M/s V.K. Seed Engineer & Contractors DD5 FC, Address 1 - Upt. III, 14-C, C/C Green Belt, Gandhi Nagar, Jaipur, JAM Address 2 - 28, Sector 6, Patelkheda, Haryana	Nil further order		
3	IRCON/2020/1, Baroda House/SLAC/1, LIST - 12/11 dtd 19.10.2020	M/s Texmaco Rail & Engineering Ltd., B-108, Chakrabarti, G.T. Road, Near Ganga Temple, Cuttack-753007	2 Years	15.10.2020	
4	IRCON/2020/1, LIST - 12/11 dtd 19.10.2020	M/s. Chaverry Engineering & Construction Co. Upt. III, 14-C, Barker's Colony, Shram Nagar South, Bida, Karnataka - 585301	2 Years	24.08.2020	
5	IRCON/2020/1, LIST - 12/11 dtd 19.10.2020	M/s. Sri Laxmi Construction A-8 Road, Near Mahesh Sagar/Venkatadri Sri. Colony, Sec-17, Gurgaon, Haryana	2 Years	10.01.2022	

MOHAN LAL
CHAHAR
CGM(S&T)

The letter/communication dated 04.04.2022 bearing no. IRCON/CC/TNS 129, addressed by the respondent to the Northern Railway Headquarters, Baroda House, New Delhi reads as under: -

"To,
CSTE/P/East
Northern Railway,
Baroda House,
New Delhi

Date: 04.04.2022

Sub: Confirmation regarding banned Business with M/s Texmaco Rail & Engineering Ltd.

Ref: Your letter No. E-205/SIG/C/4 dated 24.03.2022

In continuation of the IRCON's letter no. CGM(S&T)/2022/1/Conf. Dated 09.03.2022, it is stated that as per IRCON's standard tender conditions M/S Texmaco Rail & Engineering Ltd. are debarred for participating in the tenders invited by IRCON for a period of two years w.e.f. 15.10.2020."



FACTUAL MATRIX

2. The background of the matter is that a tender for an E-procurement Document (hereinafter referred as “the IIL Tender”), issued by the respondent for *“Design, Supply, Installation, Testing & Commissioning of Electronic Interlocking Based Signalling System At 2 Stations of Pipradhi-Bijalpura (Nepal) Section And Provision Of 6-Quad Plus OFC Communication System Between Kurtha (Nepal) And Bijalpura (Nepal)”* came to be awarded to the petitioner *vide* a Letter of Acceptance dated 01.02.2019. Consequently, a contract dated 18.06.2019 for the said tender was executed between the parties.

3. It is stated that although the petitioner completed a major portion of the work which formed part and parcel of the IIL Tender, however, sometime in 2020, certain disputes arose between the petitioner no.1 and the respondent with regard to execution of the remainder/balance work. Eventually *vide* a letter dated 15.10.2020, respondent rescinded the aforesaid contract and stated as under: -

“IRCON INTERNATIONAL LIMITED
Civil, Mechanical, Electrical, Communications and Turnkey Contractors
(A Govt. of India Undertaking)
(Without Prejudice)
No.: IRCON/2050/BGL.JBB/S&T/Corres/Nepal/29/2322 Date:
15.10.2020

To
M/s. Texmaco Rail & Engineering Ltd.,
Birla Mill Complex, G.T. Road,
Near Clock Tower, Delhi -110007

Sub.: Design, Supply, Installation, Testing & Commissioning of Electronic Interlocking System based Signalling system at 2 stations of Pipradhi - Bijalpura (Nepal) section & provision of 6 Quad + OFC communication system between Kurtha (Nepal) and Bijalpura (Nepal) - Termination Notice.



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Ref.: 1. Contract Agreement no IRCON/2050/BGL-.JBB/S&T/Tender/
Nepal Part-II/28 dtd 18.6.19.

2. Seven Day notice letter No.IRCON/2050/BGL,
JBB/S&T/Corres/Nepal/29, dtd. 06.10.20

3. 48 hours notice letter No.IRCON/2050/BGL.
JBB/S&T/Corres/Nepal/29, dtd. 13.10.20.

Dear Sir,

Forty Eight hours (48hrs.) notice was given to you under this office letter of even no. IRCON/2050/BGL JBB/S&T/Corres/Nepal/29 dated 13.10.2020 but you have taken no action to commence the work/ show adequate progress of work.

Since the period of 48 hour's notice has already expired, the above contract stands rescinded in terms of clause 62 of Standard General Conditions of Contract and the balance work under this contract will be carried out independently without your participation. Your participation as well as participation of every member/partner in any manner as an individual or a partnership firm/JV is hereby debarred from participation in the tender for executing the balance work and your security deposit shall be forfeited and Performance Guarantee shall also be encased.

Kindly acknowledge the receipt.

Yours faithfully,

For & on behalf of

Ircon International Ltd.

Sd/-

Chief General Manager (S&T)"

4. Thereafter, in the year 2021, the petitioner no.1 participated in a bid issued by the Northern Railways, New Delhi for the works of "indoor and outdoor signaling works for design, supply, installation, wiring, testing & commissioning of the distributed type electronic interlocking for Lucknow yard along with yard re-modelling for 4-line entry/exit including required alterations to adjoining block section lc gates and stations for aspect control & block working on Lucknow division of northern railways"(hereinafter referred as "the Northern Railways tender"). During the course of bidding petitioner no.1 submitted an "undertaking for not blacklisted or debarred"



before the Northern Railways, declaring that the petitioner no.1 has not been blacklisted or debarred by Railway or any other Ministry or Department of the Government of India. Subsequently, the petitioner no.1 was declared as L-1 bidder by the Northern Railways for the aforesaid tender.

5. However, the Signal and Telecom Department/Project, Northern Railway, based upon the aforementioned letter dated 15.10.2020 issued by the respondent, issued a Show Cause notice dated 12.04.2022 to the petitioner no.1, calling upon the latter to provide reasons as to why action be not initiated for alleged submission of false declaration/undertaking during the bidding process of the Northern Railways Tender. The letter dated 12.04.2022 *inter-alia* recorded as under:

"It has been noticed that your firm M/s. Texmaco Rail & Engineering Ltd. has been debarred by M/s. IRCON International for period of two years w.e.f 15.10.2020."

6. Consequently, the petitioner sent various letters and correspondences to the respondent and Northern Railways apprising them of the correct position, as per its understanding *viz.* that the petitioner no.1 has not been debarred by respondent and was, therefore, eligible to participate and qualify for the tendering process initiated by the Northern Railways.

7. It is the case of the petitioner that the letter dated 15.10.2020 issued by the respondent was only in context of the IIL tender awarded to the petitioner, which was issued with the limited objective of informing the petitioner that it was precluded from participating in re-tendering process called by the respondent for the balance work thereunder. Thus, the Northern Railways through the Show-Cause Notice dated 12.04.2022 misconstrued the limited embargo placed upon the petitioner no.1 by respondent, as an absolute and all encompassing debarment, which would



disqualify the petitioner no.1 from participating in all future tenders floated by the Northern Railways or any other State agency.

8. *Vide* communication dated 22.04.2022, the petitioner no.1 also called upon respondent to clarify the scope of the communication dated 15.10.2020 issued by them, expressly stating as under:

“Under such circumstances and taking into consideration the gross prejudice which has been meted out to Texmaco by virtue of Northern Railways letter dated 12 April 2022, IRCON is immediately called upon to clarify as to what are the circumstances under which it has communicated with the Northern Railways in such a prejudicial manner, if at all. You are requested to revert within 2 days of this letter, else, we will be compelled to escalate this issue and/or seek legal advice/remedy as appropriate to protect our interest.

This is issued without prejudice to Texmaco’s rights and contentions.”

9. In furtherance of the aforesaid letter, a follow-up communication/letter dated 25.04.2022 was also addressed by the petitioner to respondent. However, the same failed to elicit any response.

10. Aggrieved, the petitioner preferred a writ petition bearing W.P.(C) 6937/2022, assailing the aforesaid show cause notice dated 12.04.2022 issued by the Northern Railways as well as the decisions of the latter to issue the re-issue the Northern Railways tender.

11. *Vide* interim order dated 02.05.2022, passed in the said W.P.(C) 6937/2022, a Division Bench of this Court, *inter-alia*, directed as under:

“In view of the issue raised in the ‘present petition, the respondents are restrained from taking any coercive action against the petitioners in terms of the show cause notice dated 12th April, 2022 and the second tender bearing No. Sig/P/EI/LKOY/LKO/05-2022 dated 20th April, 2022 will not be given final effect to till the next date of hearing.”

12. It is submitted that it was only upon receipt of the counter-affidavit dated 19.05.2022 filed by the Northern Railways in the aforesaid writ



petition, that the petitioners became aware of the impugned letters/communications dated 09.03.2022 and 04.04.2022.

13. W.P (C) 6937/2022 came to be disposed of *vide* judgment dated 04.07.2022, *inter-alia*, observing as under:

"11. However, this Court considers some prima facie observations necessary in the context of this adjudication. A bare perusal of this letter dated 15th October, 2020 makes it, incontrovertibly clear that firstly, the contract being executed by the petitioner for respondent No.3 stood rescinded; and secondly visited a debarment on the petitioner which is specific and particular in its phraseology. It is the scope of the latter which is in contention. For convenience, the exact phraseology used in the said letter' dated 15th October, 2020 regarding the debarment is reproduced again as under:

"Your participation as well as participation of every member/partner in any manner as an individual or a partnership firm/JV is hereby debarred from participation in the tender for executing the balance work.... "

(emphasis supplied)

12. It seems, at least, from the phraseology used by respondent No.3 in this letter dated 15th October, 2020, that debarment was only for participation in the tender for executing the balance work and not for all other tenders of respondent No.3. This has to be necessarily read in consonance with earlier part of this letter which rescinds the contract and directs the balance work to be carried out independently without the petitioner's participation. The emphasis was on "balance work".

Despite what may seem to be ex facie clear, respondent No.3 in its communication dated 9th March, 2022 and 4th April, 2022 (sent to respondent No.2) informed, clarified and verified that this letter dated 15th October, 2020 issued by respondent No.3 debarred petitioner No.1 from participating in all tenders invited by respondent No.3 for a period of two years w.e.f 15th October, 2020. The petitioner No.1 has objections to this interpretation by respondent No.3 and for having not been put to notice or having had the chance to clarify (since these letters of 9th March, 2022 and 4th April, 2022 have not been shared with the petitioner No. 1 prior to these proceedings).

13. However, since this letter has not been challenged before this Court it may not be appropriate for the court to give any conclusive determination on its scope and interpretation. It would be open to the



petitioner to assail the communication dated 15th October, 2020 and the recent communication of 9th March, 2022 and 4th April, 2022 in appropriate proceedings and seek 'appropriate relief as the petitioner may' be advised. In other words, notwithstanding how respondent No.3 interprets its own letter, it would be open for the petitioner to assert in appropriate proceedings as to the interpretation, scope, consequence and impact of this letter.

14. There is another aspect to be considered. Respondent No.3 filed a short counter affidavit before the last date of hearing stating inter alia that post the termination of the 2018/2019 contract by letter dated 15th October, 2020 the petitioner had participated in another tender bearing No. IRCON/1014/J&K.KQ/S&T/tunnel, Com/Tender dated 30th June, 2021 for which the bid was not considered applying clause 26 in the Instructions to Tenderers which declared tenderers as ineligible if any previous contract awarded to them has been terminated by IRCON on account of Contractors default during the last two years prior to date of bid submission. The disqualification of this 2021 tender was uploaded by the respondent No.3 on the e-tender website on 18th November, 2021.' Respondent No.3 had filed a copy of the said display, however the petitioner in response filed a copy of another communication in respect of the same also dated 18th November, 2021 received from the e-tender portal informing about the rejection, of the bid for reasons stated as 'NIL'. Notwithstanding this factual dispute it is prima facie evident that the bid for 2021 tender was rejected for certain reasons. The petitioners for reasons known to them neither ascertained detailed reasons of why they were rejected nor ever challenged the rejection of their bid of the 2021 tender. In any event, as mentioned earlier, it is not a subject matter of challenge in this petition. Needless to state, the petitioners are 'always at liberty to take steps in accordance with law, if they wish to, not only against the debarment by respondent No.3's letter of 15th October, 2021 but also the rejection of 2021 bid by communication dated 18th November, 2021. "

(Emphasis supplied)

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XXX

XXX

30. In light of the above, conclusions (in brief) as arrived by this Court qua relief sought by the petitioners, are as under:

i. As regards the First Tender floated by the respondent No.2 (dated 23rd September, 2021), no real cause of action subsists in favour of the petitioner No.1, the tender having been discharged. The relief sought for by the petitioners regarding the first tender does not survive.



ii. As regards the show cause notice dated 12th April, 2022, since no decision has been taken, respondent Nos.1 and 2 ought to put their full case before the petitioners as elaborated in paragraph 23 of this judgment and order. Supplementary show cause notice, if any, be given by respondent Nos.1 and 2 within ten days of this order. Petitioners shall be at liberty to reply within fifteen days thereafter (even in the absence of a supplementary show cause notice). Reasoned decision be passed by respondent Nos.1 and 2 within a period of ten days thereafter.

iii. As regards the Second Tender floated by respondent no.2 (dated 20th April, 2022), the respondent Nos.1 and 2 are at liberty to proceed with the process of tender and interim order dated 2nd May, 2022 is hereby vacated. Needless to note that in case a decision in favour of the petitioners ensues pursuant to the show cause notice and the process of second tender is not concluded in the meantime, the petitioner No.1 will be permitted to participate therein.”

14. In the above background, the present petition has been filed by the petitioner against the impugned communication/letters addressed to the Northern Railways by the respondent.

SUBMISSION OF PARTIES

15. It is submitted by the learned senior counsel on behalf of the petitioners that on a bare reading of the communication dated 15.10.2020, as also the impugned letters/communications dated 09.03.2022 and 04.04.2022, it is evident that there exists no order which records the decision of respondent to debar the petitioner for a period of two years from participating in the tenders of respondent and/or any other Government undertaking.

16. It is emphasized that the only basis for issuing the impugned letters/communications dated 09.03.2022 and 04.04.2022 is the respondent's letter dated 15.10.2020, which evidently neither refers to debarring of the petitioner *qua* future tenders nor mentions any period of the purported



debarment.

17. It is submitted that even if the communication dated 15.10.2020 is construed as a debarring order, the same clearly does not satisfy the requirement of law inasmuch as the same was neither preceded by a show cause notice nor an opportunity of hearing.

18. Attention is drawn to the provisions stipulated in the “procedure for suspension/banning of business dealings with agencies in IRCON”. It is emphasized that the procedure contemplated therein was not complied with, prior to issuance of the communication dated 15.10.2020. According to the petitioners, the same was for the reason that communication dated 15.10.2020 was not intended to be a debarment/ banning order as contemplated in the aforesaid “procedure for suspension/banning of business dealings with agencies in IRCON”.

19. Controverting the above submissions, learned counsel on behalf of the respondent has submitted that:

- (i) the petition is barred by delay and laches inasmuch as the cause of action in favor of the petitioner, if at all arose on 15.10.2020, whereas the present petition was filed much thereafter;
- (ii) the communication dated 15.10.2020 was preceded by letters dated 06.10.2020 and 13.10.2020. As such, the allegations regarding violation of principles of natural justice are misconceived.
- (iii) The petitioner was aware of its debarment, as evident from the fact that when it attempted to participate in another tender issued by the respondent being IRCON / 1014 / J&K.KQ / S&T / Tunnel Com / Tender dated 30.06.2021, the bid of the petitioner no. 1 was rejected by virtue of Clause 26 of the concerned Instructions to Tenderers.



However, the petitioner neither inquired nor challenged the reason for the said rejection. Clause 26 of the concerned Instructions to Tenderers read as follows:

“26. Declaration of non-performance or ban status or termination

Tenderers are not eligible to participate in the tender process under the following conditions:

a. They have been declared a non-performer by any Central/State Government department in India including authority controlled by them during the last two years prior to date of bid submission.

b. They are currently debarred for tendering, blacklisted, suspended in Central/State Government department in India including authority controlled by them.

c. Any previous contract awarded to them has been terminated by IRCON on account of contractors default during the last two years prior to date of bid submission.

Accordingly, tenderers are required to sign an Affidavit as per the enclosed proforma in Annexure-IV, declaring their status of non-performance or debarment/termination.”

(iv) It is emphasized that the aforesaid impugned letter/communications dated 09.03.2022 and 04.04.2022 came to be issued only in the process of the petitioner’s purported participation in a tender issued by the Northern Railways. The impugned communications only serve to inform/reiterate that the petitioners stood debarred with effect from 15.10.2020.

REASONING AND CONCLUSION

20. A perusal of the order dated 15.10.2020, passed by the respondent reveals that the same only purports to preclude the petitioners’ participation for the purpose of execution of the balance work which was subject matter



of the contract dated 18.06.2019 executed between the parties in respect of the IIL tender. On a plain reading, the same does not purport to, and cannot be construed to be in the nature of a debarring/banning order purporting to interdict the petitioners from participating in other tenders issued by the Railways and/ or any other Ministry or Department of the Government of India

21. The aforementioned aspect, was taken note of in order dated 18.07.2022, passed in the present writ petition. The said order, *inter-alia*, records as under:

“4. Mr. Dyan Krishnan, learned Senior Counsel appearing in support of the petition, submits that there is essentially no need to assail the communication of 15 October 2020 since it is ex facie evident that it stood restricted to the contract with which it was concerned. The grievance essentially is of Ircon International interpreting that communication as amounting to an order of blacklisting and thus debarring the petitioner from participating in further contracts also. The Court, prima facie, finds merit in the contentions raised. Matter requires consideration.

5. Let the respondents file replies within six weeks.

6. In view of the prima facie opinion recorded hereinabove, it is hereby clarified that the order of 15 October 2020 shall not be liable to be construed as blacklisting the petitioner from all contracts and shall stand restricted to the contracts in respect of which balance work was assigned to a third party and the petitioner debarred from that particular tender.”

22. There is also merit in the submissions on behalf of the petitioner that the communication dated 15.10.2020 was issued without issuing any show cause notice to the petitioner/specifically putting the petitioner to notice as regards any proposed debarment action or an opportunity of hearing. In this regard, attention is drawn to the fact that the letter dated 15.10.2020 was preceded by a notice dated 06.10.2020 issued by the respondent, stating as under: -



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*"No. IRCON/2050/BGLJBB/S&T/Corres/Nepal/29 Date:06.10.2020
M/s Texmaco Rail & Engineering Ltd.
Birla Mill Complex, GT Road,
Near Clock Tower, Delhi-110007*

*Sub: Design, Supply, Installation, Testing & Commissioning of
Electronic Interlocking based Signaling System at two stations of
Pipradi-Bijalpur (Nepal) sec and provisions of six quad and OFC
Communication system between Kurtha (Nepal) and Bijalpur (Nepal)*

*Ref: 1. LOA No. IRCON/2050/BGLJBB/S&T/Tender/Nepal Part-II/28
dated 01.02.2019*

*2. PH Letter No. IRCON/2050/BGLJBB/S&T/Texmaco/84/1168 dtd.
20.12.19; 1173 dated 23.12.19; 13, dtd. 04.02.20; 95 dtd. 13.02.2020;
129 dtd. 03.3.20; 138 dtd. 06.3.20; 294 dtd. 15.6.20, 298, dtd. 16.6.20;
419 dtd. 17.9.20; 457 dtd. 25.9.20, 463 dtd. 30.9.20*

3. Your letter no. Texmaco/NPL/2020-2021, dated 17.08.2020.

*Considering poor progress since issue of LOA under ref-1, a notice was
given to you vide this office letter even no. dated 10.08.20, but even after
that there is no change in status of the work. There has been no physical,
financial or actual progress in the contract even after lapse of 20-
months, despite regular chasing by IRCON through verbal, telephonic
and written instructions. The delay is entirely on your account.*

*The contents of your letter under ref-3 are not correct. It is incumbent
upon you to get all permissions, approvals and authorizations from
authorities in India and Nepal to deliver the project. The contract
nowhere says that arranging any of the same is the responsibility of
IRCON. You are contracted to work on behalf of IRCON, and IRCON
have promptly issued all letters to concerned authorities for Master List,
EXIM Code, Inspection Call Letters etc. as and when requested by you.
Holding IRCON responsible for no progress in last 20-months is,
therefore, not correct.*

*No design have go far been received from you, even though, the same
could've been completed even during peak of Covid-19. Your statement
that you could not start the work as neither Track nor equipment rooms
have been handed over to you, is not correct for three reasons. First, you
have failed to submit design to IRCON for approval, and without
approved design, it is not possible for you to start installation work.
Second, you have failed to deliver any material, and without material, it
is not possible for you do any work. Third, the contract do not have any*



provision of handing over of assets to you. Different subcontractors are working on the project, and in terms of SCC clause 10.5 and GCC Clause 19, you have to liaise with each subcontractor to complete your work.

Work was never suspended by IRCON under SCC Clause 29.1 & 29.1(a) through any notification. As stated above, design related work had been done by other contractors of IRCON during peak of Covid-19, and there was no need to suspend the work.

Project Head has issued repeated instructions to you through various letters under ref-2 to start the work. Detailed specific instructions were issued to you vide letter no. IRCON/2050/BGLJBB/S&T/Textmaco/84/298, dated 16.06.20, but to no avail. You have, thus, failed to abide by the instructions of PH/IRCON issued to commence work to show adequate progress, and there are remote chances to complete the work by 15.10.20. You are hereby given 07 (seven) day notice under clause 50.1(1) of General Conditions of Contract (GCC) to make good to progress, failing which further action as provided in clause 50.0 of the GCC, viz., to terminate your contract and complete the balance work without your participation will be taken.

Please acknowledge the receipt."

23. In furtherance of the aforesaid, a communication/letter dated 13.10.2020 was issued by the respondent stating as under: -

*"No.: IRCON/2050/BGLJBB/S&T/Corres/Nepal/29 Date:13.10.2020
To,
M/s Textmaco Rail & Engineering Ltd.
Birla Mill Complex, G.T.Road,
Near Clock Tower, Delhi-110007*

Sub: Design, supply, installation, Testing & Commissioning of Electronic Interlocking System based Signaling system at 2 stations of Pipradhi-Bijalpura (Nepal) section & provision of 8 Quad + OFC communication system between Kurtha (Nepal) and Bijalpura (Nepal)-48 hour notice.

*Ref.: 1. Contract Agreement no. IRCON/2050/BGL-JBB/S&T
(Tender/Nepal Part-II/28 dated 18.6.19
2. Seven Day Notice letter no. IRCON/2050/BGL
JBB/S&T/Corres/Nepal/29 dated. 06.10.2020*

Dear Sir,

1. The seven days' notice under Standard General Conditions of



Contract was given to you under this letter of even no.; dated 06.10.2020; but you have taken no action to commence the work/show adequate progress of the work.

2. You are hereby given 48 hours' notice in terms of Clause-82 of Standard General Conditions of Contract to commence works/to make good the progress of works, failing which and on expiry of this period, your above contract will stand rescinded & the work under this contract will be carried out independently without your participation.

3. Your full Performance Guarantee for the contract shall be forfeited and you will not be issued any completion certificate for this contract."

24. A perusal of the aforesaid communications reveals that the same does not intimate or put the petitioners to notice as regards any debarment/banning action proposed to be taken against the petitioner no.1. Had the respondent intended to take any debarment/banning action, the respondent necessarily was obligated to adhere with the procedures prescribed under the "procedure for suspension/banning of business dealings with agencies in IRCON" (Issue No.01 Date:10.06.2013). In this regard attention is drawn to Clause 5.2 of the "procedure for suspension/banning of business dealings agencies", whereby it is stipulated as under:

"5.2 Banning of Business Dealings

5.2.1 A decision to ban business dealings with any Agency shall normally apply throughout IRCON. However, the competent authority can impose such a ban project/region wise only if in the particular case banning of business dealings in respective project/region will serve the purpose and achieve its objective and banning throughout the company is not required in view of the local conditions and impact of the misconduct/default. Any ban Imposed by Corporate Office shall be applicable across all Units of IRCON.

5.2.2 An Investigating Committee consisting of ED concerned, ED/Finance and an ED nominated by Competent Authority shall look into the charge(s) against the agency. The functions of the committee shall, Inter-alia Include:

i. To study the report of the project head/Functional head/



Investigation agency and decide if a prima-facie case for banning exists, if not, send back the case to the Competent Authority.

ii. To recommend for issue of show-cause notice to the Agency by the competent authority as per clause 5.2.3.

iii. To examine the reply to show-cause notice and call the Agency for personal hearing, if required.

iv. To submit final recommendations to the Competent Authority for banning or otherwise.

5.2.3. On receipt of the report of the Investigating Committee if the Competent Authority is prima-facie of the view that action for banning of business dealings with the Agency is called for, a show-cause notice may be issued to the Agency after approval by the Competent Authority.

5.2.4. The show cause notice, duly approved by the Competent Authority, may be issued by Regd. A.D./Speed Post by concerned ED in charge of the project along with a statement containing the imputation of misconduct or malpractice and the Agency should be asked to submit its written explanation or statement in defence within 30 days of the date of notice. If no reply is received, a decision may be taken ex-parte by the investigating Committee based on the facts and evidence on record.

5.2.5. If the Agency requests for inspection of any relevant document mentioned in the show cause notice in possession of IRCON, the facility for inspection of such documents may be provided.

5.2.6. After considering the reply of the Agency and other circumstances and the recommendation of the investigating committee, a final decision shall be taken by the Competent Authority, if considered necessary after giving an opportunity for personal hearing to the Agency. The Competent Authority may then consider and pass an appropriate speaking order:

a) exonerating the Agency, if the charges are not established;

b) banning the business dealings with the Agency alongwith the period for which the ban would be operative, if the charges are proved.

c) whether or not to refer the matter to the Indian Railways to consider imposition of similar ban by Indian Railways.

5.2.7. The order for banning of business dealings by all units of IRCON shall be applicable to the Agency including its allied firms as defined in Para 1102 of IR Vigilance Manual.



5.2.8. Decision of Competent Authority will be intimated to the concerned ED, who will convey the same to the delinquent Agency and its allied firms and circulate it to the corporate office and all project head/functional head for applying these orders uniformly in IRCON. The reasons may not disclosed in such communications. However, the fact that the representation has been considered should invariably be mentioned in the communication.

5.2.9. The validity of the banning order shall be for a specified time period, on expiry of which, the banning order shall cease to operate, unless extended further by competent authority.”

25. Thus, an obligation is cast upon the respondent under the aforementioned procedure, to ensure that the “banning or suspension of business dealings with an agency working with respondent” shall be (i) in accordance with law and principle of natural justice; (ii) preceded with adequate opportunity to the concerned agency to present its case and if necessary, provide an opportunity of personal hearing.¹

26. As such, construing the communication dated 15.10.2020 to be in the nature of debarment/banning order is in the face of the language of the said communication as also the prescribed procedure issued by the respondent for “suspension/banning of business dealings with agencies in IRCON”.

27. It is also well settled and reiterated by the Supreme Court in catena of cases that any banning/blacklisting order must be preceded by a show cause notice clearly setting out the rationale, basis and the duration of the proposed debarment/banning action sought to be taken and after complying with the

¹ 1.2 This procedure shall be applicable for effecting suspension/banning of business dealings with Agencies working for IRCON. It is incumbent upon IRCON to ensure compliance with the laws and principles of natural Justice for banning the business dealings with any Agency. After Issue of the Ban order for dealings in IRCON the Management may consider whether or not to refer the matter to the Indian Railways to consider imposition of similar ban by Indian Railways.

1.3 Since banning of business dealings involves severe consequences for the Agency concerned, it is essential that an adequate opportunity is provided to the Agency to present its case and any explanation, if tendered, is properly considered. If necessary, a personal hearing may be given to the Agency, before passing an order of banning based on the facts and circumstances of the case on record.



principles of natural justice.

28. In this regard the Supreme Court in **Gorkha Security Services vs. Govt. (NCT of Delhi)** (2014) 9 SCC 105 has held 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.”

29. The aforesaid dicta has also again been reiterated by the Supreme Court in **UMC Technologies Private Limited vs Food Corporation of India and Anr.**, (2021) 2 SCC 551 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.

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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 showcause 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”

30. As such, even assuming that the order dated 15.10.2020 purports to debar/ban the petitioner from participating in any tender issued by the Railways or any other Ministry or Department of the Government of India, the same being in utter violation of the principles of natural justice and the dicta laid down by the Supreme Court in **Gorkha Security Services** (supra) and **UMC Technologies Private Limited** (supra), does not withstand the scrutiny of law.

31. Learned senior counsel for the petitioner has rightly contended that although the said impugned communications/letters dated 09.03.2022 and 04.04.2022 addressed by the respondent to the Northern Railways purports to record that the petitioner has been banned for a period of two years w.e.f 15.10.2020, however, no such period was specified/stated in the communication dated 15.10.2020, issued by the respondent to the petitioner.

32. Evidently, the impugned communications dated 09.03.2022 and 04.04.2022 are based on complete distortion/misunderstanding of the scope and purport of the communication dated 15.10.2020.

33. It may also be noted that the respondent, while seeking to reject the bid of the petitioner no.1 in respect of a tender issued in 2021, did not specifically cite ‘debarment’ of the petitioner. As noticed in paragraph 14 of the judgment dated 04.07.2022 in W.P.(C) 6937/2022, in a communication dated 18.11.2021, received by the petitioner no.1 from the e-tender portal, informing about rejection of the petitioner no.1’s bid, the reason was stated



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as 'nil'. Even otherwise, the petitioner no.1 cannot be precluded from assailing its purported debarment, on ground/s of utter violation of the principles of natural justice.

34. In the circumstances, the impugned communication/letters dated 09.03.2022 and 04.04.2022 are set aside.

35. It is further directed that the respondent shall remove the name of the petitioner from "its internal intranet <https://intranet.ircon.org/agency/SB.pdf>", and from any notification or communication reflecting the petitioner no. 1 to be in the "list of agencies banned/suspended for business dealing by IRCON".

36. Further, no coercive action shall be taken against the petitioner on the basis of the communications/letters dated 09.03.2022 and 04.04.2022.

37. The present petition stands disposed of in the above terms.

SACHIN DATTA, J

OCTOBER 09, 2025/at/sl