



2025:DHC:6878



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

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Judgment pronounced on: 14.08.2025

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W.P.(C) 6734/2023 and CM APPLs.26340/2023, 41118/2024

SRSC INFRA PVT. LTD.

.....Petitioner

Through: Ms. Ruchi Kohli (Sr. Adv.) along
with Mr. Yash Mishra, Ms. Shrishti
Mishra, Mr. Satya Dev Prakash, Mr.
Harsh Vardhan and Mr. Siddhanth,
Advocates.

versus

UNION OF INDIA

.....Respondent

Through: Dr. B. Ramaswamy (CGSC) for UOI.

CORAM:**HON'BLE MR. JUSTICE SACHIN DATTA****J U D G M E N T**

1. The present petition has been filed by the petitioner being aggrieved with a communication dated 10.04.2023, whereby the Letter of Award (LOA) dated 14.02.2023, issued to the petitioner by the respondent has been revoked / withdrawn.
2. The aforesaid LOA was issued in the backdrop of a Request for Proposal (RFP) issued by the Ministry of Road Transport and Highways (MoRTH) on 06.12.2021, for the project titled "Widening and Strengthening from KM. 0.000 to KM. 38.853 of NH-330D (Sitapur to Kurain Section) to two lanes with paved shoulder configuration under EPC mode".
3. The technical bids were opened on 24.03.2022, and upon evaluation of the technically qualified bidder, the financial bids were opened on 03.06.2022. Pursuant thereto, the petitioner was declared as the L-1 bidder.



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4. Subsequently on 04.10.2022, the respondent issued a Show Cause Notice (SCN) to the petitioner, alleging violation of the Integrity Pact. The petitioner submitted its reply on 10.10.2022, refuting the allegations. Subsequently, the representatives of the petitioner attended a personal hearing before the MoRTH on 07.12.2022 and made its submissions.

5. It transpires from the counter-affidavit filed on behalf of the respondent that the matter thereafter remained pending for consideration as to whether debarment action should be taken or not. Vide Note #181 (No.201537), the file was sent to the Additional Secretary (Highways) on 21.11.2022 for directions on the issue of LOA. The file was returned by the Highway Section vide Note #200 on 27.01.2024 with comments: “*The debarment case/matter of M/s SRSC is under consideration in File No. NH-24036/43/2022-H-Part(1) (e-215001). As soon as the decision is taken, the same may be conveyed to Roads wing in this file.*” Pursuant thereto, no communication regarding debarment was received in the office of CE-RO Lucknow. Therefore, LOA was issued by the answering respondent vide letter no.CE-RO/LKO/NH(O)/14/NH-330D/2021-22 dated 14.02.2023.

6. It has been brought out by the respondent that thereafter, an e-mail was received from the Highway Section on 17.03.2023 conveying the Ministry’s OM No.NH-24036/43/2022-H dated 17.03.2023, whereby it was conveyed that the petitioner has been debarred *vide* Ministry’s order dated 07.02.2023 for a period of three months from the date of issue of the said order.

7. In view of the debarment letter, the respondent issued a letter (bearing No.CE-RO/LKO/NH(O)/14/NH-330D/2021-22) dated 10.04.2023, in terms of which the LOA in favour of the petitioner was withdrawn. The said



communication, *inter-alia*, reads as under:

“2. Whereas Ministry vide O.M. No. NH-24036/43/2022-H dated 17.03.2023 has conveyed that M/s SRSC Infra Pvt. Ltd. has been debarred vide Ministry’s order dated 07.02.2023 for a period of 03 months from the date of issue of the order.

3. Whereas Department of Expenditure (DoE) vide O.M. No. F20/56/2022-PPD dated 31.08.2022 has stated that bids from only those firms shall be considered for placement of contract which are neither debarred on the date of opening of tender nor debarred on the date of contract, and that no contract should be placed on such debarred firms.

4. Whereas, in view of the above Ministry’s O.M. No. NH-24036/43/2022-H dated 17.03-2023 and DOE’s O.M No. F.20/56/2022-PPD dated 31.08.2022 the LOA issued vide letter no.CE-RO/LKO/NH(O)/14/NH-33OD-2021-22 dated 14.02.2023 is withdrawn and the award stands cancelled.”

8. In the above background, the present petition has been filed seeking that the aforesaid communication dated 10.04.2023, as also the debarment action against the petitioner, be quashed.

9. The petitioner has also sought that the respondent be restrained from taking any consequential steps pursuant to the impugned communication dated 10.04.2023, including calling for fresh bids.

10. Learned senior counsel for the petitioner assails the debarment action against the petitioner on the following grounds:-

- (i) The debarment letter dated 07.02.2023 was never communicated to the petitioner and came to light only when it found mention in the counter affidavit filed by the respondent;
- (ii) The said debarment letter is unreasoned and does not even take note of, much less deal with, the submissions made by the petitioner in response to the SCN served on the petitioner.



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11. A perusal of the record of the case reveals that there is indeed merit in the aforesaid contention of learned senior counsel for the petitioner.

12. In the counter-affidavit, filed on behalf of the respondent itself, it has been brought out that the debarment letter dated 07.02.2023 was never served on the petitioner.

13. The debarment action against the petitioner was taken pursuant to a SCN dated 04.10.2022, issued by the respondent / MoRTH, which reads as under:

“

Dated: 04 October, 2022

To,

*The Authorised Representative
M/s SRSC Infra Pvt.. Ltd.
HQ: AA-12, Chandanvan, Mathura, UP
Branch Office: H-36, Sector, Naida, UP*

Subject: Show Cause Notice: Violation of the condition of Article 2 of Integrity Pact of the contract agreement signed between MoRTH and M/s SRSC Infra Pvt. Ltd.-reg.

Sir,

This is to bring to your kind attention that M/s SRSC Infra Pvt. Ltd. had submitted its bid and signed the Integrity Pact (IP) on 21.03.2022 in connection with NH works- widening and strengthening from km 0.000 to km 38.853 of NH-330D (Sitapur to Kurain section) to two lane with paved shoulder configuration under EPC mode in the State of Uttar Pradesh. The extract of Article-3 of IP states that “If the bidder(s)/Contractor(s)/Concessionaire(s)/ Consultant(s) has committed a transgression through a violation of Article-2 such as to put his reliability or credibility into question, the Principal shall be entitled to exclude including blacklist and put on holiday the Bidder(s)/Contractor(s)/Concessionaire(s)/Consultant(s) for any future tenders/contract award process.”

2. It is pertinent to mention that Article 2 of the IP provides for the commitment of the Bidder/Contractor/Concessionaire and the relevant part is reproduced herein:



“The Bidder(s)/Contractor(s)/Concessionaire(s)/ Consultant(s) will not directly or through any other person or firm, offer, promise or give to any of the Principal's employees involved in the tender process of the execution of the contract of to any third person any material or other benefit which he/she is not legally entitled to, in order to obtain in exchange any advantage of any kind whatsoever during the tender or during the execution of the contract.”

3. Recently, it has come to the notice of this Ministry that CBI has filed RC No.2162022A0012 at CBI/AC-II, New Delhi on the ground that employee of the M/s SRSC Infra Pvt. Ltd. has provided illegal gratification to one Resident Engineer (RE) of M/s Voyants Solutions Private Ltd. working in NHAI projects under his jurisdiction for showing them favor in issuance of completion certificates, processing of bills, smooth progression of the awarded works in relation to projects awarded by NHAI to such private companies. The NH project viz. two lane with paved shoulders of Sitarganj-Bareilly of NH-74 is awarded by NHAI to the firm, M/s SRSC Infra Private Limited. The said case has been registered against the RE of M/s Voyants Solutions Private Ltd. as well as employee of M/s SRSC Infra Pvt. Ltd. under the provision of Prevention of Corruption Act and India Penal Code.

4. Moreover, it is also important to highlight that Rule 151 (iii) of General Financial Rules (GFR) 2017 provides that a procuring entity may debar a bidder or any of its successor, from participating in any procurement process undertaken by it, for a period not exceeding two years, if it determines that the bidder has breached the code of integrity.

5. In view of the above, you are being served with this Show Cause Notice to explain that why this Ministry should not take action against M/s SRSC Infra Pvt. Ltd. as per Article 3(2) of IP and GFR 2017.

6. Your reply in the matter should be received within 7 days of issuance of this letter. In case, no response is received by the said time period, it will be presumed that you do not have to say anything in the matter and the Ministry will take decision on the basis of merits of available facts in this regard.

7. This is without prejudice to any other rights and remedies that



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Ministry may have in the law and contract.

(Sushant Sudan)

Deputy Secretary to the Government of India

Email: Sushant.sudan@nic.in”

14. A detailed response to the said SCN was sent by the petitioner *vide* communication dated 10.10.2022. It was *inter-alia* stated in the reply as under:

“4. The contents of Para 4 of your SCN is denied and Rule 151 (iii) is being reproduced below:

“Rule 151 Debarment from bidding.

{i) A bidder shall be de barred if he has been convicted of an offence- (iii) under the Prevention of Corruption Act, 1988

or

(iv) the Indian Penal Code or any other law for the time being in force, for causing any loss of life or property or causing a threat to public health as part of execution of a public procurement contract.

(ii) A bidder debarred under sub-section (i) or any successor of the bidder shall not be eligible to participate in a procurement process of any procuring entity for a period not exceeding three years commencing from the date of debarment. Department of Commerce (DGS&D) will maintain such list which will also be displayed on the website of DGS&D as well as Central Public Procurement Portal.

(v) A procuring entity may debar a bidder or any of its successors, from participating in any procurement process undertaken by it, for a period not exceeding two years, if it determines that the bidder has breached the code of integrity. The Ministry /Department will maintain such list which will also be displayed on their website.

(vi) The bidder shall not be debarred unless such bidder has been given a reasonable opportunity to represent against such debarment.”

The content of this para is denied in toto-toto. Admittedly no conviction has occurred in respect of said FIR.

Rule 151 only applies post-conviction. Accordingly, your reference to above rule is misplaced.

In view of the above, we strongly condemn the unfair view as regards mere allegations in FIR No. RC2162022A0012 at CBI/ACI, New Delhi which are still inder investigation and are yet to be established in the Competent Court. Cognizance of the orders of various courts may please be taken wherein the Hon'ble Courts have taken a view that it is a settled position that the authorities cannot refuse or cancel the



contract or agreements or take punitive action merely on the ground of registration of an FIR. We are enclosing following orders/judgements with highlighting of the relevant portion for your kind perusal:

a) M/s Sovika Aviation Services Pvt. Ltd . Vs. Union of India;

b) Anand Tewari Vs. Union of India;

c) Abhijeet Sen Vs. Superintendent; (Administration) Regional Passport Officer, Kolkata & Ors.;

d) Minakshiben Laxmanbhai Paraliya Vs. State of Gujarat;

e) Rajkumar Vs. State of Himachal Pradesh; and

f) Yogesh Kumar Vs. Union of India”

15. As such, it was brought out that in terms of relevant provisions of General Financial Rules, 2017 (GFR) it was untenable to take any debarment action against the petitioner.

16. In the debarment order that eventually came to be issued on 07.02.2023 (filed as Annexure R-1/2A of the counter-affidavit filed on behalf of the respondent / MoRTH), none of the submissions made by the petitioner in response to the SCN has been taken note of. Only a cryptic finding has been rendered to the effect that after careful examination of all records and taking into account Rule 151 of GFR, 2017, it is noticed that the petitioner has violated Article-2 of the Integrity Pact, entered into with NHAI.

17. The vital issue raised by the petitioner viz. that the petitioner could not be presumed to be guilty, and Rule 151 of GFR is attracted only post-conviction, has not even been taken note of, much less dealt with in the impugned order.

18. It is well settled that the debarment / backlisting order is required to contain the relevant reasons for the same and also deal with any defence as may be raised by the delinquent entity / person.



19. In *Kulja Industries Limited v. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited And Others*, (2014) 14 SCC 731, the Supreme Court had observed as under –

*20. It is also well settled that even though the right of the writ petitioner is in the nature of a contractual right, the manner, the method and the motive behind the decision of the authority whether or not to enter into a contract is subject to judicial review on the touchstone of fairness, relevance, natural justice, non-discrimination, equality and proportionality. All these considerations that go to determine whether the action is sustainable in law have been sanctified by judicial pronouncements of this Court and are of seminal importance in a system that is committed to the rule of law. We do not consider it necessary to burden this judgment by a copious reference to the decisions on the subject. A reference to the following passage from the decision of this Court in *Mahabir Auto Stores v. Indian Oil Corpn.* [(1990) 3 SCC 752] should, in our view, suffice: (SCC pp. 760-61, para 12)*

*“12. It is well settled that every action of the State or an instrumentality of the State in exercise of its executive power, must be informed by reason. In appropriate cases, actions uninformed by reason may be questioned as arbitrary in proceedings under Article 226 or Article 32 of the Constitution. Reliance in this connection may be placed on the observations of this Court in *Radhakrishna Agarwal v. State of Bihar* [(1977) 3 SCC 457 : (1977) 3 SCR 249] In case any right conferred on the citizens which is sought to be interfered, such action is subject to Article 14 of the Constitution, and must be reasonable and can be taken only upon lawful and relevant grounds of public interest. Where there is arbitrariness in State action of this type of entering or not entering into contracts, Article 14 springs up and judicial review strikes such an action down. Every action of the State executive authority must be subject to rule of law and must be informed by reason. So, whatever be the activity*



of the public authority, in such monopoly or semi-monopoly dealings, it should meet the test of Article 14 of the Constitution. If a governmental action even in the matters of entering or not entering into contracts, fails to satisfy the test of reasonableness, the same would be unreasonable. ... It appears to us that rule of reason and rule against arbitrariness and discrimination, rules of fair play and natural justice are part of the rule of law applicable in situation or action by State instrumentality in dealing with citizens in a situation like the present one. Even though the rights of the citizens are in the nature of contractual rights, the manner, the method and motive of a decision of entering or not entering into a contract, are subject to judicial review on the touchstone of relevance and reasonableness, fair play, natural justice, equality and non-discrimination in the type of the transactions and nature of the dealing as in the present case.”

20. In ***Diwan Chand Goyal v. National Capital Region Transport Corporation and Another***, 2020 SCC OnLine Del 2916, this Court has observed as under -

“45. Upon a reading of the aforesaid judgments cited on behalf of both the parties, the general principles, which emerge, with respect to blacklisting are;

(a) Principles of natural justice have to be complied with before the order of blacklisting is passed;

(b) Natural justice or audi alteram partem does not always require a hearing to be granted. Serving of show cause notice and affording an opportunity to reply to the same, is considered as being adequate opportunity and is sufficient adherence to the principles of natural justice;

(c) Blacklisting constitutes civil death and has extremely grave consequences. Thus, the same is amenable the judicial review if the same is by governmental authorities;



(d) Any order of blacklisting ought to contain proper reasons. The reasons need not be detailed or elaborate. It is sufficient to be brief, pithy and concise;

(e) Reasons should be supplied to the affected party;

(f) Decision taken ought not to be arbitrary or discriminatory.

(g) Blacklisting orders being amenable to judicial review can be judged on the standard of proportionality. Thus, the period of blacklisting as also terms and conditions thereof have to be proportionate to the irregularities or conduct of the bidder.”

21. A perusal of the debarment order also reveals that the same was issued by the concerned Deputy Secretary, Government of India and a copy thereof was not marked to the petitioner. Instead, copy of the debarment order was supplied as under:-

“Copy to:

1. Chairperson, NHAI with the request that a copy of this order may be served upon M/s SRSC Infra Pvt. Ltd. and the report to this effect may be submitted to the Ministry.
2. DG (RD)& SS
3. MD, NHIDCL.”

22. Along with the counter-affidavit, filed on behalf of the respondent / MoRTH, a letter dated 20.06.2023 has also been enclosed (Annexure-R1/1A) thereto which reads as under:

“

Date: 20.06.2023

NHAI/Debarment/SRSC/05/2023/E-207281-82850

To,

Ms. Sangita Topoo, US (Highways)
Ministry of Road Transport & Highways,
New Delhi.

Sub: W.P.(C) 6734/2023 along with Misl, Applications filed in the High Court of Delhi.

Regarding servicing of debarment order dated 07.02.2023.



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Madam,

May please refer your email dated 23.05.2023 on the subject mentioned above and to intimate that the debarment order dated 07.02.2023 could not be served upon M/s SRSC Infra Pvt. Ltd. due to over sight.

You are therefore, requested to see for further action and information.

Yours faithfully,

(Virender Sambyal)

GM (T) UP (W)

Email:- Virender sambyal@nhai.org”

23. As such, it is evident that the debarment order dated 07.02.2023 was never served on the petitioner.

24. It is trite that there cannot be any debarment / blacklisting without the necessary order being communicated to the concerned person / entity. From the document filed by the respondent itself it is evident that the relevant debarment order was not even communicated to the petitioner till after the expiry of the period of debarment. As such, the same does not withstand the scrutiny of law.

25. In the circumstances, the debarment order dated 07.02.2023 is quashed.

26. Since the communication dated 10.04.2023 is also predicated on the debarment order dated 07.02.2023, the same is also quashed.

27. It is noticed that the LOA was issued in favour of the petitioner as far back as on 14.02.2023. The Contract Agreement never came to be executed thereafter in view of the aforementioned intervening developments.

28. Given that the communication dated 10.04.2023 has been quashed, it



shall be open for the respondent to proceed with execution of the Contract Agreement with the petitioner. However, in case the same has become unviable on account of significant lapse of time, (since the commencement of the tender process), it shall be open for the respondent to take an appropriate decision for scrapping of the tender process and issuing a fresh tender.

29. In this regard, it would be apposite to refer to a recent judgment of the Supreme Court in *The Principal Chief Conservator of Forest & Ors. v. Suresh Mathew & Ors.*, 2025 INSC 569 wherein it has been held that it is always open to a tendering authority to scrap the tender of the bidding process and to call for a fresh tender.

“22. The Division Bench of the High Court, which upheld the judgment of the Ld. Single Judge, was of the opinion that merely because there was a likelihood of the rates being lowered if successive tenders are invited, the same cannot be a justifiable ground at all for cancellation of the contract since it would lead to a situation of an unending tender inviting procedure. However, we are of the opinion that the said observations by the High Court are contrary to the settled principles of law laid down by the Supreme Court that the Government is the protector of financial resources of the state and thus, it has every right to cancel and call for fresh tender if it is in the nature of protecting the financial interests of the State.”

(emphasis supplied)

30. Needless to say, in the event of the respondent deciding to scrap the tender process and re-tendering the same, it shall be open to the petitioner to participate in the said process. Further, the right of the petitioner to claim damages / monetary relief on account of any loss that may have been occasioned on account of cancellation of the LOA dated 14.02.2023 *vide*



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impugned communication dated 10.04.2023, shall remain expressly reserved.

31. The petition is disposed of in the above terms. Pending applications also stand disposed of.

SACHIN DATTA, J

AUGUST 14, 2025/cl, sv