



2026:DHC:3506



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Date of Decision: 23<sup>rd</sup> April, 2026**

+ O.M.P.(I) (COMM.) 51/2026 &amp; I.A. 3569/2026

S P TELECOM

.....Petitioner

Through: Mr. Udit Seth, Adv.  
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Email: [office@sethlawchambers.com](mailto:office@sethlawchambers.com)

versus

RAILTEL CORPORATION OF INDIA LIMITED .....Respondent

Through: Mr. Ashok Singh, Adv., with Mr.  
Ashok Singh Parmar, AM (Legal)  
Mob: 9313649228  
Email: [asok69advocate@gmail.com](mailto:asok69advocate@gmail.com)

**CORAM:****HON'BLE MS. JUSTICE MINI PUSHKARNA****MINI PUSHKARNA, J (ORAL):**

1. The present petition has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 ("Arbitration Act"), seeking interim protection against the action of blacklisting *vide* Letter dated 24<sup>th</sup> November, 2025, issued by the respondent, on the ground that the blacklisting was done without issuing a prior show cause notice. As per the said Letter, the petitioner has been blacklisted for a period of three years, disallowing the petitioner to participate in the respondent's future tenders in any region.
2. The parties entered into the Contract Agreement dated 04<sup>th</sup> October, 2023, for maintenance of the optical fiber cable network in *Viramgam-Gandhidham-Bhuj (HQ – Samkhyali)* section of Ahmedabad, for a period of



three years. The petitioner had performed the contract for about two and a half years.

3. As per the case put forth by the petitioner, in the remaining six months towards the end of the year 2024, frequent OFC damages occurred due to parallel third-party railway works. Despite the petitioner's explanations and a joint inspection on 22<sup>nd</sup> November, 2025 confirming deployment of manpower and equipment, the respondent terminated the contract and blacklisted the petitioner for a period of three years *vide* Termination Letter dated 24<sup>th</sup> November, 2025, without issuing a prior show cause notice. Thus, the present petition has been filed.

4. Learned counsel appearing for the petitioner submits that a notice ought to have been issued by the respondent calling upon the petitioner to show cause, before any action for blacklisting could be taken by the respondent.

5. In response, learned counsel appearing for the respondent submits that petitioner was maintaining fiber cables, and despite notice, work was not completed, on account of which, contract was terminated.

6. He submits that blacklisting has been done in terms of Clause 29 of Special Conditions of Contract between the parties, and since blacklisting is part of the clause stipulating termination, no separate show cause notice was required to be issued for blacklisting.

7. He further submits that pursuant to the directions passed by this Court, he has taken instructions for referring the matter to arbitration, and accordingly, he submits that the matter can be referred to arbitration in terms of the Arbitration Clause in the Special Conditions of Contract, entered between the parties.



8. Having heard learned counsels appearing for the parties, at the outset, this Court notes that there is a clear admission by the respondent that no notice, as such, stating that the respondent proposes to take action for blacklisting of the petitioner, has been issued by the respondent. The respondent has sought to justify the same on the ground that no separate notice for blacklisting was required, as the stipulation regarding blacklisting was incorporated in the clause which also stipulated regarding termination.

9. In this regard, it is apposite to refer to Clause 29 of Special Conditions of Contract entered between the parties, which is reproduced as under:

“xxx xxx xxx

**29. TERMINATION OF CONTRACT OWING TO DEFAULT OF CONTRACTOR :**

29.1 If the Contractor should:

- (i) Become bankrupt or insolvent.
- (ii) If contractor, subcontracts whole or any part of the work.
- (iii) Abandons the contract.
- (iv) Persistently disregards the instructions of RailTel's Engineer or contravenes any provision of the contract, or
- (v) Fails to provide man , machine & material and/or carry out the works as per contractual specifications,
- (vi) Is a defaulter as per relevant clause of condition of contract?
- (vii) Promises offers or gives any bribe, commission, gift or advantage either himself or through his partner, agent or servant to any officer or employee of RailTel or any person on his or on their behalf in relation to the execution of this or any other contract with the RailTel,
- (viii) In RailTel's opinion, the cessation of work becomes necessary, owing to paucity of funds of the Contractor, the Contractor's apparent inability to perform, non possession of equipments and tools required for the work or defective and mal-functioning equipments, non-availability of proper/nominated instrumentation, inability to provide men and material, repeated slippages and payment of penalty thereof or for any other cause deemed reasonable. Then and in any of these said cases, The engineer on behalf of the RailTel shall serve the 7 days, 48 hours and final termination notice.

29.2 In such case, the value of approved materials utilized at site and of certified and accepted work done to date by the Contractor as per contract agreement shall be paid for in full at the rates specified in the Contract subject to the clause of Liquidated damages contemplated herein. All such materials become the property of RailTel. Notice in writing from the RailTel of such termination and reason thereof shall be conclusive evidence of taking over of works from the contractor. Full security deposit will be forfeited in such case of termination. The contractor shall be debarred from participating in the tender for executing the balance work.

29.3 Contractors defaulting in one section and having their contract terminated will not be allowed to participate in RailTel's next O & M tender for a period of 3 years in any of it's regions.

xxx xxx xxx”



10. Perusal of the aforesaid clause shows that the respondent has the authority to terminate the contract in case of default of the contractor and to debar the contractor from participating in the tender for the balance work.

11. However, merely on account of the fact that an authority is vested in respondent for terminating the contract or debarring a contractor, the same cannot mean that the Principles of Natural Justice are not to be followed. Wherever any action is sought to be taken by an authority, issuance of requisite show cause notice and opportunity to show cause and grant of hearing, if required, is *sine qua non* for proper exercise of authority in accordance with the Principles of Natural Justice.

12. It is settled law that no one can be condemned unheard. Therefore, issuance of a notice before taking any action for blacklisting of the petitioner was imperative. In this regard, reference be made to the judgment in the case of *A.K.G. Construction and Developers Pvt. Ltd. Versus State of Jharkhand and Others*<sup>1</sup>, wherein, the Supreme Court has held as follows:

“xxx xxx xxx

*22. Returning to the facts of the present case, at the outset, it is apparent that the show cause notice dated 04.06.2024 does not purport to be a show cause notice for blacklisting at all. It perhaps expects the contractor to assume that it is for termination as well as for blacklisting. Even if we accept the submissions of Mr. Kumar Anurag Singh that, as there is no provision for prior notice before termination, this show cause notice must be taken to be for blacklisting, we are of the opinion that it still falls short of the requirement of a proper show cause notice for blacklisting. This is for the reason that as the decision to blacklist is independent of the decision to terminate, the Department must demonstrate application of mind before it takes the next step of blacklisting the contractor, over an order of termination. Upon taking such a decision, it must also issue a show cause notice calling upon the contractor to explain why a consequential order of blacklisting should also not be passed.*

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<sup>1</sup>2026 SCC OnLine SC 520



**The letter must be indicative of the proposed decision to blacklist and the requirement of the contractor to respond to it. The show cause notice dated 04.06.2024 falls short of these requirements. Similarly, the final order of blacklisting, dated 23.08.2024, also does not list the reasons as to why an order of blacklisting has become necessary.**

xxx xxx xxx

**24. As a consequence of our decision to set aside the blacklisting order, we would have required the Department to issue a fresh show cause notice indicative of the reasons as to why a blacklisting order is felt necessary and to thereby call upon the contractor to show cause.** However, in view of the fact that the order of termination cum blacklisting was passed on 23.08.2024, and since then almost more than one and a half year has already passed, without there being a stay of the said order in the meantime, we are of the opinion that the relief to be granted can suitably be moulded by directing that the order of blacklisting will cease to operate with immediate effect. This order will benefit the appellant more than the Department, because directing issuance of a fresh show cause notice will only lead to further litigation.

xxx xxx xxx”

(Emphasis Supplied)

13. Likewise, in the case of ***UMC Technologies Private Limited Versus Food Corporation of India and Another***<sup>2</sup>, the Supreme Court held as follows:

“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.**

xxx xxx xxx

**24. A plain reading of the notice makes it clear that the action of blacklisting was neither expressly proposed nor could it have been**

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<sup>2</sup> (2021) 2 SCC 551



**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.

xxx xxx xxx”

(Emphasis Supplied)

14. Considering the submissions made before this Court, a *prima facie* case has been established by the petitioner. This Court also takes note of the fact that the petitioner has been in continuous contractual relationship with



the respondent since the year 2005 spanning over 21 years and is presently executing various maintenance contracts across various territories in India. Thus, if interim protection is not granted to the petitioner, and the impugned order with respect to blacklisting is not stayed by this Court, the same shall cause irreparable damage to the petitioner. Further, balance of convenience also lies in favour of the petitioner.

15. Accordingly, the Letter dated 24<sup>th</sup> November, 2025, to the extent of blacklisting of the petitioner, is stayed.

16. On the last date of hearing, i.e., 16<sup>th</sup> April, 2026, this Court had noted that there is a valid Arbitration Clause between the parties, and directed the respondent to take instructions, as to whether this Court can proceed for appointment of an Arbitrator, in terms of the Agreement between the parties. The relevant portion of order dated 16<sup>th</sup> April, 2026, is reproduced as under:

“xxx xxx xxx

1. *This Court has perused the Arbitration Clause, i.e., Clause 28, of the Special Conditions of Contract (“SCC”), which is reproduced as under:*

“xxx xxx xxx

**28. SETTLEMENT OF DISPUTE AND ARBITRATION**

28.1 Any dispute or difference whatsoever arising between the parties out of or relating to the construction, meaning, scope, operation or effect of this contract or the validity or the breach thereof shall be settled by arbitration in accordance with the Arbitration and Conciliation Act, 1996 as amended and the award made in pursuance thereof shall be binding on the parties. The venue of such arbitration or proceedings thereof shall be New Delhi.

28.2 All arbitration proceedings shall be conducted in English. Recourse against any Arbitral awards or entered may be entered into court having jurisdiction or application may be made to such court for the order of enforcement as the case may be.

xxx xxx xxx”

2. *Learned counsel appearing for the petitioner submits that there is no separate Clause with respect to jurisdiction of any other Court. Thus, he submits that since the venue of the arbitration is at New Delhi, in absence of any other Clause, the seat of arbitration is also at New Delhi.*



3. *He further submits that he has an approximate claim of Rs. 1-1.15 Crores, based upon various claims, including loss of profit.*

4. *Since there are disputes between the parties and there is a valid Arbitration Clause, ultimately the disputes between the parties are to be settled by the arbitration process.*

5. *Accordingly, learned counsel appearing for the respondent is directed to take instructions as to whether this Court can proceed to appoint an Arbitrator, so that the disputes between the parties can be adjudicated, in accordance with the arbitration process, in terms of the agreement between the parties.*

*xxx xxx xxx”*

17. Today, learned counsel appearing for respondent submits that an Arbitrator can be appointed by this Court.

18. In view of the aforesaid, since the parties are *ad idem* in regard to the matter being referred to Arbitration, the statutory requirement of a Legal Notice under Section 21 of the Arbitration Act for invoking the Arbitration Clause and, the subsequent requirement of filing a Petition under Section 11 of the Arbitration Act, for appointment of an Arbitrator, are hereby waived of.

19. Learned counsel appearing for the petitioner submits that the claim of the petitioner is approximately to the tune of Rs. 1-1.5 crores.

20. He further submits that the Arbitration proceedings be held under the aegis of Delhi International Arbitration Centre (“DIAC”).

21. Accordingly, considering the submissions made before this Court, the following directions are issued:

- i) Mr. Virender Mehta, Advocate, (Mob: 91+ 9811151865) is appointed as the Sole Arbitrator to adjudicate the disputes between the parties.
- ii) The arbitration proceedings shall be held under the aegis and Rules of DIAC, Delhi High Court, Sher Shah Road, New Delhi.



- iii) The remuneration of the learned Arbitrator shall be in terms of DIAC (Administrative Cost and Arbitrators' Fees) Rules, 2018.
- iv) The learned Arbitrator is requested to furnish a declaration in terms of Section 12 of the Arbitration Act prior to entering into the reference. In the event of any impediment to the Arbitrator's appointment on that count, the parties are given liberty to file an appropriate application before this Court.
- v) It shall be open to the respondent to raise counter-claims, if any, in arbitration proceedings.
- vi) It is made clear that all the rights and contentions of the parties, including, as to the arbitrability of any of the claim, any other preliminary objection, as well as claims/counter-claims and merits of the dispute of either of the parties, are left open for adjudication by the learned Arbitrator.
- vii) The parties shall approach the learned Arbitrator within two (02) weeks from the date of appointment of the Arbitrator.
22. It is clarified that nothing contained in the present judgment shall be construed as an expression of this Court on the merits of the case, which shall be decided by the learned Arbitrator.
23. Accordingly, the present petition, along with pending application, is disposed of in the aforesaid terms.
24. The Registry is directed to send a copy of this order to the learned Arbitrator, as well as, the Secretary, DIAC, for information and compliance.

**MINI PUSHKARNA, J**

**APRIL 23, 2026/SK/au**