$~

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

Judgment reserved on: 27.10.2025

% Judgment delivered on: 04.12.2025

\+ **LPA 601/2025, CM APPL. 60598/2025 & CM APPL. 60599/2025**

CCS COMPUTERS PRIVATE LIMITED .....Appellant

Through: Mr. Saurabh Kirpal, Senior Adv with Ms. Pooja Sood and Mr. Rajat, Advs.

versus

NEW DELHI MUNICIPAL COUNCIL AND ANR .....Respondents

Through: Mr. Arun Birbal, Adv for NDMC.
Mr. Sam C. Mathew and Ms. Madhuri Mittal, Advs for R-2.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T

DEVENDRA KUMAR UPADHYAYA, C.J.

CHALLENGE

1. This *intra-court* appeal preferred under Clause X of Letters Patent seeks to challenge the judgment dated 08.08.2025 passed by the learned Single Judge whereby, *W.P.(C) 11006/2024,* filed by the appellant, has been dismissed.

2. At this juncture, we may note that the said writ petition was filed challenging the letter/order dated 07.06.2024, passed by respondent no.1-

New Delhi Municipal Council, whereby the petitioner was blacklisted and debarred from participating in any bid for a period of two years from the date of issue of the said order.

FACTS

3. Respondent no.1 floated a tender on 28.05.2022 for procurement of 4,159 pre-loaded tablets. As per the notice inviting tender, the Original Equipment Manufacturer (*hereinafter referred to as the* 'OEM') or a bidder authorised by the OEM through Manufacturer Authorisation Form (*hereinafter referred to as the* 'MAF') could participate.

4. On 21.06.2022, respondent no.2 – Datamini Technologies (lndia) Limited being an OEM authorised the appellant by means of the letter of the said date to participate in the bidding process on its behalf. The appellant accordingly, submitted its bid on 28.06.2022 and also submitted the requisite documents including a bank guarantee of Rs.18,71,550/- as earnest money deposit.

5. Respondent no.1 *vide* letter dated 02.09.2022 informed the appellant that the Turnover Certificate (*hereinafter referred to as the* 'TOC') of respondent no.2- OEM submitted by the appellant appeared to be forged and accordingly, it required the appellant to verify the facts and the figures reflected in the said document, namely, the TOC.

6. When the letter dated 02.09.2022 reached the appellant, an inquiry was initiated on 05.09.2022 by the appellant against two of its employees, who, according to the appellant, were entrusted with the responsibility of

submitting the bid and it was also resolved to conduct a detailed investigation into the matter.

7. In reply to the Show Cause Notice (*hereinafter referred to as the* 'SCN') issued by the appellant to two of its employees, on 08.09.2022, the employees submitted their apologies for their actions, stating that it was an unintentional mistake committed by them.

8. On 09.09.2022, respondent no.1 issued a SCN to the appellant in respect of the forged document/data submitted by the appellant while participating in the tender process. In the SCN, respondent no.1 also stated that in response to an email communication to the OEM, the OEM submitted that it had not shared the TOC which was submitted by the appellant along with the bid and further that the turnover figure reflected in the said certificate appeared to be manipulated without the knowledge of the OEM. In the meantime, in an in-house inquiry conducted against the two officers of the appellant, it was found that there was some tampering in the TOC which was a result of collusion with the representative of the OEM. It was further found in the said inquiry that the original figure of Rs.28,10,10,671/- was altered to Rs.1,28,10,10,671/-, which was apparently to meet the required turnover of the OEM.

9. The appellant in response to the SCN dated 09.09.2022, submitted a letter to respondent no.1 stating therein that the reply shall be submitted on 21.09.2022, and accordingly, the reply was submitted on 21.09.2022 by the appellant in response to the SCN dated 09.09.2022, along with which a detailed in-house inquiry report was enclosed. In the reply dated 21.09.2022,

it was submitted that the manipulation/forgery in the document concerned was committed without the knowledge of the appellant and without its consent.

10. Thereafter, on 27.09.2022, the appellant terminated the services of two of its employees who were found involved in the manipulation of the document in question while taking disciplinary action.

11. By means of a letter/order dated 07.12.2023, respondent no.1 blacklisted the appellant and debarred it from participating in any bid for a period of three years from the date of issuance of the said letter/order dated 07.12.2023. The letter/order of blacklisting/debarment dated 07.12.2023 was challenged by the appellant by instituting the proceedings of *W.P.(C) 16767/2023*, which was allowed by the learned Single Judge and the order of blacklisting/debarment passed by respondent no.1 was quashed by means of an order dated 04.03.2024 on several grounds.

12. This Court, while passing the order dated 04.03.2024, though quashed the order of blacklisting/debarment dated 07.12.2023; however, it also gave liberty to respondent no.1 to issue a fresh SCN to the appellant and also directed that the reply to the said SCN shall also be considered before passing any order for further action.

13. In compliance of the said order dated 04.03.2024, a SCN was issued to the appellant by respondent no.1 on 26.04.2024, to which a reply was submitted by the appellant on 23.05.2024 wherein, it was reiterated that the appellant was not responsible for the wrongful acts of its former employees

who appeared to have acted in collusion with the representative of respondent no.2 – OEM.

14. Respondent no.1 on consideration of the reply submitted by the appellant to the SCN dated 26.04.2024, passed an order on 07.06.2024, blacklisting and debarring the appellant for a period of two years from the date of issue of the said order, i.e., with effect from 07.06.2024. While passing the said order of blacklisting/debarment dated 07.06.2024, it was stated by respondent no.1 that appellant cannot shirk from its responsibility for the misconduct of its employees and that in such a high value bid, greater caution was expected to be exercised by the appellant while verifying and submitting the documents in support of the bid. It was also observed in the said order dated 07.06.2024 that the appellant and respondent no.2 – OEM had colluded to fabricate the document to meet the requisite conditions of the bid, and therefore, such an action was found to be deliberate wrongdoing attracting appropriate action.

15. The order of blacklisting/debarment dated 07.06.2024 was challenged by the appellant by instituting the proceedings of *W.P.(C) 11006/2024*, which has been dismissed by the learned Single Judge by means of the judgment dated 08.08.2025, which is under challenge herein. The learned Single Judge while dismissing the said writ petition by means of the impugned judgment dated 08.08.2025 has returned the finding that respondent no.1 did not act against the OEM on account of the fact that the financial record of the OEM were uploaded on the Government e-Marketplace Portal (*hereinafter referred to as the* 'GeM Portal') and the TOC was found genuine. However,

the fault lies with the appellant, which was responsible for submitting the bid and that the appellant ought to have acted with caution.

16. The learned Single Judge has also observed in the judgment under appeal herein that the in-house inquiry conducted by the appellant was self-serving without any involvement of respondent no.1 or the OEM, and further that the management of the appellant cannot escape from its liability by putting the blame on its employees since the principle of vicarious liability applies in this case.

17. Learned Single Judge has found that the employees of the appellant against whom some disciplinary action was taken did not derive any individual benefit from fabricating the TOC and that the ultimate beneficiary of such fabrication was the appellant itself. Learned Single Judge has also reflected upon the pre-integrity pact between the parties which stipulated that the breach by the bidder or its employees shall entitle respondent no.1 to debar the bidder. The blacklisting/debarment order dated 07.06.2024 was found to be a reasoned order with a further observation therein that the appellant cannot claim innocence by blaming its employees for fabrication of the document during the course of their duties.

18. The ground taken by the appellant before the learned Single Judge to impeach the order of blacklisting/debarment dated 07.06.2024 on the principle of proportionality was also considered, however, learned Single Judge has returned a finding that two years blacklisting period is neither illogical nor immoral, as it was a reasonable decision which was within the scope of actions that a sensible authority would take. The learned Single

Judge repelled the argument based on proportionality by further observing that sanctity of the tender process has to be maintained and that period of debarment is not reprehensible by any objective criteria of counter balancing the gravity of the offence with mitigating factors.

SUBMISSIONS ON BEHALF OF THE PARTIES

19. Learned Senior Counsel Mr. Saurabh Kirpal, has contended that the order of debarment dated 07.06.2024 whereby, the appellant has been debarred from participating in any bid of respondent no.1 for a period of two years from the date of issue of the said order is not sustainable on the principle of proportionality, considering the fact that it is not only that the appellant conducted disciplinary proceedings and terminated services of the two employees found responsible for fabrication of the document but had also initiated certain criminal action against such employees. It has further been argued by Mr. Kirpal, learned senior advocate that so far as the fabrication of the document is concerned, the same is not denied, however, for such fabrication, awarding the maximum term of debarment as admissible under the relevant General Financial Rules (*hereinafter referred to as the* 'GFR') is not warranted in the facts and circumstances of the present case as the same is hit by the principle of proportionality. Citing various judgments, Mr. Kirpal, learned senior advocate has specially laid emphasis on the judgment of the Hon'ble Supreme Court in the case of ***Kulja Industries Ltd. v. Western Telecom Project BSNL, (2014) 14 SCC 731*** and has submitted that the learned Single Judge has not considered the

argument based on the doctrine of proportionality to adjudge the order of blacklisting/debarment dated 07.06.2024.

20. Mr.Kirpal, learned senior advocate has also argued that the various factors which ought to be taken into consideration by the tendering authority while passing the order of blacklisting/debarment, as observed by the Hon'ble Supreme Court in ***Kulja Industries (supra)***, have been ignored by respondent no.1 while passing the blacklisting/debarment order and that the said factors have also not been taken into account by the learned single judge while dismissing the writ petition. Reliance on behalf of the appellant in this regard have been placed, in addition to ***Kulja Industries (supra)*** on the following judgments: -

1. ***Indian Oil Corporation Ltd. v. SPS Engineering Ltd., 2006 SCC OnLine Del 265***
2. ***Hyundai Rotem Company v. Delhi Metro Rail Corporation, 2018 SCC OnLine Del 6690***
3. ***Wadia Techno Engineering Services Ltd. v. National Highways & Infrastrctural Development Corpn. Ltd., 2019 SCC OnLine Del 6431***
4. ***Coastal Marine Construction & Engineering Ltd. v. Indian Oil Corpn. Ltd., 2019 SCC OnLine Del 6542***
5. ***Diwan Chand Goyal v. National Capital Region Transport Corpn., 2020 SCC OnLine Del 2916***
6. ***Jayanta Kumar Ghosh Outdoor Catering (P) Ltd. v. Indian Railways Catering & Tourism Corpn. Ltd., 2020 SCC OnLine Del 151***
7. ***Blue Dreamz Advertising (P) Ltd. v. Kolkata Municipal Corpn., (2024) 15 SCC 264***
8. ***Modern Stage Service v. ITDC Ltd., 2025 SCC OnLine Del 2311***
9. ***IDL Explosives Ltd. v. Union of India, 2025 SCC OnLine Cal 3092***

21. On the other hand, learned counsel representing the respondents has submitted that the learned Single Judge has considered all the relevant

aspects of the matter in their true perspective and has accordingly dismissed the writ petition, finding no merit in the submissions of the appellant. It has also been argued on behalf of the respondents that learned Single Judge has not found any procedural lapse or lacunae in the decision making process adopted by respondent no.1 while reaching to the conclusion which resulted in passing of the order of blacklisting/debarment dated 07.06.2024 and in absence of any finding about any procedural lapse or lack of fairness, the submission made on behalf of the appellant cannot be acceded to.

22. Drawing our attention to the specific finding returned by the learned Single Judge while passing the impugned judgment it has further been argued that the learned Single Judge has appropriately considered the submissions made on behalf of the appellant based on the doctrine of proportionality and has rightfully come to the conclusion that the sanctity of the tenders has to be maintained and the period of debarment as determined by respondent no.1 is reasonable in the sense that the same cannot be impeached on the ground that any sensible authority would not have arrived at such conclusion.

DISCUSSION AND CONCLUSION

23. We have heard the competing submissions made by learned counsel for the respective parties and have also perused the records available before us on this appeal.

24. We have also considered the judgments cited on behalf of the appellant, especially on the issue of the blacklisting/debarment dated 07.06.2024 being hit by the principle of proportionality.

25. Hon'ble Supreme Court in the case of ***Coimbatore District Central Coop. Bank v. Employees Assn., (2007) 4 SCC 669*** has discussed in detail the doctrine of proportionality and has observed that the said doctrine has not only arrived in our legal system, but it has come to stay. Hon'ble Supreme Court has further observed that the doctrine of proportionality has been evolved by the Courts keeping in view the need and necessity to control possibility of abuse of discretionary powers by administrative authorities. The Court has further observed that any action by an administrative authority, if found to be contrary to law or is improper or irrational or otherwise unreasonable, the Court can interfere with such action or decision under its powers of judicial review, and one of such modes of exercising power of judicial review is the doctrine of proportionality.

26. Elaborating further on the doctrine of proportionality further it has been observed by the Hon'ble Supreme Court in ***Coimbatore District Central (supra)*** that it is a principle which concerns itself with the process, method or manner in which the decision making authority reaches to a conclusion or arrives at a decision. The Apex Court has further observed that the essence of decision making process lies in attribution of relative importance to the factors and considerations in a particular case and further that doctrine of proportionality steps in to find out the true nature of such decision making exercise.

27. The Hon'ble Supreme Court has also succinctly captured the doctrine of proportionality to be applied for adjudicating any decision made by an administrative authority by the Courts in exercise of the power of judicial

review by observing that "it is not permissible to use a sledgehammer to crack a nut" and further that "where a paring knife suffices, a battle axe is precluded". The observations made in ***Coimbatore District Central (supra)*** in paragraphs 17 to 28 of the report are relevant which are extracted herein below:-

> *"17. So far as the doctrine of proportionality is concerned, there is no gainsaying that the said doctrine has not only arrived in our legal system but has come to stay. With the rapid growth of administrative law and the need and necessity to control possible abuse of discretionary powers by various administrative authorities, certain principles have been evolved by courts. If an action taken by any authority is contrary to law, improper, irrational or otherwise unreasonable, a court of law can interfere with such action by exercising power of judicial review. One of such modes of exercising power, known to law is the "doctrine of proportionality".*
>
> *18. "Proportionality" is a principle where the court is concerned with the process, method or manner in which the decision-maker has ordered his priorities, reached a conclusion or arrived at a decision. The very essence of decision-making consists in the attribution of relative importance to the factors and considerations in the case. The doctrine of proportionality thus steps in focus true nature of exercise—the elaboration of a rule of permissible priorities.*
>
> *19. de Smith states that "proportionality" involves "balancing test" and "necessity test". Whereas the former (balancing test) permits scrutiny of excessive onerous penalties or infringement of rights or interests and a manifest imbalance of relevant considerations, the latter (necessity test) requires infringement of human rights to the least restrictive alternative. [Judicial Review of Administrative Action (1995), pp. 601-05, para 13.085; see also Wade & Forsyth: Administrative Law (2005), p. 366.]*
>
> *20. In Halsbury's Laws of England (4th Edn.), Reissue, Vol. 1(1), pp. 144-45, para 78, it is stated:*
>
> > *"The court will quash exercise of discretionary powers in which there is no reasonable relationship between the objective which is sought to be achieved and the means used to that end, or where punishments imposed by*

> *administrative bodies or inferior courts are wholly out of proportion to the relevant misconduct. The principle of proportionality is well established in European law, and will be applied by English courts where European law is enforceable in the domestic courts. The principle of proportionality is still at a stage of development in English law; lack of proportionality is not usually treated as a separate ground for review in English law, but is regarded as one indication of manifest unreasonableness."*

21. The doctrine has its genesis in the field of administrative law. The Government and its departments, in administering the affairs of the country, are expected to honour their statements of policy or intention and treat the citizens with full personal consideration without abuse of discretion. There can be no "pick and choose", selective applicability of the government norms or unfairness, arbitrariness or unreasonableness. It is not permissible to use a "sledgehammer to crack a nut". As has been said many a time; "where paring knife suffices, battle axe is precluded".

22. In the celebrated decision of Council of Civil Service Union v. Minister for Civil Service [1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL)] Lord Diplock proclaimed: (All ER p. 950h-j)

> *"Judicial review has I think developed to a stage today when, without reiterating any analysis of the steps by which the development has come about, one can conveniently classify under three heads the grounds on which administrative action is subject to control by judicial review. The first ground I would call 'illegality', the second 'irrationality' and the third 'procedural impropriety'. That is not to say that further development on a case-by-case basis may not in course of time add further grounds. I have in mind particularly the possible adoption in the future of the principle of 'proportionality'…."*
>
> *(emphasis supplied)*

23.CCSU [1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL)] has been reiterated by English courts in several subsequent cases. We do not think it necessary to refer to all those cases.

24. So far as our legal system is concerned, the doctrine is well settled. Even prior to CCSU [1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL)] , this Court has held that if punishment imposed on an employee by an employer is grossly excessive,

disproportionately high or unduly harsh, it cannot claim immunity from judicial scrutiny, and it is always open to a court to interfere with such penalty in appropriate cases.

25. In Hind Construction & Engg. Co. Ltd. v. Workmen [AIR 1965 SC 917 : (1965) 2 SCR 85] , some workers remained absent from duty treating a particular day as holiday. They were dismissed from service. The Industrial Tribunal set aside the action. This Court held that the absence could have been treated as leave without pay. The workmen might have been warned and fined. (But)

> *"It is impossible to think that any other reasonable employer would have imposed the extreme punishment of dismissal on its entire permanent staff in this manner." (AIR p. 919, para 7)*
>
> *(emphasis supplied)*

The Court concluded that the punishment imposed on the workmen was

> *"not only severe and out of proportion to the fault, but one which, in our judgment, no reasonable employer would have imposed". (AIR pp. 919-20, para 7)*
>
> *(emphasis supplied)*

26. In Federation of Indian Chambers of Commerce and Industry v. Workmen [(1972) 1 SCC 40 : AIR 1972 SC 763] , the allegation against the employee of the Federation was that he issued legal notices to the Federation and to the International Chamber of Commerce which brought discredit to the Federation—the employer. Domestic inquiry was held against the employee and his services were terminated. The punishment was held to be disproportionate to the misconduct alleged and established. This Court observed that: (SCC p. 62, para 34)

> *"[T]he Federation had made a mountain out of a mole hill and made a trivial matter into one involving loss of its prestige and reputation."*

27. In Ranjit Thakur [(1987) 4 SCC 611 : 1988 SCC (L&S) 1] referred to earlier, an army officer did not obey the lawful command of his superior officer by not eating food offered to him. Court-martial proceedings were initiated and a sentence of rigorous imprisonment of one year was imposed. He was also dismissed from service, with added disqualification that he would be unfit for future employment.

28. Applying the doctrine of proportionality and following CCSU [1985 AC 374 : (1984) 3 WLR 1174 : (1984) 3 All ER 935 (HL)] , Venkatachaliah, J. (as His Lordship then was) observed: (SCC p. 620, para 25)

> *"The question of the choice and quantum of punishment is within the jurisdiction and discretion of the court martial. But the sentence has to suit the offence and the offender. It should not be vindictive or unduly harsh. It should not be so disproportionate to the offence as to shock the conscience and amount in itself to conclusive evidence of bias. The doctrine of proportionality, as part of the concept of judicial review, would ensure that even on an aspect which is, otherwise, within the exclusive province of the court martial, if the decision of the court even as to sentence is an outrageous defiance of logic, then the sentence would not be immune from correction. Irrationality and perversity are recognised grounds of judicial review."*
>
> *(emphasis supplied)"*

28. Hon'ble Supreme Court in ***Kulja Industries (supra)*** has clearly laid down certain aspects which need to be taken into account by a Court while exercising the powers of judicial review for adjudicating any administrative action in relation to blacklisting/debarment. While laying down the relevant aspects to be considered in such a matter in ***Kulja Industries (supra),*** the Hon'ble Supreme Court has also clearly held that any decision by the administrative authorities, in respect of contractual matters as well, is subject to judicial review on the touchstone of various legal principles, including the doctrine of proportionality. Paragraph 20 to 22 of ***Kulja Industries (supra)*** are also extracted herein below:-

> *"**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.[14] 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 .... 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 a 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."*

***21**. The legal position governing blacklisting of suppliers in USA and UK is no different. In USA instead of using the expression "blacklisting" the term "debarring" is used by the statutes and the courts. The Federal Government considers "suspension and debarment" as a powerful tool for protecting taxpayer resources and maintaining integrity of the processes for federal acquisitions. Comprehensive guidelines are, therefore, issued by the Government for protecting public interest from those contractors and*

recipients who are non-responsible, lack business integrity or engage in dishonest or illegal conduct or are otherwise unable to perform satisfactorily. These guidelines prescribe the following among other grounds for debarment:

(a) Conviction of or civil judgement for:-

(1) Commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public or private agreement or transaction;

(2) Violation of Federal or State antitrust statutes, including those proscribing price fixing between competitors, allocation of customers between competitors, and bid rigging;

(3) Commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, or obstruction of justice; or

(4) Commission of any other offense indicating a lack of business integrity or business honesty that seriously and directly affects your present responsibility;

(b) Violation of the terms of a public agreement nr transaction in serious CH to affect the integrity of an agency program, such as.-

(1) A wilful failure to perform in accordance with the terms of one or more public agreements or transactions;

(2) A history of failure to perform or of unsatisfactory performance of one or more public agreements or transactions; or

(3) A wilful violation of a statutory or regulatory provision or requirement applicable to a public agreement or transaction;

*(c) * * **

(d) Any other cause of so serious or compelling a nature that it affects your present responsibility.

***22.** The guidelines also stipulate the factors that may influence the debarring official's decision which include the following:*

(a) The actual or potential harm or impact that results or may result from the wrongdoing.

(b) The frequency of incidents and/or duration of the wrongdoing.

(c) Whether there is a pattern or prior history of wrongdoing.

(d) Whether the contractor has been excluded or disqualified by an agency of the Federal Government or has not been allowed to participate in State or local contracts or assistance agreements on the basis of conduct similar to one or more of the causes for debarment specified in this part.

(e) Whether and to what extent did the contractor plan, initiate or carry out the wrongdoing.

(f) Whether the contractor has accepted responsibility for the wrongdoing and recognized the seriousness of the misconduct.

(g) whether the contractor has paid or agreed to pay all criminal, civil and administrative liabilities for the improper activity. including any investigative or administrative costs incurred by the Government, and has made or agreed to make full restitution.

(h) Whether the contractor has cooperated fully with the government agencies during the investigation and any court or administrative action.

(i) Whether the wrongdoing was pervasive within the contractor's organization.

(j) The kind of positions held by the individuals involved in the wrongdoing.

(k) Whether the contractor has taken appropriate corrective action or remedial measures, such as establishing ethics training and implementing programs to prevent recurrence.

(l) Whether the contractor fully investigated the circumstances surrounding the cause for debarment and. if so. made the result of the investigation available to the debarring official."

29. The law laid down in ***Kulja Industries (supra)*** has been relied upon by this Court in ***Hyundai Rotem Company (supra).*** It is to be noticed that the subject matter of consideration before this Court in ***Hyundai Rotem Company (supra)*** was an order of blacklisting/debarment. The court has clearly held that an order of blacklisting/debarment may be subjected to judicial review if it is found that it was not within the range of the action which ought to have been reasonably taken. Paragraph no.35 of the judgment in ***Hyundai Rotem Company (supra)*** is relevant to be extracted here which reads as under:-

> *"**35.** In view of the principles as laid down above, the order of blacklisting an entity may be subject to judicial review if it is concluded that it was not within the range of the action, which ought to have been reasonably taken. The question whether the period of debarment of five years was within the reasonable range would necessarily have to be tested on the basis of a benchmark set by the DMRC. In absence of any such benchmark, the benchmark set by other organizations ought to serve as guidelines. In this case, although it is mentioned that the competent authority had relied on other blacklisting orders passed by other organizations, the same have neither been referred to nor is it discernable whether facts in any of the cases were similar to the one in this case."*

30. ***Wadia Techno Engineering Services (supra)*** has also relied upon the law laid down in ***Kulja Industries (supra)*** by setting aside the order of debarment. One of the observations made in ***Wadia Techno Engineering Services (supra)*** by this Court while setting aside the order of debarment was that in determining the period of blacklisting in the said case, the principles laid down in ***Kulja Industries (supra)*** were not taken into account. In ***Coastal Marine Construction & Engineering Ltd. (supra),*** this Court again took into account the doctrine of proportionality while considering the validity of an order of blacklisting and applying the said principle, found that the order of blacklisting under challenge therein was not sustainable. In this case, reliance was again placed on ***Kulja Industries (supra).***

31. The other judgments cited on behalf of the appellant have also considered the law laid down by the Apex Court in ***Kulja Industries (supra)*** and have applied the doctrine of proportionality to test the validity of an order of blacklisting/debarment. Specific reference in this regard may be made to the judgment in the case of ***Blue Dreamz Advertising (P) Ltd.***

(supra) wherein, it has been observed that one of the considerations which ought to be weighed by the Courts while considering validity of an order of blacklisting/debarment is as to whether, the reasons justified invocation of the penalty of blacklisting and is the penalty proportionate.

32. The Hon'ble Supreme Court in ***Blue Dreamz Advertising (P) Ltd.(supra)*** has clearly observed that any decision to blacklist should be strictly within the parameters of law and has to conform to the principles of proportionality. Paragraphs no.35 and 36 of the report in ***Blue Dreamz Advertising (P) Ltd.(supra)*** are extracted herein below:-

> *"**35.** The Division Bench has, in our opinion, not appreciated the case in its proper perspective. Merely saying that the blacklisting order carried reasons is not good enough. Do the reasons justify the invocation of the penalty of blacklisting and is the penalty proportionate, was the real question.*
>
> ***36.** The Division Bench has observed that blacklisting is a business decision by which the party affected by the breach decides not to enter into any contractual relationship with the party committing the breach. It also observed that between two private parties the right to take any such decision is absolute and untrammeled by any constraints whatsoever. The observations are too sweeping in their ambit and wholly overlook the fact that the respondent-Corporation is a statutory body vested with the duty to discharge public functions. It is not a private party. Any decision to blacklist should be strictly within the parameters of law and has to comport with the principle of proportionality."*

33. We, thus, now proceed to examine the validity of the order of blacklisting/debarment dated 07.06.2024 on the above-stated principles of law, especially on the touchstone of doctrine of proportionality. There is no denial of the fact that the appellant admits that there has been fabrication in the document in question, namely, TOC of the OEM, which was tendered

while submitting the bid. However, we also, at the same time, cannot lose sight of the fact that immediately after coming to know, even before the SCN was issued to the appellant, inquiries were made by the appellant and disciplinary proceedings were instituted against the two employees who were entrusted with the submission of the bid on its behalf. The in-house disciplinary proceedings instituted by the appellant against two of its employees ultimately ended in termination of their services. The action against the two employees by the appellant did not abate here, and the criminal proceedings were also launched against them by the appellant.

34. We are conscious of the fact that for any allegation relating to furnishing fabricated document while participating in a bid where fabrication is alleged to have been done by the employees of the appellant, the appellant cannot be absolved of its responsibility. The employees against whom some disciplinary and criminal action have been taken by the appellant was responsible not in their personal capacity while participating in the bid and furnishing the fabricated document, rather they submitted the bid on behalf of the appellant in discharge of their official duties, which they owed to the appellant. It is also to be noticed that the ultimate beneficiary were not the two employees, rather the appellant, on whose behalf the bid was submitted by the employees, and therefore, we have no doubt to conclude that the appellant cannot escape from its liability even if the fabrication of the document was done by its employees, which was furnished along with the bid.

35. Having observed as above, we also need to examine the order of blacklisting/debarment dated 07.06.2024 from the point of view of the debarment being disproportionate in the facts of the case, applying the principle of proportionality.

36. One of the factors to be considered while taking a decision by the tendering authority regarding blacklisting of a bidder, as observed by the Hon'ble Supreme Court in ***Kulja Industries (supra)*** is whether there is a pattern or history of wrongdoing, frequency of incidents, and/or duration of the wrongdoing. In ***Kulja Industries (supra),*** the Hon'ble Supreme Court has laid down that as to whether the contractor has accepted the responsibility for the wrongdoing and recognises the seriousness of the misconduct is also a factor to be taken into consideration. The other aspect which needs to be considered while passing the order of blacklisting/debarment is as to whether the contractor has cooperated fully with the Government Agencies during the investigation and with any Court or administrative action, and as to whether the wrongdoing was pervasive within the contractor's organisation.

37. In ***Kulja Industries (supra),*** it has also been held that the kind of positions held by the individuals involved in the wrongdoing is also to be considered, and further it has also to be considered as to whether the contractor has taken appropriate coercive action or remedial measures to prevent recurrence. Thus, what has been held by the Hon'ble Supreme Court in ***Kulja Industries (supra)*** is that one of the aspects to be considered while

passing the order of blacklisting/debarment, apart from the gravity of the allegation, is as to whether there are any mitigating factors as well.

38. In the facts of the instant case what we find is that the misconduct committed on behalf of the appellant while submitting the bid by using a fabricated document is grave enough to warrant blacklisting/debarment, however, there are certain mitigating factors as well which ought to have been taken into consideration as per the law laid down in ***Kulja Industries (supra)*** at least for determining the period of debarment.

39. A perusal of the order passed by the learned Single Judge, which is under challenge herein, reveals that reliance by respondent no.1 for passing the debarment order, prescribing the period of debarment, was placed on Rule 151 of the GFR, which reads as under:-

> "***Rule 151 Debarment from bidding.***
>
> *(i) A bidder shall be debarred if he has been convicted of an offence—*
>
> *(a) under the Prevention of Corruption Act, 1988; or*
>
> *(b) 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 Expenditure (DoE) will maintain such list which will also be displayed on the Central Public Procurement Portal.*
>
> *(ii) 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.*

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

40. A perusal of Rule 151 of the GFR reveals that if a bidder has been convicted of an offence either under the Prevention of Corruption Act, 1988, or under 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, such a bidder can be debarred and shall be held to be not eligible to participate in any procurement process for a period not exceeding three years commencing from the date of debarment. Sub-rule (iii) of Rule 151 of the GFR provides for debarment of a bidder or any of its successors from participating in any procurement process for a period not exceeding two years, if it is found that the bidder has breached the code of integrity. The instant case is not a case where the appellant has been debarred having been convicted of an offence either under Prevention of Corruption Act, 1988 or under the Indian Penal Code where in terms of Rule 151 of the GFR the maximum period of debarment from participation in the bid is three years; rather the appellant has been blacklisted/ debarred for breach of code of integrity for furnishing the fabricated document. Accordingly, as per Rule 151 (iii) of the GFR in a situation where a bidder is debarred for breach of code of integrity, the maximum period of debarment shall be two years. The exact phrase occurring in the said provision is *"for a period not exceeding two years"*. Thus, the period of debarment in the case of breach of the code of integrity can be even less than two years.

41. Respondent no.1 by passing the order of blacklisting/ debarment dated 07.06.2024, has debarred the appellant for the maximum period permissible for debarment in terms of Rule 151 (iii) of the GFR.

42. In our considered opinion, the maximum period of debarment could be resorted to by the tendering authority in a situation where there are no mitigating factors. The mitigating factors which can be culled out from the facts and circumstances of the instant are that, on immediately coming to know of the fabrication of the document in question, the appellant took disciplinary action even before it received the SCN from the respondent no.1. The disciplinary action initiated against two of its employees culminated in their termination from service. It is also to be taken note of that the appellant apart from taking disciplinary action also instituted certain criminal proceedings against its two employees who were responsible for submitting the bid. The admission on the part of the appellant for furnishing the fabricated document along with the bid by two of its employees is also a relevant consideration which can be read as a mitigating factor as per the law laid down by the Hon'ble Supreme Court in ***Kulja Industries (supra),*** which observed that acceptance of responsibility by the contractor for the wrongdoing and recognition of the seriousness of the misconduct is also to be taken into consideration while taking a decision which results into blacklisting/debarment. It is also to be noticed that there is no allegation against the appellant that it did not cooperate with any proceedings instituted by respondent no.1 on coming to know that a fabricated document had been used by the appellant while furnishing its bid. The said factor ought to have been taken into consideration as a mitigating factor by the authority

concerned which passed the order of blacklisting/debarment dated 07.06.2024.

43. Another aspect which can be construed to be a mitigating factor in this case is that there is nothing on record which shows that there has been any pattern or prior history of wrongdoing on the part of the appellant, and that the wrongdoing is pervasive within the appellant or organisation. As held in ***Kulja Industries (supra),*** appropriate corrective action or remedial measures is also one of the considerations which ought to weigh as a mitigating factor while taking a decision for blacklisting/debarring a bidder. In this regard, the action taken by the appellant not only as a disciplinary measure against its employees but also the initiation of criminal proceedings, ought to have been, in our considered opinion, taken into account by the authority concerned while taking the decision of blacklisting/debarment.

44. Another aspect which needs our consideration is that in terms of the order of blacklisting/debarment which was challenged before the learned Single Judge, dated 07.06.2024, the order of debarment has to operate for a period of two years from the date of issuance of the said order, and the period of debarment would thus end on 06.06.2026, however, the fact that the appellant stood debarred from the date of passing of the first order of blacklisting/debarment, dated 07.12.2023 till 04.03.2024, when this Court set aside the said order of debarment while allowing the *W.P.(C) 16767/2023* has completely been ignored.

45. Thus, the period of three months which intervened between the date of passing of the earlier debarment order on 07.12.2023 and the date of the decision of *W.P.(C) 16767/2023*, i.e., 04.03.2024, which is three months, appears to have been disregarded. If we calculate the total period under which the appellant has remained under debarment from participation in any bid, as on today, it comes out to be approximately one year and eight months.

46. Learned Single Judge, however, has though discussed the judgment of Hon'ble Supreme Court in ***Kulja Industries (supra),*** however, it appears that the mitigating factors, as discussed above, escaped his attention and therefore, on this count the judgment of the learned Single Judge which is under appeal herein cannot be sustained in its totality; neither the order of blacklisting/debarment dated 07.06.2024, so far as the period of suspension is concerned, can be sustained.

47. Ordinarily, once it is found that the period of debarment as reflected from the decision of blacklisting/debarment is hit by the doctrine of proportionality, the matter ought to be remitted to the tendering authority for taking decision afresh, however, having regard to the fact that out of a period of two years, as per the order of blacklisting/debarment dated 07.06.2024, the appellant has remained under debarment for a period of one year and eight months, we do not find it appropriate to remit the matter to respondent no.1 – tendering authority.

48. For all the aforesaid reasons, the instant appeal is partly allowed and the order of the learned Single Judge dated 08.08.2025, so far as it upholds

the period of debarment of the appellant, is set aside. We, further, quash the order of blacklisting/debarment dated 07.06.2024 so far as it prescribes the period of debarment of two years from the date of issuance of the said order, which would end on 06.06.2026 and provide that in the facts and circumstances of the instant case, the period of debarment which the appellant has already undergone till date will suffice. Thus, we direct that the appellant will henceforth not be treated to be blacklisted/debarred for participation in any other bid if it is otherwise eligible.

49. The appeal along with pending application(s) stands disposed of in the aforesaid terms.

50. There will be no order as to costs.

(DEVENDRA KUMAR UPADHYAYA)
CHIEF JUSTICE

(TUSHAR RAO GEDELA)
JUDGE

DECEMBER 04, 2025/MJ