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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 2nd September, 2025

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CS(COMM) 588/2025 and I.A. 14377-14378/2025

CONSORTIUM OF PERMIAN PEAK OIL PRIVATE LIMITED
AND INTEGRATED INDUCTION POWER LTD.Plaintiffs
Through: Mr. Krishnan Venugopal, Sr.
Advocate with Mr. Uday N. Tiwary, Mr. Akshat
Tiwary, Mr. Labeen Faaeq and Mr. Aswin BP,
Advocates.

versus

OIL AND NATURAL GAS CORPORATION LIMITED
.....Defendant
Through: Mr. Chetan Sharma, ASG with Mr.
Akshay Amritanshu, Mr. Amit Gupta, Mr. Sarthak
Srivastava, Ms. Drishti Saraf, Mr. R.V. Prabhat,
Mr. Saurabh Tripathi, Mr. Vinay Yadav, Mr.
Shubham Sharma and Mr. Vikramaditya Singh,
Advocates.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT**JYOTI SINGH, J.****I.A. 14375/2025**

1. This judgment will decide the present application, limited to prayers (b) and (c), filed by the Plaintiffs under Order XXXIX Rules 1 and 2 read with Section 151 CPC, seeking *ad interim* injunction in their favour staying the operation and effect of orders dated 01.04.2025 issued by the Defendant,



provisionally suspending business dealings with the Plaintiffs for six months, pending inquiry for banning process as also stay of the operation of show cause notice dated 06.05.2025, calling upon the Plaintiffs to submit a reply within 15 days and/or seek personal hearing, failing which the inquiry proceedings will be concluded based on records/documents/information available with the Defendant/Oil and Natural Gas Corporation Limited (hereinafter referred to as the 'ONGC').

2. Case set up by the Plaintiffs is that ONGC issued Notice Inviting Offer (NIO) on 27.11.2023 for Production Enhancement Operations in Mature Fields for 13 Contract Areas for a period of 15 years. Two oil and gas fields for which offers were invited were Motera and SW Motwan. Mature fields are those areas that have been worked by ONGC and having crossed their peak production are on a declining trend. Under the NIO, ONGC gave the Baseline Production for oil and gas, which was based on ONGC's average annual production in the area in the last three years. Bidders were required to bid on their 'Monthly Incremental Production Profile' for the area, i.e. production over and above the Baseline Production.

3. It is averred in the plaint that Plaintiffs formed a Consortium with 51% and 49% shareholding and submitted e-bids for the Motera and SW Motwan areas on 18.04.2024 and 23.04.2024, respectively and furnished e-Bank Guarantees ('BGs') of Rs.20,00,000/- each with additional e-bid bonds of Rs.3,09,00,000/- and Rs.3,24,00,000/- towards Committed Work Programme, respectively. Consortium quoted the Annual (yearly) Incremental Production Profile against the column for Monthly Incremental Production Profile in their e-bids, which was later claimed to be an



inadvertent and *bona fide* error by the Plaintiffs.

4. It is averred that Plaintiffs determined the potential of the oil and gas production as per standard practices in the concerned sector for maximising the production capacity and various inputs/data were taken into account for computing the possible enhancement of oil and natural gas from these fields. After due diligence, Plaintiffs arrived at the proposed annual enhancement and submitted the bids. On 30.07.2024, at the stage of opening of the price bids of the bidders who had been shortlisted after opening of the techno-commercial bids, Plaintiffs realised that a *bona fide* mistake/inadvertent error had crept in the e-bids inasmuch as in place of 'monthly' incremental oil and gas profile values for 180 months, 'annual' estimated incremental oil and gas profile values had been entered for all year 1-15 and months 1-180 for both fields. The mistake or error occurred because the first column in the format given as part of tender documents was for Incremental Production Profile for 'Year 1' to 'Year 18' and the mistake came to light only when price bids were opened.

5. It is stated that the entry of yearly profile was an error and this is apparent from the fact that if the Baseline Oil Production provided by ONGC for SW Motwan area was 858 cubic metres for the first month, there was no reason for the Plaintiffs to quote 7300 cubic meters as Monthly Incremental Production Profile, which even otherwise was impossible to achieve. In fact the actual Monthly Incremental Production Profile, which Plaintiffs intended to quote was 608.33 cubic meters i.e. 7300 cubic meters divided by 12 months of the year. The mistake/error resulted in variation of approximately 850% from ONGC's Baseline Production.



6. It is averred that ONGC chose not to reply to the letter dated 02.08.2024 for a month, giving an impression that the issue was under consideration. On 29.08.2024, ONGC sought extension of validity of the bids upto 31.10.2024, which Plaintiffs gave vide letter dated 02.09.2024 under a belief that ONGC would consider the documents giving the Monthly Incremental Production Profile, submitted with the letter dated 02.08.2024, since the original offer was no longer in existence. Contrary to the expected course of action, ONGC issued Notice of Award ('NOA') to the Plaintiffs on 06.09.2024, basis the Yearly Incremental Production Profile, inadvertently quoted in the original e-bids. Repeated representations to the officials of ONGC, including those sent on 10.09.2024 and 18.09.2024, were of no avail.

7. It is stated that once the original bids were revoked and substituted with revised offer on 02.08.2024, with the only change being that the Yearly Incremental Production Profile was divided by 12 months of the year to arrive at the Monthly Incremental Production profile, ONGC erred in accepting the original bids and issuing the NOAs on 06.09.2024. Thus the NOAs do not constitute valid and/or legally binding contracts. After wrongly issuing the NOAs, ONGC started pressurising the Plaintiffs to furnish BGs towards performance securities and constrained by the illegal demand, Plaintiff No. 1 filed writ petition being Special Civil Application No. 15506/2024 before the Gujarat High Court for a direction to ONGC to consider the representations. By order dated 13.02.2025, writ petition was dismissed on the ground that the reliefs sought could not be granted in a writ petition under Article 226 of Constitution of India. On 19.02.2025, ONGC issued two notices to the Plaintiffs to submit Performance Bank Guarantees



(PBGs) in terms of NOAs dated 06.09.2024. On 24.02.2025, Plaintiffs challenged the order of the Gujarat High Court before the Supreme Court in SLP (C) No. 7294/2025, which was withdrawn on 24.03.2025 with liberty to approach the Civil Court. During the pendency of the SLP, ONGC issued two Notifications dated 07.03.2025, terminating the NOAs dated 06.09.2024 for Motera and SW Motwan areas and forfeiting the e-BGs, submitted by the Plaintiffs on 24.02.2025 for sum of Rs.3.29 crores and Rs.3.44 crores, respectively.

8. It is averred that on 01.04.2025, ONGC issued two separate orders provisionally suspending business dealings with the Plaintiffs for six months pending inquiry for banning process, owing to non-submission of BGs required as per the terms of the NOAs, followed by show cause notice on 06.05.2025, calling upon the Plaintiffs to respond within 15 days as to why ONGC should not impose a ban on the Plaintiffs for a minimum period of six months and a maximum period of two years. Plaintiffs thus filed the present suit on 14.05.2025 and subsequent thereto, submitted a preliminary reply to the show cause notice on 19.05.2025.

CONTENTIONS ON BEHALF OF THE PLAINTIFFS

9. At the outset, it was urged that at this stage Plaintiffs are confining their arguments in this application to stay of operation of provisional suspension orders and show cause notice, during the pendency of this suit inasmuch as the purpose of filing the suit, challenging the NOAs dated 06.09.2024 as also Notifications dated 07.03.2025 terminating the NOAs, will be defeated if Plaintiffs are blacklisted pursuant to the show cause notice and the harm and damage caused will be irreparable and irreversible.



10. Blacklisting is a serious affair and leads to civil death of an entity and thus this extreme step should be taken only in cases involving egregious fraud or moral turpitude and not in cases of genuine contractual disputes and/or breaches. Reliance was placed on the judgment of the Supreme Court in ***Blue Dreamz Advertising Pvt. Ltd. and Another v. Kolkata Municipal Corporation and Others*, 2024 SCC OnLine SC 1896**, wherein the Supreme Court held where the case is of an ordinary breach of contract and the explanation offered by the person concerned raises a *bonafide* dispute, penalty of blacklisting ought not be imposed. Debarring a person *albeit* for a certain number of years, tantamounts to civil death, as the person is commercially ostracized resulting in serious consequences for the person and those employed by him. Reliance was also placed on the judgment in ***Techno Prints v. Chhattisgarh Textbook Corporation and Another*, 2025 SCC OnLine SC 343**, where the Supreme Court was considering a challenge to the show cause notice calling upon the appellant to show cause why it should not be blacklisted for three years and it was held that if a contractor is to be visited with punitive measure of blacklisting on account of an allegation that he has committed breach of contract, nature of his conduct must be so deviant or aberrant so as to warrant such a punitive measure. It was observed that mere allegation of breach of contractual obligations without any thing more, *per se*, does not invite any punitive action.

11. The show cause notice dated 06.05.2025 issued by ONGC, calling upon the Plaintiffs to file response as to why order of banning or blacklisting be not passed is wholly illegal and cannot pass judicial scrutiny, when tested on the anvil of the decision in ***Blue Dreamz (supra)***. Notice is predicated on



the failure of the Plaintiffs to comply with clauses 5 of the NOAs, whereby Plaintiffs were to furnish BGs within 60 days. Assuming for the sake of argument that Plaintiffs failed to furnish the BGs and violated the terms of NOAs, at the highest, this was a breach of contractual terms and cannot be a ground for blacklisting. Significantly, there are no allegations of fraud or acts of moral turpitude against the Plaintiffs. It was emphasised that if the operation and effect of show cause notice is not stayed and ONGC decides to blacklist the Plaintiffs, there will be no restitution of the damage caused, even if the Plaintiffs finally succeed in the suit and the NOAs and their termination notifications are quashed.

12. The impugned provisional suspension orders, passed pending an inquiry for debarment/blacklisting, are untenable in law and do not satisfy the test of compliance with principles of natural justice. ONGC was obliged to grant hearing and/or issue show cause notice even before passing a provisional suspension order on the same footing as for a banning order, in light of the decision in *Defsys Solutions Private Limited v. Union of India*, 2023 SCC OnLine Del 5544 and the Guidelines dated 02.11.2021 issued by Ministry of Finance, with the only exception being where defence or national security of the country is involved. In the present case, provisional suspension orders have been issued without any show cause notice or opportunity of hearing and are in the teeth of the decisions of the Supreme Court in *Erusian Equipment & Chemicals Ltd. v. State of West Bengal and Another*, (1975) 1 SCC 70; *Gorkha Security Services v. Government (NCT of Delhi) and Others*, (2014) 9 SCC 105 and *Blue Dreamz (supra)*.



13. ONGC's contention that show cause notice cannot be interdicted at this pre-mature stage, is without merit, in light of the judgment in ***Techno Prints (supra)***, where show cause notice was set aside by the Supreme Court on the ground that once the competent authority had made up its mind to pass the final order, show cause was a mere formality and that if in a given case it is apparent that there is no good reason to issue the blacklisting notice, a contractor should not face banning proceedings and await the final order, which may perhaps go against him, leaving him with no option but to challenge the same before the jurisdictional High Court.

14. Even on merits, the impugned show cause notice and provisional suspension orders cannot be sustained. As the facts go, ONGC issued NIO on 27.11.2023 indicating in the tender documents the minimum Monthly Baseline Production of oil and gas for the areas involved, based on the average annual production in the previous three years. Under the 'Bidding Parameters', bidders were required to indicate Monthly Incremental Production Profile for the area during the contract period. Plaintiffs submitted the e-bids for Motera and SW Motwan areas on 18.04.2024 and 23.04.2024, respectively with e-BGs towards bid security and performance security. Plaintiffs determined the potential of oil and gas production as per standard practices in this sector for maximising production capacity of the two oil fields as also as per the different inputs/data of field study, geological set up etc. and after exercising due diligence, arrived at a proposed annual enhancement of oil and gas production and submitted the bids. Financial bids were opened on 30.07.2024 and it is only then that the Plaintiffs realised their *bona fide* mistake and inadvertent error that in place of Monthly Incremental Oil and Gas Profile values for 180 months, Annual



estimated profile had been entered for all years 1-15 and years 1-180 for both the fields. Realising the mistake, Plaintiffs acted with promptitude and wrote to ONGC on 02.08.2024 to re-consider the corrected monthly profile and re-evaluate the bids on that basis. Under a genuine belief that the revised bids were under consideration, Plaintiffs acceded to extension of validity of their bids, however, ONGC illegally accepted the original bids which were no longer in existence and awarded the contracts on 06.09.2024.

15. Plaintiffs had revised the offer on 02.08.2024 and the original bids were no longer in existence on 06.09.2024, when NOAs were issued. Section 5 of the Indian Contract Act, 1872 ('Contract Act') provides that a proposal may be revoked at any time before communication of its acceptance is complete, as against the proposer and in the instant case, once the original bids were withdrawn before acceptance, NOAs based on original offer cannot be construed as legally binding and concluded contracts. The Supreme Court in *New India Assurance Company Limited v. Raghuvir Singh Narang and Another*, (2010) 5 SCC 335, held that the principles of contract law relating to offer and acceptance enable the person making the offer to withdraw the offer anytime before its acceptance and that any subsequent acceptance of the offer by the offeree, after such withdrawal, will not result in a binding contract. For the same proposition, reliance was placed on judgements of this Court in *M/s. Suraj Besan and Rice Mills v. Food Corporation of India*, 1987 SCC OnLine Del 389 and *Delhi Development Authority v. Bhasin Associates*, 1999 SCC OnLine Del 331. Reference was also made to the decision in *Oil and Natural Gas Commission v. Balaram Cements Ltd. and another*, 2001



SCC OnLine Guj 53, wherein the Gujarat High Court held that since the Plaintiffs had revised their earlier offer, it could not be said that a binding contract had been concluded on acceptance of the original offer by Defendant No.1.

CONTENTIONS ON BEHALF OF ONGC

16. Plaintiffs are not entitled to grant of interim injunction against the provisional suspension orders as also the show cause notice for blacklisting, both owing to their conduct and on merits. Plaintiff No.1 is guilty of concealment of the fact that it has been blacklisted in the past, which reflects a consistent conduct of committing malpractices in tender processes and jeopardising public interest. Plaintiff No. 1 was earlier awarded contracts for the same areas i.e Contract Area-3 (Motera) and Contract Area-5 (SW Motwan) under PEC Tender No. ZNSMC21004, wherein it furnished forged BGs in the sum of Rs.4.27 crores and Rs.3.72 crores, respectively. ONGC had invoked the EMD/Bid Bond amounting to Rs.40 lacs and imposed a ban suspending business dealings with Plaintiff No. 1 for two years from 08.06.2023 to 07.06.2025, *albeit* the period was later reduced to six months and the ban ended on 07.12.2023.

17. Without prejudice, the chronology of dates and events would demonstrate that plea of the Plaintiffs that Yearly Incremental Production Profiles were given by mistake in the bid documents, is false and an afterthought. This is only an attempt to escape the rigours of penalties under the NIO, NOAs and blacklisting policy of ONGC. Pursuant to NIO issued by ONGC on 27.11.2023, Plaintiffs gave their commercial bids on 15.04.2024 and 23.04.2024 for the two fields i.e Motera and SW Motwan, accompanied by undertaking in Annexure-1(M), certifying that the



information furnished was true and correct and if it was found otherwise the bids were liable for rejection. As per Clause 3(i) of NIO, bidders were required to submit offers against four biddable parameters and clearly one of them, relevant for this suit, was the '*monthly Incremental Production profile for the Contract Areas for the Contract Period i.e 15 years or 180 months (to be quoted separately for oil and gas in format as per Annexure-1(Z-3)*'. However, Plaintiffs submitted their Yearly Incremental Production Profile in the prescribed format along with unconditional and irrevocable e-BGs [Annexure-1(Y-1)].

18. A pre-bid conference was held on 12.01.2024, in terms of Clause 11 of NIO, for addressing queries/clarifications of the bidders as also looking into suggested changes in the bidding terms. In the pre-bid Conference, Plaintiffs requested for changing the requirement of providing the Monthly Incremental Production Profile to Yearly Incremental Production Profile, but through an official response, ONGC rejected the request and intimated that provisions of NIO/MPEC shall prevail. Thus at this stage, Plaintiffs were well aware that they were to furnish monthly profile and not yearly. Moreover, as per Clause 11(i) of NIO, all appendices and documents were to be digitally signed by the authorized signatory of the bidder, prior to uploading and thus the Plaintiffs had clear knowledge of the information/documents that were being uploaded.

19. The Techno-Commercial bids were opened on 08.05.2024 and till this date, Plaintiffs could have amended/modified their bids but they chose not to do so. Post-bid Conferences were held on 13.06.2024 and 14.06.2024, but even till this stage there was not a whisper that there was a mistake in the bids. It was only after the price bids were opened on 30.07.2024 and



financial quotes of the shortlisted bidders were disclosed wherein Plaintiffs emerged as the highest bidder, that they *malafidely* wrote to ONGC on 02.08.2024 claiming that major typographical error had occurred in the submitted incremental oil and gas production profile for both the fields and the corrected monthly profiles be considered for evaluation of the bids. This post-bid attempt to modify the commercial bid was in violation of Clause 13(xii) of NIO and an attempt to wriggle out of the contracts by re-characterizing the bids. Clause 13(xii) provided that the bid shall remain valid till 120 days from the date of submission and shall not be withdrawn on or after the opening of the bids till the expiry of validity period or any extension agreed thereof. Bidders were required to furnish an undertaking that they will not vary/modify the bids during the validity period.

20. In *W.B. State Electricity Board v. Patel Engineering Co. Ltd. and Others, (2001) 2 SCC 451*, the Supreme Court held that permitting any post-bid change in essential terms, unless contemplated by tender conditions, defeats transparency and introduces arbitrariness. In *Meerut Development Authority v. Association of Management Studies and Another, (2009) 6 SCC 171*, the Supreme Court held that bidders have no vested right to seek post-submission negotiations or alterations and must abide by the submitted terms. These principles were restated by the Division Bench of this Court in *Gandharva Infrastructure and Projects Ltd. through Director Santosh Kumar Bagla v. Union of India, through Secretary and Others, 2023 SCC OnLine Del 5788*, holding that the once a bid had been submitted pursuant to a tender, sanctity of the offer made by the tenderer has to be respected.



21. Significantly, by e-mail dated 29.08.2024, ONGC sought extension of the bids' validity upto 31.10.2024, which the Plaintiffs readily consented to without referring to any alleged error and without any condition or reservation. During the extended validity period of the bids, ONGC issued the NOAs on 06.09.2024 and awarding the contracts to the Plaintiffs. Since the contracts were awarded, Plaintiffs were required to furnish BGs within 60 days, as per Clause 5 thereof, failing which ONGC had the right to cancel the NOAs and encash the relevant securities. Multiple reminders were sent to the Plaintiffs for furnishing the BGs but no steps were taken to do so and instead Plaintiffs approached the Gujarat High Court for a direction to ONGC to consider the corrected Monthly Incremental Production profile and issue revised NOAs as also extend the bid validity period. Plaintiffs also sought an order restraining ONGC from invoking and encashing the Bid Bonds and BGs. ONGC filed a detailed reply opposing the writ petition and vide order dated 13.02.2025, the writ petition was dismissed on the ground that it is not for a Court to direct changes in the bid conditions. Challenge before the Supreme Court remained unsuccessful, save and except, that Plaintiffs were granted liberty to approach the Civil Court, as sought. Plaintiffs are re-agitating the same issues in the present suit in the garb of taking recourse to civil remedies, which is impermissible in law.

22. Admittedly, Plaintiffs did not furnish the BGs as required under the terms and conditions of tender documents and Clauses 5 and 6 of NOAs dated 06.09.2024 and thus the Competent Authority of ONGC decided to initiate an inquiry, in consonance with "*Policy for banning/provisional suspension of Business dealings with errant Firms*" issued by ONGC and



pending the inquiry, decided to place the firm under provisional suspension for six months. Show cause notice was issued on 06.05.2025, calling upon the Plaintiffs to file their reply within 15 days as also seek personal hearing, so that the inquiry could be conducted to give opportunity to the Plaintiffs to explain their case. Clause 9(iv) of NIO authorizes ONGC to place a bidder or a contractor on 'holiday' for two years for failure to comply with conditions of NIO or NOAs, so that he does not bid against future tenders or the ongoing tenders by ONGC. These conditions of the NIO were known to all bidders including the Plaintiffs.

23. Interim measure of issuing provisional suspension order, pending a full-fledged inquiry, does not require to be preceded by a show cause notice or opportunity of hearing. As for blacklisting, show cause notice has been issued, to which reply has been filed by the Plaintiffs and decision will be taken after giving opportunity of hearing. The Division Bench of the Bombay High Court has held in *Paras V. Mehta Indian Inhabitant v. Mumbai Municipal Corporation, through the Municipal Commissioner Head Office, Mumbai and Others, 2013 SCC OnLine Bom 1118*, that provisional suspension being a holding operation pending inquiry is valid even without a detailed pre-decisional hearing as the action is taken in administrative interest to preserve the integrity of the operations.

24. The decision to suspend the firm provisionally was necessary to prevent the Plaintiffs from bidding in future and/or ongoing contracts looking at the past and present conduct which reflects that Plaintiffs are habitual in obstructing culmination of tender processes and managed to stall the present tender by revising the bids after the process reached the stage of opening the financial bids. Their conduct is detrimental to the interest of



ONGC as also larger public interest looking at the time, money and resources involved in the tendering processes of this magnitude. In any event, Courts do not ordinarily interfere at the stage of show cause notice and interdict a process and thus ONGC should be permitted to complete the process and take the notice to its logical conclusion. Once the decision is taken by the Competent Authority, after hearing the Plaintiffs, the same will be open to challenge in the Court of law.

25. Even otherwise, the provisional suspension orders and show cause notice are not challenged in the suit and it is only through this interlocutory application that Plaintiffs seek stay of their operation and effect. Challenge in the suit is to the NOAs dated 06.09.2024 and Notifications dated 07.03.2025, terminating the NOAs, in addition to the relief of refund of the amounts under the BGs and Bid Bonds, with interest. It is trite that an interim relief can only be granted in aid of the final relief and not in isolation. In *State of Orissa v. Madan Gopal Rungta, 1951 SCC OnLine SC 63*, the Supreme Court held that Court has no power to grant an interim injunction, if no substantive relief is claimed on that aspect in the suit.

26. There is no merit in the argument of the Plaintiffs that after submission of corrected incremental production profile vide letter dated 02.08.2024, the original bids were no longer in existence and thus it was not open to ONGC to accept the original bids and issue the NOAs in terms thereof. Reliance on Section 5 of the Contract Act to argue that the NOAs were not concluded and binding contracts and consequently non-furnishing of BGs could not lead to suspension and inquiry for purported blacklisting, is also misconceived in the facts of this case. Clause 13(xii) of NIO clearly



prohibited withdrawal/variation of bids during bid validity period, after the bids were opened, thus reliance on Section 5 of the Contract Act is of no consequence. Bid conditions were binding on the bidders and their sanctity cannot be undermined. The attempt to wriggle out from the tender after opening of the bids is against the observations of the Division Bench of this Court in ***Gandharva Infrastructure (supra)*** as well as of the Supreme Court in ***State of Haryana and Others v. Malik Traders, (2011) 13 SCC 200***.

27. Terms of NOAs required the Plaintiffs to furnish BGs within 60 days, which they failed to do, despite repeated written reminders leading to termination of NOAs on 07.03.2025 and invocation of bid securities including EMDs of Rs.3.29 crores and Rs.3.44 crores. This action was taken strictly in accordance with the terms of NOAs. Legality of such forfeitures is reinforced by Supreme Court in ***National Highways Authority of India v. Ganga Enterprises and Another, (2003) 7 SCC 410***, holding that enforcement of bid security is valid, if a party fails to enter into contract despite its selection. In ***Patel Engineering (supra)***, the Supreme Court has emphasised that it is essential to maintain the sanctity and integrity of tender processes in larger public interest.

CONTENTIONS IN REJOINDER

28. NOAs cannot be construed as concluded and binding contracts between the parties by accepting original bids, which ceased to exist once revised bids were submitted by the Plaintiffs and thus no liability can be fastened on the Plaintiffs for breach of terms of these NOAs, much less the penalty of blacklisting. The Supreme Court has time and again reiterated that blacklisting should be an extreme penalty as it amounts to civil death of



an entity. Plaintiffs have been suffering grave and irretrievable injury on account of provisional suspension of business from 01.04.2025 as they have been unable to participate in a number of tenders floated by the Government Authorities, a list of which is annexed with the rejoinder. If the operation of the show cause notice is not stayed and a blacklisting/banning order is passed for two years, there will be no restitution, even if the Plaintiffs ultimately succeed in the suit and all opportunities will be lost causing financial death. This Court in ***Oasis Projects Ltd. v. National Highway and Infrastructure Development Corporation Ltd., 2024 SCC OnLine Del 9430*** has highlighted irretrievable nature of an order blacklisting/banning and this position is also reinforced by Madras High Court in ***Universal Engineers Chennai Private Limited, Represented by its Authorised Signatory Ms. V. Hamsa v. Union of India, Represented by Secretary to Government and Another, 2024 SCC OnLine Mad 7211***.

29. ONGC has laid great stress on Clause 13(xii) of NIO, which according to the said Defendant prohibits the bidder from withdrawing its bid during the validity period such that Section 5 of the Contract Act will be inapplicable. This contention is wholly misplaced because ONGC cannot, by executive instructions/tender conditions, take away the legal right of the Plaintiffs to withdraw the offer before communication of its acceptance, accruing under the Contract Act and/or arising from judicial orders.

30. ONGC's reliance on the decision in ***Gandharva (supra)*** is misplaced since in that case tenderer had sought to withdraw the offer after the bid was accepted by the Government and in this backdrop, it was held by this Court that 100% EMD was rightly forfeited, unlike the present case where the offer was withdrawn before acceptance and there is no concluded contract.



The argument that no hearing was required before passing the provisional suspension orders is misconceived since provisional suspension has the same effect/consequence as a regular blacklisting order and principles of natural justice are equally applicable as held in *Defsys Solutions Private Limited (supra)*.

31. Judgment of the Bombay High Court in *Paras V. Mehta Indian Inhabitant (supra)* is inapplicable on facts. In that case, show cause notice was issued to the tenderer on 01.12.2012 and response was submitted on 06.12.2012, whereafter on 14.02.2013 debarment order was passed. Moreover, the case concerned fraudulent withdrawal of bills by the contractor by submitting forged bills and moreover, this judgment was passed prior to the Ministry of Finance Guidelines dated 02.11.2021. Reliance of ONGC on an earlier blacklisting order is nothing but an argument of prejudice and cannot offer a justification for the impugned provisional suspension orders/show cause in the present case, which have to be tested on their own merits. Further, Plaintiff No. 2 has not been banned by ONGC in the past and insofar as Plaintiff No. 1 is concerned, it is currently operating Halisa Gujarat oilfields of ONGC and no steps have been taken to terminate the contract.

32. There is no merit in the argument of ONGC that Plaintiffs seek interim relief which is outside the scope of substantive relief in the suit. In the suit, challenge is laid to the NOAs and suspension/blacklisting is a consequence thereof. Plaintiffs have raised a specific grievance regarding banning of business in paragraphs 30 and 31 of the plaint and sought a broader relief for declaring the NOAs and consequential actions as bad in law, in prayer (b) thereof. Blacklisting is a consequence of termination



which is clear from Clause 1.1(I)(e) of ONGC's banning policy and interim relief is thus in aid of and ancillary to the main relief. [*Ref. Hindalco Industries Ltd. v. Union of India and Others, (1994) 2 SCC 594 and Nabha Investment Pvt Ltd. v. Harmishan Dass Lukhmi Dass, 1995 SCC OnLine Del 239*].

ANALYSIS AND FINDINGS

33. At the outset, it needs to be captured that in the suit *inter alia* the substantive relief claimed by the Plaintiffs is for passing a decree declaring and setting aside the NOAs dated 06.09.2024 as also Notifications dated 07.03.2025, whereby the NOAs have been terminated and EMDs have been forfeited, in respect of both the fields. By this interlocutory application, Plaintiffs seek several reliefs but the arguments were confined to seeking *ad interim* injunction in their favour staying the effect and operation of suspension orders dated 01.04.2025 as also show cause notice dated 06.05.2025, to show cause why Plaintiffs be not blacklisted.

34. Broadly, the facts that emerge are that NIO was issued by ONGC on 27.11.2023 for Production Enhancement Operations in Mature Fields with an intent to enhance the production from mature fields by infusion of technology. ONGC invited interested companies to bid to undertake operations to enhance the production of 13 On-shore Contract Areas comprising 46 producing oil and gas fields with O+OEG in place of volume of about 209 MMTOE. Eligible companies could bid either alone or as a consortium or as joint ventures for one or more Contract Areas. The areas which are subject matter of the present suit are Motera and SW Motwan.

35. Some of the important terms and conditions of NIO which will be relevant for deciding this application are as follows:-



3. Biddable Terms

(i) Companies would be required to Bid for:

No.	Parameter
1	Monthly Incremental Production profile for the Contract Area during Contract Period i.e. 15 years or 180 months <i>(to be quoted separately for oil and gas in format as per Annexure 1(Z))</i>
2	The percentage share of the "Revenue" realised from the sale of Incremental Production of hydrocarbon (i.e. crude oil and natural gas) that the contractor would share with ONGC <i>subject to the minimum revenue share for ONGC (to be quoted in format as per Annexure 1(AA-2))</i>
3	Number of Development wells to be drilled or completed in the Contract Area by end of third Contract Year <i>(to be quoted contract year-wise in format as per Annexure 1(AA))</i>
4	Number of workover jobs to be completed by end of third Contract Year <i>(to be quoted contract year-wise in format as per Annexure 1(AA))</i>

Annexure 1(AA) shall be quoted as part of Technical Proposal. Annexure 1(AA-2) and Annexure 1(Z) shall be quoted as part of Commercial Proposal.

- (ii) The Incremental Production profile to be quoted shall be the production in excess of the baseline production mentioned in this Bid Document for various Contract Areas (refer to the **Annexure 2(A)** for the Baseline Production). The baseline production indicated shall be readjusted at the time of handover of Contract Area to the Contractor by applying third-party vetted decline rates on average production of crude oil and natural gas from the Contract Area for 180 days preceding the Effective Date. The Baseline Production so adjusted at the time of handover shall be binding on the Bidders and the quoted Incremental Production profile shall remain unchanged and binding on the Bidders.
- (iii) The Revenue for the purpose of computing the fee for the successful Bidder (or Contractor) shall be all amounts that will be realized from the sale of Net Incremental Production, net of taxes on sales, on account of or in relation to the Petroleum produced and saved from the Contract Area, during a Month after the Effective Date; Less Royalty for that Month, and all other statutory levies including GST payable on such levies.
- (iv) The percentage revenue share quoted for Incremental Production shall be non-zero positive whole numbers equal to or higher than the minimum revenue



share for ONGC mentioned at 3. (vi) of the Bid document. Bids not fulfilling this requirement will not be accepted for the purpose of evaluation.

- v) The Contractor shall be eligible for compensation for maintaining Baseline Production (for Oil and/ or Gas, as the case may be) during a particular Month after the Effective Date only if the total production in a particular month is equal to or higher than 80% of the Baseline Production for the respective month subject to provisions of MPEC. Baseline compensation shall be paid to the Contractor as per the slabs indicated below subject to provisions of MPEC.

% Baseline production achieved for particular month	% of contractor's fixed fee payable in lieu of maintaining baseline production.
<80%	Nil
>=80% and <90%	90%
>=90%	100%

- (vi) Contract Area wise, Contractor's fixed fee for maintaining baseline production and minimum revenue share for ONGC from the sale of Net Incremental Production shall be as per below table:

Contract Area	Asset	Contractor's fixed fee for maintaining baseline production		Minimum revenue share for ONGC from the sale of Net Incremental production (%)
		For Crude Oil (USD/bbl)	For Natural Gas (USD/MMBtu)	
ONGC/PEC/2023 /CA-2/NANDEJ	Ahmedabad	5.5	1.0	20%
ONGC/PEC/2023 /CA-3/MOTERA	Ahmedabad	5.5	1.0	20%
ONGC/PEC/2023 /CA-5/SW MOTWAN	Ankleshwar	7.5	1.0	20%
ONGC/PEC/2023 /CA-6/DEMULGAON	Assam	10.0	1.0	20%
ONGC/PEC/2023 /CA-	Assam	10.0	1.0	20%



Contract Area	Asset	Contractor's fixed fee for maintaining baseline production		Minimum revenue share for ONGC from the sale of Net Incremental production (%)
		For Crude Oil (USD/bbl)	For Natural Gas (USD/MMBtu)	
7/CHANMAIGAO N				
ONGC/PEC/2023 /CA-9/NANNILAM	Cauvery	5.5	0.6	20%
ONGC/PEC/2023 /CA-10/KOVILKALAPAL	Cauvery	5.5	0.6	20%
ONGC/PEC/2023 /CA-11/PBS-1	Cauvery	5.5	0.6	20%
ONGC/PEC/2023 /CA-13/ADAMTILA	Silchar	10.0	1.0	20%
ONGC/PEC/2023 /CA-14/NAMBAR	Jorhat	10.0	1.0	20%
ONGC/PEC/2023 /CA-15/MANSA	Mehsana	5.5	1.0	20%
ONGC/PEC/2023 /CA-16/PONAMANDA	Rajahmundry	5.5	0.6	20%
ONGC/PEC/2023 /CA-18/	Tripura	5.5	0.3	20%

4. Bid Qualification Criteria

- (i) Company(ies) may Bid individually or in association with other companies through a Consortium or Joint Venture (JV) where each member company hold atleast 26% shareholding in the Consortium or Joint Venture as applicable. In case of Consortium Bid, leader of the Consortium shall submit the Bid on behalf of Consortium. The members of Consortium shall decide the Leader of Consortium.



8. Scope of Work

(i) ONGC wishes to further develop these hydrocarbon reserves from the Contract Areas in a way that improves current production and ultimate recovery of hydrocarbons by application of safe and efficient operating practices and suitable techniques and technologies. Once the Bidder is declared the successful Bidder and the Contract is executed, the Bidder shall be referred to as the Contractor. Including but not limited to the following, the scope of work for the Production Enhancement Operations shall be:

- Improve the production and ultimate recovery of hydrocarbons by application of safe and effective operating practices, appropriate techniques and technologies;
- The rehabilitation, reactivation and enhancement of the fields, generally in accordance with the relevant development plan as may be amended from time to time;
- Use all efforts to achieve the uninterrupted delivery of the baseline production to ONGC;
- The delivery of the Incremental Production to ONGC as committed by the Contractor;
- Observe all fiduciary duties during the transportation and handling of production from the fields to the applicable delivery points;
- The delivery of production to ONGC at the delivery points
- The delivery of all the reports requested by ONGC and the authorities.
- The Contractor will arrange for funds and resources and apply its operating experience and the appropriate advanced technologies



- The Contractor will further develop / redevelop the fields subject to the law, subject to the terms and conditions of the production enhancement contract and in line with GIPIP
- The nature of the requested activities including, but not limited to the following shall be: project management, process management, allocation of resources, outsourcing, procurement, engineering, pre-commissioning, commissioning, testing, training and operating in relation to the contract scope of work
- The Contractor has to carry out all activities at the Contractor's sole expense. All costs incurred in the activities will be funded directly by the Contractor and shall be recoverable by the Contractor only from and to the extent of the fee.
- Contractor shall obtain and maintain in force throughout the entire operation period all required approval, permits, etc.
- Contractor shall carryout re-assessment of resources & reserves for the field and carry out additional assessment including seismic, logging, exploratory drilling and establishment of additional discovery / up gradation of reserves etc. within the defined field area
- Contractor to carry out all necessary drilling both exploratory and development either for upgradation of reserves or development of field including procurement, provisioning, fabrication, constructions, installation of all necessary facilities and systems including well drilling and completion materials and equipment both down hole and surface equipment (X-mass tree, well heads, flow arm etc.), facilities, pipelines and their hook-up with surface facilities for gathering & transportation
- Integrated Asset development for production enhancement for improvement in recovery factor of the field.
- Reservoir health management in line with GIPIP (Good International Petroleum Industry Practices) including water injection and other IOR/EOR techniques.
- Surface facility improvement / Induction of new facilities: Design and engineering, purchase, acquisition, lease/hire, installation, commissioning of all facilities & equipment, pipeline & flow lines, storages, custody transfers, building, infrastructure, site preparation, transport, communication etc. necessary for operation of field.
- Carry out operation including production, processing, treatment, safe disposal of all kinds of effluents/vents, reservoir surveillance and management, artificial lift, stimulation, logging, zone transfer, water and gas shutoff, sand control or any other techniques & tools etc. which is required for efficient and optimum exploitation of reservoir / well / fields.
- Statutory clearance of identified locations for drilling/work over including land acquisition and site preparation for drilling/ work over.



- Application of practices of Health Safety and Environment as per ONGC policy.
- Production management through asset management services and governance structure as per MPEC.
- Any other activity for reservoir health and production improvement / enhancement.
- Contractor to do all activities for identified field in a manner so as to increase production and recovery from the field by adopting best practices for reservoir management, induction and implementation of new technologies including EOR/ IOR schemes.
- Obtaining / acquiring / provisioning of all necessary utilities, power, fuel, water, chemicals and other inputs as may be necessary for exploration, drilling and efficient, optimum, regular operation, production, transport and transfer of produced hydrocarbon to the custody of ONGC / consumer.
- Acquisition and obtaining of necessary consents, approval, licenses, registrations, land, lease, permissions etc. from all concerned agencies, statutory bodies and ONGC, that may be necessary for completion of assessment and further development, production and operation of fields covered under the contract. ONGC's authorized personnel will be signatory to all these requirements as per statutory provisions.
- Management, monitoring, maintenance of all data & records, documentations, reporting, reviewing, management and communication with concerned agencies, Asset/Basin Manager and contract coordinator of ONGC.
- Well maintenance and intervention activities for maintaining the health of every individual well of the field.
- Maintenance and observation of statutory & safety requirements of central/state/regulatory authorities for operation in the field.
- The maintenance, repairs and replacement of existing fixed infrastructure like pipelines, installations, well sites, approach road to well sites etc. (which shall be used by the Contractor on 'as is where is' basis) the maintenance, repairs and replacement will be carried out by the Contractor at its cost.
- Transportation of produced crude oil and gas to the receiving stations, through laying pipelines or other means like tanker transportation.
- Evacuation of oil and gas from wells/ drilled/ monetized through pipelines or other means.
- Recruitment / hiring / provisioning of all necessary qualified and experienced, skilled / semi-skilled manpower in different required functional areas and expertise necessary for operation, maintenance and management of contract provisions while adhering to all existing rules & regulations on the subject is to be done by Contractor.



9. Notification of Award and Mobilization Activities

- (i) ONGC shall issue a Notification of Award (NOA) to the successful Bidder and the contractor would undertake the following mobilization activities within the indicated timelines as follows:

Activity/ Conditions	Timeline from NOA Date
Nominate Contractor's Representative in accordance with the Article 4 of Production Enhancement Contract	15 Days
Nomination of the members of Joint Monitoring Committee and Management Committee by both Owner and Contractor	30 Days
Furnishing Contract Performance e-Bank Guarantee and CWP Performance e-Bank Guarantee in accordance with the Article 14 of Production Enhancement Contract	60 Days
Mutual agreement between the Parties on the methodology of Measurement of Petroleum in accordance with the Article 8 of Production Enhancement Contract (Indicative measurement methodology has been provided with tender documents).	90 Days
Signing of Contract	90 Days
Submission of Field Development Plan to the Joint Monitoring Committee, by the Parties in accordance with the Article 6 of Production Enhancement Contract	150 Days
Submit a Mobilisation and Handover Plan to the Joint Monitoring Committee	180 days
Completion of Mobilisation and Handover of the Contract Area to the Contractor (subject to fulfilment of the above-mentioned conditions within the specified timelines)	210 days

Note: Fields would be handed over only after submission of Contract Performance e-Bank Guarantee and CWP Performance e-Bank Guarantee by the Contractor.

- (ii) In an event the successful Bidder (or Contractor) fails to fulfil the above specified conditions/ activities, the e-Bid Bond or the Performance e-Bank Guarantee, whichever applicable, shall be forfeited.
- (iii) The Bidder shall also provide details of updated on-going process of blacklisting or where they have been blacklisted in the past two (2) years under any contract



with Authority / Government / any other Company / Firm / any organization, if so. In case the Bidder is found to be blacklisted or in the process of getting blacklisted by any Authority / Government / any other Company / Firm / any organization in the past two (2) years, ONGC shall reserve the right to restrict such Bidder from Bidding in this tender or any of the tenders for the next two (2) years.

- (iv) The e-Bid Bond or Contract Performance e-Bank Guarantee or e-CWP Performance e-Bank Guarantee, if considered to be inadequate, or is not in compliance with the terms of the conditions specified in this NIO or the Contract, ONGC shall upon notifying such Contractor, in writing stating the adequate reason shall have the right to put the successful Bidder (or the Contractor) on a holiday i.e. that particular contractor shall not have the right to Bid against any future tenders for a period of two (2) years from the date of notification from ONGC and shall not have the right to Bid for any ongoing Bids where the contract is between ONGC and that particular contractor. Against any type of Bid, ONGC shall not be entitled to provide any tender enquiry to such a Bidder.

11. Bid Submission Date and Pre-Bid Conference

- (i) Bid along with all appendices and copies of documents (except copies of the documents required in physical form) should invariably be submitted in the 'document area in C-folder' through ONGC's e-Bidding portal <https://etender.ongc.co.in>, before the scheduled date and time for the tender closing. All the documents uploaded shall be digitally signed by the authorized signatory of the Bidder. Each file should be digitally signed and then uploaded. The file(s) should not be zipped in a folder and then digitally signed.
- (ii) The Techno-Commercial Bid shall contain all details without indicating prices of the quoted items. The Commercial Bid shall contain only the prices duly filled in the price format of ONGC's e-procurement tender. The Commercial Bids submitted in physical form shall not be given any cognizance.
- (iii) Bids shall be submitted online through e-Bidding portal (etender.ongc.co.in) **not later than 15:00 hrs. IST on 16.02.2024**. All documents as mentioned at the e-Bidding portal that require mandatory physical submission are to be submitted in duplicate in sealed envelopes super-scribed 'Confidential Bid documents - Production Enhancement Operations for Contract Area _____' **not later than [15:00hrs] IST, 16.02.2024** (the Bid closing date) at ONGC Vasant Kunj Office mentioned above. Non receipt of physical submissions shall lead to rejection of Bids.
- (iv) The duly completed Bid with no system error message can be 'submitted' in ONGC e-Bidding portal any time before the submission deadline is reached. The Bidder shall also be permitted to make changes in his Bid and re-submit the same in ONGC e-procurement portal till the submission deadline. The final submitted version of Bid only shall be considered by ONGC.
- (v) No Bid can be submitted after the submission deadline is reached. The system time that will be displayed on e-procurement web page shall decide the submission deadline.
- (vi) The Bidder needs to submit the original copies of Memorandum of Understanding/ Joint Venture, in case if the Bid is submitted by a Consortium, along with the Bid.
- (vii) The Bidder can Bid for one or more Contract Areas.



- (viii) Any change in the indicated schedule shall be communicated subsequently
- (ix) Pre-Bid conference will be held on **12.01.2024** at 11:00 Hrs. (IST) at ONGC, Vasant Kunj, New Delhi-110070 for the purpose of clarification of points on technical and commercial matters related to these Documents. The interested parties would have to submit their pre-Bid queries in the designated folder of ONGC e-procurement website latest by **03.01.2024**. Only those parties who submit pre Bid queries within this date along with the necessary undertaking as per the Bid Document would be allowed to participate in the pre Bid conference.

The Bidder meeting following requirement shall only be considered for attending the pre-Bid conference.

- a. To participate in Pre-Bid conference, an undertaking in the prescribed format as per Appendix-PBC shall be submitted by the Bidder along with Pre-Bid queries within prescribed date. Failing which the Bidder shall not be allowed to attend pre-Bid conference.
- b. The Bidder should depute their employees (preferably) who are competent to present their queries in the Pre-Bid Conference.
- c. Only those Bidders who have submitted queries within prescribed date shall be allowed to attend PBC.
- d. While submitting Pre Bid queries, Bidder(s) shall be required to provide details (Name, Designation, mobile no. etc.) of its representative, who will attend PBC and those person(s) only will be permitted to attend the pre-Bid conference.

The maximum number of persons that would be permitted per Bidder for participation in pre-Bid conference is THREE.

- (x) Any modification to the Bidding Document which may become necessary as a result of the pre-Bid meeting, shall be made by the Company exclusively through the issuance of addendum(s) to the Bidding Documents.
- (xi) Non-attendance at the pre-Bid conference shall not be a cause for disqualification of a Bidder.
- (xii) **Post Bid conference:**
In order to avoid delay in processing of tenders ONGC shall hold post Bid conference with the interest Bidder.

For holding Post Bid conference following process shall be followed:



Govt, of India in this regard are available at website <https://doe.gov.in/procurement-policy-divisions>)

- 1) Any Bidder from a country which shares a land border with India will be eligible to Bid in this tender only if the Bidder is registered with the Competent Authority.

[Competent Authority for the purpose of registration shall be the Registration Committee constituted by the Department for Promotion of Industry and Internal Trade (DPIIT), as mentioned under Annex I of the Order (Public Procurement No.1) dated 23.07.2020]

- 2) "Bidder" (including the term 'tenderer', 'consultant' or 'service provider' in certain contexts) means any person or firm or company, including any member of a Consortium or joint venture (that is an association of several persons, or firms or companies), every artificial juridical person not falling in any of the descriptions of Bidder stated hereinbefore, including any agency, branch or office controlled by such person, participating in a procurement process.
- 3) "*Bidder from a country which-shares a land border with India*" for the purpose of this Order means; -
 - a. An entity incorporated, established or registered in such a country; or
 - b. A subsidiary of an entity incorporated, established or registered in such a country; or
 - c. An entity substantially controlled through entities incorporated, established or registered in such a country; or
 - d. An entity whose beneficial owner is situated in such a country; or
 - e. An Indian (or other) agent of such an entity; or
 - f. A natural person who is a citizen of such a country; or
 - g. A Consortium or Joint Venture where any member of the Consortium or Joint Venture falls under any of the above.
- 4) The beneficial owner for the purpose of (3) above will be as under:
 - (i) In case of a company or Limited Liability Partnership, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person (s), has a controlling ownership interest or who exercises control through other means.

Explanation-

- a. "Controlling ownership interest" means ownership of or entitlement to, more than twenty-five per cent, of shares or capital or profits of the company;
- b. "Control" shall include the right to appoint majority of the directors or to control the management or policy decisions including by virtue of their



shareholding or management rights or shareholders agreements or voting agreements;

- (ii) In case of a partnership firm, the beneficial owner is the natural person(s) who, whether acting alone or together, or through one or more juridical person, has ownership of entitlement to more than fifteen percent of capital or profits of the partnership;
- (iii) In case of an unincorporated association or body of individuals, the beneficial owner is the natural person(s), who, whether acting alone or together, or through one or more juridical person, has ownership of or entitlement to more than fifteen percent of the property or capital or profits of such association or body of individuals;
- (iv) Where no natural person is identified under (i) or (ii) or (iii) above, the beneficial owner is the relevant natural person who holds the position of senior managing official;
- (v) In case of a trust, the identification of beneficial owner(s) shall include identification of the author of the trust, the trustee, the beneficiaries with fifteen percent or more interest in the trust and any other natural person exercising ultimate effective control over the trust through a chain of control or ownership.

- 5) An Agent is a person employed to do any act for another, or to represent another in dealings with third person.

6) **CERTIFICATE REGARDING COMPLIANCE:**

a) Bidder shall submit following certificate:

"We have read the clause regarding restrictions on procurement from a Bidder of a country which shares a land border with India. We certify that Bidder M/s. _____ (name of the Bidder) is not from such a country or if from such a country, has been registered with the Competent Authority. We hereby certify that Bidder M/s. _____ (Name of Bidder) fulfills all the requirement in this regard and is eligible to be considered against the tender."

[wherever applicable Bidder must submit evidence of valid registration by Competent Authority]

b) [To be inserted in tenders for Service Contracts/Works Contracts including Turnkey contracts-] The successful Bidder shall not be allowed to sub-contract works to any contractor from a country which shares a land border with India unless such contractor is registered with the Competent Authority. Bidder shall submit the following certificate in this regard:

"We have read the clause regarding restrictions on procurement from a Bidder of a country which shares a land border with India and on sub-contracting to contractors from such countries."



We certify that Bidder M/s. _____ (Name of Bidder) will not sub-contract any work to a contractor from such countries unless such contractor is registered with the Competent Authority.*

[wherever applicable Bidder must submit evidence of valid registration by Competent Authority]

If such certificate (as mentioned as (a) & (b) above) given by a Bidder whose Bid is accepted, is found to be false, this would be a ground for immediate rejection of Bid/termination of contract and forfeiture of EMD/Security Deposit.

The above certificate shall form part of PO/contract.

The registration, wherever applicable, should be valid at the time of submission of Bids and at the time of acceptance of Bids. If the Bidder was validly registered at the time of acceptance / placement of order, registration shall not be a relevant consideration during contract execution.

- 7) Further, the above guidelines will not apply to the Bidder from those countries (even if sharing a land border with India) to which the Government of India has extended lines of credit or in which the Government of India is engaged in development projects. Updated lists of countries to which lines of credit have been extended or in which development projects are undertaken are given in the website of the Ministry of External Affairs, Govt. of India.
- 8) 'Agent' mentioned in the above guidelines also includes dealer/distributor/sole selling agent.
- (xiv) Scanned copy of duly signed Integrity Pact and Power of Attorney are to be submitted along with techno-commercial Bid in e-form. Integrity Pact and Power of Attorney is tender specific. Only one copy of Integrity Pact and Power of Attorney is required against this tender irrespective of no. of Contract Areas quoted by the Bidder.

13. Other terms and conditions

iv) Electronic bid bond :

The Bidder is required to submit the e-Bid Bond as mentioned in Article 4. (vii) of this document in the form of e-Bank Guarantee(s) from a Scheduled Commercial Bank valid for a period of 30 days from the date of Bid validity. The same needs to be correspondingly extended for every extension of Bid validity as indicate in para xii.

The e-Bid Bond shall be forfeited in any of the following events:

- *If Bid is withdrawn during the validity period or any extension thereof duly agreed by the Bidder*
- *If Bid is varied or modified in a manner not acceptable to ONGC*



during the validity period or any extension of the validity duly agreed by the Bidder:

• If a Bidder having been notified of the acceptance of its Bid, fails to furnish e-Security Deposit/Performance e-Bank Guarantee (Performance Security) in the format as per Annexure I (Y-2) within 60 days of notification of such acceptance.

...

...

(v) Electronic Bank Guarantee the Successful Bidder will have to submit electronic bank guarantee(s) as per the provisions of the Model Production Enhancement Contract and in the format as per Annexure I (Y-2).

...

...

(xii) Validity period of the Bid:

The Bid shall be valid for a period of 120 days from the date of submission of Bid. (Hereinafter referred to as validity period) and shall not be withdrawn on or after the opening of Bids till the expiration of the validity period or any extension agreed thereof in exceptional circumstances, prior to expiry of the original Bid validity period, the ONGC may request the Bidder for a specified extension in the period of validity. The requests and the responses shall be made in writing. The Bidder will undertake not to vary/modify the Bid during the validity period, or any extension agreed thereof The Bidder agreeing to the request for extension of validity of offer shall be required to extend the validity of Bid Security correspondingly ...”

36. Last date for submission of pre-bid queries was 03.01.2024. Pre-bid conference was held on 12.01.2024. Plaintiffs submitted their bids on 15.04.2024 and 23.04.2024 for Motera and SW Motwan, respectively with an undertaking in Annexure-1 (M), certifying that the information and documents submitted along with the bids were true and correct and nothing was false and no material information forming part of bid evaluation was suppressed. It was also accepted that if any material information was suppressed or was found to be untrue, incorrect or misleading, bid was liable



to be rejected and if the contract was awarded, the same shall be liable for cancellation. Bid was also accompanied with Annexure-1(S) accepting all conditions contained in NIO unconditionally; Incremental Production Profile Annexure-1(Z-3); and Annexure-1(Y-1), being unconditional and irrevocable e-BGs.

37. Techno Commercial bids were opened on 08.05.2024. As per ONGC, Plaintiffs could have amended/modified their bids till this date and not thereafter. On 13.06.2024 and 14.06.2024, post-bid conferences were held and on 30.07.2024, price bids were opened of the techno-commercially successful bidders. Plaintiffs emerged as highest bidders and being H-1 were to be awarded the contracts. However, on 02.08.2024, Plaintiffs sent a letter to ED-Chief, P&D Directorate, ONGC stating that a major typographical error had occurred in the incremental oil and gas production profile for both the fields inasmuch as in place of monthly profile values for 180 months, annual estimated profile values had been entered for all years 1-15 and months 1-180 for both the fields. It was requested that corrected incremental production profile attached with the letter be considered for evaluation of the bids as all other documents remained unchanged.

38. On 29.08.2024, ONGC sent an e-mail asking the Plaintiffs to extend the validity of the bids upto 31.10.2024, failing which necessary action will be taken and in response thereto, vide e-mail dated 02.09.2024, Plaintiffs extended the bid validity without any reservation or pre-condition. Since Plaintiffs were the highest bidder, ONGC issued the NOAs on 06.09.2024 for Motera and SW Motwan awarding the contracts to the Plaintiffs with a stipulation in Clause 5, requiring the Plaintiffs to furnish Contract BGs and Committed Work Programme BGs within 60 days in the attached format as



per Annexure-1(Y-2) of NIO. Relevant clauses in the respective NOAs are as follows:-

5. PERFORMANCE BANK GUARANTEE (PBG):

As per Article 14.1 of Model Production Enhancement Contract (MPEC), please submit the following Performance Bank Guarantee in the attached format as per Annexure-1(Y-2) of NIO of Bid document as under.

S/No.	Details of PBG(s)	PBG amount (In INR)	Cut-off date of submission
1.	Contract Performance Bank Guarantee	34,06,98,000.00	Within 60 days from the date of issuance of Notification of award.
2.	Committed Work Programme (CWP) Performance Bank Guarantee	3,09,00,000.00	Within 60 days from the date of issuance of Notification of award.

- The Contractor shall provide the Contract Performance Bank Guarantee valid for the entire Contract Period or valid for not less than 24 Months provided that it shall be renewed no later than Two Month prior to the expiry of the existing Contract Performance Bank Guarantee.
- The Contractor shall provide the CWP Performance Bank Guarantee valid for a period of 5 years from the date of issuance of Notification of award or valid for not less than 24 Months provided that it shall be renewed no later than Two Month prior to the expiry of the existing CWP Performance Bank Guarantee.
- Fields would be handed over only after submission of Contract Performance Bank Guarantee and CWP Performance Bank Guarantee by the Contractor.

Contractor to submit a confirmation within three days of issuance of this NOA, to the effect that SD/PBG(s) will be submitted within the stipulated time. If contractor fails to submit the SD/PS within the stipulated date, ONGC can take action as per conditions specified in the tender.

Please keep the bid bond valid and alive till submission of PBG.



5. PERFORMANCE BANK GUARANTEE (PBG):

As per Article 14.1 of Model Production Enhancement Contract (MPEC), please submit the following Performance Bank Guarantee in the attached format as per Annexure-1(Y-2) of NIO of Bid document as under:

S/No.	Details of PBG(s)	PBG amount (In INR)	Cut-off date of submission
1.	Contract Performance Bank Guarantee	102,24,80,200.00	Within 60 days from the date of issuance of Notification of award.
2.	Committed Work , Programme (CWP) Performance Bank Guarantee	3,24,00,000.00	Within 60 days from the date of issuance of Notification of award.

- The Contractor shall provide the Contract Performance Bank Guarantee valid for the entire Contract Period or valid for not less than 24 Months provided that it shall be renewed no later than Two Month prior to the expiry of the existing Contract Performance Bank Guarantee.
- The Contractor shall provide the CWP Performance Bank Guarantee valid for a period of 5 years from the date of issuance of Notification of award or valid for not less than 24 Months provided that it shall be renewed no later than Two Month prior to the expiry of the existing CWP Performance Bank Guarantee.
- Fields would be handed over only after submission of Contract Performance Bank Guarantee and CWP Performance Bank Guarantee by the Contractor.

Contractor to submit a confirmation within three days of issuance of this NOA, to the effect that SD/PBG(s) will be submitted within the stipulated time. If contractor fails to submit the SD/PS within the stipulated date, ONGC can take action as per conditions specified in the tender.

Please keep the bid bond valid and alive till submission of PBG.

39. After the contracts were awarded, Plaintiffs started exchanging communications with ONGC proposing two options: (a) correcting the incremental production figures and reissuing the contract BGs at revised levels and allowing the Consortium to continue and operate the fields; or (b) terminating both the contracts with refund as also not to blacklist the consortium from future dealings with ONGC. Powerpoint presentation



was given on 16.10.2024 to highlight the alleged *bona fide* typographical error.

40. ONGC, on the hand was sending reminders on 22.10.2024, 29.10.2024, 06.11.2024, 12.11.2024 and 20.11.2024 to the Plaintiffs to furnish BGs as per NIOs and NOAs, which was admittedly not done. Plaintiffs approached the Gujarat High Court on 24.10.2024 praying for issuance of a writ of mandamus to ONGC to consider their representation for correction of annual incremental production figures and to issue corrected NOAs, amongst other reliefs. Writ petition was strenuously opposed by ONGC, both on maintainability under Article 226 of the Constitution of India and on merits. By order dated 13.02.2025, the writ petition was dismissed on the ground that under Article 226 of the Constitution, no mandamus can be issued for correction of figures in the bid documents as it is for the employer to permit, if at all permissible under Notice Inviting Tender or of their own. SLP (C) No. 7294/2025 against the said order was dismissed as withdrawn on 24.03.2025, with liberty to pursue civil remedies, as sought by the Plaintiffs.

41. The moot question that arises for consideration in the present application is whether Plaintiffs are entitled to *ad interim* injunction staying the operation of suspension orders dated 01.04.2025 as also show cause notice dated 06.05.2025, whereby Plaintiffs were asked to file reply and explain why ONGC should not ban them from carrying on business dealings with ONGC for a minimum of 6 months and a maximum of 2 years.

42. Plaintiffs contend that the sole ground to issue the suspension orders and the show cause notice was non-furnishing of BGs, required to be furnished under Clause 5 of the NOAs dated 06.09.2024, which is wholly



flawed for the reason that these NOAs cannot be treated as valid and legally binding contracts between the parties. The argument is that on 02.08.2024 Plaintiffs revised the initial bids submitted on 15.04.2024 and 23.04.2024 and once the bids were revised, prior to acceptance of the bids, the original bids ceased to exist and could not have been accepted. In this backdrop, the NOAs 06.09.2024, do not constitute valid contracts and thus there was no obligation on the Plaintiffs to furnish the BGs. Reliance was placed on Section 5 of the Contract Act and judgments of this Court in *New India Assurance Company Limited (supra)*, *M/s. Suraj Besan and Rice Mills (supra)* and *Bhasin Associates (supra)*, to bring home this point. Foundation of this argument lies in the alleged inadvertent typographical error because of which, in place of monthly incremental oil and gas profile values of 180 months, annual estimated profile values were given for all years 1-15 and months 1-180 in respect of both fields. Much was argued that this error was promptly brought to the notice of ONGC on 02.08.2024 but there was no response for over a month till 06.09.2024, when NOAs were illegally issued.

43. On a careful consideration of this submission and after perusing the NIO incorporating the bid parameters and the bids given by the Plaintiffs as also looking into the chronology of dates and events, I am of the view that submission of annual profile instead of monthly incremental profile, as mandated in the 'Bid Parameter', was not an inadvertent typographical error, as alleged and there are more than one reasons, which persuade me to come to this *prima facie* finding.

44. It was clearly stipulated in 'Bidding Terms' of the NIO that companies would be required to bid for '*Monthly Incremental Production*



profile for the Contract Area during Contract Period i.e. 15 years or 180 months (to be quoted separately for oil and gas in format as per **Annexure 1(Z)**). The format contained 'month' and 'year' columns separately and illustratively, first page of the format is scanned and placed below, which would amply demonstrate that there was no scope of confusion while furnishing monthly or yearly profiles:-

ANNEXURE 1(Z-3)

INCREMENTAL PRODUCTION PROFILE (TO BE QUOTED BY THE BIDDERS)

(All values to be entered up to two decimal places)

CONTRACT AREA NO.: ONGC/PEC/2023/CA-3/MOTERA

Year	Month	Incremental Oil Production (in Cubic Meter)	Incremental Gas Production (in Thousand Cubic Meter)
1	1	To be Quoted	To be Quoted
1	2	To be Quoted	To be Quoted
1	3	To be Quoted	To be Quoted
1	4	To be Quoted	To be Quoted
1	5	To be Quoted	To be Quoted
1	6	To be Quoted	To be Quoted
1	7	To be Quoted	To be Quoted
1	8	To be Quoted	To be Quoted
1	9	To be Quoted	To be Quoted
1	10	To be Quoted	To be Quoted
1	11	To be Quoted	To be Quoted
1	12	To be Quoted	To be Quoted
2	13	To be Quoted	To be Quoted
2	14	To be Quoted	To be Quoted
2	15	To be Quoted	To be Quoted
2	16	To be Quoted	To be Quoted
2	17	To be Quoted	To be Quoted
2	18	To be Quoted	To be Quoted
2	19	To be Quoted	To be Quoted
2	20	To be Quoted	To be Quoted
2	21	To be Quoted	To be Quoted
2	22	To be Quoted	To be Quoted
2	23	To be Quoted	To be Quoted
2	24	To be Quoted	To be Quoted
3	25	To be Quoted	To be Quoted
3	26	To be Quoted	To be Quoted

45. Further, it was stipulated in Clause 7 of NIO i.e. '*Bid Evaluation Criteria*', that qualifying bids will be evaluated based on the criteria mentioned in the table thereunder and quite clearly, the first bid parameter for evaluating was '*Monthly Incremental Production profile for the Contract*



Area during Contract Period i.e. 15 years of 180 months'. Conjoint reading of Clauses 3 and 7 leaves little doubt that bidders were required to furnish the Monthly Incremental Production Profile in the required format. Additionally, Clause 11 (ix) of NIO provided for holding a Pre-bid Conference on 12.01.2024 for the purpose of clarification of points on technical and commercial matters related to bid documents and Clause 11(x) stipulated that any modification to the bidding document which may become necessary as a result of the pre-bid meeting, shall be made by the company exclusively through issuance of addendum(s) to the bidding document. There is no denial that Pre-bid Conference was held on 12.01.2024, as scheduled. Pertinently, during the course of hearing, learned ASG handed over copy of '*Record Note of Pre Bid Conference scheduled on 12.01.2024*', which reflects that Plaintiffs had suggested that the bid parameter of Monthly Incremental Production Profile be changed to Yearly Incremental Production Profile, however, this was categorically rejected by ONGC, reiterating that terms of NIO/MPEC shall prevail. Relevant part of the Record Note is extracted hereunder, for ready reference:-

Record Note of Pre bid Conference scheduled on 12.01.2024.

Sub: Tender No. ZNSBC23008 for Production Enhancement Operations in Mature Fields.

25	NIO	7.(ii).1	Monthly Incremental Production profile for the Contract Area during Contract Period i.e., 15 years or 180 months	S.N #1 of the table, In Bid parameter, it should be or basis of yearly incremental profile in place of monthly incremental profile	Not Agreed, provisions of the NIO/MPEC shall prevail	Permian Peak Oil Private Limited
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46. There is thus merit in the submission of ONGC that there was no ambiguity in the Bid Parameters stipulated in the NIO, which unequivocally required the bidders to give Monthly Incremental Production Profile. *Arguendo*, if there was any doubt the same was removed in the pre-bid conference and in these circumstances, furnishing of Annual Incremental Production Profile cannot be termed as a mere mistake or an inadvertent error. By their own showing, Plaintiffs possess vast experience in the business of development and production of hydrocarbons as also in the field of exploration and exploitation of oil and gas and have been regularly participating in several tenders and completely understand the import of bid conditions and bid parameters. In ***Patel Engineering Co. Ltd. (supra)***, the Supreme Court observed that bidders have or should have assistance of technical experts and the degree of care required in bids with high stakes and competition is greater than in local bids of small works. The Supreme Court emphasized that sanctity and integrity of the tender process must be maintained. It was also observed that in works of great magnitude where bidders, who fulfil pre-qualification alone are invited to bid, adherence to instructions cannot be given a go-by, by branding it as a pedantic approach, otherwise it will encourage and provide scope for discrimination, arbitrariness and favouritism, which are totally opposed to rule of law and Constitutional values. The very purpose of issuing rules or instructions is to ensure their enforcement lest the rule of law would be a casualty. Relaxation or waiver of a rule or condition, unless provided in the concerned documents, in favour of one bidder would create justifiable doubts in the minds of other bidders and would impair the rule of transparency and fairness and provide room for manipulation to suit the whims of the State



agencies in picking and choosing a bidder for awarding contracts, as in the case of distributing bounty or charity and such an approach should be avoided. It was held that the appellant was justified in not permitting Respondents 1 to 4 to correct the errors of the nature and the magnitude which, if permitted, would have given a different complexion to the bid. The High Court erred in directing the appellant to permit Respondents 1 to 4 to correct the errors in the bid documents. Relevant passages from the judgement are as follows:-

“23. The mistakes/errors in question, it is stated, are unintentional and occurred due to the fault of computer termed as “a repetitive systematic computer typographical transmission failure”. It is difficult to accept this contention. A mistake may be unilateral or mutual but it is always unintentional. If it is intentional it ceases to be a mistake. Here the mistakes may be unintentional but it was not beyond the control of Respondents 1 to 4 to correct the same before submission of the bid. Had they been vigilant in checking the bid documents before their submission, the mistakes would have been avoided. Further, correction of such mistakes after one-and-a-half months of opening of the bids will also be violative of clauses 24.1, 24.3 and 29.1 of the ITB.

24. The controversy in this case has arisen at the threshold. It cannot be disputed that this is an international competitive bidding which postulates keen competition and high efficiency. The bidders have or should have assistance of technical experts. The degree of care required in such a bidding is greater than in ordinary local bids for small works. It is essential to maintain the sanctity and integrity of process of tender/bid and also award of a contract. The appellant, Respondents 1 to 4 and Respondents 10 and 11 are all bound by the ITB which should be complied with scrupulously. In a work of this nature and magnitude where bidders who fulfil prequalification alone are invited to bid, adherence to the instructions cannot be given a go-by by branding it as a pedantic approach, otherwise it will encourage and provide scope for discrimination, arbitrariness and favouritism which are totally opposed to the rule of law and our constitutional values. The very purpose of issuing rules/instructions is to ensure their enforcement lest the rule of law should be a casualty. Relaxation or waiver of a rule or condition, unless so provided under the ITB, by the State or its agencies (the appellant) in favour of one bidder would create justifiable doubts in the minds of other bidders, would impair the rule of transparency and fairness and provide room for manipulation to suit the whims of the State agencies in picking



and choosing a bidder for awarding contracts as in the case of distributing bounty or charity. In our view such approach should always be avoided. Where power to relax or waive a rule or a condition exists under the rules, it has to be done strictly in compliance with the rules. We have, therefore, no hesitation in concluding that adherence to the ITB or rules is the best principle to be followed, which is also in the best public interest.

25. For all these reasons, in such a highly competitive bid of global tender, the appellant was justified in not permitting Respondents 1 to 4 to correct the errors of the nature and the magnitude which, if permitted, would have given a different complexion to the bid. The High Court erred in directing the appellant to permit Respondents 1 to 4 to correct the errors in the bid documents.”

47. This judgment is also relevant to the present case as it brings out the exceptions to the general principles of equitable considerations, in the context of mistakes and I quote :-

“27. Exceptions to the above general principle of seeking relief in equity on the ground of mistake, as can be culled out from the same para, are:

(1) Where the mistake might have been avoided by the exercise of ordinary care and diligence on the part of the bidder; but where the offeree of the bid has or is deemed to have knowledge of the mistake, he cannot be permitted to take advantage of such a mistake.

(2) Where the bidder on discovery of the mistake fails to act promptly in informing to the authority concerned and request for rectification, withdrawal or cancellation of bid on the ground of clerical mistake is not made before opening of all the bids.

(3) Where the bidder fails to follow the rules and regulations set forth in the advertisement for bids as to the time when bidders may withdraw their offer; however where the mistake is discovered after opening of bids, the bidder may be permitted to withdraw the bid.”

48. Therefore, even assuming that Plaintiffs committed a mistake, the questions that arise are: (a) whether the mistake could have been avoided by exercise of ordinary care and diligence; (b) whether Plaintiffs had or can be deemed to have knowledge of mistake; and (c) whether on discovery of the mistake, Plaintiffs acted promptly and prior to the opening of the bids. The



answers to each of these questions go against the Plaintiffs. Clause 3(i) of NIO provided four Bid Parameters of which one was submission of Monthly Incremental Production Profile for Contract Area during the 15 year/180 months contract period to be submitted in the format prescribed under Annexure 1(Z). Clause 7 laid down the Bid Evaluation Criteria and the weightages and the first prescribed parameter was the monthly incremental profile. Further, Clause 11(i) provided that the bids along with all appendages and copies of documents, were to be digitally signed by the authorised representatives, prior to uploading. Even with ordinary diligence one would have known that it was the monthly incremental profile that was required to be furnished. Authorised representatives of the Plaintiffs were duty bound to exercise due care and diligence while uploading the figures and if they chose to be callous in such high stake tenders, assuming they were, it was at Plaintiffs' peril.

49. Again assuming that there was a mistake, it is not shown why the mistake was not detected immediately when the bids were uploaded, moreso, when Plaintiffs were put to caution in the Pre-bid Conference that annual profiles will not be accepted. Techno Commercial bids were opened on 08.05.2024, after which post-bid conferences were held on 13.06.2024 and 14.06.2024. Even till this date, there was no whisper that there was a mistake/typographical error in the bids. Plaintiffs waited for the price bids to open on 30.07.2024 and realising that they were the highest bidders and possibly the contracts may not be financially viable, they wrote to ONGC on 02.08.2025 to accept the corrected documents and re-value the bids. As rightly flagged by ONGC, this was a desperate attempt to escape the rigours of penalties under the NIO, NOAs and the banning policy. Nothing has been



shown at this stage which could lead even to a *prima facie* conclusion that the Plaintiffs discovered the alleged mistake only when price bids were opened.

50. There is another crucial aspect of the matter, which was repeatedly highlighted by ONGC. NIO clearly provided in Clause 13(xii) that the bids shall be valid for a period of 120 days from the dates of submission and shall not be withdrawn on or after opening of bids till expiration of the validity period or any extension thereof. Bidders were required to undertake not to vary/modify the bid during the validity period. Plaintiffs furnished an unconditional undertaking in Annexure-1(S) along with the e-bids that all terms and conditions of the bid documents were acceptable to them and cannot now question the bid conditions. Hence, it was not open to the Plaintiffs to revise the bids by giving fresh documents containing monthly incremental oil and gas profile values in the teeth of Clause 13(xii) and ONGC rightly accepted the original bids and issued the NOAs on 06.09.2024, calling upon the Plaintiffs to furnish the requisite BGs on conclusion of legally binding contracts.

51. As rightly urged on behalf of ONGC, the Supreme Court in ***Patel Engineering Co. Ltd. (supra)***, has in no uncertain terms held that permitting post-bid change in essential terms, unless contemplated by tender conditions, defeats transparency and introduces arbitrariness. In ***Meerut Development Authority (supra)***, the Supreme Court held that bidders have no right to seek post-bid submissions and negotiations and any alteration sought, must abide by the applicable terms. It was observed that once the tender process stands terminated, rights of the bidders, if any, come to an end and any requests made later, are of no consequence. Once it is clear that



there is no vagueness, uncertainty or confusion with regard to any term of the Notice Inviting Tender and the tender process is fair and transparent, there is no scope for interference by the Courts, while exercising power of judicial review.

52. In ***Tata Cellular v. Union of India, (1994) 6 SCC 651***, the Supreme Court observed that judicial quest in administrative matters is to strike just balance between administrative discretion to decide matters as per Government Policies and need of fairness. All that the Court is required to see in matters relating to tenders and contracts is that the decision awarding or refusing a contract was arrived at taking into account all relevant considerations and eschewing all irrelevant considerations as also that the State action is not fraught with arbitrariness and bias. In the instant case, terms of the NIO are clear and unambiguous and the bidding process was transparent and fair, with no allegations of bias against any official of ONGC. Tested on the anvil of law of scope of judicial interference, it cannot be held even *prima facie*, that the decision of ONGC to award the contract on the basis of original bids and subsequently to terminate the NOAs on non-fulfilment of its terms was illegal, arbitrary or unfair.

53. Reliance of the Plaintiffs on Section 5 of the Contract Act to argue that in light of revision of the bids on 02.08.2025, there was no concluded contract between the parties and hence no obligation to furnish BGs, non-furnishing of which is the cause of suspension and show cause for blacklisting, overlooks Clause 13(xii) of NOA, which proscribed the bidders from withdrawing or varying/modifying the bids once they were 'opened'. This is in furtherance of the objective that at this advance stage of tender, parties should not be permitted to jeopardize the process and is in keeping



with the dictum of the Supreme Court that sanctity and integrity of tender processes should be maintained. It bears repetition to state that Plaintiffs had undertaken to abide by the terms of the NIO and are bound by Clause 13(xii). Reliance by learned Senior Counsel for the Plaintiffs on the judgments in *M/s. Suraj Besan and Rice Mills (supra)* and *Bhasin Associates (supra)* is misplaced. The two cases are complete distinguishable on facts and did not involve a binding bid condition akin to Clause 13(xii). In *M/s. Suraj Besan and Rice Mills (supra)*, tenders were submitted by the Plaintiff on 29.06.1983. By letter dated 08.07.1983, Plaintiff informed the Defendant that the offer was for 1500 MTs of stocks and not over the said quantity, since Plaintiff was registered only for 1500 MTs. This, according to the Plaintiff, amounted to an amended offer which was received by the Defendant on 11.07.1983. Tender was accepted by the Defendant on 22.07.1983 and communication to this effect was received by the Plaintiff on 24.07.1983. Case of the Plaintiff was that its offer was only for 1500 MTs of stock and the acceptance by the Defendant after amended offer did not bring about a valid and binding contract between the parties to purchase 6200 MTs, initially offered and that the acceptance was a counter offer. It is in this context that the Court held that Plaintiff was entitled to withdraw or modify the offer before communication of acceptance was complete. It was also held that acceptance by the Defendant of part of the original offer amounted to a counter offer.

54. The judgment in *Bhasin Associates (supra)* is also inapplicable. In the said case, the issue that arose for consideration before the Court was whether any triable issue arose in terms of clause 13A(i) of the Notice Inviting Tender. Be it noted that, NIT contained a clause which provided



that contractors were strictly prohibited from giving conditional tenders. Therefore, as a fall out of the clause, if any contractor submitted a conditional tender, the same was liable to be rejected summarily and full earnest money was to stand forfeited. Respondent therein gave a conditional bid and DDA forfeited the earnest money. Respondent filed a suit before the Trial Court under Order XXXVII CPC for recovery, in which DDA filed an application for leave to defend on the ground that a triable issues was arising in the matter. The application was dismissed by the Trial Court and DDA approached this Court in a civil revision. This Court held that the Trial Court had come to a correct finding of violation of provisions of Contract Act on an interpretation of clause 13A(i) and thus DDA did not have a good defence or the defence was illusory. Order of the Trial Court was upheld and in this context, the Court observed that it is the bid that constitutes an offer and unless the same is accepted and acceptance is communicated to the bidder, there is no binding contract between the parties. It was also observed that in these circumstances, the question of forfeiting the earnest money on making conditional offer would not arise and this would not constitute a triable issue. On the proposition of law that bids can be withdrawn before acceptance, there can be no quarrel. But the bid condition prohibiting withdrawal of bids after they are opened cannot be glossed over. On the aspect of forfeiture of EMD, in *National Thermal Power Corporation Limited v. Ashok Kumar Singh and Others*, (2015) 4 SCC 252, the Supreme Court has held that right to withdraw a bid in terms of Section 5 of the Contract Act would not entitle the bidder to withdraw without suffering forfeiture of the earnest money in cases where submission and receipt of bids is itself subject to the condition that in the event of withdrawal of the



bid, earnest money stands forfeited. In light of the judgment of the Supreme Court, the judgment in *Bhasin Associates (supra)* can be of no avail to the Plaintiffs.

55. Coming to the suspension orders dated 01.04.2025, the main plank of the argument of the Plaintiffs is that no show cause notice or opportunity of hearing was given to the Plaintiffs before suspending and therefore, there is violation of principles of natural justice in view of the settled law in *Defsys Solutions (supra)*. The suspension orders are also questioned on the ground that in the absence of a concluded contract, Plaintiffs could not be blamed for non-furnishing the BGs. To my mind, these arguments hold no water.

56. Clause 9(iv) of the NIO authorized ONGC to suspend or ban contractors if the e-bid bond or contract PBG or e-CWP PBG were not furnished or were considered inadequate or were not in compliance with terms of NIO or the contract. ONGC is thus entitled to place a successful bidder on 'holiday' after notifying the reason(s) for doing so. This entitlement also flows from "*Policy for banning/provisional suspension of Business dealings with erring Firms*" issued by ONGC. Division Bench of the Bombay High Court in *Paras V. Mehta Indian Inhabitant (supra)* has held that there is a well-settled distinction between interim measure which are made as holding operations pending full-fledged inquiry and final action either by way of inflicting penalties or orders of blacklisting and de-registration. It was observed that where by interim measure a suspension order is passed pending final decision on the aspect of blacklisting, there cannot be insistence upon rigid compliance with principles of natural justice. Thus no grievance can be raised on this score as the suspension is pending an inquiry, for which the Plaintiffs were called upon to reply and even seek



personal hearing. Relevant paragraphs are as follows:-

“16. There is a well settled distinction between interim measures, which are made as a holding operation pending full fledged enquiry and final action either by way of inflicting penalty or orders of blacklisting and deregistration. The impugned letter dated 14.2.2013 and circular dated 16.3.2013 indicate that the respondents, pending final decision on the aspect of blacklisting or deregistration, felt it appropriate that no work orders be issued to the petitioner or that any further tender bids that may be submitted by the petitioner be not considered in the interregnum. At this stage, there can be no insistence upon rigid compliance with principles of natural justice. If serious irregularities are suspected, then pending appropriate enquiry, it may not be unreasonable to take interim measures by way of holding operation.

17. In the case of Lewis v. Heffer, (1978) 3 All ER 354, Lord Denning drew out the distinction between suspensions which are inflicted by way of punishment and suspensions, which are made as holding operation pending enquiry in the following words:

“But they do not apply to suspensions which are made, as a holding operation, pending enquiries. Very often irregularities are disclosed in a Government department or in a business house; and a man may be suspended on full pay pending enquiries. Suspicion may rest on him; and so he is suspended until he is cleared of it. No one, so far as I know, has ever questioned such a suspension on the ground that it could not be done unless he is giving notice of the charge and an opportunity of defending himself and so forth. The suspension in such a case is merely done by way of good administration. A situation has arisen in which something must be done at once. The work of the department or the office is being affected by rumours and suspicions. The others will not trust the man. In order to get back to proper work, the man is suspended. At that stage the rules of natural justice do not apply, see Furnell v. Whangarei High Schools Board”.

18. The aforesaid observations were cited with approval by the Supreme Court in the case of Liberty Oil Mills v. Union of India, (1984) 3 SCC 465, by observing that pre-decisional natural justice is not usually contemplated when the decision taken are of an interim nature pending investigation or inquiry.

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xxx

xxx

20. This, however, does not mean that the effect of interim measures made as holding operation pending full fledged investigation can continue to operate for an uncertain or indefinite period. Nor can they operate for an unreasonably long period of time. Under the guise of such order/circular, the MMC cannot, for an indefinite period refuse to place any work orders



upon the petitioner or decline consideration of the petitioner's tender bids. The respondents are duty bound to complete enquiry/investigation within a reasonable period. Such enquiry/investigation has to be conducted consistent with principles of natural justice and fair play and upon complying with the rules framed by the respondents themselves in the matter of registration and deregistration of the contractors. Only upon such a premise, we propose not to interfere with the impugned letter dated 14.2.2013 and circular dated 16.3.2013. Mr. Sakhare submitted that the enquiry/investigation in accordance with rules for registration/deregistration of the contractors can be completed within a period of eight weeks. In our opinion, this is a reasonable period, within which the respondents can be directed to complete the enquiry/investigation, which shall have to be in accordance with rules framed by the respondents themselves in this regard."

57. Learned ASG explained that it was imperative to suspend the Plaintiffs' firm from participation in the ongoing and future tenders by ONGC in larger public interest owing to the non-furnishing of BGs and jeopardizing the whole tender process, which was in respect of oil and gas production and thus a project of vital public importance. It was asserted that Plaintiff No.1's past conduct in respect of tenders, dents its credibility to participate in tenders of like nature and magnitude. Plaintiff No. 1 was earlier awarded Contract Areas Motera and SW Motwan under PEC Tender No. ZNSMC21004 and in that tender, forged BGs of Rs.4.27 crores for Motera and Rs.3.72 crores for SW Motwan, were furnished. Upon discovery of the forged guarantees, ONGC invoked the EMD/bid bond worth Rs.40 lacs and imposed a two year ban from 08.06.2023 to 07.06.2025, which was later reduced to six months *albeit* none of this is even disclosed in the plaint. The six months ban ended on 07.12.2023 and the present bids were submitted immediately thereafter and yet again Plaintiffs adopted a strategy to wriggle out of the NOAs, once realisation dawned at the time of opening of the financial bids that possibly the venture was not financially



viable. In the bargain two crucial tenders have suffered a set back with adverse effect on public interest inasmuch as these tenders were for enhancing the production from mature oil and gas fields by infusion of technology.

58. True that blacklisting is a serious action and amounts to civil death of a business entity. It is trite that before taking a decision for blacklisting, Competent Authority must arrive at an objective satisfaction. **[Ref.: *Erusian Equipment & Chemicals Ltd. (supra)*]**. The requirement of complying with principles of natural justice by issuing a show cause notice and giving opportunity of hearing to the entity concerned before deciding on the blacklisting needs no emphasis. **[Ref.: *Joseph Vilangandan v. The Executive Engineer, (PWD), Ernakulam and Others, (1978) 3 SCC 36, Raghunath Thakur v. State of Bihar and Others, (1989) 1 SCC 229* and *Gorkha Security Services (supra)*]**. Indisputably, in the present case, this important parameter is met inasmuch as show cause notice has been issued on 06.05.2025, calling upon the Plaintiffs to file their reply, which they have done. Show cause notice is predicated on Clause 5 of NIO specifying a timeline of 60 days for furnishing the requisite BGs in accordance with Article 14 of Production Enhancement Contract. Plaintiffs admittedly failed to furnish the BGs within the given timeline, despite several written reminders and final notice dated 19.02.2025 giving more time to submit the BGs till 24.02.2025. Source of power to issue the Show cause notice is ONGC's policy for banning/provisional suspension of business dealings with erring firms as also Clause 9(iv) of NIO. Inquiry officer has been appointed to conduct an impartial and fair inquiry into the allegations levelled and there is no doubt that the issues raised and highlighted by the



Plaintiffs in the reply will be considered by ONGC and decision will be taken after granting an opportunity of hearing. No interference is warranted at this stage.

59. The decision of the Supreme Court in *Blue Dreamz (supra)* cannot come to the aid of the Plaintiffs. In the said case, the Supreme Court held that where the case is of ordinary breach of contract and explanation offered by the person raises a *bona fide* dispute, blacklisting as a penalty ought not to be resorted to as this commercially ostracises the person/entity blacklisted and results in serious consequences. The case concerned disputes pertaining to reciprocal obligations in the bid document. Appellant claimed that Respondent did not issue work orders, bank guarantee format, refused no objection certificate for electricity connection etc., while Respondent took a position that bank guarantee was not a mode of payment and in the joint inspection, it was found that work was not completed by the Appellant on all the locations. In this backdrop, the Supreme Court concluded that these reasons fell short of rendering the conduct of the Appellant so abhorrent as to justify blacklisting. The present is a case where after opening of price bids, Plaintiffs sought to revise the offer and contends that since the original offer no longer existed there was no concluded contract, in the teeth of tender condition proscribing such an action, resulting in a situation where after months of a complex and tedious process, an important tender did not fructify. This cannot be termed as an ordinary case of breach of reciprocal obligations under a contract. Past conduct of Plaintiff No.1 has also weighed with ONGC in issuing the show cause notice, where forged BGs were issued for the two fields in a different tender.

60. Reliance was placed by the Plaintiffs on the judgment in *Techno*



Prints (supra), where the Supreme Court quashed the show cause notice calling upon the Appellant to show cause why it should not be blacklisted, in support of the argument that even at the stage of show cause notice, Court can interfere in given facts and circumstances. From a reading of the judgment, it is evident that what weighed with the Supreme Court in quashing the show cause notice was the fact that Appellant was assigned a contract of printing books by the Respondent sometime in the year 2020 but unfortunately from mid-2020, the entire country was in the grip of Pandemic COVID-19 and therefore, the obligations under the contract could not be discharged due to circumstances beyond the control of the Appellant. It was in these peculiar facts that the Supreme Court quashed the show cause notice.

61. For all the aforesaid reasons, this Court is not inclined to grant *ad interim* injunction staying the operation of the suspension orders dated 01.04.2025 and show cause notice dated 06.05.2025. ONGC is absolved of its oral assurance given to the Court during the pendency of this application that they will not proceed with the show cause notice dated 06.05.2025. As per the show cause notice, Plaintiffs are entitled to seek a personal hearing. Consequently, if Plaintiffs make a request for personal hearing within two weeks from today, ONGC will accord a personal hearing, before taking a final decision.

62. At the end, I may add the usual caveat that observations made in this judgment are *prima facie* and will not come in the way of final adjudication of the suit.

63. Application is partially dismissed to the extent of reliefs (b) and (c) in the prayer clause.



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64. List for consideration of the application for remaining reliefs on 28.11.2025.

JYOTI SINGH, J

SEPTEMBER 02, 2025/Shivam