



* IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: 23rd October, 2024

Pronounced on: 29th October, 2024

+ **W.P.(C) 14903/2024, CM APPL. 62511/2024, CM APPL. 62512/2024**

PNC INFRATECH LIMITED

..... Petitioner

Through: Mr. Rajiv Nayar and Mr. Dayan Krishnan, Senior Advocates with Mr. Adhip Ray and Ms. Saima Mahmood, Advocates.

versus

UNION OF INDIA THROUGH MINISTRY OF ROAD
TRANSPORT AND HIGHWAYS & ANR.

..... Respondents

Through: Mr. Santosh Kumar, SC with Mr. Adithya Ramani, Advocate for NHAI.
Mr. Syed Abdul Haseeb, CGSC with Mr. Himanshu Sethi, GP.
Ms. Akanksha Kaul, CGSC with Mr. Akash Kr. Singh, GP.

+ **W.P.(C) 14904/2024, CM APPL. 62517/2024, CM APPL. 62518/2024**

PNC BUNDELKHAND HIGHWAYS PVT LTD

..... Petitioner

Through: Mr. Darpan Wadhwa, Senior Advocate with Mr. Shashwat Singh and Mr. Kushagra, Advocates.

versus

UNION OF INDIA THROUGH MINISTRY OF ROAD
TRANSPORT AND HIGHWAYS & ANR.

..... Respondents

Through: Mr. Santosh Kumar, SC with Mr. Adithya Ramani, Advocate for NHAI.
Ms. Anushkaa Arora, SPC with



Ms. Soumya Kapoor, GP for R-1.

+ **W.P.(C) 14905/2024, CM APPL. 62520/2024, CM APPL. 62521/2024**

PNC KHAJURAHO HIGHWAYS PVT LTD Petitioner

Through: Mr. Nilava Bandyopadhyay,
Advocate.

versus

UNION OF INDIA THROUGH MINISTRY OF ROAD
TRANSPORT AND HIGHWAYS & ANR. Respondents

Through: Mr. Santosh Kumar, SC with
Mr. Adithya Ramani, Advocate for
NHAI.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T

SANJEEV NARULA, J.

1. The Petitioners seek *inter-alia* quashing of the order dated 18th October, 2024 (“Impugned order”) issued by Respondent No.1– Ministry of Road Transport and Highways (“MoRTH”) disqualifying them from participating in any MoRTH tender process for a period of 1 year. Additionally, they seek to quash the Show Cause Notice (“SCN”) dated 30th August, 2024 issued by Respondent No. 2— National Highway Authority of India (“NHAI”) which led to the impugned disqualification. Furthermore, they also seek to quash the Office Memorandum bearing O.M. No. NH-35014/20/2020-H-Part(2) dated 18th August, 2022.



2. The factual background in all the Petitions is nearly identical with the Petitioners raising similar legal grounds of challenge. Petitioner in W.P.(C) 14904/2024 and W.P.(C) 14905/2024 are subsidiaries of Petitioner in W.P.(C) 14903/2024 who have been disqualified from participating in the tender process of Respondent No.1 through the same order and show cause notice as noted above. Given the substantial overlap in both facts and legal submissions, advanced by respective counsel, it is deemed appropriate to address them collectively through a common order.

Brief Facts

3. NHAI issued a notice inviting tender along with Request for Proposal for four-laning of Jhansi- Khajuraho section from Km 0.00 to Km 76.3 of NH- 75/76 (“Package- I”) and four-laning of Jhansi-Khajuraho section of NH- 75/76 from Design Chainage Km 76.3 (“Package-II”). PNC Infratech Limited was the successful bidder of this tender. In compliance of the Letter of Acceptance dated 31st March, 2017 for Package-I and 28th March 2017 for Package-II, PNC Infratech Limited formed Special Purpose Vehicles (“SPVs”)- PNC Bundelkhand Highways Private Limited [Petitioner in W.P.(C) 14904/2024] and PNC Khajuraho Highways Private Limited [Petitioner in W.P.(C) 14905/2024] respectively. For this project, an Integrity Pacts (“IP”) was executed between PNC Infratech Limited and its subsidiaries and NHAI, in respect of Package-I and Package-II respectively,¹ setting forth the commitments to ethical practices and transparency.

4. During the Operation and Management of Package-I and Package-II, the CBI registered an FIR dated 8th June, 2024 against certain former officials of the NHAI along with other accused persons including PNC

¹ Collectively referred to as “IP”



Infratech Limited and some of its employees under Section 7, 8, 9, 10 and 12 of the Prevention of Corruption Act, 1988 (“PC Act”) and under Section 120B of the Indian Penal Code 1860 (“IPC”). Subsequently, a chargesheet was filed on 8th August, 2024, before the Court of the Special Judge for CBI Cases in Bhopal. While the chargesheet has been submitted, the court is yet to take cognizance of the matter, and charges have not yet been framed.

5. In light of the aforementioned criminal prosecution launched by the CBI, NHAI issued a show cause notice dated 30th August, 2024 to the Petitioners, alleging a breach of Article 2 of the IP. According to NHAI, this violation warranted the Petitioners’ exclusion and potential blacklisting from future contracts as provided under Article 3(2) of the IP and clause 4.2 of the Request for Proposal dated 9th November, 2016. Subsequently, MoRTH issued the Impugned order dated 18th October, 2024, disqualifying the Petitioners from participating in any MoRTH tender processes for one year, effective immediately in terms of the General Financial Rules, 2017 (“GFR Rules”) read with the Office Memorandum bearing O.M. No. NH-35014/20/2020-H-Part (2) dated 18th August, 2022 (“Impugned OM”).

6. Aggrieved by the same, the Petitioners have filed the present petition seeking setting aside of the SCN dated 30th August, 2024 and debarment order dated 18th October, 2024.

Contentions

7. Counsels for the Petitioners strongly press for quashing of Impugned order by arguing the following:

7.1 The Impugned order has been passed without jurisdiction. A bare perusal of the SCN and the Impugned order would reveal that the action has been taken against Petitioners on account of alleged breach of the IP.



However, for “transgression” of the terms of the IP, including that of Article 2, Article 3(2) provides the power only to the “Principal” (in this case Respondent No-2) to blacklist or put on holiday. However, in the present case, while Respondent No. 2 has issued the SCN, the Impugned order was passed by Respondent No. 1. Respondent No. 1 is neither a signatory to the IP, nor a signatory to the Concessionaire Agreement. Moreover, neither the IP, nor the Concessionaire Agreement authorizes Respondent No-1 to take any action related to IP. Therefore, the Impugned order passed by Respondent No-1 is without jurisdiction and *non-est*. As regards the OM No. NH-35014/20/2020-H-Part(2) dated 18th August, 2022 empowering Respondent No.1 to pass such Impugned orders, the same is not applicable as it is an Inter-Departmental Memo of Respondent No.1 and cannot unilaterally confer jurisdiction to Respondent No. 1 to act beyond the agreed terms of the IP, or unilaterally amend the IP. Any change to the IP has to be made in writing in terms of Article 10(2) of the IP which was not done. Moreover, the Impugned OM was issued five years after the execution of the IP and cannot have retrospective application or amend the terms of any IP unilaterally. The Respondents do not have any legal basis of applying the OM dated 18th August, 2022.

7.2 The Impugned order fails to demonstrate “transgression” by the Petitioner which is a *sine qua non* for debarment of an entity. The triggering point of Article 3(2) of IP is ‘transgression’ which can finally lead to debarment of the Contractor. Article 3(2) has to be read with Article 3(3), which defines “transgression”. A transgression is considered to have occurred, if the principal, after due consideration of the available evidence, concludes that “On the basis of facts available there are no material doubts”.



The Impugned order miserably fails to satisfy the mandatory threshold of Article 3(2) and 3(3) of the IP. The entire action of Respondents including the Impugned order lacks “due consideration” and the Respondents have failed to disclose any “evidence” which has led Respondent No. 1 or 2 to conclude that there were “no material doubts” that a transgression has been committed. Furthermore, a bare perusal of the Impugned Order, especially Para 10(i) and 10(vi) makes it clear that the sole consideration of Respondent No.1 while passing the Impugned Order is launch of criminal proceedings by CBI and the Chargesheet. However, the same cannot be a valid basis for passing the Impugned Order as mere launch of criminal proceedings cannot be basis for action of debarment. In view of the legal principles and the conduct of Respondent No.2, it is clear that the entire action of the Respondents is bad in law. That apart, it is pertinent to note that the Impugned SCN issued by Respondent No. 2 in para 4 states – “*that employees of Ms. PNC Infratech Ltd have **allegedly** provided illegal gratification through illicit means to some of the employees of the Authority.*” The use of the term “allegedly” makes it evident that Respondent No.2 accepts that the FIR and Chargesheet contains only allegations and not evidence. Moreover, the Impugned order discloses that the only basis for the Impugned action is the Chargesheet which too cannot form the basis for debarment as no cognizance has been taken by the CBI Court as Respondent No. 2 itself has not till date given the requisite sanction. Therefore, the Chargesheet is a ‘dead letter’ and cannot be the basis of any action. It is settled law that FIR and Chargesheet are not “evidence” in law. Therefore, there can be no question of there being any evidence that transgressions have been committed beyond material doubt. In



any case, there is nothing in the FIR or Chargesheet regarding the accused being caught red handed. It is highlighted that the Petitioners [PNC Bundelkhand Highways Private Limited and PNC Khajuraho Highways Private Limited] have not been named as an accused in either the FIR or the Chargesheet. Therefore, the presence of material doubt is clearly established as the SCN mentioned “allegedly provided” and no sanction has been given by Respondent No.2. In view thereof, no action can be taken by the Respondents for alleged violation of IP based on transgression.

7.3. The Impugned order was passed with a predetermined mindset and undue haste, violating principles of natural justice. The instances of pre-meditated mind can be substantiated from the content of the SCN itself wherein without any basis or contrary to its own noting in Para 4 of ‘allegedly provided’ at Para 5 and 7, Respondent No. 2 concluded that the Petitioner is guilty of transgression. Having come to this pre-meditated conclusion, Respondent No. 2 in para 7 stated *“However, before taking any action and in order to comply with the principles of natural justice, the Authority hereby issues this Show Cause Notice to both the entities mentioned above to show cause as to why action should not be taken to debar /blacklist them....”*. Furthermore, the subsequent letters dated 18th September, 2024 and 20th September, 2024 from Respondents No. 1 and 2 suggest they had already decided to debar the Petitioner, making the hearing merely a formality. Further, the hearing lasted from 11:00 AM to 11:45 AM on 18th October 2024, yet the order was communicated that same evening at 8:13 PM without addressing the Petitioner’s detailed 646-page written submission. This shows that the Order was unduly rushed and pre-meditated by the Respondent No.1, making the Impugned order bad in law.



8. Counsels for the Respondents, contest the relief sought by the Petitioners, asserting the following grounds:

8.1. Given that Ms. PNC Infratech Ltd's employees and directors allegedly engaged in obtaining undue favors from NHAI, there is a legitimate basis for the debarment action. The FIR registered on reliable information against the company employees substantiates the Respondents' decision.

8.2. The Petitioners were afforded due process, receiving SCNs that provided ample opportunity to respond. MoRTH considered the Petitioners' reply before issuing the Impugned order.

8.3. MoRTH's authority to issue the debarment order is established by OM no. NH-35014/20/2020-H-Part(2) dated 18th August, 2022, which aligns with the Supreme Court's ruling in *M/s Erusian Equipment & Chemicals Ltd. vs. State of West Bengal and Anr.*²

8.4. Debarment is permissible even prior to conviction, provided there is compelling evidence to suspect misconduct by the company's employees. The Division Bench ruling of this court in *UEE Electrical Engineers P. Ltd. v. Delhi Development Authority and Ors.*³ supports this position.

8.5. The Impugned order is well-reasoned, satisfying the requirement for administrative orders to be based on rational and justified grounds, even if it lacks the detailed analysis typical of judicial rulings.

Analysis and Findings

9. Before proceeding to analyse the aforementioned contentions, it would be

² (1975) 1 SCC 70

³ 2005 (81) DRJ 56 DB



appropriate to outline the principles guiding judicial review in matters of public procurement and administrative decisions on debarment or disqualification. In such cases, government agencies retain a considerable degree of discretion in awarding, managing, or rescinding contracts. Judicial intervention is done with caution, with courts generally refraining from substituting their own judgment for that of the competent authority, provided statutory and procedural safeguards have been observed. The scope of review in cases concerning debarment or disqualification is, therefore, limited to determining whether the administrative decision was arbitrary, unreasonable, or violated principles of natural justice, rather than assessing the merits of the decision itself.

10. With this framework in mind, the Court will first address Petitioners' contention relating to jurisdictional overreach by Respondent No.1.

11. *Whether the Impugned order has been passed without jurisdiction?*

11.1 The NHAI was constituted by an Act of Parliament in 1988 and operates under the administrative control of the MoRTH who retain overarching regulatory authority over NHAI's operations. NHAI functions as a Central Authority specifically mandated to develop, maintain, and manage the National Highways entrusted to it by the Government of India. Consequently, MoRTH, as the supervisory body, possesses inherent jurisdiction to intervene in matters involving integrity and compliance within projects managed by NHAI. This administrative control grants MoRTH the discretion to issue directives and enforce compliance measures across its affiliated bodies, including actions to maintain ethical standards and uphold public trust.

11.2 The Impugned debarment order has been issued by MoRTH, drawing



its authority from OM No. NH-35014/20/2020-H H-Part (2) dated 18th August, 2022. This OM outlines the procedural requirements for implementing agencies under the MoRTH in matters of public procurement, specifically in relation to debarment of bidders or contractors who are found in breach of the IP or code of conduct. The OM is extracted hereinbelow:

“OFFICE MEMORANDUM

Subject: Integrity in Public Procurement

In order to ensure transparency, equity and competitiveness, Integrity Pact provisions have been made in the RFP and contract documents. Further, Integrity Pacts are being monitored by a panel of Independent External Monitors.

2. Ministry of Finance has issued Guidelines on Debarment of firms from Bidding vide O.M. No. F.1/20/2018-PPD, dated 02.11.2021 (copy enclosed). Subsequently, Compliance Report of the said Guidelines has also been sought by Ministry of Finance vide O.M No. F.1/20/2018-PPD, dated 02.08.2022 (copy enclosed).

3. All the implementing agencies of MORTH shall follow these Guidelines in letter and spirit.

4. In the above context, it is further clarified that:

i. As per Clause (iii) of Rule 151 of GFR, 2017, an entity may be blacklisted/debarred if the bidder has breached the code of integrity.

ii. There is no need to wait till the criminal case instituted by the investigating agency is concluded. In case, there is enough material to proceed, implementing agency shall go ahead with the imposition of penalty.

iii. The kind of evidence required to be certain of a violation by a bidder so as to trigger such sanctions is adequate evidence of a violation if “on the basis of the facts available there are no material doubts” or “it is more likely than not” that the violation has occurred. The Supreme Court of India in M/s Erusian Equipment and Chemicals Ltd. [(1975) 1 SCC 70] inter alia held that “strong justification for believing that the proprietor or employee of the firm has been guilty of malpractices such as bribery, corruption, fraud” can be one of the grounds for blacklisting. The Report of the Investigating Agency (e.g. CBI Report)/ Investigating Officer’s Report under section 173 of Code of Criminal Procedure (Charge Sheet) or any other reliable source shall be the basis for determining violations.

iv. There shall not be any delay in taking action on all such violations as such a delay will result in giving benefit of allowing defaulters to bid and get new projects with the Government.



v. AS(H) shall be the competent authority to debar the firms, as per Ministry of Finance O.M No. F.1/20/2018-PPD, dated 02.11.2021.

5. This issues with the approval of Secretary (RT&H).”

11.3 The Supreme Court in *M/s Erusian Equipment & Chemicals Ltd.*,⁴ recognized that public bodies have the right to protect themselves against contractors involved in malpractices such as bribery, corruption, and fraud, and affirmed that debarment can proceed on the basis of “adequate evidence” or “strong justification” for believing that malpractices have occurred. The OM, in line with the Supreme Court’s judgment in *Erusian* establishes MoRTH’s jurisdiction to debar entities under suspicion of corrupt practices. The Impugned OM further clarifies that investigating agency reports, such as a CBI report or a charge sheet, are considered reliable sources for determining violations that may trigger debarment.

11.4 The OM designates the Additional Secretary (Highways) as the competent authority to issue debarment orders on behalf of MoRTH. This power includes the discretion to bar entities from future contracts, even prior to conviction, where credible evidence indicates corrupt practices. The Impugned OM also stipulates that the reports of the investigating agency or any other reliable source shall be the basis for determining any violation by a bidder.

11.5 The Petitioners have sought the quashing of the Impugned OM, challenging its validity. Although they did not present any cogent arguments regarding this challenge in their written submissions, the court has nonetheless reviewed the grounds mentioned in their petitions and will

⁴ “(1975) 1 SCC 70”



address them here. It is firstly imperative to note that the validity of the Impugned OM has already been examined by this court in W.P.(C) 16110/2022, where the arguments, similar to the ones raised in the aforementioned petitions, were rejected, and the Impugned OM was upheld. The Petitioners also cited ***Orion Security Solutions Pvt. Ltd. v. University of Delhi***⁵ to claim that the Impugned OM violates that judgment. However, this argument has already been rejected by this court in the decision rendered in W.P.(C) 16110/2022 holding ***Orion Security*** to be inapplicable.

11.6 The Court also finds the Petitioners' argument regarding the timing of the OM relative to the execution of the IP to be unpersuasive. The purpose of OM is to codify principles set out in *Erusian* and other relevant cases, which already permit debarment for public safety and integrity in procurement, regardless of when the IP was executed. Consequently, the provisions of Impugned OM apply as procedural guidelines and are not restricted by the date of IP, nor do they violate principles against retrospective application. The Court, therefore, finds no jurisdictional defect in MoRTH issuing the Impugned order.

11.7 Moreover, NHAI has initiated the exercise by issuing notice, sending a report to MoRTH and participating in hearing and assisting MoRTH. The MoRTH, being the higher authority of NHAI, therefore, in the opinion of the Court, is well vested with the jurisdiction to pass the Impugned order. It is also pertinent to note that this order has been passed, keeping in mind the grave allegations of corruption. It must be noted that the MoRTH has in the Impugned Order disqualified the Petitioners from participating in any tender process of the 'Ministry' for a period of one year.

⁵ [W.P. (C) 252/2018]



Since the effect of the Impugned order had wide ramifications debarring the Petitioners from participating in any government contracts, it necessarily followed that a senior officer of the Nodal Ministry of NHAI would take a decision on the debarment. In this context, the involvement of a more senior official from the Ministry demonstrates a commitment to propriety and reasonableness. In fact, by notifying MoRTH, Respondent No. 2 has taken a fair approach by keeping some distance from the final decision on debarment. As a result, an independent body, after hearing both parties and considering the available evidence, ultimately reached a decision. Thus, in the Court's view, there is no jurisdictional error.

11.8 The Petitioners have also asserted that the Impugned OM cannot unilaterally confer jurisdiction to Respondents to act beyond the agreed terms of the IP, or unilaterally amend the IP. It must be noted that the powers to pass the Impugned order has been drawn from the Impugned OM which is to be read with the IP. The reasons for referring the matter to MoRTH has in fact been delineated in communication dated 18th September, 2024, which reads as follows:



3. As part of the above submissions, M/s PNC Infratech Ltd has requested to give us opportunity of hearing as per the principles of natural justice by giving personal audience in the captioned subject before initiating any action proposed under the show cause notice.

4. As per MoRTH OM No. NH-35014/20/2020-H-Part(2) dated 18.08.2022, Additional Secretary (Highways) is Competent Authority for such cases. Further, as per para 5 (f) of Annexure of Office Memorandum dated 02.11.2021 of DoE, Secretary of Ministry/Department may nominate an officer at the rank of Joint Secretary /Additional Secretary as competent Authority to debar the firm.

5. In view of the above, the entire case along-with relevant documents [copy of the FIR dated 08.06.2024 (Annexure-1), copy of Show cause notice issued by NHAI (Annexure-2), replies to show cause submitted by M/s PNC Infratech Ltd, copy of CBI report dated 08.08.2024 (Annexure-3), copy of CBI report dated 08.08.2024 (Annexure-4) & copy of relevant clauses of Concession Agreement (Annexure-5)] are enclosed herewith with a request for further decision, including a suitable consideration on giving personal hearing to the Agency, on the matter.

6. This issues with the approval of the Competent Authority.

11.9 The Court finds no merit in the Petitioner's argument that MoRTH cannot enforce sanctions simply because it is not a party to the IP. This contention overlooks the broader objective of ensuring integrity in public contracts. Courts have consistently held that public interest considerations take precedence over narrow contractual interpretations, especially when dealing with issues of corruption or malpractice. As the regulatory body, MoRTH holds inherent authority to intervene when ethical violations are suspected, even if specific contractual clauses seem restrictive. Therefore, in the opinion of the Court, there is no jurisdictional error.

12. *Whether the Impugned order fails to demonstrate "transgression" by Petitioner rendering the debarment invalid?*

12.1. The Petitioners contend that under Article 3(2) of the IP, a finding of "transgression" is the foundational requirement that may justify a contractor's debarment. They argue, however, that Article 3(2) must be interpreted alongside Article 3(3), which defines "transgression" as occurring only when the authority, upon a thorough evaluation of available



evidence, determines there is an absence of material doubt regarding the infraction. According to the Petitioners, the Respondents have neither disclosed nor demonstrated any evidence that would allow a reasoned conclusion of “no material doubts” concerning a transgression, thereby rendering the debarment order invalid.

12.2. The Court has carefully considered the arguments advanced by the Petitioners but remains unconvinced. The concept of transgression is found in the contractual terms, particularly, the IP executed between the parties, whose relevant clauses read as follows:

“Article 2: Commitments of the Bidder/Contractor(s)/ Concessionaire(s)/ Consultant(s).

The Bidder(s)/Contractor(s)/concessionaire(s)/consultant(s) commit himself to take all measures necessary to prevent corruption. He commits himself to observe the following principles during his participation in the tender process and during the contract execution.

- (a) The Bidder(s)/Contractor(s)/concessionaire(s)/consultant(s) will not, directly or through any other person or firm, offer, promise or give to any of the Principal’s employees involved in the tender process or the execution of the contract or to any third person, any material or other benefit which he/ she is not legally entitled to, in order to obtain in exchange any advantage of any kind whatsoever during the tender process or during the execution of the contract*
- (b) The Bidder(s)/Contractor(s)/concessionaire(s)/consultant(s) will not enter with other bidders into any undisclosed agreement or understanding, whether formal or informal. This applies in particular to prices, specifications, certifications, subsidiary contracts, submission or non-submission of bids or any other actions to restrict competitiveness or to introduce cartelization in the bidding process.*
- (c) The Bidder(s)/Contractor(s)/concessionaire(s)/consultant(s) will not commit any offence under the relevant IPC/PC Act and other Statutory Acts; further the Bidder(s)/Contractor(s)/ concessionaire(s)/consultant(s) will not use improperly, for purposes of completion or personal gain, or pass on to*



others, any information or document provided by the Principal as part of the business relationship, regarding plans, technical proposals and business details, including information contained or transmitted electronically .

- (d) The Bidder(s)/Contractor(s)/concessionaire(s)/consultant(s) of foreign shall disclose the name and address of the Agents / representatives in India, if any similarly the Bidder(s)/Contractor(s)/ concessionaire(s)/consultant(s) of Indian Nationality shall furnish the name and address of the foreign principle, if any.
- (e) The Bidder(s)/Contractor(s)/concessionaire(s)/consultant(s) will, when presenting his bid, disclose c1ny and all payments he has made, is committed to or intends to make to agents, brokers or any Other intermediaries in connection with the award of the contract. He shall also disclose the details of services agreed upon for such payments.
- (f) The Bidder(s)/Contractor(s)/concessionaire(s)/consultant(s) will not instigate third persons to commit offences outline above or be an accessory to such offences.
- (g) The Bidder(s)/Contractor(s)/concessionaire(s)/consultant(s) will not bring any outside influence through any Govt. bodies/quarters directly or indirectly on the bidding process in furtherance of his bid.

Articles 3: Disqualification from tender process and exclusion from future contracts.

- (1) If the Bidder(s)/Contractor(s)/concessionaire(s) /consultant(s), before award or during execution has committed a transgression through a violation of any provision of Article - 2, above or in any other form such as to put his reliability or credibility in question, the Principal is entitled to disqualify the Bidder(s)/Contractor(s)/concessionaire(s) /consultant(s) from the tender process.
- (2) If the Bidder/ Contractor/ Concessionaire/ Consultant has committed a transgression through a violation of Article-2 such as to put his reliability or credibility into question, the Principal shall be entitled to exclude including blacklist and put on holiday the Bidder/Contractor/Concessionaire/Consultant for any future tenders/contract award process. The imposition and duration of the exclusion will be determined by the severity of the transgression. The severity will be determined by the Principal taking into consideration the full facts and



circumstances of each case particularly taking into account the number of transgressions, the position of the transgressors within the company hierarchy or the Bidder/Contractor/Concessionaire/Consultant and the amount of the damage. The exclusion will be imposed for a minimum of 1 year.

- (3) A transgression is considered to have occurred if the Principal after due consideration of the available evidence concludes that on the basis of facts available there are no material doubts.*
- (4) The Bidder(s)/Contractor(s)/concessionaire(s)/consultant(s) with its free consent and without any influence agrees and undertakes to respect and uphold the Principal's absolute rights to resort to and impose such exclusion and further accepts and undertakes not to challenge or question such exclusion on any ground, including the lack of any hearing before the decision to resort to such exclusion is taken. This undertaking is given freely and after obtaining independent legal advice.*
- (5) The decision of the Principal to the effect that a breach of the provisions of this Integrity Pact has been committed by the Bidder(s)/Contractor(s)/concessionaire(s)/consultant shall be final and binding on the Bidder/Contractor/concessionaire/consultant.*
- (6) On Occurrence of any sections/disqualification etc arising out from violation of integrity pact Bidder/Contractor/concessionaire/consultant shall not be entitled for any compensation on this account.*
- (7) Subject to full satisfaction of the Principal, the exclusion of the Bidder/Contractor/concessionaire/consultant could be revoked by the Principal if the Bidder/Contractor/concessionaire/consultant can prove that he has restored/recouped the damage caused by him and has installed a suitable corruption prevention system. in his organization."*

12.3 While the Petitioners may argue that mere initiation of criminal proceedings is insufficient to warrant debarment, but it must be noted that the Impugned order and the SCN is based on cogent evidence and not mere initiation of criminal proceedings. The record suggests that an FIR dated 8th June, 2024 has been registered on credible source information, alleging that



the directors and other employees of PNC Infratech Limited, engaged in a scheme to secure undue favours from certain NHAI officials by offering bribes in exchange for favourable treatment. These alleged favours encompassed actions such as the facilitation of project handovers, issuance of No Objection Certificates (“NOCs”), and expedited processing of final bills related to the Jhansi-Khajuraho project awarded to the Petitioner by NHAI. The FIR further indicates that specific employees of PNC Infratech Limited maintained persistent and targeted communications with NHAI officers, with the aim of obtaining these benefits, including clearance of pending bills and issuance of NOCs to enable changes in project ownership.

12.4 The material on record before the competent authority thus extends beyond mere allegations. The FIR dated 8th June, 2024, unambiguously outlines the intent behind these illicit transactions, demonstrating that the financial inducements were intended to manipulate the project’s procedural outcomes. Furthermore, the chargesheet filed on 8th August, 2024, substantiates these allegations by detailing the trap laid by the Investigating Officer, capturing employees on CCTV, and revealing intercepted conversations between the Petitioner’s staff and the employees of NHAI named as accused in the FIR.

12.5 While the Petitioners correctly observe that the Court has not yet taken cognizance of the chargesheet, this fact does not, in the Court’s opinion, detract from the substantial evidence supporting the Respondents’ actions. The interception of calls, the CCTV footage, and other evidence referenced in the chargesheet together establish, with compelling clarity, that the alleged transgressions occurred beyond any material doubt. The Court finds that this evidence satisfies the threshold of “transgression” as



contemplated under Articles 3(2) and 3(3) of the Integrity Pact, supporting the Respondents' decision to impose the debarment on firm, documented grounds.

12.6 The OM provides that there is no need to wait till the criminal case instituted by the investigating agency is concluded. The threshold for determining a violation by a bidder, as per the OM, is satisfied by the presence of “adequate evidence of a violation” if, based on the facts available, there are “no material doubts” or if it is “more likely than not” that the violation has occurred. This threshold permits the authority to act decisively once sufficient preliminary evidence supports the conclusion of misconduct, thus enabling timely intervention in the interest of safeguarding the integrity of public contracts.

12.7 In *M/s Erusian Equipment*, the Supreme Court clarified that one of the grounds justifying blacklisting is the existence of “strong justification” to believe an employee or representative of a firm is involved in malpractice. In that case, the Petitioner company was blacklisted based on confidential information from the Collector of Customs, implicating the firm in dubious practices while an investigation was underway. This decision, highlights that government agencies, when dealing with credible information indicating potential fraud or corruption, need not wait for judicial confirmation before acting to preserve public interests. The rationale is to enable government entities to pre-emptively protect procurement processes from entities suspected of ethical violations.

12.8 A similar approach was endorsed by a coordinate bench of this



Court in *M/s Sabharwal Medicos Pvt. Ltd. v. Union of India and Ors.*,⁶ where it was held that the authority vested with the power to blacklist must independently assess whether the facts and circumstances warrant such an action. The bench emphasized that, once the investigation of the investigating agency, results in a chargesheet, the State is neither obligated nor expected to wait for the final outcome of the criminal trial to impose preventive measures, such as blacklisting. The Court noted that the filing of chargesheet establishes a reasonable foundation to act, especially where the public interest may be jeopardized by continued dealings with the accused entity.

12.9 Further reinforcing this principle, this court in *Shoghi Communications Ltd. v. Union of India*⁷ also upheld a blacklisting order against a company following the filing of a chargesheet against its director, even while the criminal trial was still pending. The court ruled that pending criminal proceedings do not preclude the imposition of preventive sanctions like blacklisting, where *prima facie* evidence substantiates the allegations.

12.10 Additionally, the Division Bench of this Court, in *UEE Electrical Engineers Pvt. Ltd. v. Delhi Development Authority*,⁸ upheld an order of blacklisting based solely on an FIR registered against a company employee. Notably, at the time of the debarment, the FIR remained under investigation, underscoring that the pendency of an investigation does not preclude the imposition of preventive measures like blacklisting. This judgment reinforces the principle that a formal indictment or conviction is not a prerequisite for blacklisting when there is substantive cause for

⁶ 2013 SCC Online Del 3839

⁷ 2011 SCC Online Del 329

⁸ 2005 (81) DRJ 56 DB



concern founded on credible allegations of misconduct. These aforementioned judgments reflect a judicial consensus recognizing that while blacklisting has serious implications, its exercise is permissible based on credible preliminary findings that safeguard public resources and trust.

12.11 The Petitioners' reliance on ***Kailash Gour v. State of Assam***,⁹ invoking the presumption of innocence in criminal jurisprudence, is misplaced in the present context. This case does not engage principles of criminal law for establishing individual guilt but instead centers on administrative action grounded in public interest. The Court does not apply the presumption of innocence or principles of criminal jurisprudence in the administrative domain, where preventive action can be taken on strong suspicion supplemented by credible evidence, rather than on definitive proof of guilt.

12.12 The Petitioners' reference to ***Orion Securities*** is similarly unpersuasive. That decision turned on whether an applicant could be disqualified solely due to registration of an FIR. In contrast, the present case involves an FIR that has culminated in a chargesheet, substantiated by cogent evidence, which together meet the threshold for determining "transgression" under the Integrity Pact. The evidence gathered by the CBI establishes more than a mere suspicion, providing a sound basis for debarment in alignment with administrative law principles.

12.13 Likewise, ***Baldev Singh & Anr. v. State of Punjab***¹⁰ and ***Kartongen Kemi Och Forvaltning AB v. State***¹¹ are distinguishable, as these cases dealt with the weight of an FIR as substantive evidence in

⁹ [Criminal Appeal Petition No. 1068 of 2006]

¹⁰ 1996 AIR 372

¹¹ 2004 DHC 111407



criminal proceedings. In the administrative context here, the chargesheet—supported by concrete evidence including recorded conversations and CCTV footage—serves as a substantive basis for action. Thus, while these criminal cases emphasize high thresholds of proof, administrative decisions of debarment rely on a standard of credible evidence that firmly supports the action in question.

12.14 It is indeed a fundamental tenet of criminal law that every individual is presumed innocent until proven guilty by a competent court following a fair trial. However, in the present case, the issue before the Court does not concern establishing guilt in the criminal sense but rather determining whether a “transgression” has occurred under the terms of the Integrity Pact (IP). The IP is structured to enforce ethical integrity and transparency in public contracts, and its objectives would be undermined if the Petitioners’ arguments were to be accepted. This mechanism is preventive rather than punitive, aimed at promoting public trust by precluding contractors suspected of unethical practices from participating in public tenders.

12.15 The Court is of the view that the breaches alleged against the Petitioners constitute serious infractions that cannot be overlooked or trivialized. The evidence that emerges in the chargesheet —comprising intercepted communications, video footage, and documented instances of bribery—reflects conduct that strikes at the very core of public procurement integrity. The severity of these allegations, coupled with the corroborative material unearthed and referenced in the chargesheet, firmly justifies the Respondents’ decision to debar the Petitioners from participating in tender processes.



12.16 Moreover, the Court reiterates that it is not within its purview to supplant the judgment of the competent authority with its own, except where it is shown that the authority's decision is arbitrary, capricious, or taken in violation of procedural propriety. Here, the Respondents have exercised their discretion in a manner consistent with the objectives of IP, relying on substantial evidence indicative of transgressive practices. The decision to refrain from engaging in contractual relationships with entities under a cloud of suspicion is a rightful prerogative of the State. Imposing an alternative view would place undue limitations on the State's authority to protect its interests by excluding parties it reasonably deems untrustworthy or undesirable. The Court finds that such discretion is particularly appropriate in this context, where public trust and the ethical management of resources are paramount.

13. *Whether the Impugned order was passed with a pre-determined mindset and undue haste*

13.1. The Petitioners assert that the Respondents approached the decision-making process with a pre-determined mindset, evident from the content and tone of the SCN, which, they argue, lacked a factual basis and reflected a foregone conclusion of guilt. According to the Petitioners, the language of SCN and structure imply that the Respondents had already resolved to impose sanctions on the Petitioner, treating the hearing as a mere formality rather than an opportunity for meaningful engagement. They further contend that letters issued by NHAI on 18th September, 2024, and by MoRTH on 20th September, 2024, underscore this pre-meditated approach, revealing that the decision to debar the Petitioner had effectively been made



before considering any response.

13.2 The Petitioners also argue that these correspondences indicate that the hearing process lacked genuine intent, serving only as a procedural formality to comply with documentation requirements. They contend that the Respondents' actions amounted to a gross breach of the principles of natural justice, particularly the right to a fair hearing, as the opportunity to present their case was illusory, and the decision was pre-determined. By failing to afford a fair, impartial, and open-minded consideration of the Petitioner's representations, the Petitioners argue that the Respondents undermined the legitimacy of the administrative process.

13.3 In the Court's opinion, these contentions are entirely misconceived and unsupported by the record. The mere fact that the Respondents acted with promptness does not substantiate the claim of a pre-determined mindset or undue haste. Assertions to this effect are devoid of merit and overlook the procedural fairness afforded to the Petitioners.

13.4 The record reflects that the Respondents fully adhered to principles of natural justice, as evidenced by the SCN dated 30th August, 2024, issued by NHAI. This notice explicitly outlined the allegations against the Petitioner company, including the specific breaches alleged under the Integrity Pact and the potential sanctions under consideration. The SCN provided the Petitioners with a clear and comprehensive account of the charges, enabling them to understand the case against them and respond meaningfully. Furthermore, the SCN offered the Petitioners an opportunity to make representations before a final decision was rendered, fulfilling the procedural requirement to ensure a fair hearing.

13.5 The said SCN is as follows:



“Sub.: Show Cause Notice: Violation of the conditions of Article 2 of Integrity Pact of the contract agreement signed between NHAI & PNC Khajuraho Highways Pvt. Ltd. and M/s PNC Bundelkhand Highways Private Limited.

This is to bring to your kind attention that M/s PNC Infratech Ltd was awarded the work of “Four laning of Jhansi-Khajuraho section (Pkg-1 & Pkg-II) of NH-75/76 in the state of U.P. & M.P. under NHDP (Phase III) on Hybrid Annuity mode” and Concession Agreement for the work was signed on 07.06.2017.

2. The Integrity Pact (“IP”) was also signed as part of the Concession Agreement. The Article-3 of IP states that “If the Bidder(s)/ Contractor(s)/ Concessionaire(s)/ Consultant(s) has committed a transgression through a violation of Article-2 such as to put his reliability or credibility into question, the Principal shall be entitled to exclude including blacklist and put on holiday the Bidder(s)/Contractor(s)/ Concessionaire(s)/ Consultant(s) for any future tenders/ contract award process.

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

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

4. Recently, it has come to the notice of the Authority that CBI has filed RC No. RC2182024A0012 dated 08.06.2024 and chargesheet dated 08.08.2024 on the ground that employees of M/s PNC Infratech Ltd. have allegedly provided illegal gratification through illicit means to some of the employees of the Authority. The said case has been registered against the employees of NHAI as well as employees and one of the promoters of M/s PNC Infratech Ltd under the provisions of Prevention of Corruption Act and Indian Penal Code. It is noted that one of the directors of PNC Infratech Ltd., Shri T.R. Rao, is the managing director of PNC Khajuraho Highways Pvt. Ltd., and M/s PNC Bundelkhand Highways Private Limited, the SPV.

5. In light of the above facts and circumstances, the Authority is of the view that M/s PNC Infratech Ltd & PNC Khajuraho Highways Pvt. Ltd. and M/s PNC Bundelkhand Highways Private Limited have committed a transgression through a violation of the provisions of Article 2 of the IP as extracted above and are thus liable to be excluded including blacklisting for any future tenders/contract in terms of Article 3 (2) of IP. Not only this, in view of the above, the abovenamed companies have also indulged in corrupt practice in terms of Clause 4.2 of Section 4 (Fraud



and Corrupt Practices) of the Request For Proposal dated 09.11.2016 issued for the instant project (“RFP”) which provides that if a bidder is found by the Authority to have directly or indirectly or through an agent, engaged or indulged, inter alia, in any corrupt practice, then such Bidder, at the sole and absolute discretion of the Authority, shall not be eligible to participate in any tender or RFP issued by the Authority during a period of 2 (two) years.

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

7. In view of the aforesaid transgression, M/s PNC Infratech Ltd, PNC Khajuraho Highways Pvt. Ltd. and M/s PNC Bundelkhand Highways Private Limited have put their reliability and credibility into question and indulged into the corrupt practice, therefore, they are liable to be proceeded against as per the actions envisaged under Article 3 (2) of the IP and GFR 2017 read with Clause 4.2 & 4.3 of Section 4 of the RFP. However, before taking any action and in order to comply with the principles of natural justice, the Authority hereby issues this Show Cause Notice to both the entities mentioned above to show cause as to why action should not be taken to debar/blacklist them, for breaching Article 2(a) of the IP and Clause 4 of Section 4 of the RFP as per MoRTH Guideline dated 18.08.2022 from participating in future tenders/contract award process, as per Article 3(2) of IP, Rule 151(iii) of GFR 2017 read with Office Memorandum No. NH-35014/20/2020-H-Part(2) dated 18.08.2022 of the Ministry of Road Transport & Highways and Clause 4.2 & 4.3 of Section 4 of the RFP.

8. The reply(ies) from both the aforementioned companies in the matter should be received within 15 days of receipt of this letter i.e. on or before 14.09.2024. In case, no response is received by the said date it will be presumed that the said companies don’t have anything to say in the matter and action will be taken as proposed herein above which includes debarment/blacklisting without further notice to them as per Contractual provisions, extent guidelines issued from time to time by Ministry of Finance Govt of India & MORTH.

9. This is issued without prejudice to any other rights and remedies that the Authority may have, now or in future, against the abovenamed companies, whether in law, contract or otherwise.”

13.6 The swift action taken by the Respondent No.2, far from indicating a pre-meditated conclusion, demonstrates an efficient response to



serious concerns that were properly detailed and disclosed. Consequently, the Court holds that the Petitioners' allegations of a biased or pre-determined approach are unfounded and fail to meet the threshold for establishing a breach of natural justice. The Petitioners submitted a detailed reply to the SCN on 14th September, 2024, denying all allegations. Subsequently, NHA, *via* its letter dated 18th September, 2024, forwarded all pertinent documents related to the matter to MoRTH, as the OM vests MoRTH with the authority to impose debarment in cases involving pre-conviction corruption or criminal allegations. MoRTH, in turn, issued an SCN to the Petitioner on 20th September, 2024, instructing them to submit all relevant documents and evidence by 30th September, 2024. Additionally, MoRTH directed the Petitioner to attend a hearing, either in person or through an authorized representative, scheduled for 30th September, 2024, at 11:00 AM.

13.7 As the Petitioners were unable to attend the hearing, at their request, MoRTH, through another communication dated 30th September, 2024, directed Petitioner to appear on 18th October, 2024 at 11:00 AM and submit documents.

13.8 MoRTH conducted a hearing for the Petitioner, attended by NHA officers, before issuing a reasoned order on 18th October, 2024, imposing a one-year debarment. Pertinently, SCNs were issued by both NHA and MoRTH, each explicitly detailing the allegations against the Petitioner and the potential consequences. Following this, the Petitioner was provided the opportunity to file comprehensive written submissions and present its case at a personal hearing.

13.9 The Court finds that the Respondents' actions complied with



both the letter and spirit of the natural justice principles, offering the Petitioners a legitimate chance to defend the allegations.

13.10 The Court also does not find merit in Petitioners' assertion that the Impugned Order, did not deal with, or even refer to the grounds and submissions in the detailed Written Submissions running into more than 700 pages. The Impugned order was passed by MoRTH after considering the Petitioner's arguments, as noted in the very same order. The issuance of SCNs and the involvement of both NHA I and MoRTH exhibit a deliberate and comprehensive review process, ensuring that all allegations were conveyed transparently to the Petitioner. This procedural thoroughness suggests an intention to uphold due process rather than hastily implement debarment. Additionally, the opportunity for a personal hearing allowed the Petitioner to present clarifications in person, a step that further demonstrates the Respondents' adherence to procedural fairness. This approach underscores that the Respondents fully adhered to the principles of natural justice, affording the Petitioner every opportunity to respond and defend its position. The allegations of a pre-determined or biased mindset are therefore unsubstantiated, as the procedural record demonstrates a fair, balanced, and transparent process by the Respondents.

13.11 In ***Diwan Chand Goyal v. National Capital Region Transport Corporation***¹² this court has detailed the principles of debarment by analysing several judgments of the Supreme Court and has *inter alia*, held that the order of blacklisting ought to contain reasons but the reasons need not be detailed or elaborate. It is sufficient to give brief reasons. Further reasons can also be inferred from the documents on record and not

¹² W.P. (C) 3301 of 2020



necessarily be contained in the Impugned order.

Conclusion

14. In light of the foregoing analysis, the Court finds no merit in the Petitioners' contentions challenging the Impugned order or the SCN. The Respondents, through NHA and MoRTH, adhered to a structured process that safeguarded procedural fairness and complied with the principles of natural justice. The record demonstrates that the Petitioner was adequately informed of the allegations and given sufficient opportunity to present its case, both through written submissions and a personal hearing.

15. The Impugned decision was based on a reasoned assessment of credible evidence, as outlined in the Show Cause Notice, the chargesheet, and the Impugned order. The Respondents acted within their statutory discretion, and the decision to impose debarment is neither arbitrary nor capricious. Allegations of a pre-determined mindset or undue haste are unfounded, as the Respondents followed due process with transparency and diligence. The preventive action taken is in furtherance of the public policy objectives to maintain integrity in public procurement and contracting.

16. Accordingly, the writ petitions stand dismissed, with no grounds for interference in the Respondents' decision to impose debarment. This Court finds no reason to substitute its own judgment for that of the competent authority, which has exercised its discretion lawfully and rationally in light of the evidence presented.

17. The Court also finds no merit in the Petitioners' challenge to the SCN or the Impugned OM.

18. Before parting, it is clarified that the observations regarding the



sufficiency of evidence against the Petitioner– PNC Infratech Limited, its directors and other employees are limited to the finding of a breach of the Integrity Pact by the Petitioners. The Court’s observations on the FIR or chargesheet shall not prejudice rights and contentions of any of the Petitioners or influence the ongoing criminal proceedings.

19. Dismissed, along with pending applications.

SANJEEV NARULA, J

OCTOBER 29, 2024

d.negi