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

Judgment pronounced on: 11.12.2025

\+ **W.P.(C) 4342/2024, CM APPL. 17821/2024, 27206/2024, 71333/2024 & 71334/2024**

VERT EQUIPMENT PRIVATE LIMITED & ANR. .....Petitioners

Through: Mr. Atul Nanda, Sr. Advocate along with Ms. Rameeza Hakeem, Mr. Balaji Subramanian, Mr. Kaustubh Chaturvedi, Mr. Akash Kundu, Ms. Vartika Aggarwal, Mr. Harshit Smit Shay and Ms. Annammaya Nanda, Advocates.

versus

UNION OF INDIA .....Respondent

Through: Ms. Radhika Bishwajit Dubey, CGSC along with Ms. Gurleen Kaur Waraich, Mr. Kritarth Upadhyay and Mr. Vivek Sharma, Advocates for UOI.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

FACTUAL MATRIX

1. The present petition has been filed by the petitioners assailing an order dated 26.02.2024, issued by the respondent/Ministry of Defence, Government of India, whereby, suspension of business dealings of the petitioner no.1 with the Government of India initially suspended *vide* an order dated 14.08.2020, has been extended for a "further period of six months w.e.f. 14.02.2024 or until further order/s". The same has been ostensibly done in terms of paragraph D.2 of 'the Guidelines of the Ministry

of Defence for Penalties in business dealing with entities dated 21.11.2016' (hereinafter referred as "*the MoD Guidelines*").

2. The background of the matter is that the petitioner no.1, a company engaged in the business of providing engineering equipments to the Government of India and the Indian Army was held to be in alleged violation of the Pre-Contract Integrity Pact (hereinafter referred as " the PCIP") furnished during the bidding process of two tenders floated by the respondent for "procurement of 1000 numbers of Rough Terrain Fork Lift Truck" (hereinafter referred as "*the first tender*") and "supply of 1820 Skid Steer Loaders" (hereinafter referred as "*the second tender*") in the year 2009 and 2012 respectively. The said violation was attributed to the alleged failure of the petitioners to disclose the registration of two FIRs bearing nos. RC AC1 2012 A0004 dated 30.03.2012 and RC AC1 2012 A0014 dated 19.10.2012 by the CBI against one Mr. Ravinder Rishi (now deceased), the then major shareholder of the petitioner no.1 company.

3. On account of non-consideration of the bids of the petitioners pertaining to the aforementioned tenders, the petitioners preferred writ petitions before this Court. In regard to the first tender, W.P(C) 6443/2014 preferred by the petitioner came to be dismissed by a Division Bench of this Court *vide* an order dated 08.03.2018. The said order *inter-alia* reads as under: -

> *7. In the present case, it is not disputed by the petitioner that the respondent invoked the bank guarantee on 08.08.2014. Interestingly, the petitioner has not challenged the invocation nor has asked for any relief pertaining to the invocation based upon the respondent's assessment that the Pre-Contract Integrity Pact ("PCIP") had been violated. This assumes importance because the subsequent arguments and proceedings before this Court in this petition are entirely hinged upon the action of the respondent in proceeding to hold that Integrity Pact was violated.*

The closure report which the respondent eludes to in its counter affidavit pertinently states that the Special Judge in the New Delhi Courts refused to proceed upon the report on 25.08.2014 and evidently therefore, as on date, when the decision to encash the bank guarantee on the determination that the PCIP was violated, the respondent had some basis to do so. In the subsequent event, i.e. omission to invite petitioner for the contract negotiations then cannot be termed as arbitrary.

8. The Court is also of the opinion that whilst the petitioner's submission that it did all that it could do to comply with the terms imposed by the tender and that its reluctance to extend the bank guarantee, was premised upon by the respondents to encash it, has to be seen in the overall circumstances. The lowest tenderer, undoubtedly, has an expectation. In this case, the petitioner perhaps entertained such an expectation. It is not entirely unreasonable but as to whether that expectation – crystallizes into a contract, would depend upon the terms of the contract and the evaluation by the agency. In the facts of this case, the agency (the Central Government) had some reasons which the Court, in its discretion under Article 226 of the Constitution, cannot substitute and hold to be inadequate.

For the above reasons, it is held that there is no merit in the writ petition; it is accordingly dismissed."

4. Similarly, as regards to the second tender, W.P(C) 4443/2020 preferred by the petitioner was dismissed by this Court *vide* an order dated 18.08.2020, *inter-alia*, observing as under:-

"21. Having heard the learned counsel for the parties and perused the record, the first issue that needs to be decided is whether the petitioners who have challenged the invocation of Bank Guarantee, which is unconditional, the remedy for them would be to seek damages, that too in a Civil Court. I am not in agreement with this plea of Mr. Kumar for the reason, the petition has been filed laying challenge to the decision of the respondent no.1 that the petitioner no.1 has breached the PCIP, which also contemplates, upon such a breach, the Bank Guarantee can be invoked. So the invocation is consequential to the breach of PCIP. The substantive relief sought, being against the decision of respondent no.1, holding that petitioner no.1 has breached the PCIP, surely the petitioners are within their right to seek a consequential prayer with regard to Bank Guarantee that too against respondent no.1, which comes within the definition of State as per Article 12 of the Constitution of India, action of which surely have a public law element. Mr. Subramanian is justified on placing reliance on the Judgment of the Supreme Court in Joshi

Technologies Ltd. (Supra), wherein in Para 69.1, the Supreme Court has said

"The Court may not examine the issue unless the action have some public law character attached to it"

22. In so far as the other pleas advanced by Mr. Subramanian are concerned, there is no dispute that Clause 10 of PCIP under the headings "Sanctions for violation" contemplates the following action in the eventuality of breach of PCIP, i.e., Clause 6 and 7. Clauses 6, 7 and 10 are reproduced as under:

> *"6. The Bidder commits, himself to take all measures necessary to prevent corrupt practices, unfair means and illegal activities during any stage of his bid or during any pre-contract or post-contract stage in order to secure the contract or in furtherance to secure it and in particular commits himself to the following:-*
>
> *6.1 The Bidder will not offer, directly or through intermediaries, any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the Buyer, connected directly or indirectly with the bidding process, or to any person, organization or third party related to the contract in exchange for any advantage in the bidding, evaluation contracting and implementation of the Contract.*
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> *6.2 The Bidder further undertakes that he has not given, offered or, promised to give, directly or indirectly any bribe, gift, consideration, reward, favour, any material or immaterial benefit or other advantage, commission, fees, brokerage or inducement to any official of the Buyer or otherwise in procuring the Contract or forbearing to do or having done any act in relation to the obtaining or execution of the Contract of any other Contract with the Government for showing or forbearing to show favour or disfavour to any person in relation to the Contract or any other Contract with the Government.*
>
> *6.3 The Bidder will not collude with other parties interested in the contract to impair the transparency, firmness and progress of the bidding process, bid evaluation, contracting and implementation of the contract.*
>
> *6.4 The Bidder will not accept any advantage in exchange for any corrupt practice, unfair means and illegal activities.*

6.5 The Bidder further confirms and declares to the Buyer that the Bidder is the original manufacturer/integrator/authorized government sponsored export entity of the defence stores and has not engaged any individual or firm or company whether Indian or foreign to intercede, facilitate or in any way to recommend to the Buyer or any of its functionaries, whether officially or unofficially to the award of the contract to the Bidder, nor has any amount been paid, promised or intended to be paid to any such individual, firm or company in respect of any such intercession, facilitation or recommendation.

6.6 The Bidder, either while presenting the bid or during precontract negotiations or before signing the contract shall disclose any payments he has made, is committed to or intends to make to officials of the Buyer or, their family members, agents, brokers or any intermediaries in connection with the contract and the details of services agreed upon for such payments.

6.7 The Bidder shall not use improperly, for purposes of competition or personal gain, or pass on to others, any information provided by the Buyer as part of the business relationship, regarding plans, technical proposals and business details, including information contained in any electronic data carrier. The Bidder also undertakes to exercise due and adequate care lest any such information is divulged.

6.8 The Bidder commits to refrain from giving any complaint directly or through any other manner without supporting it with full and verifiable facts.

6.9 The Bidder shall not instigate or cause to instigate any third person to commit any of the actions mentioned above.

7. Previous Transgression.

7.1 The Bidder declares that no previous transgression occurred in the last three years immediately before signing of this Integrity Pact, with any other company in any country in respect of any corrupt practices envisaged hereunder or with any Public Sector Enterprises in India or any Government Department in India that could justify bidder's exclusion from the tender process.

7.2 If the Bidder makes incorrect statement on this subject, Bidder can be disqualified from the tender process or the contract, if already awarded, can be terminated for such reason.

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10. Sanctions for Violation

10.1 Any breach of the aforesaid provisions by the Bidder or any one employed by him or acting on his behalf (whether with or without the knowledge of the Bidder) or the commission of any offence by the Bidder or any one employed by him or acting on his behalf, as defined in Chapter IX of the Indian Penal Code, 1860 or the Prevention of Corruption Act 1988 or any other act enacted for the prevention of corruption shall entitle the Buyer to take all or any one of the following actions, wherever required.

(i) To immediately call of the pre-contract negotiations without assigning any reason or giving any compensation to the Bidder. However, the proceedings with the other Bidder(s) would continue.

(ii) The Earnest Money/Security Deposit/Performance Bond shall stand forfeited either fully or partially, as decided by the Buyer and the Buyer shall not be required to assign any reason therefore.

(iii) To immediately cancel the contract, if already signed without giving any compensation to the Bidder.

(iv) To recover all sums already paid by the Buyer, in case of an Indian Bidder with interest thereon at 2% higher than the prevailing Base Rate of SBI. If any outstanding payment is due to the Bidder from the Buyer in connection with any other contract for any other defence stores, such outstanding payment could also be utilized to recover the aforesaid sum and interest.

(v) To encash the advance bank guarantee and performance bond/warranty bond, if furnished by the Bidder, in order to recover the payments, already made by the Buyer, along with interest.

(vi) To cancel all or any other Contracts with the Bidder.

(vii) To debar the Bidder from entering into any bid from the Government of India for minimum period of five years, which may be further extended at the discretion of the Buyer.

(viii) To recover all sums paid in violation of this Pact by Bidder(s) to any middleman or agent or broker with a view to securing the contract.

(ix) If the Bidder or any employee of the Bidder or any person

acting on behalf of the Bidder, either directly or indirectly, is closely related to any of the officers of the Buyer, or alternatively, if any close relative of an officer of the Buyer has financial interest/stake in the Bidder's firm, the same shall be disclosed by the Bidder at the time of filing of tender. Any failure to disclose the interest involved shall entitle the Buyer to rescind the contract without payment of any compensation to the Bidder.

The term 'close relative'· for this purpose would mean spouse whether residing with the Government servant or not, but not include a spouse separated from the Government servant by a decree or order of a competent court; son or daughter or step son or step daughter and wholly dependent upon Government servant, but does not include a child of step child who is no longer in any way dependent upon the Government Servant or of whose custody the Government servant has been deprived of any or under any law, any other person related, whether by blood or marriage to the Government servant or to the Government servant's wife or husband and wholly dependent upon Government servant.

(x) The Bidder shall not lend to or borrow any money from or enter into any monetary dealings or transactions, directly or indirectly, with any employee of the Buyer, and if he does so, the Buyer shall be entitled forthwith to rescind the contract and all other contracts with the Bidder. The Bidder shall be liable to pay compensation for any loss or damage to the Buyer resulting from such rescission and the Buyer shall be entitled to deduct the amount so payable from the money(s) due to the Bidder.

(xi) In cases where irrevocable letters or Credit have been received in respect of any contract signed by the Buyer with the Bidder, the same shall not be opened.

10.2 The decision of the Buyer to the effect that a breach of the provisions of this Integrity Pact has been committed by the Bidder shall be final and binding on the Bidder, however, the Bidder can approach the monitor(s) appointed for the purpose of this Pact."

23. Respondent no.1 has referred to two cases being investigated by CBI of which reference has already been made above. In one case, i.e. Tatra Truck case, though closure report has been filed by the CBI, the same is still pending consideration of the Special Judge. It is not a case where closure report has been accepted. Further, it is not disputed by Mr. Subramanian that Ravinder Rishi was part of petitioner no.1 Company. What is important in this case, is that the petitioner no.1 had earlier filed

a writ petition being W.P.(C) 6443/2014 challenging the non-consideration of its bid for procurement of RTFLT. It is a conceded case of the petitioners that even in the year 2014, respondent no.1 had invoked a similar Bank Guarantee furnished by the petitioner no.1 on the same ground, an action which was not challenged by the petitioner no.1 in that petition. In other words, petitioner no.1 had accepted the invocation of the Bank Guarantee on the ground of breach of PCIP on same grounds. Having accepted the said decision which has been upheld by the Court vide Judgment dated March 8, 2018 by stating as under, the decision now taken cannot be faulted. The relevant part of the said judgment is reproduced hereunder:-

> *"7. In the present case, it is not disputed by the petitioner that the respondent invoked the bank guarantee on 08.08.2014. Interestingly, the petitioner has not challenged the invocation nor has asked for any relief pertaining to the invocation based upon the respondent's assessment that the Pre-Contract Integrity Pact ("PCIP") had been violated. This assumes importance because the subsequent arguments and proceedings before this Court in this petition are entirely hinged upon the action of the respondent in proceeding to hold that Integrity Pact was violated. The closure report which the respondent eludes to in its counter affidavit pertinently states that the Special Judge in the New Delhi Courts refused to proceed upon the report on 25.08.2014 and evidently therefore, as on date, when the decision to encash the bank guarantee on the determination that the PCIP was violated, the respondent had some basis to do so. In the subsequent event, i.e. omission to invite petitioner for the contract negotiations then cannot be termed as arbitrary."*

24. Having said that, the plea advanced by Mr. Subramanian that the action is in violation of principles of natural justice as no show cause notice was issued before invoking the Bank Guarantee is without any merit for the reasons (i) the ground for invocation of Bank Guarantee is the same as was in the year 2014 (ii) when the invocation of Bank Guarantee of 2014 has not been challenged, but accepted, the show-cause notice is not required to be given as the grounds for invocation are already known (iii) even otherwise, no such notice is required to be given as such a notice is not contemplated in the terms of the Bank Guarantee which in fact is unconditional. Even the plea of proportionality pleaded by Mr. Subramanian is unsustainable as action of 2014, upheld in the year 2018 was identical inasmuch as the invocation of the Bank Guarantee was on the same grounds with same consequence, i.e., invocation of Bank Guarantee for Rs. 3 Crores. In so far as the plea of Mr. Subramanian that the action has been taken without referring to the

Monitors is concerned, the same is also not appealing. I agree with the submission of Mr.Kumar, who had relied upon the Clause 12.4 of PCIP which contemplates, if any, complaint is received by the buyer in a procurement case, the buyer shall refer the complaint to the Monitors for comments / enquiry. He also relied upon the guidelines of 2015 which contemplates two types of complaints (a) from public (b) competing vendors. Admittedly, the action taken is not on the basis of the complaints from the public / competing vendors but on the basis of cases investigated by CBI. The clause for reference to mediators has no applicability in the case in hand.

25. Further, I may state in so far as the invocation of Bank Guarantee is concerned, it is not the case of the petitioner that the Bank Guarantee invoked is contrary to the conditions stipulated therein. In fact, I find from the format of the Bank Guarantee it is unconditional. If that be so, the invocation cannot be faulted in view of the settled law as laid down by the Supreme Court, on which reliance has been placed by Mr. Kumar by referring to the judgement in the case of U.P. State Sugar Corporation v. Sumac International Ltd. (supra) wherein, in Para 12&16 the Supreme Court has held as under:

> *"12. The law relating to invocation of such bank guarantees is by now well settled. When in the course of commercial dealings an unconditional bank guarantee is given or accepted, the beneficiary is entitled to realize such a bank guarantee in terms thereof irrespective of any pending disputes. The bank giving such a guarantee is bound to honour it as per its terms irrespective of any dispute raised by its customer. The very purpose of giving such a bank guarantee would otherwise be defeated. The courts should, therefore, be slow in granting an injunction to restrain the realization of such a bank guarantee. The courts have carved out only two exceptions. A fraud in connection with such a bank guarantee would vitiate the very foundation of such a bank guarantee. Hence if there is such a fraud of which the beneficiary seeks to take advantage, he can be restrained from doing so. The second exception relates to cases where allowing the encashment of an unconditional bank guarantee would result in irretrievable harm or injustice to one of the parties concerned. Since in most cases payment of money under such a bank guarantee would adversely affect the bank and its customer at whose instance the guarantee is given, the harm or injustice contemplated under this head must be of such an exceptional and irretrievable nature as would override the terms of the guarantee and the adverse effect of such an injunction on commercial dealings in the country. The two grounds are not necessarily connected, though both may coexist in*

some cases. In the case of U.P. Coop. Federation Ltd. v. Singh Consultants and Engineers (P) Ltd. [(1988) 1 SCC 174] which was the case of a works contract where the performance guarantee given under the contract was sought to be invoked, this Court, after referring extensively to English and Indian cases on the subject, said that the guarantee must be honoured in accordance with its terms. The bank which gives the guarantee is not concerned in the least with the relations between the supplier and the customer; nor with the question whether the supplier has performed his contractual obligation or not, nor with the question whether the supplier is in default or not. The bank must pay according to the tenor of its guarantee on demand without proof or condition. There are only two exceptions to this rule. The first exception is a case when there is a clear fraud of which the bank has notice. The fraud must be of an egregious nature such as to vitiate the entire underlying transaction. Explaining the kind of fraud that may absolve a bank from honouring its guarantee, this Court in the above case quoted with approval the observations of Sir John Donaldson, M.R. in Bolivinter Oil SA v. Chase Manhattan Bank [(1984) 1 All ER 351] (All ER at p. 352): (at SCC p. 197)

"The wholly exceptional case where an injunction may be granted is where it is proved that the bank knows that any demand for payment already made or which may thereafter be made will clearly be fraudulent. But the evidence must be clear both as to the fact of fraud and as to the bank's knowledge. It would certainly not normally be sufficient that this rests on the uncorroborated statement of the customer, for irreparable damage can be done to a bank's credit in the relatively brief time which must elapse between the granting of such an injunction and an application by the bank to have it charged."

This Court set aside an injunction granted by the High Court to restrain the realisation of the bank guarantee.

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16. Clearly, therefore, the existence of any dispute between the parties to the contract is not a ground for issuing an injunction to restrain the enforcement of bank guarantees. There must be a fraud in connection with the bank guarantee. In the present case we fail to see any such fraud. The High Court seems to have come to the conclusion that the termination of the contract by the appellant and his claim that time was of the essence of the contract, are not based on the terms of the contract and, therefore,

there is a fraud in the invocation of the bank guarantee. This is an erroneous view. The disputes between the parties relating to the termination of the contract cannot make invocation of the bank guarantees fraudulent. The High Court has also referred to the conduct of the appellant in invoking the bank guarantees on an earlier occasion on 12-4-1992 and subsequently withdrawing such invocation. The court has used this circumstance in aid of its view that the time was not of the essence of the contract. We fail to see how an earlier invocation of the bank guarantees and subsequent withdrawal of this invocation make the bank guarantees or their invocation tainted with fraud in any manner. Under the terms of the contract it is stipulated that the respondent is required to give unconditional bank guarantees against advance payments as also a similar bank guarantee for due delivery of the contracted plant within the stipulated period. In the absence of any fraud the appellant is entitled to realise the bank guarantees."

5. Against the said order dated 18.08.2020 passed in W.P(C) 4443/2020, the petitioner before this Court preferred LPA 252/2020 (pending adjudication). However, whilst the pendency of the said LPA the respondent *vide* an order dated 14.08.2020, suspended the business dealings of the petitioners for a period of one year from the date of issuance of the said letter. The said suspension order dated 14.08.2020 reads as under: -

Government of India
Ministry of Defence
D (Vigilance)

Subject: Suspension of M/s Vectra Advanced Engineering Pvt Ltd (VAEPL) for a period of one year from in terms of the 'Guidelines of the Ministry of Defence for Penalties in business dealings with entities'-reg.

Consequent to the registration of the CBI case in FIR No. RC AC1 2012 A0004 dated 30.03.2012 (Tatra Truck Deal Case) and the FIR No. RC AC1 2012 A0014 dated 19.10.2012(Case of alleged bribery filed by Gen VK Singh, ex COAS) Hon'ble Raksha Mantri has approved suspension of business dealings with M/s VAEPL for a period of one year from the date of issue of this letter in terms of Para D2 of the Guidelines of the Ministry of Defence for Penalties in business dealings with entities issued vide MoD ID Not. 31013/1/2016-D(Vig) dated 21.11.2016

2. It is requested that strict compliance of the above decision may be ensured by all Wings in this Ministry and Services.

(Gopal Prasad)
Deputy Director (Vigilance)

6. Against the said suspension, *vide* a letter dated 21.10.2020 the petitioners made a representation to the respondent. It is stated that the said representation was not responded to and instead the respondent time and again extended the suspension for a period of 6 months (each) *vide* orders dated 03.09.2021, 10.01.2022, 14.02.2022, 14.08.2022, 14.02.2023 and 14.08.2023 without any prior show-cause notice or an opportunity of hearing to the petitioners.

7. Subsequently, the petitioners preferred W.P(C) 2857/2023 before this Court *inter-alia* assailing suspension orders, alleging that the same have been passed and extended without issuance of a show cause notice or an opportunity of personal hearing to the petitioners. The said petition was allowed v*ide* judgment dated 05.09.2023, with the following directions: -

> *"82. Accordingly, in the facts of this case and analysing the aforementioned decisions, the following directions are issued:*
> *i) A show cause notice shall be issued to the Petitioner within a period of 2 weeks from today setting out the reasons for banning, if any. In these facts, if the Respondent does not intend to ban the Petitioner, the same shall also be communicated to the Petitioner.*
>
> *ii) Any relevant material in respect of allegations against the Petitioner shall be put to the Petitioner along with the show cause notice.*
>
> *iii) An opportunity to reply shall be afforded to the Petitioner and if a hearing is sought, the same shall be granted.*
>
> *iii) After affording a hearing, a reasoned order shall be passed within 3 months.*
>
> *v) All remedies of the Petitioner are left open to be availed of in accordance with law."*

8. However, against the said judgment dated 05.09.2023, the respondent preferred LPA 832/2023 before this Court. A Division Bench of this Court *vide* judgment dated 22.12.2023 upheld the judgment passed by the learned

Single Judge of this Court in W.P(C) 2857/2023 by *inter-alia* directing that *"in case Show Cause Notice is not issued by the appellant within a period of two weeks and reasoned order is not passed within three months thereafter, after affording an opportunity of reply and hearing to respondent no. 1 in terms of the directions of the learned Single Judge, the period of suspension shall automatically stand revoked after the expiry of the aforesaid timelines."*

9. Pursuant to the direction/s passed by this Court in the aforementioned judgments dated 05.09.2023 [in W.P(C) 2857/2023] and 22.12.2023 [in LPA 832/2023], a show cause notice dated 04.01.2024 was issued against the petitioner no.1. The said show cause notice was responded to by the petitioners *vide* a letter dated 18.01.2024. In addition, the petitioners also sought for a personal hearing. Consequently, *vide* a letter dated 30.01.2024, the respondent scheduled a personal hearing for the petitioners on 07.02.2024.

10. Pursuant thereto, the respondent passed the impugned order, directing extension of the suspension of the petitioner no.1 from business dealing with the Government of India for a "further period of six months w.e.f. 14.02.2024 or until further order/s".

11. In the aforesaid conspectus, the present petition has been filed by the petitioners being aggrieved by the order dated 14.02.2024 passed by the respondent.

SUBMISSIONS ON BEHALF OF THE PETITIONERS

12. Mr. Atul Nanda, learned senior counsel on behalf of the petitioners submitted that the entire case of the respondent against the petitioner no.1

rest upon two FIRs registered by the CBI against Late Mr. Ravinder Rishi, the then major shareholder of the petitioner no.1. However, the same is misplaced inasmuch as the petitioner no.1 was not ascribed any role in either of the FIRs and after passing away of Mr. Ravinder Rishi on 13.03.2016, the only adverse link between the FIRs and petitioner no.1 ceased to exist. Despite the aforesaid, the suspension has continued on mere supposition that adverse material against the petitioner no.1 might surface in the future. Furthermore, the filing of the said FIRs have been in knowledge of the respondent since 2012, however, it was only after a period of 8 years since the registration of the said FIRs that the respondent decided to suspend the petitioner no.1.

13. It is further submitted that a closure report dated 25.08.2014 in regard to FIR being RC AC1 2012 A0004 has been filed by the CBI and is pending acceptance before the concerned trial court. The same was intimated to the respondent *vide* a letter dated 27.08.2014. As regard the FIR bearing RC AC1 2012 A0014, the chargesheet filed by the CBI on 15.07.2014 arraigned only one Lt. Gen. Tejinder Singh and Mr. Ravinder Rishi was not named as an accused therein. However, despite the respondent being aware of the aforesaid circumstances since the year 2014, and in absence of any change/s in the said circumstances, the respondent in the year 2020 decided to suspend the petitioner no.1 solely premising the said decision upon registration of the said FIRs against the deceased majority shareholder of petitioner no.1.

14. Learned counsel on behalf of the petitioners places reliance on paragraphs 76 and 77 of the judgment dated 05.09.2023 passed in W.P(C) 2857/2023 to contend that the Court therein observed that the reliance

placed by the respondent upon Clause D.2 of the MoD Guidelines for suspending the business dealings of the petitioner no.1 is untenable "*as, the the present is not a case where there has been initiation of enquiry or an investigation or an enquiry is ongoing"*.

15. It is further contended that since Mr. Ravinder Rishi passed away on 13.03.2016, in view of the settled law, prosecution against a deceased person cannot continue and the death of the accused constitutes acquittal.[1] Furthermore, the prosecutions against Mr. Ravinder Rishi, during his lifetime had respectively culminated into a closure report and dropping of his name in the chargesheet, thus there is no question of any adverse prosecution being initiated after his death. However, the impugned order is silent on the aforesaid aspect, despite the same being considered by the learned Single Judge in Judgement dated 05.09.2023 passed in W.P(C) 2857/2023 and specifically pleaded by the petitioners in paragraph 9 of its reply dated 18.01.2024 to the show cause notice.

16. It is further submitted that the impugned order passed by the respondent is in teeth of the directions passed by this Court *vide* judgment dated 05.09.2023 (upheld by the Division Bench *vide* judgment dated 22.12.2023 in LPA 832/2023) as the show-cause notice and the impugned orders are mere mechanical reiteration of the factual conspectus and based upon a pre-mediated decision which only speaks of "extension of suspension". In this regard, reliance has been placed upon the observation made by the Supreme Court in ***M/s Techno Prints v. Chhattisgarh***

[1] In this regard, reliance has been placed upon judgment rendered by the Supreme Court in ***U. Subhadramma and Ors. vs State of Andhra Pradesh and Anr.*** (2016) 7 SCC 797 and this Court in ***Rajiv Gandhi Ekta Samiti vs Union of India***, 2000 (52) DRJ 507.

Textbook Corporation and Anr., 2025 INSC 236.[2]

17. It is further contended that the suspension of business dealings on account of the breach/violation of PCIP is an afterthought inasmuch as initial suspension order dated 14.08.2020 and the show-cause notice dated 04.01.2024 specifically seeks to found the suspension on Clause D.2 of the MoD Guidelines *i.e.,* power to suspend on ground of registration of FIRs. It is settled law that the impugned order/action cannot go beyond the show cause notice and thus if the show cause notice rested on an alleged violation of paragraph D.2 of the MoD Guidelines, the impugned order cannot be passed on alleged violation of the PCIPs. Furthermore, even such ground of alleged breach of the PCIPs does not aid the respondent since such alleged breach is nothing but the factum of registration of the FIRs. There is no other independent ground /fact/ event for incriminating the petitioners. Hence what the respondent cannot achieve directly, it is now trying to achieve indirectly.

18. It is further submitted that on account of the alleged failure of the petitioners to declare "previous transgression", the respondent has invoked clause 7.1 read with clause 10 of the PCIP to establish violation of PCIP. However, the same is misplaced inasmuch as (i) there is no definition of a "transgression", hence how is the aforesaid construed as transgression by the respondent is unknown (ii) in order to violate Clause 7.1, there shall exist a transgressions of a bidder (i.e. the petitioner no.1 herein), however, there is

[2] *36. .... Even otherwise, issuing of show cause notice if not always then at least most of the times is just an empty formality because at the very point of time the show cause notice is issued the Authority has made up its mind to ultimately pass the final order blacklisting the Contractor. In other words, the show cause notice in most of the cases is issued with a pre-determined mind. It has got to be issued because this Court has said that without giving an opportunity of hearing there cannot be any order of blacklisting. To meet with this just a formality is completed by the Authority of issuing a show cause notice."*

no FIR/ transgression *qua* the petitioner no.1 hence even the filing of the FIRs cannot be construed as "previous transgressions" of the petitioner no.1 which have not been declared (iii) there cannot be any breach of first PCIP since the same was furnished in the year 2009 i.e., prior to the registrations of the said FIRs (iv) a PCIP is not a document in perpetuity and has a validity of 5 years as per clause 16 of the PCIP and since none of the tenders fructified into contract, the 5 year terms which were in existence from the date of signing /submission of the PCIP has expired. Thus, respondent cannot a decade later continue to claim breach of PCIP which has long since expired.

19. It is further submitted that even assuming that a there was breach of PCIP, the respondent has already invoked Bank Guarantee of Rs. 3 crores which was submitted by the petitioner no.1 *vide* letter dated 08.08.2014. Further, the reliance placed by the respondent upon orders dated 08.03.2018 and 18.08.2020 passed in W.P(C) 6443/2014 and W.P(C) 4443/2020 respectively are misconstrued inasmuch as the said orders were dealing with factual situation as on 08.08.2014 i.e., prior to filing of the closure report in FIR RC AC1 2012 A0004/1st FIR and dropping of Mr. Ravinder Rishi's name from chargesheet filed in the FIR RC AC1 2012 A0014/ 2nd FIR. Further, the aforesaid aspect has been dealt adequately in paragraphs 70 to 72 of the judgment dated 05.09.2023 passed by the learned Single Judge in W.P(C) 2857/2023.

20. It is further contended that the alleged breaches occurred in the year 2012, and thus the relevant guidelines which came into force in the year 2016 cannot be assumed to apply to the petitioner retrospectively.

21. It is also submitted that as far as the duration of suspension imposed

upon the petitioner no. 1 is concerned, the respondent contends that the maximum duration cannot exceed ten years. However, the same does not come to aid of the respondent inasmuch as despite having knowledge of the filing of the FIRs in 2012 itself *(*respondent having been copied such FIRs and its officials being named as unnamed accused in one of them), the respondent took no action. The respondent cannot choose to start the clock whenever it desires (in this case in 2020) and say that ten years will run from that date. Even assuming that the respondent placed the petitioner no.1 under suspension when the FIRs were registered in 2012, the ten-year period would have elapsed in the year 2022.

22. It is submitted that the impugned action is nothing but a final/indefinite banning order which is masked as a suspension. Evidently, the respondent is extending/renewing the suspension of the petitioner no.1 in a mechanical manner and such continued suspension leads to indefinite banning which is teeth of the law laid down by the Supreme Court in ***Kulja Industries Limited vs Chief General Manager, Western Telecom Bharat Sanchar Nigam Ltd and Ors***., (2014) 14 SCC 731 (paragraphs 18 to 25).

SUBMISSIONS ON BEHALF OF THE RESPONDENT

23. Ms. Radhika Bishwajit Dubey, learned Central Government Standing Counsel (CGSC), who appears on behalf of the respondent, submits that the show cause notice dated 04.01.2024 and the impugned order dated 26.02.2024 have been issued in compliance with the directions contained in the aforementioned judgments dated 05.09.2023 (by the Single Judge) and 22.12.2023 (by the Division Bench). It is further stated that the impugned order was passed after considering the written submissions filed on behalf of

the petitioners and after affording an opportunity of personal hearing to the petitioners.

24. Learned CGSC is unable to controvert that a closure report has been filed by the CBI in FIR No. RC AC 2012 A0004. It is also acceded that in FIR No. RC AC1 2012 A0014, no chargesheet has been filed against Late Mr. Ravinder Rishi. Further, learned CGSC is also unable to controvert that the above status of the FIRs results in a situation where in fact there is "no inquiry pending".

25. Attention is drawn to paragraph D.2 of the MoD Guidelines and it is emphasized that the extension of the suspension period was pursuant to deliberations by the concerned Committee of the Ministry of Defence, Government of India and pursuant to approval of the Competent Authority.

26. It is submitted that the suspension of the petitioner is liable to be extended on orders of the Competent Authority for a period of six months at a time. It is further submitted that in terms of the extant guidelines, the total period of suspension of business dealings with an entity shall not exceed the maximum period of banning of business dealings i.e., not be more than ten years.

ANALYSIS AND CONCLUSION

27. At the outset, it is noticed that the entire case against the petitioners rests on two FIRs registered by the CBI being RC AC1 2012 A0004 dated 30.03.2012 (hereinafter referred as "*the first FIR*") and RC AC1 2012 A0014 dated 19.10.2012 (hereinafter referred as "*the second FIR*"). The said FIRs contained allegations against one Late Mr. Ravinder Rishi who used to be a major shareholder in the petitioner no.1 company.

28. It is noted that besides the aforesaid, there has neither been any other link nor a reference of the petitioner no.1 company in the said FIRs. Further, admittedly, in the first FIR, the investigating agency (CBI) has filed a closure report on 25.08.2014 before the concerned trial court while in the second FIR, a charge-sheet has been filed on 15.07.2014 against one Lt. Gen (Retired) Tejinder Singh and Late Mr. Ravinder Rishi (with whom the petitioners have had an association) has not been arraigned as an accused therein.

29. Further, in the counter-affidavit filed on behalf of the respondent, the status of the aforementioned FIRs have been set out as under:

> *"Details of the CBI Cases*
>
> *CBI FIR RC AC 1 2012 A0004 dated 30.03.2012.*
>
> *16. As per the CBI FIR, there were irregularities in the dealings of M/s BEML with Tatra Sipox (UK), for supply of Tatra Vehicles, its components and spares, as an Original Equipment Manufacturer (OEM). However, M/s Tatra Sipox (UK), whose affairs in India are managed by Shri Ravinder Rishi (also shown as one of the directors of the Petitioner company), is not involved in manufacturing of Tatra vehicles and cannot be termed as OEM.*
> *17. It has been alleged that unknown officers of BEML entered into criminal conspiracy with Shri. Ravi Rishi of Tatra Sipox and fraudulently assigned contract with M/s Tatra Sipox by showing it as OEM, against the provisions of DPP. Vehicles worth approx. INR. 5000 crores have been supplied to Indian Army in this manner.*
> *18. Further, in continuation of the conspiracy, unknown officials of the M/s BEML also allowed change of currency from US dollar to Euro and further, by not levying liquidated damages, caused a loss of approx. INR. 13.27 crores.*
> *19. Thereafter on 27.08.2014, CBI informed that the investigation in the said matter could not substantiate the leveled allegations. Accordingly, a closure report was filed in the court of Spl. Judge, Patiala House, New Delhi on 25.08.2014. The same is currently under consideration with the Ld. Court. Considering the aforesaid allegations, it is respectfully submitted that Hon'ble Court, while considering the closure report, may take any view in the said matter.*

CBI FIR RC AC 1 2012 A 0014 dated 19.10.2012.

20. The said case was registered under Section 12 of Prevention of Corruption Act, 1988 for suspected offence of abetting a public servant to accept illegal gratification, brought out by Gen. V. K. Singh, the then Chief of Army Staff (COAS). It was alleged that Lt. Gen (Retd.) Tejinder Singh had offered him bribe of INR. 14 crores on behalf of Shri. Ravinder Rishi to clear the file for procurement of 1676 High mobility vehicles (HMVs) including Tatra Vehicles. It is undisputed that Shri Ravinder Rishi was one of the promoters/directors of the Petitioner Company. CBI vide letter dated 14.08.2014 informed that chargesheet has been filed in the said case naming Lt. Gen. (Retd.) Tejinder Singh as an accused. As per the information received from CBI vide letter dated 25.10.2019, the case is still under trial at the stage of Prosecution Evidence in the court of Spl. Judge (PC Act), CBI, Rouse Avenue District Court, New Delhi."

30. The status of the aforementioned FIRs have also been noted by the learned Single Judge in the judgment dated 05.09.2023 passed in W.P.(C) 2857/2023 as under:-

"69. In FIR A0014 the CBI filed the chargesheet only against one Lt. Gen Tejinder Singh, and Mr. Rishi was not charge sheeted. Insofar as FIR A0004 is concerned, on 27th August, 2014, the CBI, informed that the investigation could not substantiate the levelled allegations and a closure report was filed in the Court of Special Judge, Patiala House, Delhi. Further, Mr. Ravinder Kumar Rishi passed away on 13th March, 2016."

31. In the circumstances, there is merit in the contention of the petitioners that given status of the above FIRs, there can be said to be "no inquiry pending". As such, the condition precedent for sustaining an action under paragraph D.2 of the MoD Guidelines, is not satisfied. The same has been also noted by the learned Single Judge in paragraphs 76 and 77 of the aforesaid judgment dated 05.09.2023 in the following terms:

"76. The overall rationale applied by the Respondent in the suspension process is that the two FIRs pending against Mr. Rishi (since deceased) who was the promoter of Petitioner No.1 would attract Clause D2 of the MoD Guidelines.

77. The same is not tenable as, ***the present is not a case where there has been initiation of enquiry or an investigation or an enquiry is ongoing***.

The investigations concluded and resulted in charge-sheet being filed in FIR A0014 wherein Mr. Rishi has not been named. Even in respect of FIR A0004 where no charge-sheet has been filed, the investigation has been going on for more than ten years and a closure report has been filed."

32. Paragraph D.2 of the MoD Guidelines provides as under:

"The Competent Authority may suspend business dealings with an entity when it refers any complaint against the entity to CBI or any investigating agency or when intimation is received regarding initiation of criminal investigation or enquiry against any entity."

Given that there is no criminal investigation or inquiry pending against the petitioners at present, it is untenable to invoke the aforesaid paragraph D.2 of the MoD Guidelines for continuing the suspension of the petitioners.

33. The petitioner is also right in contending that upon the passing away of Mr. Ravinder Rishi on 13.03.2016, the only adverse link between the FIRs and the petitioner no.1 has ceased to exist. In ***U. Subhadramma & Ors. v. State of Andhra Pradesh & Anr.,*** (2016) 7 SCC 797, the Supreme Court has held that prosecution cannot continue against a dead person and presumption of innocence continues to be applicable to an unconvicted and deceased accused[3].

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[3] In ***U. Subhadramma & Ors. v. State of Andhra Pradesh & Anr.,*** (2016) 7 SCC 797 it has been held as under:-

"*8….. While this section is clear that the orders of attachment must be withdrawn if cognizance of the offence has not been taken or there has been an acquittal; the section is silent as to the effect of abatement of prosecution. It is due to this silence that it is contended by the State Government in this case that the orders of attachment could not only have been continued but could also have been confirmed. It is not possible for us to accept the submission. If the law requires that the orders of attachment should be withdrawn upon acquittal it stands to reason that such orders must be withdrawn when the prosecution abates or cannot result in a conviction due to the death of the accused, whose property is attached. Concept of abatement of a trial could be subsumed in the section where the final judgment and order of the criminal court is one of acquittal. In this context, the presumption of innocence of an accused till he is convicted must be borne in mind and there is no reason to consider this presumption to have vaporised upon the death of an accused. It may be noted that this Court has time and again reiterated the presumption of innocence of an accused till he is convicted.*

9. … It is too well settled that a prosecution cannot continue against a dead person. A fortiori a criminal court cannot continue proceedings against a dead person and find him guilty. Such proceedings and the findings are contrary to the very foundation of criminal jurisprudence. In such a case the accused does not

34. It is notable that in the judgment dated 05.09.2023 rendered by the learned Single Judge in W.P.(C) 2857/2023 (supra) it was specifically directed that the factum of passing away of Mr. Ravinder Rishi and the impact of the present status of the aforementioned FIRs be duly considered by the respondent. The relevant observations in the said judgment dated 05.09.2023 are as under:-

> *"78. Admittedly, the person i.e. Mr. Rishi against whom the allegations were initially made in the FIRs, has passed away. Criminality, if any, of the said individual, no longer would be determined even by the ld. Trial Court in view of the law laid down in U. Subhadramma (Supra) where the Hon'ble Supreme Court has held that criminal proceedings cannot continue against a dead person.*
>
> *xxx xxx xxx*
>
> *80. The impact of the charge-sheet filed by the CBI as also the major development of the accused in respect of whom the Petitioner entity remained suspended, having passed away, ought to be considered by the Competent Authority."*

35. However, unfortunately, in the show cause notice that was issued in the aftermath of, and purportedly in compliance with the directions contained in the aforesaid judgment dated 05.09.2023, there is no mention whatsoever of the aforementioned aspects. Further, although the petitioner (in paragraph 9 of its reply dated 08.01.2024 to the show cause notice dated 04.01.2024) specifically took an objection to this effect, however, the impugned order is silent as regards thereto.

36. Thus, the conclusion is irresistible that the impugned order fails to take into account the relevant aspects/circumstances and is not in consonance with the directions contained in the aforesaid judgment dated

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exist and cannot be convicted. Consequently, the learned District Judge committed a gross error of law in acting upon such a finding and treating Ramachandraiah as guilty of such offences while making the order of attachment and while confirming the said order of attachment of properties"

05.09.2023. A perusal of the impugned order also reveals that apart from repeating the contents of the show cause notice, it contains no reasoning whatsoever and does not even purport to deal with the petitioners' reply to the show cause notice.

37. The Supreme Court has time and again frowned upon such non application of mind and mechanical narration of events in orders passed for debarring/blacklisting/suspending dealings with entities. In ***M/s Techno Prints v. Chhattisgarh Textbook Corporation & Anr.***, 2025 INSC 236, the Supreme Court *inter-alia* held as under:

> *"36. .... Even otherwise, issuing of show cause notice if not always then at least most of the times is just an empty formality because at the very point of time the show cause notice is issued the Authority has made up its mind to ultimately pass the final order blacklisting the Contractor. In other words, the show cause notice in most of the cases is issued with a pre-determined mind. It has got to be issued because this Court has said that without giving an opportunity of hearing there cannot be any order of blacklisting. To meet with this just a formality is completed by the Authority of issuing a show cause notice."*

38. The PCIP violations referred to in the penultimate paragraph of the impugned order are also predicated on the aforementioned FIRs. There is no other independent ground/fact/event relating to the petitioners. As such, the alleged violation of the PCIPs cannot afford a fresh/independent ground for taking any suspension action against the petitioners.

39. The petitioners have also rightly drawn attention to the fact that the first PCIP (of which infraction is alleged on the part of the petitioners) was given in the context of a tender issued in 2009. The second PCIP was in the context of a tender issued in the year 2012 for which the petitioner submitted its bid in the year 2013. At the time when the first PCIP was entered into, the concerned FIRs were not even in existence. Further, even the second

PCIP was furnished in the context of a particular tender (of 2013 vintage) and it is untenable for it to serve as a ground for continued indefinite suspension of the petitioners, regardless of the above subsequent developments in respect of the concerned FIRs.

40. It is also notable that the power under paragraph D.1 of the MoD Guidelines can be invoked only as an interim measure pending an inquiry. It is not even the case of the respondent that it has held, or proposes to hold, any enquiry against the petitioner no.1. Given the status of the FIRs it also cannot be said that there is any pending inquiry. In fact, the learned Single Judge in the aforesaid judgment dated 05.09.2023 has categorically found that there is no inquiry pending in the following terms:

> *"77. The same is not tenable as, the present is not a case where there has been initiation of enquiry or an investigation or an enquiry is ongoing. The investigations concluded and resulted in charge-sheet being filed in FIR A0014 wherein Mr. Rishi has not been named. Even in respect of FIR A0004 where no charge-sheet has been filed, the investigation has been going on for more than ten years and a closure report has been filed."*

Hence, any exercise of the powers of suspension under paragraph C.1(a) based on paragraph D.1 of the MoD Guidelines would be misconceived. Also, it is untenable to invoke paragraph D.2 of the MoD Guidelines in view of the present status of the concerned FIRs and the stand taken by the Investigating Agency with regard thereto.

41. A Division Bench of this Court in ***Defsys Solutions Private Ltd vs Union of India,*** 2023 SCC OnLine Del 7716, while dealing with a matter in similar conspectus, rendered certain observations *qua* the applicability of clause C.1 and D.2 of the MoD Guidelines in cases where company has not been arrayed or specifically named in the FIR or charge-sheet filed against its shareholder/promoter/employee. The relevant portion of the said

judgment reads as under:-

> ***"26.*** *Under Clause C.1 of the MOD guidelines, six specific causes have been provided which may lead to suspension and then final banning under Clause F. Emergent suspension, however, can be ordered under Clause D.2. However, D.2 can be exercised only if causes under Clause C.1 exists. The UOI has contended that power to suspend under Clause D.2 is independent of Clause C.1. This contention is patently wrong on the reading of the two clauses. In any case, the power to suspend under Clause D.2 does not lead to banning under Clause F. Under clauses F.1 to F.3, there are specific time periods provided for banning. The suspension period must relate to banning, otherwise it is causeless. Neither of Clauses F.1 to F.3 refer to Clause D as a cause for banning. An intimation by CBI of a pending investigation is not a cause for banning, only a chargesheet is. In the present case, there is neither a chargesheet nor any other cause mentioned in Clause C.1. The above factors demonstrate the MoD violates the MoD's own Guidelines which requires it to be "satisfied that such action [such as suspension] is appropriate and necessary in the circumstances of the case".*
>
> ***27.*** *Clause D.1 of the MoD Guidelines prescribes that "full proceeding" has to be initiated by the competent authority before suspension is attempted in respect of any of the causes mentioned in C.1 (a) - (f). The word proceeding inheres in itself a show cause notice; reply to the show cause notice, and then an order of suspension, if required to be issued.*
>
> ***28.*** *In the same breath, is the second part of D.2, where if an intimation is received by the competent authority for initiation of criminal investigation or inquiry against any entity, could allow such competent authority to suspend business with the entity. In this case, initiation of criminal investigation must relate back to clause D.1 first and then Clause D.2's first part, where the competent authority sends the complaint to the investigating agency and agency can initiate criminal investigation.*
>
> ***29.*** *Clause D.2 of the MoD Guidelines, which the MoD has sought to invoke, stipulates as follows:"D.2 The competent authority may suspend business dealings with an entity when it refers any complaint against the entity to CBI or any investigating agency or when intimation is received regarding initiation of criminal investigation or enquiry against any entity."*
>
> ***30. Obviously, by a reading of the above, Defsys itself, which is the "entity" is not under an "ongoing investigation" by the CBI at the time of issuance of the suspension order. Any investigation of an ex-director cannot attribute to the company by itself.****"*

42. Subsequent to the aforesaid judgment passed by the Division Bench of this Court, in the subsequent round of litigation between the parties thereto, a Division Bench of this Court in ***Defsys Solutions Pvt. Ltd vs Union of India***., 2025 SCC OnLine Del 5718 observed as under:-

> *"43. .....This Court has already held in the above referred Judgments that the mere fact that the CBI is investigating the petitioner No. 1 is not sufficient to suspend it under the Impugned Guidelines, given the circumstances mentioned hereinabove and taken note of by this Court in its earlier judgments.*
>
> *xxx xxx xxx*
>
> *46.....The petitioner No.1 is still not an accused in the AgustaWestland Case; the Suspension Order against AgustaWestland, which is the prime accused, stands withdrawn on 12.11.2021 itself; there is no mention of any evidence with the respondent or with the CBI against the petitioner No.1 involving the petitioner no.1 with the AgustaWestland Case apart from an "apprehension" that it may be so involved; the respondent has not given any Show Cause Notice or a hearing while passing the Third, Fourth, and the Fifth Suspension Order; and finally, the circumstances mentioned in Clause C.1 (a) to (f) of the Impugned Guidelines are still not satisfied; in fact, no attempt has also been made by the respondent in the Impugned Third, Fourth or the Fifth Suspension Orders to show their satisfaction to any of these Clauses.*
>
> *47. We, therefore, reiterate that the Third, Fourth and the Fifth Suspension Orders are in abuse of the power vested in the respondent under the Impugned Guidelines. In spite of repeated Judgments of this Court in favour of the petitioner No.1, the petitioner No.1 continues to suffer the agony of suspension on almost identically worded orders and on almost similar inputs from the CBI. This shows the utter callousness in which the respondent is dealing with the petitioner No.1 and its utter disregard to the Judgment dated 31.05.2024 of this Court, the findings of which have not been challenged by the respondent till date. In view of the said circumstances, we are of the opinion that the Judgments relied upon by the respondent cannot come to the aid of the respondent and we need not make a detailed study of them in this judgment."*

43. The dicta laid down in the above judgments squarely applies to the present case as well.

44. In the aforementioned judgment dated 05.09.2023 passed in W.P.(C)

2857/2023 it has been observed that an indefinite suspension can be even worse than blacklisting. The relevant observations are as under: -

> *"60. In the context of the MoD Guidelines, suspension is a subset/ species within debarment/ banning and not an independent measure. It is nothing but an urgent, interim or immediate measure preceding banning. Thus, indefinite suspension without resort to the safeguards prescribed for banning would not be permissible. This is so because the period of suspension is included within the maximum banning period as per Clause F.3 of the MoD Guidelines. Accordingly, the stand of the Respondent No.1 that suspension can extend till the maximum period of ban and the ban can be indefinite would lead to a completely unsustainable conclusion that in effect, suspension can be indefinite. Such an interpretation could render the entire guidelines itself unconstitutional.*
>
> *61. In view thereof, for a prolonged suspension, all the procedural safeguards i.e., the recourse to principles of natural justice provided in the MoD Guidelines in case of debarment/ banning would also be applicable to suspension. Accordingly, if any entity is suspended, a review within 6 months has to be done and it is expected that the authorities shall ordinarily issue a show-cause notice setting out the grounds for which suspension has been resorted to and make out the grounds which would lead to a ban on the entity. In this process, the show-cause notice has to consist of the grounds which could be any of the grounds contained in Clause C1 (a) to (f). A reply would have to be sought after properly considering the reply, a reasoned order shall have to be passed. Further, the period of suspension and banning cannot be indefinite, unless in exceptional circumstances.*
>
> *62. In the opinion of the Court therefore, the MoD Guidelines would have to be read in a manner which is consistent with the legally enshrined principles of non-arbitrariness. The MoD Guidelines, the Procedures for Penal Action and the FAQs as they stand could lead to abuse of power and, thus, have to be read in a manner consistent with sound and legally established principles. It would not be permissible to have a perpetual state of suspension without showcause notice, that too for an indefinite period. It is also pertinent to note that defence contracts by their very nature consist of only one customer i.e., the Government and perpetual suspension can be even worse than blacklisting as it is backed by the power of the Government, leading to unintended consequences for the credibility of such entities and lives of the employees of such entities.*
>
> *xxx xxx xxx*
>
> *64. It is clear from the aforementioned discussion that the provisions of the MoD Guidelines, especially provisions related to suspension, banning and the*

period and procedure for the same are ambiguous and vague. This court is of the opinion that the MoD Guidelines would have to be read in a manner that is holistic and part of a complete scheme. This is clear from a perusal of the policy, guidelines and FAQs which show that in case of banning, hearing, show cause notice, reply is mandatory. Suspension cannot be read in isolation but has to be read as a part of the banning process. Thus, when for the final punishment of banning itself, a proper procedure is required, it cannot be held that repeated suspension orders can be issued without complying with the principle of audi alteram partem. It is nigh possible that suspension may have to be resorted as an urgent measure and thus advance notice may not be possible. However, post the suspension, notice would still have to be given, if the same is to be continued for a long period."

45. In ***Defsys Solutions Private Ltd vs Union of India*** 2023 SCC OnLine Del 7716, the said view has been reiterated by a Division Bench of this Court as under:

"32. No suspension can be continued ad infinitum as being attempted by the respondent because such continuation would be contrary to the established law of land."

46. Further, as per clause F.3 of the MoD Guidelines, *inter-alia* (i) the period of suspension of business dealing of an entity shall be included in the period of ban imposed (if any) upon the said entity [for the same cause of action] (ii) banning of entity under clause C.1(a) of MoD Guidelines (for which the petitioner no.1 has been put under suspension) shall be "at least for a period of 5 years". In terms of paragraph 31 of the Procedure for Penal Actions, the period for banning an entity under clause C.1(a) of the MoD Guidelines is stipulated to be "not less than five years and not more than ten years", except in certain special circumstances. Evidently, the petitioner no.1 has already undergone a suspension for a period of more than 5 years (since 14.08.2020) and thus has virtually served the minimum period prescribed for banning of an entity as per clause F.3 of the MoD Guidelines.

47. 'Suspension', being in the nature of an urgent and temporary measure

must necessarily be followed by a final decision *i.e.*, either banning of the entity or revocation of the suspension, continuation thereof for an indefinite period on ambiguous grounds is clearly untenable. The impugned order essentially purports to extend the suspension for an indefinite period by directing its continuation for "further period of six months w.e.f. 14.02.2024 or until further order".

48. In the above circumstances, for all the above reasons, the impugned order dated 26.02.2024 is unsustainable; the same is, accordingly, set aside.

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

SACHIN DATTA, J

DECEMBER 11, 2025
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