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

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*Judgment pronounced on: 11.12.2025*

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**W.P.(C) 9232/2025 and CM APPL.39180/2025****GANESHGARHIA CONSTRUCTION PRIVATE LIMITED**

.....Petitioner

Through: Mr. Nalin Kohli, Sr. Advocate along with Mr. Pramod Kalirana, Ms. Nimisha Menon, Mr. Manish Chaudhary and Mr. Aman Yadav, Advocates.

versus

**NATIONAL HIGHWAYS AUTHORITY OF INDIA & ORS.**

.....Respondents

Through: Mr. Santosh Kumar, SC along with Mr. Devansh Malhotra, Advocate for NHAI.

**CORAM:****HON'BLE MR. JUSTICE SACHIN DATTA****JUDGMENT****FACTUAL MATRIX**

1. The present petition has been filed by the petitioner assailing an order dated 30.06.2025, whereby, the contract dated 25.07.2024 executed between the petitioner and respondent no.1 has been terminated and the petitioner has been debarred for a period of one year from participating in any NHAI tender/projects. The petitioner also assails a Show Cause Notice dated 05.05.2025 and a penalty letter dated 12.02.2025, issued by the respondents.
2. The present petition arises in the background of a contract dated



25.07.2024 for “Engagement of user fee collection agency on the basis of competitive bidding through e-tender at Chapwa, Distt. Maharajganj Fee Plaza at km 11.070 for the section from km. 0.000 to km. 40.706 (40.706 km. length) of 2 laning of Sonauli to Gorakhpur Section of NH-24, in the State of Uttar Pradesh and upkeep/maintenance of adjacent Toilet blocks including recouping the consumable items.” The said work was awarded to the petitioner for the period between 29.07.2024 to 29.07.2025 with an annual remittance amounting to Rs.6,82,10,000/-.

3. The impugned actions undertaken by the respondents arose pursuant to a surprise inspection conducted by official/s of respondents on 08.02.2025 at the Chapwa Fee Plaza upon receiving an email/communication dated 03.02.2025 from Indian Highways Management Company Ltd. (IHMCL) [a nodal agency of respondents, overseeing operations at toll plazas], which referred to usage of ‘Unauthorized Handheld Cash Machines’ at the said toll plaza.

4. Learned counsel on behalf of the respondents submits that for the purpose of surprise inspection, a vehicle no. JH-01-DQ-2770 was deployed, and a designated officer of the NHAI was directed to make cash payments during both ingress and egress at the toll plaza. It is stated that during the initial passage Rs. 50/- was collected in cash by the petitioner from the said vehicle, however, no receipt was issued. Furthermore, vehicle registration number was not entered in the toll records and the said vehicle was falsely categorized as “FASTag Exempt-Local/Farmer” category. On the contrary, during the return journey, the same vehicle was charged the correct user fee and a proper receipt was issued and the said transaction was recorded in the



system.

5. It is further submitted that the surprise inspection therefore revealed that the petitioner while accepting cash from non-FASTag vehicles was processing some transactions outside the mandated ETC system in contravention of clause 3(e) of the contract agreement (which mandates that the contractor is bound to remit 50% of the fee collected from vehicles without FASTag or without valid, functional FASTag that enter into FASTag lane at fee plaza to the respondents). It is stated that said conduct of the petitioner led to operational malpractice and losses to the respondents.

6. Pursuant thereto, *vide* letter/communication dated 12.02.2025, respondents imposed a penalty of Rs. 10,00,000/- upon the petitioner on account of alleged repeated violations and non-compliance/adherence with clauses 20, 21 and 23 of the contract agreement. The said communication reads as under:

*“11033/NHAI/PIU-GKP/NH-24/Chapwa/2024-25/4916 Dated 12.02.2025*

*To,  
Authorized Signatory,  
M/s Ganeshgarhia Construction Pvt. Ltd.  
3-A-5, JAWAHAR NAGAR, SRI GANGA NAGAR,  
RAJASTHAN 335001  
Phone:- 0154-2460097*

*Sub: Engagement of user fee collection agency on the basis of competitive bidding through e-tender at Chapwa, Distt. Maharajganj Fee Plaza at km 11.070 for the section from km. 0.000 to km. 40.706 (40.706 km. length) of 2 laning of Sonauli to Gorakhpur Section of NH-24, in the State of Uttar Pradesh and upkeep/maintenance of adjacent Toilet blocks including recouping the consumable items: Regarding use of Unauthorized software/machine for toll collection reg.*

*Ref: (i) Work Order issued by NHAI HQ vide no. NHAI/1303/547/CO/24-25/CB/Chapwa, Distt. Maharajganj Fee Plaza/E24780 dated 25.07.2024.*



Sir,

*Please refer to the letter from NHAI HQ under reference, vide which it has been communicated that your agency i.e. M/s Ganeshgarhia Construction Pvt. Ltd. has signed Contract Agreement with NHAI on 25.07.2024 for collecting Fee Plaza at Design Km.11.070 for the section from Km.0.000 to Km.40.706 (40.706 Km length) of 2 laning of Sonauli to Gorakhpur Section of NH-24, in the state of Uttar Pradesh and upkeep/maintenance of adjacent Toilet blocks including recouping the consumable items.*

2. *In this context, it is pertinent to mention that the Contract Agreement for user fee collection at Chapwa Toll Plaza is under execution with M/s Ganeshgarhia Construction Pvt. Ltd. w.e.f. 29.07.2024 to 29.07.2025 vide NHAI HQ letter no. NHAI/13013/547/CO/24-25/CB/Chapwa, Distt. Maharajganj Fee Plaza/E24780 dated 25.07.2024 with an annual remittance amount of Rs. 6,82,10,000/-.*

3. *The same agency i.e. M/s Ganeshgarhia Construction Pvt. Ltd. was collecting the user fee for the period from 13.07.2022 to 13.07.2023 on Chapwa User Fee Plaza. NHAI HQ vide their letter no. E206829 dated 27.07.2023 had imposed a penalty of Rs.11,00,000/-, as the UFCA agency was found to be involved in collection of user fees through unauthorized POS Machine, which is a clear violation of clause 21 of Contract Agreement.*

4. *During inspections conduct on 08.02.2025, it was found that toll booths were poorly maintained, with a lack of cleanliness and personnel displaying indiscipline. Personnel were noted sitting inappropriately in lanes and failing to adhere to uniform regulations as mandated under Clause 13(c) of the Contract Agreement.*

5. *Subsequently at Chapwa User Fee Plaza, M/s Ganeshgarhia Construction Pvt. Ltd. for collection of toll on subject plaza w.e.f. 29.07.2024, a number of complaints has been received in this office informing about the user of unauthorized methods of collection of user fees on the plaza. Upon inspection of matter by this office, it was come to notice that the UFCA is running parallel unauthorized POS machine for collection of user fees. During the surprise inspection carried out on 08.02.2025, it was observed that the UFCA is taking user fees and exempting the vehicle by mentioning it in exempt category and also not providing the receipts for the cash taken.*

*A specific case involved a transaction of amount of Rs.50, for vehicle registration no. JH 01 DQ 2770 (video attached). Neither UFCA provided*



*valid receipt for the amount taken nor this particular transaction is registered as cash transaction in the ETC Software. This office vide mail dated 10.02.2025 sought transaction details from concerned system integrator firm. The SI firm shared the report which shows that this vehicle was exempted from toll charges impersonating the Hyundai Creta SUV (CAR) as “FasTag Exempt – Local Farmer” in the ETC database. This act of deceit underscores a deliberate intent to defraud users and breach contractual obligations.*

*Similarly, more transactions of similar nature were traced out, which highlights the frequent use of unauthorized methodology for collecting user fee on Chapwa User Fee Plaza.*

6. Consolidating all the facts, it clearly indicates that it is a breach of the clause 20, 21 & 23 of Contract Agreement which state:-

***Clause 20: Penalty for failure to comply any of the obligations specified in clause 23:***

*“In case of non-compliance of any of the obligations specified in Clause 23(a) to (i), the Authority shall levy penalty @ Rs.1.0 lakh per default per month except for Clause-23(e) for which the penalty shall be @ Rs.10,000/- per default per month, without prejudice to any other rights of the Authority under this Contract. However, in case of non-compliance of obligations specified in Clause 23(h), the Authority shall levy a penalty @ Rs.10,00,000/- per instance or termination of Contract Agreement or both, without prejudice to any other rights of the Authority under this Contract. The date of default will be the date of reporting to the contractor by the Authority concerned or his authorized representative. In addition to levy of penalty as above, more than three defaults in a month under this clause may attract termination under clause 35(2) of this contract. Before levy of penalty under this clause the contractor shall be given a reasonable opportunity to rectify the default. The decision of the Authority concerned or his authorized representative to levy the penalty under this clause shall be final and binding. The penalty so levied shall be recovered from the performance guarantee which shall be replenished by the contractor within 10 days from the date of such recovery failing which the contract is liable to be terminated.”*

***Clause 21: Operational Transparency***

*The Contractor shall be solely responsible for efficient and transparent working and management of User Fee collection at all points of time. The Contractor shall ensure the following:*



- (i) *“All transactions including cash, user fee levied on overload vehicles, violations, and exemptions/concessions will be processed through ETC System available at fee plaza. Usage of electronic ticketing machine or any such devices like handheld Point-of-Sale (POS) terminal, POS Billing machine etc. is strictly prohibited for user fee collection at NH fee plaza. Furthermore, the deployment or usage of any alternate software/system for user fee collection at NH fee plaza, except for the TMS through which FASTag transactions are processed, is also strictly prohibited. Any instance of usage of such handled devices or unauthorized software/system shall be treated as Fraudulent Activity and any User Fee Collection agency (ies), including the Director(s) of such entities or owner, found practicing such fraudulent activities at NH fee plazas will attract penal action as per clause 20 of the contract agreement including debarment from NHAI for a period up to (1) year.*
- (ii) *No fraudulent/parallel system in lanes to process cash/exempt transaction....”*

**Clause 23(f): Obligation of the Contractor**

*(f) “The contractor also agrees to abide by the requirement of clause 21 in order to maintain operational transparency at the fee plaza.....”*

7. *Despite repeated warnings, penalties, and directives, the agency has failed to address these concerns and is not adhering with clause 20, 21 & 23 of Contract Agreement. The continued non-compliance has caused reputational damage to NHAI and significant inconvenience to road users.*

8. *In view of the repeated violations and non-compliance, a penalty of Rs.10,00,000/- is imposed as per NHAI Policy circular dated 25.01.2025.*

**(Lalit Pratap Pal)**  
*Project Director”*

7. Subsequently, a Show Cause Notice dated 05.05.2025 came to be issued by the respondents to show cause as to why penal action should not be taken against the petitioner.



2025:DHC:11216



सत्यमेव जयते

भारतीय राष्ट्रीय राजमार्ग प्राधिकरण  
(सड़क परिवहन एवं राजमार्ग मंत्रालय)

National Highways Authority of India  
(MINISTRY OF ROAD TRANSPORT & HIGHWAYS)

कार्यालय-परियोजना निदेशक, परियोजना क्रियान्वयन इकाई-गोरखपुर  
एच.आई.ए. 1-04, प्रथम तल, न्यू विवेकपुर कॉलोनी, वाटर पोर्ट बिल्डिंग के समीप, तारा मण्डल गोरखपुर-273017 (उ.प्र.)  
Office of the Project Director, Project Implementation Unit Gorakhpur  
HIG-1-04, 1st Floor, New Vivekpuram Colony, Near Water Sport Building, Taramandal, Dist.- Gorakhpur - 273017 (U.P.)  
Geographic coordinates : 26°43'26.2"N 83°3'47.8"E  
दूरभाष/Tel. No. (0551) 2231040 ईमेल/email-gorakhpur@nhai.org.

**ANNEXURE P-2**

11033/NHAI/PIU-GKP/NH-24/Chapwa/2025-26/5537

Dated: 05.05.2025

To,

Authorized Signatory,  
M/s Ganeshgarhia Construction Pvt. Ltd.  
3-A-5, JAWAHAR NAGAR, SRI GANGA NAGAR,  
RAJASTHAN 335001  
Phone:- 0154-2460097

Sub: Engagement of user fee collection agency on the basis of competitive bidding through e-tender at Chapwa, Distt. Maharajganj Fee Plaza at km 11.070 for the section from km. 0.000 to km. 40.706 (40.706 km. length) of 2 laning of Sonauli to Gorakhpur Section of NH-24, in the State of Uttar Pradesh and upkeep/maintenance of adjacent Toilet blocks including recouping the consumable items: Show Cause Notice for use of Unauthorized software/machine for user fee collection as against the subject agreement -reg.

Ref: (i) Work Order issued by NHAI HQ vide no. NHAI/13013/547/CO/24-25/CB/Chapwa, Distt. Maharajganj Fee Plaza/E24780 dated 25.07.2024.  
(ii) NHAI letter no. 4916 dated 12.02.2025

Please refer to the letter from NHAI HQ under reference, vide which it has been communicated that your agency i.e. M/s Ganeshgarhia Construction Pvt. Ltd. has signed Contract Agreement with NHAI on 25.07.2024 for collecting Fee Plaza at Design Km. 11.070 for the section from Km.0.000 to Km.40.706 (40.706 km length) of 2 laning of Sonauli to Gorakhpur Section of NH-24, in the state of Uttar Pradesh and upkeep/maintenance of adjacent Toilet blocks including recouping the consumable items

2. In this context, it is pertinent to mention that the Contract Agreement for user fee collection at Chapwa Toll Plaza is under execution with M/s Ganeshgarhia Construction Pvt. Ltd. w.e.f 29.07.2024 to 29.07.2025 vide NHAI HQ letter no. NHAI/13013/547/CO/24-25/CB/Chapwa, Distt. Maharajganj Fee Plaza/E24780 dated 25.07.2024 with an annual remittance amount of Rs.6,82,10,000/-.

3. The same agency i.e. M/s Ganeshgarhia Construction Pvt. Ltd. was collecting the user fee for the period from 13.07.2022 to 13.07.2023 on Chapwa User Fee Plaza. NHAI HQ vide their letter no. E206829 dated 27.07.2023 had imposed a penalty of Rs. 11,00,000/-.



as the UFCA agency was found to be involved in collection of user fees through unauthorized POS Machine, which is a clear violation of clause 21 of Contract Agreement.

4. Further, during inspection conducted on 08.02.2025, it was found that toll booths were poorly maintained, with a lack of cleanliness and personnel displaying indiscipline. UFCA Personnel were noted sitting inappropriately in lanes and failing to adhere to uniform regulations as mandated under Clause 13(c) of the Contract Agreement.

5. Subsequently at Chapwa User Fee Plaza, M/s Ganeshgarhia Construction Pvt. Ltd. for collection of toll on subject plaza w.e.f 29.07.2024, a number of complaints has been received in this office informing about the use of unauthorized methods for collection of user fees on the plaza. Upon inspection of matter by this office, it was come to notice that the UFCA is running parallel unauthorized POS machine for collection of user fees. During the surprise inspection carried out on 08.02.2025, it was observed that the UFCA is taking user fees and exempting the vehicle by mentioning it in exempt category and also not providing the receipts for the cash taken.

A specific case involved a transaction of amount of Rs. 50, for vehicle registration no. JH 01 DQ 2770 (video attached). Neither UFCA provided valid receipt for the amount taken nor this particular transaction is registered as cash transaction in the ETC Software. This office vide mail dated 10.02.2025 sought transaction details from concerned system integrator firm. The SI firm shared the report which shows that this vehicle was exempted from toll charges impersonating the Hyundai Creta SUV (CAR) as "FasTag Exempt- Local Farmer" in the ETC database. This act of deceit underscores a deliberate intent to defraud users and breach contractual obligations.

Similarly, more transactions of similar nature were traced out, which highlights the frequent use of unauthorized methodology for collecting user fee on Chapwa User Fee Plaza. In this regard, IHMCL vide e-mail dt. 03.02.2025 has also raised the issue of usage of Unauthorized Handheld Cash Machines at subject NH Fee Plaza.

6. Consolidating all the facts, it clearly indicates that it is a breach of the clause 20, 21 & 23 of Contract Agreement which state: -

**Clause 20: Penalty for failure to comply any of the obligations specified in clause 23:**

*"In case of non-compliance of any of the obligations specified in Clause 23(a) to (i), the Authority shall levy penalty @ Rs.1.0 lakh per default per month except for Clause-23(e) for which the penalty shall be @ Rs.10,000/-per default per month, without prejudice to any other rights of the Authority under this Contract. However, in case of non-compliance of obligations specified in Clause 23 (h), the Authority shall levy a penalty @ Rs.10,00,000/- per instance or termination of Contract Agreement or both, without prejudice to any other rights of the Authority under this Contract. The date of default will be the date of reporting to the contractor by the Authority concerned or his authorized representative. In addition to levy of penalty as above, more than three defaults in a month under this clause may attract termination under clause 35 (2) of this*



contract. Before levy of penalty under this clause the contractor shall be given a reasonable opportunity to rectify the default. The decision of the Authority concerned or his authorized representative to levy the penalty under this clause shall be final and binding. The penalty so levied shall be recovered from the performance guarantee which shall be replenished by the contractor within 10 days from the date of such recovery failing which the contract is liable to be terminated."

**Clause 21: Operational Transparency**

The Contractor shall be solely responsible for efficient and transparent working and management of User Fee collection at all points of time. The Contractor shall ensure the following:

- (i) "All transactions including cash, user fee levied on overload vehicles, violations, and exemptions/concessions will be processed through ETC System available at fee plaza. Usage of electronic ticketing machine or any such devices like handheld Point-of-Sale (POS) terminal, POS Billing machine etc. is strictly prohibited for user fee collection at NH fee plazas. Furthermore, the deployment or usage of any alternate software/system for user fee collection at NH fee plaza, except for the TMS through which FASTag transactions are processed, is also strictly prohibited. Any instance of usage of such handheld devices or unauthorized software/system shall be treated as Fraudulent Activity and any User Fee Collection agency (ies), including the Director(s) of such entities or owner, found practicing such fraudulent activities at NH fee plazas will attract penal action as per clause 20 of the contract agreement including debarment from NHAI for a period up to (1) year.
- (ii) No fraudulent/parallel system in lanes to process cash/exempt transaction..."

**Clause 23(f): Obligation of the Contractor**

(f) "The contractor also agrees to abide by the requirement of clause 21 in order to maintain operational transparency at the fee plaza..."

7. Despite repeated warnings, penalties, and directives, the agency has failed to address these concerns and is not adhering with clause 20, 21 & 23 of Contract Agreement. The continued non-compliance has caused reputational damage to NHAI and significant inconvenience to road users. In view of the same, this office vide letter no. 4916 dated 12.02.2025 has imposed penalty of Rs. 10,00,000/- as per NHAI policy circular dated 25.01.2024 on UFCA.

8. In this regard, before proceeding further for taking penal action including termination and debarment upto 1 year as per subject agreement and extant NHAI guidelines, an opportunity of personal hearing is being hereby granted to your good self as per direction of the competent authority and in view of the natural justice.



9. In light of above, show cause notice is being issued to you for explaining why action for penal action including termination and debarment upto 1 year as per clause 20 & 35 of the subject Agreement and NHAI circular no. 17.5.87/2024 dt. 25.01.2024 shall not be taken against your UFCA. The said explanation in writing along with personal hearing in this office is being invited on or before 10 days from issuance of this letter, failing which it will be presumed that you have nothing to say in this matter and further proceedings as per the terms and conditions of the Contract Agreement and extant NHAI policy guidelines shall be initiated.

  
(Lalit Pratap Pal)  
Project Director

Copy for kind information to:

1. Chief General Manager (CO), NHAI HQ, New Delhi.
2. Regional Officer (UP-East), Varanasi

8. The petitioner *vide* a letter dated 15.05.2025 filed a detailed response and vehemently opposed the allegations levied by the respondents in the SCN.

9. Thereafter, *vide* an order dated 30.06.2025, the respondent/s terminated the contract with the petitioner and also debarred the petitioner for a period of one year from participating in any NHAI tender/projects. The same was done on the basis of (i) findings of the surprise inspection, corroborated with reports and various other inputs from the System Integrator and IHMCL, video evidence and TMS transaction analysis (ii) alleged violation of clauses 15(g), 20, 21, and 23 of the Contract and (iii) alleged engagement of the petitioner in fraudulent practices. The said reads as under:-



2025:DHC:11216

**भारतीय राष्ट्रीय राजमार्ग प्राधिकरण**

(सड़क परिवहन और राजमार्ग मंत्रालय)

**National Highways Authority of India**

(Ministry of Road Transport and Highways)

जी-5 एवं 6, सेक्टर-10, द्वारका, नई दिल्ली-110075

G-5 &amp; 6, Sector 10, Dwarka, New Delhi - 110075

दूरभाष / Phone: 91-11-25074100/25074200  
फैक्स / Fax: 91-11-25093507/ 25093514

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**ANNEXURE P-1**

No. NHAI/13013/547/CO/24-25/CB/Chapwa FP/E-24780/196

Date: 30.06.2025

To,

The Authorized Signatory,  
M/s. Ganeshgarhia Construction Pvt. Ltd.  
3-A-5, Jawahar Nagar  
Sri Ganga Nagar – 335001, Rajasthan  
Email: ganeshgarhia\_2009@yahoo.com

**Subject: Termination and Debarment – User Fee Collection Contract at Chapwa Fee Plaza on NH-24, Uttar Pradesh (Without Pre-judice) – Reg.**

**Ref:** (i) Contract Agreement dated 25.07.2024 between NHAI and M/s. Ganeshgarhia Construction Pvt. Ltd.  
(ii) Show Cause Notice issued by PIU-Gorakhpur dated 05.05.2025 and reply dated 15.05.2025

Sir,

With reference to the above, you were engaged as the User Fee Collection Agency (UFCA) for **Chapwa Fee Plaza** at km 11.070 for the section from km 0.000 to km 40.706 of NH-24 in the state of Uttar Pradesh through a competitive e-bidding process.

2. As per findings of surprise inspection conducted by NHAI officials on 08.02.2025, it was observed that your agency was using unauthorized Point-of-Sale (POS) machines and/or parallel software for toll collection. This was corroborated by reports and inputs from the System Integrator and IHMCL, and confirmed through video evidence and TMS transaction analysis. Specific instances of illegal toll exemption and fraudulent categorization (e.g., Vehicle No. JH-01-DQ-2770) were recorded.

3. Further, the toll plaza was found in very poor operational condition, with lack of proper lighting, hygiene, uniformed staff, and significant understaffing – all in violation of Clauses 15(g), 20, 21, and 23 of the Contract Agreement.

4. Despite imposition of a penalty of Rs. 10,00,000/- (PIU letter No. 4916 dated 12.02.2025) and a Show Cause Notice was issued by PIU vide their letter dated 05.05.2025. In this regard, your reply dated 15.05.2025 was examined by PIU and found unsatisfactory, evasive, and lacking documentary support. Furthermore, you failed to avail the opportunity for personal hearing offered by PIU.

5. Your continued non-compliance and engagement in fraudulent practices have not only resulted in financial loss to the Government but also tarnished the reputation of NHAI and caused inconvenience to road users.

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Conf-2



6. In view of the above, and under the provisions of Clauses-20 and 21 of the Contract Agreement and in line with the NHAI's Policy Circular dated 25.01.2024, it has been decided by the Competent Authority for:

- (i) Termination of the Contract Agreement dated 25.07.2024 w.e.f. date of handing over to new agency.
- (ii) Debarment of M/s. Ganeshgarhia Construction Pvt. Ltd., including its Directors/Owners, from participation in any NHAI tender/projects for a period of one (01) year from the date of issuance of this letter.
- (iii) Any dues, penalties, or recoveries shall be effected from the Performance Security as per contractual terms.

7. This is without prejudice to NHAI's other rights and remedies under RFQ & RFP and/or applicable law.

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

Yours faithfully,

(Mudit Garg)

General Manager (CO)

### **SUBMISSIONS ON BEHALF OF THE PETITIONER**

10. Learned senior counsel on behalf of the petitioner submits that the impugned penalty letter was neither preceded by a personal hearing nor furnishing of any material documents/videos substantiating the alleged lapse/defects on part of the petitioner which were discovered during the surprise inspection. Further, the penalty imposed is in contravention of clause 18 of the contract inasmuch as the said clause stipulates that for any excess fee charged, a penalty equivalent to 150 times the excess fee charged shall be imposed.

11. It is further submitted that the impugned debarment order fails to take into consideration the reply to the impugned Show Cause Notice submitted by the petitioner. It is contended that the petitioner in its reply *inter-alia*



stated that (i) the petitioner is neither in receipt of any complaint or query against it, as recorded in the impugned Show Cause Notice (ii) the petitioner categorically denied the findings of surprise inspection (incident pertaining to the collection of Rs.50/- ) and use of unauthorized software. It is submitted that the respondents, without dealing with the contentions raised in the aforementioned reply, issued the impugned debarment order. By placing reliance on judgment passed by this Court in ***Mekaster Trading Corporation vs Union of India and Ors.***, 2003 (71) DRJ 376, it has been contended that the order of debarment must be passed after consideration of reply to show cause notice and reasons must be recorded.

12. It is further contended that while the impugned Show Cause Notice refers to ‘a number of complaints’ being received against the use of unauthorized methods for collection of user fee at the toll plaza by the petitioner, neither have the respondents’ forwarded records of the said complaints to the petitioner nor does the impugned orders specify the said complaints. Further, the respondents have not seized any hardware/Point of Sale machine or any alternate software/device.

13. It is further contended that to substantiate the impugned actions, the respondents have solely relied upon the purported findings of the surprise inspection.

14. Further, by placing reliance on the judgment passed by the Supreme Court in ***Excel Crop Care Ltd vs Competition Commission of India***, (2017) 8 SCC 47 it is submitted that in regards the same alleged offence, the respondents have already imposed a penalty of Rs. 10,00,000/- (not implemented yet) and in the aforesaid conspectus, taking debarment action



along with termination of the contract, is arbitrary, disproportionate and tantamounts to the petitioner being penalized twice for the same alleged offence.

15. It is contended that reliance upon a previously imposed penalty on the petitioner (when the petitioner operated as a toll collection agency for the same plaza from 13.07.2022 to 13.07.2023) is misplaced. It is also submitted that the petitioner has not breached clause 21 of the Contract inasmuch as the user fee collection is done under strict monitoring of NHAI officials and system integrator (an entity appointed by NHAI to supervise user fee collection work). The IHMCL, System Integrator and concerned PIU have complete access to all camera of fee plaza and supervision control of user fee work and all transactions are validated by them. Further, the IHMCL email dated 04.02.2025 as relied by the respondents uses the term “apprehension”, and is bereft of any relevant details.

16. Further, reliance is also placed upon judgments passed by the Supreme Court in *Mohinder Singh Gill vs. Election Commissioner*, 1978 1 SCC 405 to contend that an administrative order's validity must be judged by the reasons in the order itself and new grounds cannot be taken during the proceedings and on *Kranti Associates Private Limited vs Mashood Khan.*, (2010) 9 SCC 496 to emphasize that recording of reasons is a must while passing any administrative order.

### **SUBMISSIONS ON BEHALF OF THE RESPONDENTS**

17. Learned counsel on behalf of the respondents submits that the petitioner in its reply to the impugned Show Cause Notice has categorically



admitted that Rs. 50/- was collected and the same was not accounted for because the said collection was (i) an innocent informal exchange with a local resident (ii) the concerned vehicle was local and exempt from toll. However, the said assertion is untenable inasmuch as the passenger in the said vehicle, and the said vehicle itself, were not “local”. The vehicle was deployed by the NHAI along with its officer. Furthermore, even a local vehicle in terms of National Highways Fee (Determination of Rates and Collection) Rules, 2008 needs an exemption pass.

18. It is submitted that further evidence appears from the transaction details which records that the same vehicle (deployed for surprise inspection) was fraudulently permitted entry under the exempt category (without a valid exemption pass) at the time of ingress, and no toll charge was recorded in the system. However, at the time of egress, the same vehicle was categorized correctly as non-exempt and charged the requisite fee, clearly confirming irregular toll collection.

19. It is submitted that previously when the petitioner operated as a toll collection agency for the same plaza (from 13.07.2022 to 13.07.2023), the petitioner was penalized for the same misconduct i.e., collecting toll using an unauthorized Point of Sale (POS).

20. It is further submitted that the petitioner accepted the penalty imposed by NHAI *vide* the impugned penalty letter without any protest. The findings underlying the said penalty also formed the basis of the subsequent Show Cause Notice, but the petitioner chose to challenge the same only at a belated stage, viz. after almost 5 months when the impugned Show Cause Notice was issued. Therefore, prolonged and unexplained silence amounts to



acquiescence, and the belated challenge is barred by delay and laches.

21. It is further submitted that the use of unauthorized Point of Sale machines and parallel software is conclusively established from (i) surprise inspection which uncovered the presence of unapproved POS system and secondary software running along with the official toll collection platform (ii) system log reveals that Rs.50 was collected for vehicle JH-01-DQ-2770 *via* the parallel system, yet no corresponding entry appears in the primary toll-collection database (iii) CCTV footage reveals that Rs.50/- was collected during ingress of the vehicle and a parallel software system was being operated through a secondary keyboard. Although transaction was recorded by the parallel system, no legitimate receipt was issued to the said vehicle.

22. It is contended that although the petitioner already had access to the CCTV footage in terms of paragraph (ii)<sup>1</sup> of a circular dated 18.05.2015 bearing no. NHAI/13013/CO Division/ETC/14-15/66192, passed by the respondents, the petitioner did not rely upon the said footage in its reply to the impugned Show Cause Notice to defend its case.

23. It is submitted that the petitioner has been debarred in accordance with clause 21 of the Contract which stipulates that in case a contractor uses any expressly prohibited handheld Point of Sale machines or alternative software for user fee collection, it shall be deemed as fraudulent activity, attracting penal action including debarment for up to one year. Furthermore,

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<sup>1</sup> (ii) Installation and O & M of ETC equipment/ systems (A VCC, Lane Cameras, RFID Readers, etc) will be the responsibility of ETC equipment/ system supplier of IHMCL/ NHAI. However, the toll collection contractor is responsible for traffic management in ETC lane including Security of ETC equipment. The contractor cannot operate ETC equipment but can view/ download/ print '**free of cost**' the data from these equipment/ systems for which he may set up his own infrastructure/ connections, as required. The contractor is also free to install such other equipment as deemed appropriate by him to satisfy himself to capture the transactions through the electronic toll (ETC) lane correctly.



by placing reliance upon judgment passed by the Supreme Court in ***Patel Engineering Ltd. Vs Union of India***, (2012) 11 SCC 257 it is contended that the power to blacklist or debar is an inherent administrative power of a public body, flowing from its public obligations, even in absence of an express clause.

### **REASONING AND CONCLUSION**

24. The legal position is well settled that a blacklisting/debarring order is subject to judicial review on the touchstone of procedural fairness, compliance with the principles of natural justice, Wednesbury unreasonableness and disproportionality. The legal position in this regard has been reiterated time and again by the Supreme Court in numerous judgments.

25. In ***Diwan Chand Goyal vs. National Capital Region Transport Corporation***, 2020 SCC OnLine Del 2916, a coordinate Bench of this Court after analysing various judgments rendered by the Supreme Court, summarized the general principles pertaining to debarment as under:-

*“45. Upon a reading of the aforesaid judgments cited on behalf of both the parties, the general principles, which emerge, with respect to blacklisting*

*are;*

*(a) Principles of natural justice have to be complied with before the order of blacklisting is passed;*

*(b) Natural justice or audi alteram partem does not always require a hearing to be granted. Serving of show cause notice and affording an opportunity to reply to the same, is considered as being adequate opportunity and is sufficient adherence to the principles of natural justice;*

*(c) Blacklisting constitutes civil death and has extremely grave consequences. Thus, the same is amenable to the judicial review if the same is by governmental authorities;*



(d) Any order of blacklisting ought to contain proper reasons. The reasons need not be detailed or elaborate. It is sufficient to be brief, pithy and concise;

(e) Reasons should be supplied to the affected party;

(f) Decision taken ought not to be arbitrary or discriminatory.

(g) Blacklisting orders being amenable to judicial review can be judged on the standard of proportionality. Thus, the period of blacklisting as also terms and conditions thereof have to be proportionate to the irregularities or conduct of the bidder.”

26. In **Gorkha Security Services v. Government (NCT of Delhi) and Ors.**, (2014) 9 SCC 105, the Supreme Court emphasised the necessity of serving a proper show cause notice to the effected party as a pre-condition for taking debarment/blacklisting action. The relevant observations are as under:-

16. It is a common case of the parties that the blacklisting has to be preceded by a show-cause notice. Law in this regard is firmly grounded and does not even demand much amplification. The necessity of compliance with the principles of natural justice by giving the opportunity to the person against whom action of blacklisting is sought to be taken has a valid and solid rationale behind it. With blacklisting, many civil and/or evil consequences follow. It is described as “civil death” of a person who is foisted with the order of blacklisting. Such an order is stigmatic in nature and debars such a person from participating in government tenders which means precluding him from the award of government contracts.

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21. The central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of show-cause notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the defaults/breaches complained of are not satisfactorily explained. When it comes to blacklisting, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action.



22. *The High Court has simply stated that the purpose of show-cause notice is primarily to enable the noticee to meet the grounds on which the action is proposed against him. No doubt, the High Court is justified to this extent. However, it is equally important to mention as to what would be the consequence if the noticee does not satisfactorily meet the grounds on which an action is proposed. To put it otherwise, we are of the opinion that in order to fulfil the requirements of principles of natural justice, a show-cause notice should meet the following two requirements viz:*

- (i) The material/grounds to be stated which according to the department necessitates an action;*
- (ii) Particular penalty/action which is proposed to be taken. It is this second requirement which the High Court has failed to omit.*

*We may hasten to add that even if it is not specifically mentioned in the show-cause notice but it can clearly and safely be discerned from the reading thereof, that would be sufficient to meet this requirement.*

27. It is also well settled that the debarment/blacklisting order must contain reasons and must deal with the defences/justifications that may have been put forth in the response to the show cause notice.

28. In ***Techno Prints v. Chhattisgarh Textbook Corporation and Anr.***, 2025 SCC OnLine SC 343, it has been observed by the Supreme Court that the procedural exercise prior to taking debarment/blacklisting action cannot be reduced to a mechanical narration of facts, without effectively taking into account the response/defence of the effected party. The relevant portion of the said judgment reads 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.”*

29. Further, in ***Techno Prints*** (supra), relying upon the judgment



rendered by the Supreme Court in ***Blue Dreamz Advertising Pvt. Ltd and Anr. Vs Kolkata Municipal Corporation and Ors.***, (2024) 15 SCC 264 it has been held that a mere contractual transgression is not sufficient to entail a punitive measure of blacklisting; the nature of the conduct must be so deviant or aberrant so as to warrant such a punitive measure. The relevant portion of the said judgment reads as under:

*“27. This Court in The Blue Dreamz Advertising Pvt. Ltd. v. Kolkata Municipal Corp., 2024 INSC 589 while quashing and set asiding the blacklisting order as affirmed by the High Court in almost identical facts observed as under:*

- 1. In case there exists a genuine dispute between the parties based on the terms of the contract, blacklisting as a penalty cannot be imposed.*
- 2. The penalty of blacklisting may only be imposed when it is necessary to safeguard the public interest from irresponsible or dishonest contractors, and*
- 3. The Corporation being a statutory body, have a higher threshold to satisfy before passing such blacklisting order and therefore, the measures undertaken by it should be reasonable.”*

30. In the present case, what is stark is that the impugned debarment order completely omits to deal with the petitioner’s response dated 15.05.2025 to the show cause notice dated 05.05.2025, except for making the following cryptic observations:

*“4.....your reply dated 15.05.2025 was examined by PIU and found unsatisfactory, evasive, and lacking documentary support. Furthermore, you failed to avail the opportunity for personal hearing offered by PIU.”*

31. Clearly, the impugned debarment order is vitiated on account of the abject non-consideration of the points/defences urged by the petitioner in its response dated 15.05.2025 to the show cause notice dated 05.05.2025. In the aforementioned response to the show cause notice, the following aspects had



been urged by the petitioner:

- (i) that the show cause notice makes reference to an allegation pertaining to the period 2022-23, a period which was covered by an entirely different contract and has no co-relation with the present contract agreement;
- (ii) It was highlighted that although the show cause notice refers to multiple complaints being received by the respondent against the petitioner, however no query/complaint had ever been forwarded to the petitioner, nor any answers were sought from the petitioner with regard thereto;
- (iii) It was pointed out that user fee collection is done under the supervision of system integrated, IHMCL and continuous monitoring of work done as per provision of contract agreement. It was emphasised that the petitioner has been discharging all the obligation in the contract agreement under active supervision of the respondent/s and therefore, the allegations of operational efficiency/flaws /fraudulent contract were untenable;
- (iv) It was sought to be emphasised that the concerned vehicle which was utilised for the purpose of surprise inspection was a local vehicle and that Rule 9 of the National Highways Fee (Determination of rates and collection) Rules, 2008 mandates that the people living in the vicinity of the Toll-Plaza be allowed to cross the Plaza without any payment. It was emphasised that the petitioner/Toll Collection Agency have to exercise circumspection so that no law and order situation arises and to avoid disputes with local residents.



(v) Importantly, it was emphasised that the respondent/NHAI had not shared details of any alleged fraudulent software/hardware stated to have been used by the petitioner nor any evidence provided as to how it was determined that fraudulent software was being used.

32. It was incumbent on the respondent/NHAI to specifically deal with the aforesaid aspects before proceeding to debar the petitioner. The impugned debarment order inasmuch it fails to do so is unreasoned and falls short of the mandatory procedural requirements, which are required to be adhered to, in terms of the aforementioned judgments rendered by the Supreme Court.

33. The petitioner has also emphasised that the impugned order was based on a sole incident concerning collection of Rs.50/- by an employee of the petitioner at the toll plaza from a vehicle deputed by respondent for surprise inspection (during ingress), which at best could be described as an aberration. It is pointed out that from the very same vehicle (which was involved in the surprise inspection) during egress, an amount of Rs.70/- was collected and a proper receipt was issued utilising the software, computer system and printer installed by the NHAI. Had there been any attempt to bypass the official toll collection system, this would not have happened. It is also emphasised that in the factual conspectus, it is wholly untenable and disproportionate on the part of the respondent to take the most extreme and harsh action of debarment against the petitioner.

34. This Court is refraining from rendering any factual evidence/conclusion on these aspects inasmuch as it was incumbent on the concerned authority of the NHAI to consider the same and pass a reasoned



order with regard thereto.

35. It also noticed that paragraph 2 of the impugned order records as under:-

*“2. As per findings of surprise inspection conducted by NHAI officials on 08.02.2025, it was observed that your agency was using unauthorized Point-of-Sale (POS) machines and/or parallel software for toll collection. This was corroborated by reports and inputs from the System Integrator and IHMCL, and confirmed through video evidence and TMS transaction analysis. Specific instances of illegal toll exemption and fraudulent categorization (e.g., Vehicle No. JH01- DQ-2770) were recorded.”*

36. It appears that no POS Machine/parallel system/software/device was actually seized by the respondent. As such, the impugned order, on the face of it, is predicated on an untenable factual premise.

37. It is also noticed that the paragraph 5 of the show cause notice refers to “number of complaints received in this office informing about the use of unauthorised method of collection of user fee on the plaza”. The particulars of these complaints were evidently not given to the petitioner, thereby denying the petitioner an effective opportunity to respond to the same.

38. Also, the impugned order (in paragraph 5 thereof) refers to “continued non-compliance and engagement in fraudulent practices” without giving any details as regards thereto. It is further noticed that the show cause notice refers only to a solitary incident (based on the surprise inspection conducted on 08.02.2025) and give no details/particulars on the basis of which it could be inferred that the petitioner has ‘continuously’ been non-compliant and/or engaged in fraudulent practices.

39. The law is well-settled that the debarring/blacklisting action is an extremely harsh penalty akin to bring about “civil death” of an entity. Before



taking such a drastic action, the least that is expected is that the concerned authority would pass a self-contained, reasoned order dealing with all aspects of the matter.

40. In the present case, as noticed, the impugned order falls short of this mandatory legal requirement. In the circumstances, the impugned order to the extent it seeks to take debarment action against the petitioner, is set aside.

41. However, this Court is not inclined to interfere with the termination of the concerned contract dated 25.07.2025 and/or imposition of penalty, inasmuch as the same are contractual matters for which, it is incumbent on the petitioner to avail the prescribed contractual/civil remedies.

42. The present petition stands disposed of in the above terms.

**SACHIN DATTA, J**

**DECEMBER 11, 2025**

*at,sl*