Serial No.01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

WA No.3/2026

Reserved on: **04.02.2026**
Pronouncement on:**19.02.2026**

M/s BSCPL Infrastructure Ltd. through Mr. Bollineni Krishnaiah, office at: 8-2-502/1/A, Jivi Towers, Road No.7, Banjara Hills, Hyderabad-500034, Telangana.

..... Appellant

Vs.

Public Works Department (Roads) through its Chief Engineer (National Highways), Government of Meghalaya.

..... Respondent

Coram:
Hon'ble Mrs. Justice Revati Mohite Dere, Chief Justice
Hon'ble Mr. Justice W. Diengdoh, Judge

Appearance:

For the Appellant : Mr. Jethmalani, Sr.Adv with
Mr. S. Chopra, Adv
Mr. K. Ch Gautam, Adv
Mr. R. Sharma, Adv
Mr. T. Tewari, Adv
Ms. S. Jethmalani, Adv
Ms. G.C. Marboh, Adv

For the Respondent : Mr. A. Kumar, Advocate General with
Mr. A.H. Kharwanlang, Addl.Sr.GA
Mr. A.S. Pandey, GA
Mrs. S. Laloo, GA
Ms. I. Syiemlieh, GA

i)	Whether approved for reporting in Law journals etc.:	Yes
ii)	Whether approved for publication in press:	Yes

JUDGMENT

Hon'ble, the Chief Justice:

By the aforesaid appeal, the appellant has impugned the judgment and order dated **17th December, 2025**, passed by the learned Single Judge in Writ Petition (C) No.24 of 2025. By the said judgment and order, the learned Single Judge dismissed the appellant's petition which sought quashing and setting aside of the order dated **3rd December, 2024**, passed by the respondent, blacklisting/debarring the appellant for five years from participating in any future tender/contract of Public Works Department.

Brief facts:

In September, 2009, the Government of India, through the Ministry of Road Transport and Highways, floated a tender for the '2-laning of Nongstoin-Shillong Section of NH 44 and Nongstoin-Rongjeng-Tura Road in the State of Meghalaya under Phase 'A' of SARDP-Ne-NH-44E & SR-MG-PWD-2010-11-172'. Accordingly, on **14th June, 2010**, a Joint Venture agreement was executed between M/s BSCPL and C&C

Construction for the purpose of bidding of the aforesaid two specific projects, one in Nagaland and another in Meghalaya. In the said Joint Venture agreement, M/s BSCPL (appellant) was the lead partner of the said agreement.

2. On **15th June, 2010**, Joint Venture, being BSC C&C JV (hereinafter referred to as 'JV', submitted its bid before the respondent.

3. On **31st January, 2011**, a Letter of Acceptance was issued in favour of the JV for the aforesaid 2-laning project. On **21st February, 2011**, the parties entered into an agreement "contract" to execute the work of Ilvo Laning of Shillong-Nongstoin Section of NH 44E and Nongstoin-Rongjeng-Tura Road in the State of Meghalaya for contract price of ₹1303.83 crores. The project was to be completed within 36 months i.e., on or before **7th March, 2014**.

4. It is not in dispute that the project could not be completed within the stipulated period and hence,

supplementary agreements were entered into between the parties and the timeline was extended. Admittedly, the revised cost estimate was submitted on four occasions and the final extension of time was approved by the respondent till **31st December, 2017**. It appears that the Contract works were completed on **15th December, 2017** and the completion certificate for the project was issued on **13th March, 2018**.

5. In the interregnum, during the aforesaid period i.e., 2017-2018 disputes arose between the parties in terms of the execution of the work under the contract. The appellant-JV sent a notice in terms of Clause 24 of the Contract to the respondent informing of its claims in relation to non-payment of interest on delayed payments, non-payment of cost of extra bitumen used in bituminous works and non-reimbursement of labour cess. Accordingly, on **23rd April, 2015**, the appellant-JV sought appointment of Dispute Review Board-I (hereinafter referred to as DRB-I) in terms of Clause 24 of the Contract.

6. Accordingly, on **1st June, 2016**, DRB-I was constituted for adjudication of the disputes for Claim-I, arising between the parties. In May, 2016, Shri M. Phanbuh, Chief Engineer (National Highway), denied the appellant's claim as none of the heads of claims were maintainable. On **2nd June, 2016**, Shri M.R. Sangma, Chief Engineer, admitted the claims of the appellant-JV vide communication/letter sent by him. On **12th September, 2016**, Mr. Sangma, Chief Engineer (National Highway), submitted a letter of joint verification of claims with the JV to DRB-I. On **25th September, 2016**, DRB-I gave its recommendation on the dispute and allowed Claim-I of the appellant, i.e., ₹80 crore. On **19th February, 2017**, DRB-I revised its recommendation, i.e., passed an addendum to its recommendation dated **25th September, 2016**, and also awarded interest to the appellant.

7. It appears that **3rd December, 2017**, the Regional Officer, MoRTH, forwarded the recommendation regarding approval of RCE-IV (revised cost estimate). On **19th May,**

2017, Mr. Sangma addressed a letter to DRB, communicating that an amount of ₹16 crore has been processed towards labour cess and the remaining claims were being processed to be incorporated in RCE-IV.

8. Since the respondent failed to make the payment of interest awarded by DRB-I, the appellant-JV sent a notice dated **11th June, 2018**, stating its intention to invoke arbitration for the unpaid claims under DRB-I award. On **25th September, 2018**, the appellant-JV applied to the DRB, constituting the same members as the earlier DRB-I, for adjudication of two sets of claims i.e., regarding additional claims arising on account of delay, disruption and prolongation of contract due to breaches by the respondent during the execution of the contract (Claim-II), including loss of profits. Accordingly, DRB-II was constituted. On **25th September, 2018**, the DRB-II passed recommendation in favour of the appellant-JV and awarded an amount of ₹220 (approx) crores/lakhs, towards delay, disruption and

prolongation, including loss of profits. On **16th October, 2025**, DRB-II further revised its recommendation.

9. On **16th January, 2019**, the respondent also sent a notice invoking arbitration and appointed Mr. K.K. Jalan as its nominee arbitrator. On **1st January, 2019** in response to the respondent's notice of arbitration, appellant-JV appointed Mr. R.K. Srivastava as its nominee arbitrator and sought for consolidation of both, Claims-I and II before the learned Arbitral Tribunal. On **13th March, 2019**, the nominee arbitrators of the appellant-JV and the respondent appointed Hon'ble Mr. Justice (Retd) V.B. Gupta as the Presiding Arbitrator and accordingly, the Arbitral Tribunal entered upon reference in accordance with the Arbitration and Conciliation Act, 1966 (hereinafter referred to as the 'Act') for adjudication of both the claims allowed by DRB-I and DRB-II.

10. On **1st February, 2019**, the appellant-JV also invoked arbitration proceedings in respect of both the Claims i.e., Claims- I and II.

11. On **30th May, 2019**, the appellant-JV filed its statement of claim for two claims based on DRB-I and DRB-II recommendations. As far as Claim-I was concerned, it was based on the admission of the officials of the respondent. Along with the statement of claim, the appellant-JV also filed an application under Section 31(6) of the Act, seeking an interim award on claim-I allowed by the DRB-I, since it was an admitted claim. It appears that the appellant-JV in the statement of claims had filed 16 volumes of unindexed documents running into more than 9500 pages. On **30th July, 2019**, the respondent before filing its reply to the appellant's statement of claim, filed an application under Section 16 of the Act, challenging the jurisdiction of the Arbitral Tribunal. The Arbitral Tribunal vide order dated **21st March, 2020** dismissed the respondent's application under Section 16 of the Act.

12. It appears that on **10th November, 2020**, the respondent tried to implead the Ministry of Road Transport

and Highways (MoRTH) in the arbitration, by filing an application seeking impleadment of MoRTH, as a party respondent to the arbitration proceeding. The respondent also filed its statement of defence. On **18th December, 2020**, the appellant-JV filed its rejoinder to the statement of defence.

13. By two separate orders dated **27th July, 2021**, the Arbitral Tribunal rejected the impleadment application of the respondent with costs and allowed the interim application preferred by the appellant under Section 31(6) of the Act and passed an interim award directing the respondent to pay the appellant-JV a sum of ₹75 crore with interest pending detailed calculation, as a part of the claims, arising out of Claim-I.

14. The respondent challenged the interim award under Section 34 of the Act by filing a petition alongwith an application for stay of the interim award dated **27th July, 2021**. The said petition was filed before the Commercial Court, Shillong. Vide order dated **29th October, 2021**, the Commercial Court, Shillong issued notice to the appellant-JV

and the Court granted ad-interim ex-parte stay on the interim award passed by the Arbitral Award. On **17th November, 2021**, the appellant-JV filed an application and sought dismissal of the petition i.e., Commercial Misc. Case No.24/2021, filed by the respondent on the premise that the same was premature, as the Section 33 application was pending before the Arbitral Tribunal. The Commercial Court, Shillong vide order dated **17th November, 2021** modified its stay on the interim award so as to allow continuation of the Section 33 proceeding before the Arbitral Tribunal. On **21st December, 2021**, the Arbitral Tribunal, rejected the said application filed by the appellant-JV under Section 33 of the Act.

15. On **19th January, 2021**, the appellant-JV filed a petition being Civil Revision Petition No.2 of 2022 in the High Court of Meghalaya and sought quashing and setting aside of the said orders passed by the Commercial Court, Shillong. The High Court vide judgment and order dated **11th February,**

2022 set aside the orders of the Commercial Court, Shillong and directed the Commercial Court, Shillong to take up Section 34 petition de novo in the light of the dismissal of Section 33 application.

16. On **14th February, 2022**, the Arbitral Tribunal framed issues for adjudication. It appears that one of the issues framed by the Arbitral Tribunal concerned Claim-I, which was already the subject matter of the order dated **27th July, 2021**. On **6th April, 2022**, the respondent filed a petition in this Court challenging the Arbitral Tribunal's order dated **14th February, 2022** framing issues and also prayed for stay of the arbitral proceeding. Vide order dated **9th May, 2022**, this Court quashed the order of the Arbitral Tribunal dated **14th February, 2022** to the extent, that it related to issue No.1, i.e., issue which concerned Section 31(6) application and accordingly, arbitral proceedings were stayed vide order dated **25th April, 2022**. Later, this Court vide order dated **9th May, 2022** quashed Issue No.1 and disposed of the petition.

17. Being aggrieved by the said order passed by the High Court, the appellant-JV filed a Special Leave Petition before the Apex Court. It appears that the arbitral proceeding was stayed approximately for one year. In view of the stay, the recording of evidence of the appellant-JV remained incomplete. On **19th June, 2023**, the Arbitration Appeal No.6 of 2023 preferred by the appellant-JV in this Court under Section 37 of the Act challenging the judgment dated **17th May, 2023**, passed by the Commercial Court, Shillong was dismissed by the High Court with costs was decided against the respondent and the Section 31(6) order of the Arbitral Tribunal was upheld, i.e., interim award passed by the Arbitral Tribunal was upheld. Pursuant thereto, the respondent filed a Special Leave Petition in the Apex Court against the said order dated **19th June, 2023**, passed in Arbitration Appeal No.6 of 2023. The said SLP was dismissed by the Apex Court vide order dated **7th August, 2023**. While dismissing the Special Leave Petition Nos.14475 of 2022, the

Apex Court modified issue No.1 in the arbitration as well as vacated the stay on the arbitration proceeding.

18. On **14th September, 2023**, the arbitration proceedings resumed after the stay was lifted by the Apex Court on **7th August, 2023**. It appears that the respondent filed an application on **17th September, 2024**, under Section 16 contending that the dispute had become non-arbitrable before the arbitrator, however, the same was dismissed with costs. On **17th October, 2023**, cross-examination of the appellant-JV and evidence recording concluded. As the mandate of the Arbitral Tribunal had expired on **30th November, 2023**, the same was renewed for further six months by the Commercial Court, Shillong vide its order dated **4th July, 2024**.

19. It appears that the Tribunal passed its final award with the majority of 2:1, allowing Claim-I of the appellant-JV and rejected the entire Claim-II of the appellant-JV.

20. It is the respondent's case that on **3rd September, 2024**, they unearth several ledger entries showing that the appellant-JV had engaged, during the extensions granted in execution of the contract, in giving illegal gratification to government officials, including the Engineers of PWD, funding of MoRTH officials and other officials. Accordingly, a complaint was filed by the Chief Engineer (Roads), National Highway with the Sardar Police Station, East Khasi Hills against the appellant-JV and its partners including certain known and unknown officials and representatives of the appellant-JV alleging offences punishable under Sections 120B, 409, 420, 465, 468, 471, 477(a) IPC read with Section 13(2) of the Prevention and Corruption Act, 1988. Pursuant to the complaint, on **10th September, 2024**, FIR bearing No.286(9) of 2024 was registered with the Sardar Police Station, East Khasi Hills, Shillong against the appellant-JV and its partners and certain officials/representatives of the respondent and the appellant.

21. On **16th September, 2024**, the respondent issued a show cause notice to the appellant-JV and its partners in view of the material found in the statement of claims, i.e., ledger entries showing acts of corruption and bribery being committed by the appellant-JV. Certain entries in the ledger accounts were quoted in the show cause notice in support of the same. On **30th September, 2024**, the appellant-JV sent a joint reply, including for C&C construction, to the show cause notice stating therein that the expenses in the ledger account were not by way of bribe or corruption.

22. On **3rd December, 2024**, the respondent, after considering their reply, blacklisted the appellant-JV and its partners for a period of five years. It appears that almost around this time, i.e., on **16th September, 2024**, the respondent also preferred an application under Section 2(3) read with Section 16 of the Act, as according to the respondent, the disputes had become inarbitrable due to corruption and bribery. On **4th October, 2024**, the appellant-

JV filed its reply to the Section 16 application filed by the respondent before the Arbitral Tribunal, stating therein, that the said entries relied upon by the respondent were records of day-to-day expenses of the project incurred between 2014-2017.

23. Being aggrieved by the impugned order dated **3rd December, 2024**, blacklisting the appellant-JV and its partners for five years, the appellant-JV preferred a Writ Petition (C) No.24 of 2025, in this Court and sought quashing of the order dated **3rd December, 2024**, by which they were blacklisted by the respondent for five years from participating in any future tender/contract of Public Wors Department.

24. The learned Single Judge vide his judgment and order dated **17th December, 2025**, dismissed the said petition essentially on the following counts:

(i) that the respondent was well within its authority to issue show cause notice to the appellant-JV for blacklisting;

(ii) that the material relied upon for issuance of show cause notice and subsequent blacklisting was not based on hearsay or suspicion but on ledger accounts produced by the appellant-JV themselves, which provided sufficient and credible proof of illegal gratification and as such, the course of action taken by the respondent was well within its right;

(iii) that the action resorted to by the respondent was neither mala fide nor motivated nor without any basis, as the State was obligated to put public interest over anything else in such cases; and

(iv) there is no delay in taken action against the appellant-JV and that the penalty imposed considering the nature of allegations which reflects the conduct of the appellant-JV and scale of public fund involved is neither disproportionate nor excessive.

25. Hence, this appeal.

Submissions on behalf of the appellant:

Mr. Jethmalani, learned Senior Counsel appearing for the appellant, assailed the order of blacklisting as well as the impugned order passed by the learned Single Judge on the following counts:

(i) that the show cause and the impugned order blacklisting the appellant-JV, i.e., clauses 37 and clause 59.2(h) of the conditions of contract, were inapplicable to the facts in hand.

(ii) that neither the show cause notice nor the impugned order of blacklisting explicitly set out (a) the thing and value given to the public official concerned; (b) what was the reciprocal action of the public official, for the thing given, which was meant to influence the public official concerned, in the procurement process or in the contract execution; and (c) the name of the public official who was sought to be influenced. Thus, it is submitted that neither in the show cause notice nor in the blacklisting order any such particulars are furnished. It is further submitted that the show cause notice is also bereft of vital particulars, rendering it void and illegal inasmuch as,

it does not put the appellant company to notice on the specific factual particulars that he is supposed to meet vis-à-vis the charge of corruption.

(iii) That the blacklisting order deals with much more allegations, not referred to in the show cause notice and as such, the impugned order cannot be sustained.

(iv) that the ledger entries which are admitted by the appellant and relied upon by the respondent in the show cause notice and in the blacklisting order do not disclose any payments whatsoever to Mr. Sangma, Chief Engineer, for the alleged acts performed by him or for any reason.

(v) that during the period of execution of the contract, there were no complaints or allegations against the appellant-JV regarding the quality of work, workmanship or progress of work. It is submitted that due to the additional scope of works and amounts, supplementary agreements were entered into between the appellant-JV and the respondent under four revised cost estimates on **30th July, 2013**, **6th February, 2015**, **7th July, 2015** and **30th May, 2017**, which took the

project cost from ₹1303.83 crores to ₹2406.46 crores and that these revisions were after following due procedure.

(vi) that at no stage of the arbitration proceeding, which was delayed by the respondent, there were allegations of bribery/corruption, either during recording of evidence or in the statement of defence and that the allegations pertained only to exaggeration of claims by the appellant-JV.

(vii) That the FIR lodged by the respondent, does not allege any offence under the Prevention of Corruption Act; and that the FIR alleges that the total value of property stolen was ₹2366.77 crore, which infact, is the entire sum awarded by the Arbitral Tribunal to the appellant-JV, suggesting that no amount was due and payable to the appellant company-JV at all for the execution of the contract which execution of work, spanned from 2011 to 2017; that the ledger entries of the appellant company on which reliance is placed by the respondent to blacklist the appellant-JV were annexed to the statement of claim which was filed on **30th May, 2019**, and that the respondent despite knowing the same, lodged a police

complaint belatedly, only on **3rd September, 2024**, after more than five years and consequently, issued the impugned show cause notice on **16th September, 2024**, which ultimately resulted in blacklisting the appellant-JV. It is submitted that the explanation offered by the respondent for the delay in filing the FIR/issuance of the show cause notice is, that they waited till the cross-examination of the appellant-JV during the trial of the arbitration petition, an explanation that defies logic.

(viii) that the show cause notice and consequently, the blacklisting order was passed by the respondent authority with a mala fide intent only to deny the appellant-JV, its legitimate financial dues arising out of an express contractual obligation, which was accepted by the State PWD Department and the nodal authority, MoRTH.

(ix) that the conduct of the respondent and the observations made against the respondents in various proceedings, is telling;

(x) that the FIR was registered show cause notice issued and the impugned order was passed only to scuttle the arbitration proceeding and prejudice the arbitrator; and

(xi) that the learned Single Judge failed to consider the aforesaid.

Mr. Jethmalani, learned Senior Counsel appearing for the appellant, relied on the following judgments in support of his submissions:

(1) ***M/s Erusian Equipment & Chemicals Ltd. v. State of West Bengal & anr: (1975) 1 SCC 70***;

(2) ***Gorkha Security Services v. Government (NCT of Delhi) & ors: (2014) 9 SCC 105***;

(3) ***UMC Technologies Private Limited v. Food Corporation of India & anr: (2021) 2 SCC 551***;

(4) ***V-MARC India Limited v. State of Uttar Pradesh & ors: 2025 SCC OnLine All 379***;

(5) ***Floral Electrical Pvt. Ltd. v. Haryana Vidyut Prasaran Nigam Ltd. & anr: 2025 SCC OnLine P&H 2191*** ;

(6) ***M/s Techno Prints v. Chhattisgarh Textbook Corporation & anr: 2025 INSC 236: Civil Appeal No.2362 of 2025***; and

(7) ***The Blue Dreamz Advertising Pvt. Ltd. v. Kolkata Municipal Corporation & ors: 2024 INSC 589***

Submissions on behalf of the respondent:

Mr. Kumar, learned Advocate General, opposed the appeal on the following grounds:

(i) that the facts and the admitted ledger accounts which the appellant-JV has admitted clearly reveals corrupt practices/bribes made to public officials and that the action of blacklisting the appellant-JV is justified, proportionate and in larger public interest;

(ii) that there was no delay in issuing the show cause notice, inasmuch as, there was a stay to the arbitral proceedings pending before the Arbitral Tribunal for a sufficiently long period; and that in any circumstance, actions of the appellant-JV, who had indulged in corrupt practices cannot be condoned, more particularly when the ledger entries have been admitted by the appellant-JV. It is further submitted that the ledger entries admitted by the appellant-JV clearly show that

the appellant-JV had indulged in corrupt practices and that the argument, that the amount was small as compared to the contract, is inconsequential, inasmuch as, corruption is corruption;

(iii) that Clause 59.2(h) confers power on the respondent to even otherwise, take appropriate action against the party concerned, if it is found that the party has indulged in corrupt practices. It is submitted that payment of monies to government officials by way of wine bottles, laptops, mobiles, costly gifts, hotel arrangements and donations to unknown organisation cannot be trivialised;

(iv) that the ledger entries have been admitted by the appellant-JV, although according to the appellant-JV, they were given as gifts and as goodwill gestures, and not as bribes. It is submitted that the appellant-JV is seeking to justify the gifts, as legitimate business expenses, when infact, it is nothing but bribery/corruption. He further submitted that the appellant-JV had admitted the ledger entries submitted by them, in the cross-examination before the Arbitral Tribunal. It

is further submitted that the ledger entries reveal the underlying reasons for admission of claims made by the Government officials in favour of the appellant-JV, thus causing huge loss to the public exchequer;

(v) that both, the High Court and the Arbitral Tribunal had passed critical observations vis-à-vis the ledger accounts showing gifts given to government officials;

(vi) that sufficient details have been spelt out in the show cause notice; that the principles of natural justice have been duly complied with, as warranted and that thereafter, a speaking order has been passed blacklisting the appellant-JV for five years. Thus, according to the learned Advocate General, due process has been followed to the hilt by the respondent;

(vii) that in the FIR, Prevention of Corruption Act has been invoked and the said FIR is being investigated; and that the Enforcement Directorate has also issued summons to the former Chief Engineer Mr. Almond M. Kharmawphlang under the Prevention of Money Laundering Act; and

(viii) that the learned Single Judge, after going through the record has rightly dismissed the appellant-JV's petition by a reasoned order and that no interference is warranted in the same.

Mr. Kumar, learned Advocate General appearing for the respondent, relied on the following judgments in support of his submissions:

(1) ***Grosons Pharmaceuticals (P) Ltd. & anr v. State of U.P. & ors: (2001) 8 SCC 604, para 2***;

(2) ***Patel Engineering Limited v. Union of India & anr: (2012) 11 SCC 257***, ***paras 36 & 37***;

(3) ***TPF Engineering Pvt. Ltd. & anr v. National Highways Logistics Management Limited & anr: 2023 SCC OnLine Del 7116***, ***paras 24 to 28, 33 to 35, 43***;

(4) ***ITD Cementation India Limited v. SSJV-ZVS Joint Venture & ors: (2023) 2 High Court Cases (Del) 44: 2023 SCC OnLine Del 1391***, ***paras 13 & 14***;

(5) ***Asia Foundations & Constructions Ltd., Bombay & ors v. State of Gujarat & anr: 1985 SCC OnLine Guj 93: AIR 1986 Guj 185: (1987) 2 GLH 510***, ***para 31***;

(6) ***M/s Sabharwal Medicos Pvt. Ltd. through its Director v. Union of India & ors: 2013 SCC OnLine Del 3839***, ***paras 12 to 15***;

(7) ***Theme Engg. Service Pvt. Ltd. Assn. with Ishita Info Sol. Thru. Their Auth. Rep. Sumeet Asthana v. National Highway Authority of India Thru Chairman & anr: 2024 SCC OnLine All 6275***, ***paras 35, 38***;

(8) ***Riddhi Siddhi Associates v. National Highways Authority of India & ors: 2024 SCC OnLine Del 5513***, ***paras 7 to 10***;

(9) ***State of Odisha & ors v. Panda Infraproject Limited: (2022) 4 SCC 393***, ***paras 17, 18, 22, 24***;

(10) ***Kulja Industries Limited v. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited & ors: (2014) 14 SCC 731***, ***paras 17, 21, 25***;

(11) ***State of Orrisa v. Madan Gopal Rungta: 1951 SCC 1024***, ***para 15***; and

(12) ***V. Punnen Thomas v. State of Kerala: 1968 SCC OnLine Ker 110: AIR 1969 Ker 81 (FB): 1968 KLT 800 (FB)***, ***paras 9 to 14***.

26. Before we proceed to consider whether interference is warranted in the impugned order dated **3rd December, 2024**, blacklisting the appellant-JV and the impugned judgment and order dated **17th December, 2025**, passed by the learned Single Judge of this Court in WP (C) No.24 of 2025, it would

be apposite to deal with the law with respect to show cause notice, in cases relating to blacklisting, which is no longer res-integra.

27. In ***M/S Erusian Equipment and Chemicals Ltd v. State of West Bengal & anr*** reported in ***(1975) 1 SCC 70***, the question that arose before the Apex Court was whether a person who is put on the blacklist by the State Government is entitled to a notice to be heard before the name is put on the blacklist? The Apex Court in paras 15 to 17, 19 and 20 held as under:

> "*15. The blacklisting order does not pertain to any particular contract. The blacklisting order involves civil consequences. It cast a slur. It creates a barrier between the persons blacklisted and the Government in the matter of transactions. The black lists are "instruments of coercion".*
>
> *16. In passing an order of blacklisting the Government department acts under what is described as a standardised code. This is a code for internal instruction. The Government departments make regular purchases. They maintain list of approved suppliers after taking into account the financial standard of the firm, their capacity and their past performance. The removal from the list is made for various reasons. The grounds on which blacklisting may be ordered are if the proprietor of the firm is convicted by court of law or security considerations to*

warrant or if there is strong justification for believing that the proprietor or employee of the firm has been guilty of malpractices such as bribery, corruption, fraud, or if the firm continuously refuses to return Government dues or if the firm employs a Government servant, dismissed or removed on account of corruption in a position where he could corrupt Government servants. The petitioner was blacklisted on the ground of justification for believing that the firm has been guilty of malpractices such as bribery, corruption, fraud. The petitioners were backlisted on the ground that there were proceedings pending against the petitioners for alleged violation of provisions under the Foreign Exchange Regulations Act.

17. The Government is a Government of laws and not of men. It is true that neither the petitioner nor the respondent has any right to enter into a contract but they are entitled to equal treatment with others who offer tender or quotations for the purchase of the goods. This privilege arises because it is the Government which is trading with the public and the democratic form of Government demands equality and absence of arbitrariness and discrimination in such transactions. Hohfeld treats privileges as a form of liberty as opposed to a duty. The activities of the Government have a public element and, therefore, there should be fairness and equality. The State need not enter into any contract with any one but if it does so, it must do so fairly without discrimination and without unfair procedure. Reputation is a part of a person's character and personality. Blacklisting tarnishes one's reputation.

19. Where the State is dealing with individuals in transactions of sales and purchase of goods, the two important factors are that an individual is entitled to trade with the Government and an individual is entitled to a fair and equal treatment with others. A duty to act fairly can be interpreted as meaning a duty to observe certain

aspects of rules of natural justice. A body may be under a duty to give fair consideration to the facts and to consider the representations but not to disclose to those persons details of information in its possession. Sometimes duty to act fairly can also be sustained without providing opportunity for an oral hearing. It will depend upon the nature of the interest to be affected, the circumstances in which a power is exercised and the nature of sanctions involved therein.

20. Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains. The fact that a disability is created by the order of blacklisting in decades that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist."

28. In ***Gorkha Security Services v. Government (NCT of Delhi) & ors*** reported in ***(2014) 9 SCC 105***, the Apex Court was called upon to consider the form and content of show cause notice that is required to be served before deciding, whether the noticee is to be blacklisted or not? and whether it was a mandatory requirement that there should be a stipulation contained in the show cause notice that action of blacklisting is proposed? The Apex Court in paras 21, 22 and 29 held as under:

"*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.

29. No doubt, rules of natural justice are not embodied rules nor can they be lifted to the position of fundamental rights. However, their aim is to secure justice and to prevent miscarriage of justice. It is now well-established proposition of law that unless a statutory provision either specifically or by necessary implication excludes the application of any rules of natural justice, in exercise of power prejudicially affecting another must be in conformity with the rules of natural justice."

29. In ***UMC Technologies Private Ltd v. Food Corporation of India & anr*** reported in ***(2021) 2 SCC 551***, the Apex Court held in paras 14 and 21 as under:

"*14. Specifically, in the context of blacklisting of a person or an entity by the State or a State Corporation, the requirement of a valid, particularised and unambiguous show-cause notice is particularly crucial due to the severe consequences of blacklisting and the stigmatisation that accrues to the person/entity being blacklisted. Here, it may be gainful to describe the concept of blacklisting and the graveness of the consequences occasioned by it. Blacklisting has the effect of denying a person or an entity the privileged opportunity of entering into government contracts. This privilege arises because it is the State who is the counterparty in government contracts and as such, every eligible person is to be afforded an equal opportunity to participate in such contracts, without arbitrariness and discrimination. Not only does blacklisting take away this privilege, it also tarnishes the blacklisted person's reputation and brings the person's character into question.*

Blacklisting also has long-lasting civil consequences for the future business prospects of the blacklisted person.

21. Thus, from the above discussion, a clear legal position emerges that for a show-cause notice to constitute the valid basis of a blacklisting order, such notice must spell out clearly, or its contents be such that it can be clearly inferred therefrom, that there is intention on the part of the issuer of the notice to blacklist the noticee. Such a clear notice is essential for ensuring that the person against whom the penalty of blacklisting is intended to be imposed, has an adequate, informed and meaningful opportunity to show cause against his possible blacklisting."

30. In ***Kulja Industries Ltd v. Chief General Manager Western Telecom Project Bharat Sanchar Nigam Limited & ors*** reported in ***(2014) 14 SCC 731***, the Apex Court held as under:

"*21. The legal position governing blacklisting of suppliers in USA and UK is no different. In USA instead of using the expression "blacklisting" the term "debarring" is used by the statutes and the courts. The Federal Government considers "suspension and debarment" as a powerful tool for protecting taxpayer resources and maintaining integrity of the processes for federal acquisitions. Comprehensive guidelines are, therefore, issued by the Government for protecting public interest from those contractors and recipients who are non-responsible, lack business integrity or engage in dishonest or illegal conduct or are otherwise unable to perform satisfactorily. These guidelines*

prescribe the following among other grounds for debarment:

(a) Conviction of or civil judgment for.—

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

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

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

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

(b) Violation of the terms of a public agreement or transaction so serious as to affect the integrity of an agency program, such as.—

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

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

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

(c) * * *

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

25. Suffice it to say that "debarment" is recognised and often used as an effective method for disciplining deviant suppliers/contractors who may have committed acts of omission and commission or frauds including misrepresentations, falsification of records and other breaches of the regulations under which such contracts were allotted. What is notable is that the "debarment" is never permanent and the period of debarment would invariably depend upon the nature of the offence committed by the erring contractor."

31. In ***Patel Engineering Ltd v. Union of India & anr*** reported in ***(2012) 11 SCC 257***, the Apex Court held as under:

"*36. We cannot say the reasoning adopted by the second respondent is either irrational or perverse. The dereliction, such as the one indulged in by the petitioner, if not handled firmly, is likely to result in recurrence of such activity not only on the part of the petitioner, but others also, who deal with public bodies, such as the second respondent giving scope for unwholesome practices. No doubt, the fact that the petitioner is blacklisted (for some period) by the second respondent is likely to have some adverse effect on its business prospects, but, as pointed out by this Court in Jagdish Mandal v. State of Orissa [(2007) 14 SCC 517] :(SCC p.518) "Power of judicial review will not be invoked to protect private interest at the cost of public interest, or to decide contractual disputes.*"

32. The aforesaid legal position is well settled and undisputed and there can be no escape from the said settled legal principles. The question that arises for consideration before us, is whether there is breach of any of the said principles enunciated, by the Apex Court in the facts of the present case.

33. Keeping in mind the settled position of law and the facts in hand, we are of the opinion that no interference is warranted in the order blacklisting the appellant-JV and the impugned judgment and order dated **17th December, 2025** passed in WP (C) No.24 of 2025, by which the appellant's writ petition, challenging the order blacklisting them for five years from participating in any future tender/contract of the PWD was dismissed, for the reasons that follow.

34. At the outset, we may note certain admitted facts; (a) that a contract was entered into between the appellant-JV and the respondent on **21st February, 2011**, for the period of 36 months w.e.f. **7th March, 2011**, i.e., till **6th March, 2014**; (b)

that the contract amount was ₹1303.83 crore; (c) that the contract period was extended from time to time; (d) that the appellant-JV completed the work on **15th December, 2017**; and (e) that the final completion certificate was issued on **13th March, 2018**. It appears that during the extension granted to complete the contract, the comprehensive contract value was revised from ₹1303.83 crores to ₹2406.46 crores. It is also not disputed that there were two proceedings initiated by the appellant-JV, i.e., DRB-I and DRB-II, and that arbitration proceeding were also initiated by the appellant-JV and the respondent.

35. It is also not in dispute that in the arbitration proceeding, the appellant-JV had submitted statement of claims, i.e., ledger accounts in support of its claim. The ledgers concerned Claim-II. It is this ledger account, which has been relied upon by the respondent to issue show cause notice to the appellant-JV. The statement of claim dated **30th May, 2019**, filed by the appellant-JV before the Arbitral

Tribunal, alongwith the ledger account under the head of 'business promotion account', reflects payments of cash/expenditure/cheque payments made to various officials/authorities. The statement of claim under the head of 'business promotion account' shows the following ledger entries;

> "***13.1 Cash being paid for purchase of gift items for Govt. officials;***
>
> ***13.2 Cash being paid for tour from Shillong to Guwahati to-fro charges (for IOCL officials) and sweets- for seeking extension of time in clearing dues.***
>
> ***13.3 Cash being paid for gift articles purchased and given to local administrators (watch from HELOIS-Titan Company);***
>
> ***13.4 Cash being paid at Hotel Polo Towers for celebration of Engineers Day of PWD Department Staff as per instruction of Higher Management;***
>
> ***13.5 Cash being paid towards purchase of W. Bottles (B Dog) 3nos@ 1600/- for officials;***
>
> ***13.6 Cash being paid towards amount at Bamboo Hut Restaurant for farewell party with PWD Staff;***
>
> ***13.7 Cash being paid towards expenses at City Hut Family Dhaba for Govt. officials;***

13.8 Cash being paid for purchase of Whisky Bottles for officials;

13.9 Expenditure in favour of Highland Studio against purchase of gift (Samsung Tab) items for officials in the Christmas Festival;

13.10 Expenditure incurred in favour of MX Tech against purchase of gift items (Samsung Galaxy Core 2 Prime) for officials in the event of Christmas Festival);

13.11 Cash being paid towards purchase of Titan Watch 3 Nos from Meghatraders for officials;

13.12 Cash being paid towards purchase of Whisky Bottles towards Govt. officials;

13.13 Expenditure incurred for purchase of gift items for event of New Year 2015;

13.14 Cash being paid for purchase of sweets for IOCL officials;

13.15 Cheque of Rs 5,00,000/- paid to NONGKHNUM WE CARE SOCIETY as per instructions of Higer Management;

13.16 Cash being paid towards purchase of gift items for officials of local administration purpose;

13.17 Cash being paid for purchase of Samsung Mobile Phone 1 nos for official purpose.”

36. It is submitted on behalf of the appellant-JV that reliance placed on these ledger entries in the impugned show

cause notice or the order blacklisting the appellant-JV is misconceived inasmuch as, it does not show what was the thing, its value and how it influenced the officials, in the execution of the contract. It is further submitted that there is no name of any public official mentioned but only designation and that the show cause notice, which places reliance on the ledger entries, does not in any way show quid pro quo by any government official to the appellant-JV. It is further submitted by the learned Senior Counsel for the appellant-JV that at the highest, it can be said that it was a goodwill gesture by the appellant-JV to the bureaucracy but does not show that the appellant-JV got anything in return or that there was any quid pro quo.

37. In this context, at this stage, it would be relevant to reproduce Clause 37 of the 'Instruction to bidders' and 59.2(h) of the General Conditions of Contract, respectively.

> ***"37. Corrupt or Fraudulent Practice***
>
> *37.1 The employer will reject a proposal for award if it determines that the bidder for award has engaged in*

corrupt or fraudulent practices is competing for the contract in question will declare the form in eligible, either indefinitely or for a stated period of time, to be awarded a contract with National Highway Authority of India/ State P.W.D. and any other agencies, if at any time determines that the firm has engaged in corrupt or fraudulent practices in competing for the contractor, or in execution.

59. Termination

59.1. The Employer or the Contractor may terminate the other party causes a fundamental breach of the Contract.

59.2. *Fundamental breaches of Contract include, but shall not be limited to the following:*

a) the Contractor stops work for 28 days when no stoppage of work is shown on the current Programme and the stoppage has not been authorized by the Engineer;

b) The Engineer instructs the Contractor to delay the progress of the works and the instruction is not withdrawn within 28 days;

c) The Employer or the Contractor is made bankrupt or goes into liquidation other than for a reconstruction or amalgamation;

h) ***If the Contractor, in the judgment of the Employer has engaged in corrupt or fraudulent practices in competing for or executing the contract****.*

For the purpose of this paragraph: "corrupt practice" means the offering, giving, receiving or soliciting of anything of value to influence the action of a public

official in procurement process or in contract execution.

Fundamental practice "means misrepresentation of facts in order to influence a procurement process or the execution of a contract to the detriment of the Borrower and includes collusive practice among Bidders (prior to or after bid submission) designed to establish bid prices at artificial non-competitive levels and to deprive the Borrower of the benefits of free and open competition.

***The above said act of corrupt practice in execution of the project are duly covered under the heading "fraudulent practice" and moreover the employer has a right even independent of contract to initiate blacklisting/debarment procedure for indulging in corrupt and fraudulent practices**."*

(emphasis supplied)

38. It is pertinent to note, that Clause 37 applies not only at the time of completion of the contract, but also in its execution. According to the respondent, the facts reveal corrupt practice by the appellant-JV, during the execution of the contract. Clause 59.2(h) as reproduced hereinabove spells out the scope of what is 'corrupt practice'. The said Clause 59.2(h) reveals that there is a power vested in the respondent to take appropriate action, even though it was concluded

contract. Clause 59.2(h) also reveals, that the respondent, in addition, even in the absence of the said provision in the contract, had an inherent power to blacklist/debar the appellant-JV, for indulging in corrupt and fraudulent practices.

39. The Apex Court in ***Kulja Industries Limited v. Chief General Manager Telecom Project Bharat Sanchar Nigam Limited & ors: (2014) 14 SCC 731*** has in para 17 held as under:

> *"17. That apart, the power to blacklist a contractor whether the contract be for supply of material or equipment or for the execution of any other work whatsoever is in our opinion inherent in the party allotting the contract. There is no need for any such power being specifically conferred by statute or reserved by contractor. That is because "blacklisting" simply signifies a business decision by which the party affected by the breach decides not to enter into any contractual relationship with the party committing the breach. Between two private parties the right to take any such decision is absolute and untrammelled by any constraints whatsoever. The freedom to contract or not to contract is unqualified in the case of private parties. But any such decision is subject to judicial review when the same is taken by the State or any of its instrumentalities. This implies that any such decision will be open to scrutiny not only on the touchstone of the*

principles of natural justice but also on the doctrine of proportionality. A fair hearing to the party being blacklisted thus becomes an essential precondition for a proper exercise of the power and a valid order of blacklisting made pursuant thereto. The order itself being reasonable, fair and proportionate to the gravity of the offence is similarly examinable by a writ court."

40. As noted earlier in the 'business promotion account', i.e., ledger account, the details of expenses have been mentioned i.e., expenses incurred for purchasing alcohol, personal gifts etc. for government officials. The said business promotion account/ledger account has been filed with the statement of claim and admittedly, has not been denied by the appellant-JV. Eg. entry dated **31st December, 2015**, shows purchase of HP laptop for PWD, Junior Engineer; entry dated **18th June, 2015**, cash paid to Mr. K. Chakradhar towards purchase of gift items (family watch set 1 No.) for government official purpose; amounts spent for costly gifts such as mobiles, cameras; entries regarding monthly payments to the police station; donation of ₹4 lakhs made to the Police Officers Wives Association, donation of ₹5 lakhs made to Nongkhnum

We Care Society and so on; entries of gifts to officers of Public Works Department, to MoRTH officers, DRB members etc.

41. It is pertinent to note that based on the aforesaid ledger entries, which were submitted with the statement of claim dated **30th May, 2019**, the respondent had issued the impugned show cause notice dated **16th September, 2024**. Admittedly, the appellant-JV has not denied the said entries given with the statement of claim. The explanation offered by the appellant-JV is, that the same was not given as bribes, and that some of the monies were given to charitable organisations, and that the said entries do not in any way reflect that the said amounts were given by way of corrupt practice or bribe to any official; and that at the highest, one can say that the statement of claim submitted by the appellant-JV, with respect to the said entries was wrongfully claimed and that the same could not have been claimed by the appellant-JV, is clearly an afterthought.

42. Infact, a perusal of the show cause notice dated **16th September, 2024**, would show that the same clearly sets out the instances of alleged corrupt practice directly attributable to the appellant-JV. It may be noted, that the appellant-JV in its reply thereto dated **30th September, 2024** has not specifically denied the entries but have explained the same as expenses validity incurred and were not acts of alleged bribery/corruption. Thus, despite opportunity being given, appellant-JV failed to satisfactorily explain the allegations on which blacklisting was proposed. In this context, it would be apposite to reproduce para 2 of the judgment of the Apex Court in ***Grosons Pharmaceuticals (P) Ltd. v. State of U.P. & ors: (2001) 8 SCC 604***, which reads thus:

> *"2. ..... It is true that an order blacklisting an approved contractor results in civil consequences and in such a situation in the absence of statutory rules, the only requirement of law while passing such an order was to observe the principle of audi alteram partem which is one of the facet of the principles of natural justice. The contention that it was incumbent upon the respondent to have supplied the material on the basis of which the charges against the appellant were based was not the requirement of principle of audi alteram partem. It was*

sufficient requirement of law that an opportunity of show cause was given to the appellant before it was blacklisted. It is not disputed that in the present case, the appellant was given an opportunity to show cause and he did reply to the show cause which was duly considered by the State Government. We are, therefore, of the view that that the procedure adopted by the respondent while blacklisting the appellant was in conformity with the principles of natural justice."

43. It is also evident from the aforesaid clauses 37 and 59.2(h), that it was permissible for the respondent to blacklist or debar the contractor even independent of the contract, inasmuch as, the respondent had an inherent right to choose with whom to do business with and to debar entities that indulge in corrupt and fraudulent activities. The allegations in the show cause notice pertain to the execution of the contract, during the period 2015 to 2017.

44. Thus, from the aforesaid clauses, it is evident that the respondent was well within its power to issue show cause notice to the appellant-JV for backlisting and consequently, on

consideration of appellant-JV's reply, to take appropriate action for blacklisting the appellant-JV.

45. We may also note from a perusal of the show cause notice, the reply of the appellant-JV and the impugned order dated **3rd December, 2024**, that the material relied upon for issuance of show cause notice and subsequently, passing the blacklisting order, was based on the admitted ledgers produced by the appellant-JV and admitted to, by the appellant-JV in the cross-examination before the Arbitral Tribunal. The admitted entries, albeit sought to explain, form the basis of illegal gratification to government officials. In these circumstances, we do not find the action of the respondent to be vitiated by mala fides or motivated. The State is under an obligation to put public interest over everything else. After all, the monies utilised is public money, which cannot be lost sight of.

46. On the question of delay as vehemently argued by Mr. Jethmalani, learned Senior Counsel for the appellant-JV, we

are of the opinion that in the facts, no delay was occasioned warranting quashing of the order of blacklisting on the said count. As noted above, the statement of claim was filed on **30th September, 2019**, and that during the period from **25th April, 2022** to **9th May, 2022**, the proceeding before the Arbitral Tribunal was stayed. It is also evident that the cross-examination of the appellant-JV commenced only on **11th July, 2022**, after the stay was vacated, after which on **3rd September, 2024**, a complaint was filed, pursuant to which an FIR was registered at the behest of the respondent. The FIR is based on the statement of claims/ledger accounts submitted by the appellant-JV before the Arbitral Tribunal. Post registration of the FIR, show cause notice dated **16th September, 2024** was issued to the appellant-JV. Hence, in the facts, we do not find that the delay is such, warranting quashing of the impugned order blacklisting the appellant-JV.

47. As far as the submission of Mr. Jethmalani, learned Senior Counsel, that the show cause notice is vague and

devoid of particulars, we find no merit in the same. We find that the show cause notice details the particulars, including setting out the entries in the ledger account showing payments made to the officials, and as such, the said show cause notice cannot be quashed and set aside on the ground of vagueness and being devoid of particulars. We also find that principles of natural justice have been duly complied with and that the impugned order blacklisting the appellant-JV has been passed after considering the material on record and as such, no interference is warranted in the same.

48. As far as the delay in registration of the FIR and the non-inclusion of the Prevention of Corruption Act is concerned, it is pertinent to note that the said FIR is under investigation. The question, whether or not an offence is made out will be considered by the Court in the petition filed by some of the persons seeking quashing of the FIR, and as such cannot be gone into in the present appeal.

49. As far as the findings/observations made by the Tribunal and the High Court in their orders, both learned Senior Counsel for the appellant-JV and the learned Advocate General vehemently relied on the same, to point out the damning observations so made by the Tribunal/Court. It appears that the Arbitral Tribunal's order has been challenged under Section 34 of the Act, before the appropriate forum. Mr. Jethmalani relied on certain observations and scathing remarks made by the Tribunal/High Court against the respondent, including imposition of costs on the respondent, whereas, Mr. Kumar, learned Advocate General, also relied on the damning observations made by the Arbitral Tribunal and the High Court with respect to the ledger entries submitted by the appellant-JV in the arbitration proceeding, to show how the Tribunal and the High Court had dealt with the ledger entries and had made scathing remarks against the appellant-JV. As stated aforesaid, we will not go into the merits of the same, since the question before us is, whether the show cause notice and consequently, the blacklisting order suffers from

any infirmities and is bad in law; and whether the impugned judgment and order passed by the learned Single Judge suffers from any infirmities, warranting interference in the same.

50. Suffice to state, that in the facts as stated above and having regard to the judicial pronouncements, we find that no interference is warranted either in the order dated **3rd December, 2024**, blacklisting the appellant-JV or in the order impugned dated **17th December, 2025**, passed by the learned Single Judge in WP (C) No.24 of 2025.

51. In terms of the aforesaid, the writ appeal stands dismissed.

(W. Diengdoh)
Judge

(Revati Mohite Dere)
Chief Justice