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

% ***Judgment pronounced on: 11.08.2026***

\+ **W.P.(C) 15518/2025, CM. APPLs. 63474/2025, 68718/2025**

SAI CONSULTING ENGINEERS PVT LTD. .....Petitioner

Through: Mr. Shashank Garg, Sr. Adv., Mr. Aseem Chaturvedi, Mr. Arit Kumar Singh, Mr. Anuj Shrotriya, Ms. Nishtha Jain and Ms. Lizthachet, Advs.

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA & ANR. .....Respondents

Through: Mr. Santosh Kumar, SC and Mr. Devansh Malhotra, Adv. for R-1. Mr. Jagdish Chandra and Ms. Maanya Saxena, Advs., UOI.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

1. The present petition has been filed by the petitioner assailing a debarment notice/order dated 30.09.2025 issued by respondent no.1/National Highways Authority of India (NHAI), whereby, the petitioner on account of breach of its contractual obligation/s has been debarred from participating in any future bids with the NHAI, Ministry of Road Transport and Highways, Government of India (MoRTH)/respondent no.2 and their executing agencies for a period of two years from the date of issuance of the impugned notice.

2. The petitioner is a multi-disciplinary organisation providing engineering services including feasibility, planning, detailed design,

construction supervision, IE, AE and construction management in the areas such as Building and Industry, Water and Environment, Urban Planning and SEZ. As a consultant, the petitioner is stated to have completed several projects in India as well as abroad including providing consultancy services for the construction, maintenance, design etc., of National and State Highways for the respondents.

3. The petitioner and respondent no.1 executed a consultancy agreement dated 26.03.2018, in terms whereof, the petitioner was appointed as a consultant for preparing Detailed Project Reports (DPR) for bypass/ring road around Gorakhpur, Bareilly, Moradabad, Kanpur and Ayodhya in the State of Uttar Pradesh under the NHDP Phase-VII.

4. As per the Terms of Reference (ToR), particularly stipulated in clauses 3.3.1 and 5.1 of the Appendix A to the Special Conditions of Contract (SCC), as a consultant the petitioner was required to support NHAI in land acquisition process *inter-alia* by conducting all required surveys/valuation, liaison with relevant state departments throughout the said process, assist NHAI and CALA in publishing of notifications in Official Gazette as required under Section 3A and 3D of the National Highways Act, 1956 (hereinafter referred as "*the NH Act, 1956*") and declaration of award under Section 3G of the NH Act, 1956.

5. The disputes between the parties in the present petition have arisen as regards the discrepancies noticed in a report dated 08.08.2024 submitted by a committee constituted by the respondent no.1 to conduct an inquiry into the manner in which the land acquisition process was undertaken by the concerned stakeholders for GATA No.156, Sarniya Village, District Bareilly, Uttar Pradesh falling within a stretch from Km. 0.000 to Km.

19.200 of Bareilly Bypass in District Bareilly in the State of Uttar Pradesh.

6. The background of the matter is that in the year 2024, a complaint was received by respondent no.1 regarding discrepancies in land acquisition process in the stretch of Western Spur of Bareilly from Km. 0+00 to 20+200 on HAM basis in the State of Uttar Pradesh. In particular it was alleged therein that the landowner of GATA No. 156, Sarniya Village, District Bareilly, Uttar Pradesh in connivance with the certain officials has illegally converted the said land into non-agricultural land and is constructing a structure thereon in order to secure higher compensation from the Government. Consequently, upon receipt of the said complaint, the Competent Authority of respondent no.1 v*ide* an office order dated 30.07.2024 constituted a committee to investigate into the concerned allegations.

7. The said Committee *vide* its report dated 08.08.2024 highlighted certain irregularities in the concerned land acquisition process including discrepancies in valuation of the structure constructed on GATA No. 156, Sarniya Village, District Bareilly, Uttar Pradesh.

8. In view of the findings rendered by the concerned committee in its report dated 08.08.2024, alleging role of the petitioner *viz.* the irregularities highlighted thereto, a show cause notice dated 04.12.2024 came to be issued against the petitioner by the respondent no.1 seeking a detailed explanation as regards submission of faulty/overvalued structure valuation reports pertaining to GATA No. 156, Sarniya Village, Bareilly, Uttar Pradesh by it and as to why no adverse action in regard to the same including debarment be initiated against the petitioner.

9. The allegations levied in the said show cause notice were vehemently

opposed by the petitioners *vide* a reply dated 11.12.2024 and also during personal hearing scheduled on 13.01.2025 before the Member (Administration), NHAI. Furthermore, pursuant to the personal hearing it is stated that an additional detailed written submission dated 17.01.2025 along with documentary support was also submitted by the petitioner.

10. Thereafter, after a lapse of almost four months, in furtherance of the show-cause notice dated 04.12.2024**,** another show-cause notice dated 29.04.2025 came to be issued by the respondent no.1 against the petitioner seeking to explain as to why an appropriate action of debarment for "upto 2 years" should not be taken against it in terms of Clause 7.4.2 of the General Contract Condition (GCC) of the Consultancy Agreement read with NHAI circulars no. 97/ 12 dated 17.04.2012 & no. 186/2015 dated 27.11.2015. A detailed response dated 13.05.2025 to the said show-cause notice is stated to have been submitted by the petitioner (annexed as Annexure P-24 to the present petition).

11. However, *vide* the impugned communication dated 29.09.2025 on account of flagrant breaches of the Consultancy agreement by the petitioner, the respondent no.1 debarred the petitioner for a period of two years from participating in any future bids with NHAI, MoRTH and their executing agencies. Aggrieved by the impugned decision, the petitioner has preferred the present petition.

SUBMISSIONS ON BEHALF OF THE PETITIONER

12. Learned senior counsel for the petitioner submitted that the show-cause notices and impugned debarment order attributes irregularities solely to revenue officials and landowners; and the entire foundation of the

impugned action against the petitioner rests only on alleged deficiencies in its performance, without a single charge of fraud, fabrication, moral turpitude, collusion, or mala fide intent being recorded against it. Therefore, contractual or procedural lapses, even if assumed, as a settled position of law does not warrant extreme civil consequence such as that of debarring the petitioner for a period of two-years. The same is violative of the doctrine of proportionality, more so when no quantified loss as mandated under Clauses 7.3 of the GCC is attributed to the petitioner. In this regard, reliance has been placed on law laid down by the Supreme Court in ***Blue Dreamz Advertising (P) Ltd. v. Kolkata Municipal Corporation***, 2024 SCC OnLine SC 1896 and this Court in ***Hariom Project (P) Ltd. v. Military Engineer Services***, 2020 SCC OnLine Del 3464; and ***Coastal Marine Construction & Engineering Ltd. v. Indian Oil Corporation Ltd.***, 2019 SCC OnLine Del 6542.

13. It is contended that nearly one year and ten months after the petitioner had completed its work and submitted the Final Valuation Report on 17.02.2023, respondent no.1, without any prior intimation or communication, by relying upon an undisclosed Inspection Committee Report dated 08.08.2024, issued a Show Cause Notice dated 04.12.2024. The petitioner was kept completely uninformed about the constitution of the concerned committee, its composition, the material considered, or any deliberations held. Such non-disclosure, suppression of material documents, and exclusion of the petitioner from the process render the entire proceedings arbitrary, opaque, and legally unsustainable.

14. It is also contended that the subsequent Show Cause Notice dated 29.09.2025 in verbatim, merely repeats the initial Show-cause notice dated

04.12.2024 issued, ignoring the petitioner's detailed replies dated 11.12.2024 and 17.01.2025 and is therefore an arbitrary, unauthorised reopening of settled issues without any new material or legal basis.

15. It is further submitted that the impugned debarment notice is also nothing but a verbatim reproduction of the subsequent Show Cause Notice dated 29.04.2025, devoid of any independent reasoning, consideration of facts, or evaluation of the petitioner's submissions specially detailed response dated 17.01.2025 (to show cause notice dated 04.12.2024)and 13.05.2025 (to the show-cause notice dated 29.04.2025) to show cause notices issued by the respondent no.1.Moreover, despite submitting response thereto, paragraph 5 of the impugned debarment notice erroneously records that no reply was submitted by the petitioner in response to the show-cause notice dated 29.04.2025. The said conduct of the respondent no.1 evidences towards a mechanical and predetermined mindset of the respondent no.1 while issuing the impugned decision.

16. It also contended that even if there were any alleged breach, the Contract itself provides for other remedies, including monetary penalties or settlement of disputes through arbitration, and therefore, proceeding directly to the extreme and most severe punitive measure of debarment/blacklisting, without alleging any serious fraud, fault, or mala fide intention, is wholly unjustifiable.

17. It is further submitted that the assertion in the impugned debarment notice that the Inspection Committee Report dated 08.08.2024 had been shared with the petitioner is wholly false. The said report, which allegedly formed the very foundation of the debarment proceedings, was neither supplied with the first Show Cause Notice dated 04.12.2024 nor with the

subsequent Show Cause Notice dated 29.05.2025 and was only provided to the petitioner for the very first time with the Counter Affidavit filed in the present petition. Further, even on merits, the aforementioned report of the committee contains no adverse finding/s against the petitioner and does not even attribute any role to the petitioner. Thus, evidently, withholding of such material along with non-consideration of the petitioner's replies violates natural justice and renders the entire proceeding void, ultra vires, and constitutionally unsustainable.

18. Further, it is contended that the allegation that the petitioner failed to correctly value the concerned land is contrary to its contractual mandate inasmuch as: -

a) in terms of clause 5.1 and 5.1.8 of the agreement petitioner's role was limited strictly to valuation of structures, tress and crops; and did not include land valuation, land-use verification, road-width determination, or application of circle rates, all of which exclusively fell within the statutory functions of CALA. The contemporaneous CALA Award dated 06.07.2023 further establishes that the petitioner had only submitted the valuation for the structure on the said land at INR 2,95,61,800/-, whereas valuation of the land was done only by the CALA, not the petitioner/DPR Consultant;

b) all draft and final submissions made by the petitioner as prescribed under Section 3G of the NH Act 1956 were duly scrutinised and finally approved without any contemporaneous objection whatsoever. The concerned irregularities arose for the first time only in the undisclosed Inspection Committee proceedings of August 2024, almost 20 months later, demonstrating that the allegation levied against the petitioner is an afterthought and is barred by acquiescence, waiver, and estoppel. Such post-facto objections, relating to deliverables outside contractual scope, cannot constitute grounds for punitive civil consequences such as blacklisting

c) The allegations regarding incorrect land valuation, wrong consideration of 9 metres road width, or omission of Sarniya are factually untenable since Sarniya was included by the petitioner in the initial Schedule 3(a) draft submission and the omission in the Gazette thereafter was solely respondent no.1's admitted error, and road-width determination is a government function and not attributable to the petitioner. The petitioner has always acted diligently and the same is evident from the fact that after becoming aware of land conversion upon publication of the certified Khatauni on 20.11.2021, it immediately brought about the said change in subsequent submissions.

d) Respondent no.1's allegation regarding use of incorrect rates for valuation is misconceived. In the absence of communication with respect to any applicable rates for the purposes of valuation of the structure from PIU Bareilly, the petitioner applied the DM circle rates, which is the consistent and accepted practice across land acquisition projects and had been followed throughout by the petitioner in the earlier projects as well without any objection or protest. Further, since DM rates are notified by the District Magistrate, a statutory authority, the petitioner has no control over their determination, and their application is fully compliant with the Manual of Guidelines on Land Acquisition under the National Highways Act, 1956 (hereinafter referred as "Manual of Guidelines"), which mandates reliance on government-notified rates.

e) the allegation regarding non-deduction of salvage value is contrary to Clause 3.5.5(iii)(d) of the aforesaid Manual of Guidelines which permits either (i) valuation by the competent authority or approved agency, or (ii) reconstruction cost net of salvage. As the project did not involve shifting or reconstruction, the petitioner correctly adopted valuation by the competent authority or approved agency, under which no salvage deduction is warranted. In any event, once compensation is determined by the CALA, the structures vest in respondent no.1, making salvage deduction impermissible. The petitioner thus acted strictly in line with statutory guidelines and established practice, and no deviation can be attributed to it.

f) the Inspection Committee's reliance on Google Earth imagery to allege that certain structures appeared between February 2021 and March 2022 is speculative, non-statutory, and directly contrary to the authenticated revenue records that were verified by respondent no.1, the CALA, and the revenue officials at every stage of the acquisition process. The petitioner's Draft dated 27.10.2021 prepared in terms of Section 3A of the NH Act 1956 and Draft dated 05.05.2022 prepared in terms of Section 3D of the said Act correctly reflected the land status strictly in accordance with and as recorded in official revenue documents at the contemporaneous time. These entries were to be independently verified and confirmed by the appropriate authorities including but not limited to CALA and other revenue officials, before publication of the 3A Gazette Notification on 28.01.2022 and the 3D

Gazette notification on 13.09.2022. Therefore, the sequence of submissions and the corresponding statutory publications clearly demonstrates that any default, if at all, lies with the respondents and their associated authorities, and not with the petitioner.

SUBMISSION ON BEHALF OF THE RESPONDENT NO.1

19. Learned counsel on behalf of the respondent no.1 submitted that the contention of the petitioner that the impugned order is passed in violation of the principles of natural justice is unfounded. A bare perusal of the record demonstrates that the impugned order was passed following a comprehensive, multi stage and procedurally fair process wherein every material relied upon was disclosed as well as multiple opportunities of hearing were provided to the petitioner. The same is evident from the fact that pursuant to issuance of show cause notice dated 04.12.2024, the petitioner was given a personal hearing on 13.01.2025 and his response thereto dated 11.12.2024 was duly considered by the concerned authority. Thereafter, even after issuance of a subsequent show-cause notice dated 29.04.2025, the petitioner was given an opportunity of personal hearing on 06.05.2025.

20. It is submitted that the averment of the petitioner that the Inspection Committee report dated 08.08.2024 was never supplied is nothing but an afterthought. During the course of personal hearing on 13.01.2025, the inspection committee’s report dated 08.08.2024 was supplied to the petitioner. Further, the petitioner never raised any issue regarding non-supply of said report in any of its reply during either personal hearing, or through any email. Anyhow, discrepancies disclosed in the said inspection

report were already put to the knowledge of the petitioner in the show cause notices and the said report contained no new factual material that wasn't already known to the petitioner.

21. It is further submitted that the omission on part of the petitioner has resulted in a valuation escalation from INR 1.72 crores to INR 12.48 crores, causing a sevenfold inflation at the cost of public funds. The said position is not denied by the petitioners. Thus, the period of debarment imposed upon the petitioner is proportionate to the gravity of lapse committed by it and is in public interest.

22. It is submitted that in terms of clauses 3.1.1 and 7.1.1 of the agreement, the petitioner's obligation extended beyond the mere valuation of structures and also included joint measurements surveys; valuation of land related assets; monitoring land-use changes; accurate verification of entries for notifications published in terms of Section 3G of the NH Act 1956, which contained compensation amount for land and structures; and timely reporting of discrepancies. Thus, the plea of the petitioner that it bears no responsibility and had no role to play in the said valuation since a separate agency was appointed by it to carry out the same is of no merit

23. It is also contended that the petitioner in its reply to the show-cause notice neither denied the factum of overevaluation nor the varsities of discrepancies alleged therein. The petitioner merely denies its responsibility in this regard under the contract. However, since the avoidable escalation caused significant losses and compromised sanctity of Land Acquisition Process, requisite actions have been undertaken against the petitioner, CALA and officials of NHAI.

24. It is submitted that the overvaluation of the structure situated at

GATA No.156, Sarniya Village, Bareilly, U.P was carried out on the basis of plinth area, despite the said structure having no plinth. The same ought to have been valued in accordance with item rates prescribed by the concerned Public Works Department's Schedule of Rates (PWD SOR).

25. It is also contended that the petitioner in its written submission dated 16.12.2025 has sought to set out an entirely new case particularly as regards the issue of valuation of plinth. Besides the said written submission, the petitioner neither in its reply to show cause notice dated 04.12.2024 and/or debarment proceedings before the NHAI nor in the present petition stated that the structure in question had a plinth.

26. It is further submitted that not only was the land use surreptitiously changed from agriculture to non-agriculture for securing higher compensation rate but also non-agricultural land rates were applied to the entire acquired area of 0.6053 Ha of Gata No. 156, Sarniya Village, Bareilly despite admittedly a portion of the land being agricultural, as reflected in the Notification drafted by the petitioner itself in terms of Section 3D of the NH Act 1956.

27. It is further contended that the petitioner's attempt to attribute the land-use change to an inadvertent omission of Sarniya village from the 3(a) notification is wholly misconceived and had the petitioner discharged its obligation and flagged the material development at the appropriate stage, the subsequent misuse of land and the resultant overevaluation could have been prevented since:-

a. admittedly the petitioner as on 20.11.2021 was aware of the certified khatuni reflecting conversion from agriculture to non-agricultural land, however conveyed no disclosure in this regard to the respondent no.1. Further, despite the aforesaid knowledge, based upon a misclassification traceable to the inputs provided by the petitioner, the 3A Gazette dated 28.01.2022 came to be published, continuing to classify the concerned land as agriculture.

b. Even though the petitioner finally on 05.05.2022 referred to the concerned land as non-agricultural, it failed to disclose that the conversion occurred during the land acquisition process, a fact critical to preventing construction that was underway on the concerned land during the said period of time.

c. Notably, contemporaneous Google Earth imagery demonstrates that construction on the subject land took place after February 2021 and was visible by March 2022, evidently to facilitate such land-use change and secure higher compensation.

<u>THE AMBIT OF JUDICIAL REVIEW</u>

28. The law is well settled that an order of debarment/blacklisting passed by the State or its instrumentality, though arising in a contractual setting, is amenable to judicial review under Article 226 of the Constitution of India, both as regards the decision-making process and the decision itself, on the touchstone of fairness, natural justice, non-arbitrariness and proportionality. In ***Kulja Industries Limited v. Chief General Manager, Western Telecom Project, BSNL & Ors.***, (2014) 14 SCC 731, the Supreme Court while recognising that the power to blacklist inheres in every entity allotting a contract, observed 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… 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 pre-condition 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…"

29. In the same decision, the Supreme Court reiterated the well-established principal set out in ***Erusian Equipment & Chemicals Ltd. v. State of West Bengal & Anr.***, (1975) 1 SCC 70 as under: -

*"**18.** The legal position on the subject is settled by a long line of decisions rendered by this Court starting with Erusian Equipment & Chemicals Ltd. v. State of W.B. [(1975) 1 SCC 70] where this Court declared that blacklisting has the effect of preventing a person from entering into lawful relationship with the Government for purposes of gains and that the authority passing any such order was required to give a fair hearing before passing an order blacklisting a certain entity. This Court observed: (SCC p. 75, para 20)*

"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 indicates 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."…………..

30. It was further emphasised in ***Kulja Industries*** (supra) that even where the underlying right of a writ petitioner is contractual in character, "the manner, the method and the motive behind the decision of the authority

whether or not to enter into a contract is subject to judicial review on the touchstone of fairness, relevance, natural justice, non-discrimination, equality and proportionality”. It is within these confines (and not as an appellate authority re-appreciating the merits of the underlying contractual controversy) that this Court proceeds to examine the impugned action.

DEBARMENT: AN EXCEPTIONAL REMEDY

31. Debarment is stigmatic in character, and its consequences travel far beyond the dealings of the debarred entity with the authority which passes the order. As held by the Supreme Court in ***UMC Technologies Private Limited v. Food Corporation of India & Anr.***, (2021) 2 SCC 551 [at paragraph 15], “this domino effect, which can effectively lead to the civil death of a person, shows that the consequences of blacklisting travel far beyond the dealings of the blacklisted person with one particular government corporation and in view thereof, this Court has consistently prescribed strict adherence to principles of natural justice whenever an entity is sought to be blacklisted.”

32. The circumstances in which recourse to this drastic measure is permissible have been authoritatively delineated by the Supreme Court in ***The Blue Dreamz Advertising Pvt. Ltd. & Anr. v. Kolkata Municipal Corporation & Ors.***, (2024) 15 SCC 264 by observing that debarment is a remedy calibrated to the protection of public interest against contractors whose conduct betrays a want of business integrity; it is not an instrument for the resolution, or the punishment of ordinary contractual disagreements. The relevant portion of the said judgment reads as under -

"25. In other words, where the case is of an ordinary breach of contract and the explanation offered by the person concerned raises a bona fide dispute, blacklisting/debarment as a penalty ought not to be resorted to. Debarring a person albeit for a certain number of years tantamounts to civil death inasmuch as the said person is commercially ostracized resulting in serious consequences for the person and those who are employed by him.

26. Too readily invoking the debarment for ordinary cases of breach of contract where there is a bona fide dispute, is not permissible. Each case, no doubt, would turn on the facts and circumstances thereto."

33. Two further propositions from ***Blue Dreamz*** (supra) bear directly on the present controversy. *First*, the mere presence of recitals styled as reasons is not decisive; the true enquiry is whether the reasons justify the invocation of a penalty of this magnitude. The relevant paragraph thereof reads as under:-

"34. The Division Bench has, in our opinion, not appreciated the case in its proper perspective. Merely saying that the blacklisting order carried reasons is not good enough. Do the reasons justify the invocation of the penalty of blacklisting and is the penalty proportionate, was the real question."

34. *Second*, the authority must undertake an enquiry into whether the conduct in question is of a qualitatively different order than the ordinary vicissitudes of commerce. The relevant portion thereof is as under:-

"37. There has been no enquiry by the Division Bench as to whether the conduct of the appellant was part of the normal vicissitudes in business and common place hazards in commerce or whether the appellant had crossed the rubicon warranting a banishment order, albeit for a temporary period in larger public interest."

35. Further, the Supreme Court in ***Blue Dreamz*** (supra) drew a pointed

contrast (at paragraph 40 thereof) between the circumstances that fell for consideration in ***Patel Engineering Ltd. v. Union of India***, (2012) 11 SCC 257, and ***Kulja Industries*** (supra) inasmuch as the latter cases involved fraudulent and collusive conduct and were not cases of ordinary contractual breach. Where the conduct falls short of that threshold, the authority, in the words of the Supreme Court, has "lifted a sledgehammer to crack a nut" [paragraph 30 of ***Blue Dreamz*** (supra)].

36. The said position has been reaffirmed by the Supreme Court in ***M/s Techno Prints v. Chhattisgarh Textbook Corporation & Anr.***, 2025 SCC OnLine SC 343 as under:-

> *"33. As observed by this Court in Erusian Equipment & Chemicals Ltd. Vs. State of W.B. reported in (1975) 1 SCC 70, an order of blacklisting casts a slur on the party being blacklisted and is stigmatic. Given the nature of such an order and the import thereof, it would be unreasonable and arbitrary to visit every contractor who is in breach of his contractual obligations with such consequences. There have to be strong, independent and overwhelming materials to resort to this power given the drastic consequences that an order of blacklisting has on a contractor. The power to blacklist cannot be resorted to when the grounds for the same are only breach or violation of a term or condition of a particular contract and when legal redress is available to both parties…*
>
> *34. Plainly, if a contractor is to be visited with the punitive measure of blacklisting on account of an allegation that he has committed a breach of a contract, the nature of his conduct must be so deviant or aberrant so as to warrant such a punitive measure. A mere allegation of breach of contractual obligations without anything more, per se, does not invite any such punitive action.*
>
> *35. ……Therefore, while the debarment itself may not be permanent and may only remain effective for a limited, pre-determined period, its negative effect continues to plague the business of the debarred entity for a long period of time. As a result, it is viewed as a punishment so grave, that it must follow in the wake of an action*

that is equally grave."

37. In light of the foregoing discussion, the following broad principles emerge: (*i*) an order of debarment, and the decision-making process culminating therein, are open to judicial review on the anvil of natural justice, non-arbitrariness and proportionality; (*ii*) debarment tantamounts to 'civil death' and consequently the power to debar must be exercised sparingly, and only upon strong, independent and overwhelming material; (*iii*) a breach of contractual obligations, without the conduct of the entity being shown to be deviant, aberrant or subversive of public interest, does not furnish a cause for debarment, particularly where the explanation offered raises a bona fide dispute and legal redress is otherwise available; (*iv*) the order must contain reasons which do not merely record a conclusion of breach, but demonstrate why the conduct justifies a penalty of this magnitude, and why the period imposed is proportionate; and (*v*) the reasons must reflect due and demonstrable consideration of the defences set up by the affected entity.

THE CONTRACTUAL / POLICY FRAMEWORK OF IMPUGNED ACTION

38. The impugned order invokes clauses 3.1.1 and 7.1.1 of the General Conditions of Contract ('GCC') of the Consultancy Agreement. Clause 3.1.1 ('Standard of Performance') is a general obligation to perform the Services "with all due diligence, efficiency and economy, in accordance with generally accepted professional techniques and practices" and to act "as faithful advisers to the Client". Clause 7.1.1 provides that "The Consultant shall be responsible for accuracy of the data collected, by him directly or

procured from other agencies/authorities, the designs, drawings, estimates and all other details prepared by him as part of these services", and obliges the Consultant to indemnify the Authority against any inaccuracy in the work.

39. The operative provision under which the penalty has been imposed is Clause 7.4.2 of the GCC, read with NHAI Policy Circulars No. 97/12 dated 17.04.2012 and No. 186/2015 dated 27.11.2015, all of which stand extracted in the impugned order itself. Clause 7.4.2 of GCC reads:-

> *"7.4.2 Warning/ Debarring — In addition to the penalty as mentioned in para 7.3, warning may be issued to the erring consultants for minor deficiencies. In the case of major deficiencies in the Detailed Project Report involving time and cost overrun and adverse effect on reputation of NHAI, other penal action including debarring for certain period may also be initiated as per policy of NHAI."*

40. Paragraph 2.2 of NHAI Policy Circular No. 97/2012 dated 17.04.2012, in turn, prescribes a graded scheme of deterrent penalty action. The same reads as under:-

> *"2.2…….In case of minor deficiencies on consultant's part a warning may be issued. In the case of significant deficiencies in services causing adverse effects on the Project or on reputation of the Authority, other penal actions including debarring for a specified period shall be initiated as per this policy. The deterrent penalty action can be taken in any of the following ways:*
>
> *(i) Issue warning to the consultants as decided by Employer/client.*
>
> *(ii) Suspend their short-listing with NHAI and debar them from award of future works in NHAI for a period of less than 12 months in case of minor deficiency in services.*
>
> *(iii) Debarring the consultants for a period of 1 to 5 years for major negligence/deficiency in services."*

41. It is evident that the scheme contemplates debarring an entity depending upon the nature of the lapse; the scheme itself inherently makes a distinction between a mere shortfall in performance and "major negligence/deficiency in services". A finding locating the deficiency within the graver category, supported by reasons, is the jurisdictional premise for a debarment of the kind imposed.

42. As regards the scope of the petitioner's engagement, Clause 3.3.1 of the ToR is titled "Support in land Acquisition process till the receipt of land possession certificate from CALA"; sub-clause (iv) thereof requires the consultant to "Conduct all required surveys/valuation including joint measurement survey and valuation of land assets". Clause 5.1.1 of the ToR ('Conduct all required surveys/valuation') enumerates: *"1. Identify all land parcels that need to be acquired as part of project road 2. Conduct Joint measurement survey in conjunction with CALA, NHAI and Land revenue department to verify land records. 3. Conduct valuation of land related assets (Structures, trees, crops etc.) and liaison with respective State authority for authentication of the valuation".*

43. Clause 5.1.7 obliges the consultant to *"Assist CALA and NHAI (PIU) in the publishing of 3D notification"*, and Clause 5.1.8 to *"Assist the CALA in the declaration of award (3G)"*, including (item 6) *"valuation of land related assets (Structures, trees, crops etc.)"* and (item 8) assistance to CALA *"in 3G award preparation and in drafting 3G award documents*".

44. The allocation of functions is reflected in the respondent no.1's own Manual of Guidelines which has been placed on record. Paragraph 3.5.5(i) thereof records that *"Once MoRTH has notified any land for acquisition for a road project or associated facilities, the CALA is duty-bound under law to*

determine the compensation for the subject land and the structures, trees or any other assets attached to such lands or standing thereon as on the date of issue of notification under Section 3A of the NH Act, 1956". The Manual further records that *"the CALA is required to get the valuation of such assets carried out from the respective competent authorities e.g. from the PWD or approved valuers in respect of structures"*, and that *"the CALAs are expected to undertake due diligence in assessing the values of assets attached to the land being acquired"*. The Manual of Guidelines contemplates that the creation of any asset, or a change in the nature of any asset, including value addition therein, on or after the issuance of the Section 3A Gazette Notification, is not to be taken into account for payment of any compensation.

REASONING AND CONCLUSION

45. I have considered the rival submissions advanced by the parties, including the written submissions filed on behalf of the petitioner and the respondent no.1, and have examined the material placed on record, including the impugned order, the show cause notices, the Consultancy Agreement and its Terms of Reference, and the Manual of Guidelines. Testing the impugned action on the anvil of the principles enunciated hereinabove, I am of the considered opinion that the impugned debarment order cannot be sustained. The reasons are set out hereunder.

Controversy between the parties essentially pertains to alleged breach of contract

46. The foundational enquiry in every debarment matter is whether the

conduct of the entity concerned is of such a deviant or aberrant character as to place it outside the ordinary vicissitudes of contractual performance. In the present case, that enquiry stands answered by the impugned order itself. The operative wrongdoing found in paragraph 4 of the impugned order is attributed, in terms, to third parties. Paragraph 4(ii)of the impugned order concludes as under:-

> *"…From this fact it is clear that the concerned landowner in connivance with the revenue officials have deliberately converted their land in order to secure higher compensation from the Government."*

47. Equally, the determinations which produced the impugned escalation in compensation are recorded in the impugned order as determinations of the CALA. Paragraphs 4(iv) and 4(v) thereof reads as under:-

> *"(iv) Upon perusal of the 3(G) award declared by CALA for GATA No. 156 it was found that CALA has adopted non agriculture rates for the land abutting road having width of more than 9Mtrs however at site it is only 3.5 Mtrs wide.*
>
> *(v) Also CALA has given the Non-agriculture rate for whole Gazetted area of GATA No. 156 i.e 0.6053 Ha however the area covered by the structure is only 0.3660 Ha."*

48. What is attributed to the petitioner has been set out in the 'Authority's reply' column of the tabulation contained in paragraph 5 of the impugned order. The relevant portion therein reads as follows:

> *"The consultant's lack of proactive engagement contributed to the discrepancies";* and
> *"The Authority asserts that the consultant had a duty to ensure accuracy and detect fraud. Merely relying on an external agency does not absolve them of responsibility. Their failure to report irregularities is a serious lapse."*

Thus, the gravamen of the charge against the petitioner is not that it committed, participated in, or was complicit in the alleged manipulation found; it is that the petitioner failed to detect, flag and follow up upon the acts of others. The case set up against the petitioner is essentially one of deficient performance *simpliciter*, in the course of a complex, multi-agency statutory land acquisition process.

49. This position stands placed beyond controversy by the statement made on behalf of the respondent no.1 before this Court during the course of hearing on 20.04.2026. In response to a specific query, learned counsel for the respondent no.1 categorically stated that no allegation of collusion has been levelled against the petitioner. The order dated 20.04.2026 passed in the present proceedings records as under:-

> *"2. In response to a specific query, Mr. Santosh Kumar, learned standing counsel for the respondents, submits that although no allegation of collusion has been levelled against the petitioner, but the conduct of the petitioner, and the nature of the lapse/s, warrants the debarment action."*

50. Neither the show cause notices nor the impugned order contain any charge of fraud, fabrication, misrepresentation, moral turpitude or mala fides against the petitioner. The present case is thus the very antithesis of ***Patel Engineering*** (supra) and ***Kulja Industries*** (supra), *viz*. the category of cases involving deliberate dereliction or collusive fraud which, as explained in ***Blue Dreamz*** (supra), alone justifies the invocation of this extreme power. The enquiry mandated by paragraph 37 of ***Blue Dreamz*** (supra) *viz*. whether the petitioner's conduct "crossed the rubicon" or was part of the normal hazards of a multi-agency exercise of this nature, was apparently never undertaken, and no finding to that effect is discernible from the impugned

order. As held in paragraph 34 of ***Techno Prints*** (supra), a mere allegation of breach of contractual obligations, without anything more, does not per se invite punitive action of this nature.

51. The characterisation, in paragraph 6 of the impugned order, of the petitioner's conduct as "gross and willful negligence" is not based on any cogent analysis. As discussed hereinabove, the jurisdictional foundation for a debarment action mandatorily requires that conduct of an egregious and aberrant character is manifest. Evidently, this essential pre-requisite for a debarment action has not been satisfied in the present case and therefore on this ground alone the impugned action is rendered unsustainable.

The omission of Sarniya village: the genesis of the controversy

52. Another fundamental aspect merits particular attention. It is borne out from the record that (i) the documentation for the notification under Section 3(a), submitted by the petitioner to PIU Bareilly on 23.04.2021, included Sarniya village; (ii) that the 3(a) Gazette notification published on 11.06.2021 nevertheless omitted Sarniya; (iii) that upon the omission coming to light, the petitioner submitted a draft amendment on 31.08.2021, once again including Sarniya village, pursuant whereto the amended Gazette notification came to be published on 24.09.2021.

53. Significantly, the tabulation in the impugned order itself records the petitioner's assertion to the aforesaid effect. The 'Authority's reply' joins issue not by disputing the inclusion of Sarniya in the petitioner's draft, nor by claiming that the act of Gazette publication was the petitioner's function, but only by asserting that the petitioner "should have followed up" and ensured that the Revenue Department was officially notified. In other words,

even at its highest, the respondent no.1's case against the petitioner *qua* this omission is one of insufficient follow-up. The omission itself occurred in the publication process at the respondent no.1's own end.

54. The significance of this omission is crucial. As noticed hereinabove, under the scheme reflected in the respondent no.1's own Manual of Guidelines, the Section 3A Gazette Notification operates as the statutory cut-off. The creation of any asset, or a change in the nature of any asset, after its issue, has a bearing on the payment of compensation. Admittedly, the landowner's application for conversion of land use was made on 25.07.2021, after the publication of 3 (a) Gazette Notification dated 11.06.2021 from which Sarniya stood omitted. The conversion was effected by the revenue officials in October 2021, which was "between 3(a) and 3(A) gazette notification", as paragraph 4(ii) of the impugned order itself records. Indeed, the respondent no.1's own case before the arbitrator, as recorded in paragraph 4(ix) of the impugned order, is that no compensation is admissible for the structure constructed on the concerned land precisely because it was constructed after the publication of 3A Gazette Notification. This stand itself demonstrates that the initial omission on the part of the respondent no.1, contributed in large measure to the alleged mischief that took place.

55. Arguably, had Sarniya village been carried into the Gazette notification of 11.06.2021, the window within which the conversion and the construction occurred would not have opened as it did. The root of the controversy thus lies in an omission squarely attributable to the respondent no.1 and not in any act of the petitioner. In these circumstances, it is quite incongruous for the authority to impose the extreme penalty of debarment upon the petitioner, for a controversy which has its genesis in the

respondent's own initial lapse.

<u>Functions of the CALA fastened upon the petitioner; subsistence of a bona fide dispute as regards rival interpretations</u>

56. The charges levelled against the petitioner reveal a further fundamental difficulty. The change of land use was effected by the revenue authorities. The impugned order in paragraph 4 (ii) itself records that the conversion was done by the concerned revenue officials in October 2021, and attributes the decision behind it to the landowner "in connivance with the revenue officials". The adoption of non-agricultural rates, the application of rates referable to a road width exceeding 9 metres, and the extension of non-agricultural rates to the entire gazetted area, are all recorded in paragraphs 4(iv) and 4(v) of the impugned order as acts of the CALA in the declaration of the 3(G) Award. The respondent no.1's own Manual of Guidelines, as noticed above, declares the CALA "duty-bound under law" to determine compensation. The same also requires CALA to obtain structure valuations from the PWD or approved valuers, and expects CALA "to undertake due diligence in assessing the values of assets attached to the land being acquired".

57. Despite the above, the respondent no.1 invokes Clause 3.3.1(iv) of the ToR ("valuation of land assets"), the responsibility recital in Clause 5.1 ("responsible in land Acquisition process till the receipt of land possession certificate from CALA"), and Clauses 3.1.1 and 7.1.1 of the GCC, to contend that the petitioner's obligations extended to monitoring land-use changes, verifying entries in the statutory notifications, obtaining and verifying rates, and timely reporting of discrepancies. The petitioner, per contra, relies upon the description of its valuation function in Clauses 5.1.1.3

and 5.1.8.6 of the ToR ["valuation of land related assets (Structures, trees, crops etc.)] to contend that its mandate in the valuation exercise was confined to structures, trees and crops, and never extended to land valuation, land classification, road-width determination or the application of circle rates. It is also pointed out that the CALA award dated 06.07.2023 itself reflects that the petitioner submitted valuation only in respect of the structure, the valuation of the land having been made by the CALA.

58. It is not necessary for this Court, in exercise of jurisdiction under Article 226 of the Constitution of India, to conclusively construe these provisions, and this Court refrains from doing so, particularly because the respondent no.1's remedies in damages and arbitration (noticed hereinafter) are expressly preserved. What is relevant for the purpose of the impugned debarment action, is that the rival constructions represent a genuine and substantial dispute concerning contractual provisions. It is also noticed that the functions entrusted to the petitioner are assistive in nature and do not detract from statutory functions entrusted to the CALA and the revenue authorities under the NH Act, 1956 as reflected in the respondent no.1's own Manual of Guidelines. The same is particularly true as regards the valuation methodology, particularly as to whether the structure was required to be valued on DM circle rates (which, according to the petitioner, was adopted in the absence of communication of any applicable rates by PIU Bareilly and consistently with prevailing practice) or on item rates under the PWD Schedule of Rates (as the respondent no.1 contends, on the footing that the structure had no plinth). The impugned order itself contains no comparative analysis of the rival methodologies.

59. Where the explanation offered by the entity concerned raises a bona

fide dispute of this nature, the law declared in paragraphs 25 and 26 of ***Blue Dreamz*** (supra) squarely proscribes recourse to debarment. The proscription operates with added force here, because the respondent no.1 is in fact pursuing alternative remedies. Paragraph 4(ix) of the impugned order records the same as under:-

> *"(ix) NHAI has filed the case before the arbitrator under section 3(G)(5) of NH Act 1956 wherein it is prayed that Agriculture rates shall be given for GATA No. 156 since the landowner in connivance with the revenue officials have converted the nature of land between 3(a) and 3(A) in order to secure higher compensation from the Government and no compensation against structure existing on GATA no. 156 is admissible as the same was constructed after 3(A) notification."*

60. The respondent no.1 has thus itself invoked the statutory remedy against the very award which embodies the escalation. Paragraph 9 of the impugned order separately preserves the right to claim damages; and Clauses 7.3 of the GCC provide the contractual machinery for quantification and recovery of any loss. In this backdrop, the impugned debarment of the petitioner is in the teeth of the law declared in paragraph 33 of ***Techno Prints*** (supra). The same reads as under :

> *"33. As observed by this Court in Erusian Equipment & Chemicals Ltd. v. State of W.B., (1975) 1 SCC 70, an order of blacklisting casts a slur on the party being blacklisted and is stigmatic. Given the nature of such an order and the import thereof, it would be unreasonable and arbitrary to visit every contractor who is in breach of his contractual obligations with such consequences. There have to be strong, independent and overwhelming materials to resort to this power given the drastic consequences that an order of blacklisting has on a contractor. The power to blacklist cannot be resorted to when the grounds for the same are only breach or violation of a term or condition of a particular contract and when legal redress is available to both parties. Else, for every breach or violation, though there are legal modes*

of redress and which compensate the party like the Corporation before us, it would resort to blacklisting and at times by abandoning or scuttling the pending legal proceedings."

Impugned order is unreasoned and has internal inconsistencies; absence of any reasons as regards the period of debarment

61. As noticed hereinabove, the scheme invoked by the respondent no.1 is expressly graded. The same contemplates warning for minor deficiencies; debarment for less than twelve months for minor deficiency in services; and debarment of one to five years reserved for "major negligence/deficiency in services". The impugned order does not, at any place, undertake the exercise which this gradation necessarily demands. It does not specifically identify the act or omission of the petitioner which in the respondent no.1's assessment constitutes 'major' negligence or deficiency. It does not explain why the case is not one of 'minor deficiency' answerable by a warning or a shorter period of debarment; and it assigns no reason whatsoever for selecting a period of two years, the maximum which the show cause notice dated 29.04.2025 had proposed ("upto 2 years"). The impugned order travels directly from a recital of discrepancies to the conclusion, in paragraph 6, as under:-

> *"6. The above factual matrix proves that the Consultant has exhibited gross and willful negligence towards its obligations and has committed flagrant breaches of the Consultancy Agreement…"*

62. The infirmity is aggravated by the fact (as also noticed hereinabove) that the impugned order appears to be incongruous/inconsistent on the central issue of attribution. As noticed, while paragraphs 4(iv) and 4(v) record that it is the CALA which "has adopted" and "has given" the non-agricultural rates, the 'Authority's reply' in the tabulation asserts that *"The*

non-agriculture rates i.e. 5000/square meter were adopted by DPR consultant on agriculture land in the area of 6053 square meter."

63. It is trite that reasons are distinct from conclusions. The considerations which legitimately inform the quantum of a debarment were adverted to by the Supreme Court in ***Kulja Industries*** (supra) at paragraphs 21 and 22 thereof, including the actual or potential harm resulting from the wrongdoing, its frequency and duration, the existence of any pattern or prior history, the extent of the contractor's complicity, and any remedial measures undertaken. None of these considerations finds any reflection in the impugned order. In ***Blue Dreamz*** (supra), it was observed as under :

> *"34. The Division Bench has, in our opinion, not appreciated the case in its proper perspective. Merely saying that the blacklisting order carried reasons is not good enough. Do the reasons justify the invocation of the penalty of blacklisting and is the penalty proportionate, was the real question."*

The above circumstances seriously impinge on the legality of the impugned order.

<u>Non-consideration of the petitioner's reply to the show cause notice dated 29.04.2025</u>

64. There is an additional infirmity, which has a bearing on whether principles of natural justice can be said to have been complied with. Paragraph 5 of the impugned order records that no reply or representation was submitted by the petitioner to the show cause notice dated 29.04.2025, and that at the personal hearings the petitioner merely reiterated the contentions in its reply dated 11.12.2024. The submission dated 17.01.2025, furnished pursuant to the personal hearing of 13.01.2025, finds no mention

whatsoever in the impugned order. Moreover, the reply dated 13.05.2025 to the show-cause notice dated 29.04.2025, has been placed on record. The respondent no.1 has sought to contend that the reply dated 13.05.2025 was not received but that the same submissions were made at the personal hearing on 06.05.2025 before the authority and considered thereof. The difficulty remains that such consideration does not appear from the impugned order itself. A Coordinate Bench of this Court in ***Transys Consulting Pvt. Ltd. v. National Highway Authority of India***, 2024 SCC OnLine Del 5713, observed that the reasons for a decision taken by an authority "must be clearly articulated within the impugned order itself" and the authority must engage directly with the explanations offered in response to the show cause notice.

65. The record, as discussed hereinabove, clearly demonstrates that the impugned order falls foul of the aforesaid dicta and therefore is legally untenable.

CONCLUSION

66. In view of the foregoing discussion, the debarment order dated 30.09.2025 passed by the respondent no.1 is unsustainable and is, accordingly, set-aside.

67. The petition stands allowed in the above terms. All pending applications stand disposed of.

68. Needless to say, the same shall be without prejudice to the right of the respondent no.1 to claim damages and/or realise any dues, losses and damages from the petitioner that may have accrued on account of the alleged breach of the contractual obligations as mandated under the Consultancy

Agreement, in accordance with law.

SACHIN DATTA, J

AUGUST 11, 2026/*at*