
(2025) 08 DEL CK 0669

In the Delhi High Court

Case No : Writ Petition (C) No. 11006 Of 2024 and Civil Miscellaneous
Application No. 45418 Of 2024

CCS Computers Private Limited

APPELLANT

Vs

New Delhi Municipal Council & Anr

RESPONDENT

Date of Decision : 08-08-2025

Acts Referred:

Constitution of India, 1950 — Article 14, 226
Code of Criminal Procedure, 1973 — Section 156(3), 200

Citation : (2025) 08 DEL CK 0669

Hon'ble Judges : Jyoti Singh, J

Bench : Single Bench

Advocate : Dayan Krishnan, Manoranjan Sharma, Rajat Joneja, Anmol Kumar,
Arun Birbal, Sanjay Singh, Ashish Prasad, Sam C. Mathew, Madhuri Mittal

Final Decision : Dismissed

Judgement

Jyoti Singh, J

1. By this writ petition, Petitioner lays siege to letter/order dated 07.06.2024 issued by Respondent No. 1/New Delhi Municipal Council ('NDMC'), whereby Petitioner has been blacklisted by NDMC and debarred from participating in any bid in NDMC for a period of 02 years from the date of issue of the letter. Petitioner seeks writ of mandamus to direct NDMC not to publish the impugned letter on its website or to take down the same, if already published as also not to take further coercive action during pendency of Complaint Case No. 3100/2024, titled 'CCS Computers Private Limited v. State & Ors.', pending before the Trial Court and return the bank guarantee amount.

2. Case set up by the Petitioner is that Petitioner is a company incorporated under the Companies Act, 1956 engaged in the business of providing IT services with vast experience in the industry. Petitioner has successfully provided IT related services to various Government entities including but not limited to Indian Navy, Army Headquarters Computer Centre, Ministry of Home Affairs,

DRDO and Ministry of Science & Technology. Petitioner is a MSME organization duly registered under the Micro, Small and Medium Enterprises Development Act, 2006.

3. It is averred that Education Department of NDMC vide Request for Proposal ('RFP') floated a tender for procurement of 4,159 pre-loaded electronic tablets on Government E-Marketplace ('GeM') on 28.05.2022. To participate in the tender, Respondent No. 2/Datamini Technologies (India) Ltd., which was the 'Original Equipment Manufacturer' ('OEM'), authorized the Petitioner to negotiate and conduct the entire process of bidding on its behalf and for this purpose issued a bid specific Manufacturer's Authorization Form dated 21.06.2022. As per the authorization given by Respondent No. 2 through its representative namely, Sh. Chandan Kumar, Petitioner participated in the bidding process and submitted the bid along with requisite documents on GeM portal and also furnished a Bank Guarantee dated 22.06.2022, for a sum of Rs.18,71,550/-in favour of NDMC.

4. It is stated that after the bid was submitted, NDMC vide e-mail dated 02.09.2022 informed the Petitioner that the Turnover Certificate of Respondent No. 2, submitted as part of the bid documents, appeared to be forged and Petitioner was asked to verify the correctness of the certificate. Shocked with this revelation, Petitioner proceeded to inquire into the veracity of the allegation from its employees who were involved in the bid submission process. On 05.09.2022, Petitioner called for a written explanation from two of its employees namely, Sh. Sunil Kumar Srivastava and Sh. Puspendra Singh with respect to the alleged forgery in the Turnover Certificate. Additionally, considering the gravity of the situation, Petitioner held a meeting of its Board of Directors on 05.09.2022, wherein a Resolution was passed for conducting a detailed inquiry into the conduct of the delinquent employees who had submitted the bid documents, on instructions of and in connivance with Sh. Chandan Kumar, an employee of Respondent No. 2.

5. It is averred that to ensure that the inquiry process was unbiased, an advocate, who had no relation with the Petitioner and was an independent person, was nominated as an Inquiry Officer vide letter dated 05.09.2022, who conducted a detailed inquiry by issuing formal notices to the employees involved in the bidding process. Four employees were examined in the inquiry, after receiving their written responses on 08.09.2022. Sh. Sunil Kumar Srivastava and Sh. Puspendra Singh confessed and admitted that the Turnover Certificate was edited and the original figure of Rs.28,20,10,671/-was changed to Rs.128,20,10,671/- so as to meet the required turnover of the tender. Importantly, they also admitted that the change in the given turnover was carried out under the influence of and upon instructions from Sh. Chandan Kumar and the management of the Petitioner was not informed of this change. Hence, the decision of NDMC to blacklist the Petitioner as an organization, is untenable in law.

6. It is further averred that while the independent inquiry was on-going,

Petitioner received a show cause notice dated 09.09.2022 from NDMC calling for an explanation for tampering/forging the Turnover Certificate, in response to which the Petitioner, vide letter dated 15.09.2022, sought extension of time till 21.09.2022 to furnish a detailed explanation along with the Fact-Finding Report. After the Inquiry Officer submitted its final report dated 20.09.2022 holding Sh. Sunil Kumar Srivastava and Sh. Puspendra Singh guilty of forging the Turnover Certificate, Petitioner submitted the report along with reply dated 21.09.2022 to NDMC, expecting and hoping that NDMC will drop the show cause notice as it was now clear that the management/senior officers of the Petitioner had nothing to do with the forgery of the Turnover Certificate, which was an act planned and orchestrated by its employees at the instance of Respondent No. 2 for personal gains and without knowledge of the management. Being an organization of great repute and following the policy of zero tolerance for corruption, Petitioner terminated the services of these employees, looking at the gravity and seriousness of the situation, basis the findings and recommendations of the Inquiry Officer.

7. It is averred that despite the fact that Petitioner informed NDMC that it had terminated the delinquent employees who had indulged in wrong practices for personal gains and motives, NDMC issued a non-speaking order dated 07.12.2023, blacklisting the Petitioner for three years from participating in any tender issued by NDMC. By representation dated 15.12.2023, Petitioner requested NDMC to re-consider the decision but there was no response and having no other option, Petitioner filed W.P. (C) No. 16767/2023 in this Court, which was disposed of vide order dated 04.03.2024 quashing the letter dated 07.12.2023 on the ground that:

(a) explanation furnished by the Petitioner was not considered; (b) no opportunity was given to the Petitioner to respond to the stand of NDMC with respect to General Financial Rules, 2017 ('GFR'); and (c) order dated 07.12.2023 was non-speaking and contained no reasons for blacklisting for three years. Court granted liberty to NDMC to issue a fresh show cause notice and consider the response of the Petitioner and thereafter pass a reasoned and speaking order, if any action was proposed.

8. It is averred that during the pendency of the writ petition, Petitioner filed a complaint on 23.12.2023 in Kalkaji Police Station, Delhi against its employees as also Sh. Chandan Kumar for committing forgery of official documents, requesting for registration of FIR. As no action was being taken on the complaint, Petitioner filed another complaint on 06.05.2024 with DCP, South-East District, Delhi, which was later transferred to Police Station, Parliament Street, New Delhi but no action was taken, despite passage of five months, leading to the Petitioner filing an application under Section 156(3) read with Section 200 Cr.P.C. in Patiala House Courts, for registration of FIR. The complaint was registered as Complaint Case No. 3100/2024. By order dated 27.05.2024, learned MM, directed the Investigating Officer to submit Action Taken Report ('ATR') and after ATR was

filed, complaint was transferred to the Court of learned CJM on account of lack of jurisdiction, where the matter is pending.

9. It is stated that in terms of the liberty granted by this Court, NDMC issued a fresh show cause notice dated 26.04.2024 calling upon the Petitioner to explain within ten days as to why necessary action be not taken. During the course of personal hearing, representative of the Petitioner verbally explained the actual facts and circumstances to Director (Education), NDMC and also gave a written reply dated 23.05.2024, highlighting that at no point in time, management and/or other officers of the Petitioner company were aware of tampering in the bid document i.e. Turnover Certificate by the ex-employees in connivance with representative of Respondent No.2. Petitioner also brought forth that it had an impeccable track record of business dealings and had provided services for years to several departments under the Central Government Ministries and Public Sector Undertakings, with no complaints from any sector. However, glossing over the explanation rendered, NDMC issued the impugned order dated 07.06.2024, debarring the Petitioner from participating in any tender floated by NDMC for two years. Petitioner represented against the said decision on 13.06.2024 and sought review of the decision, flagging several issues which made the decision illegal, disproportionate and harsh and highlighting that blacklisting amounted to civil death of the Petitioner. Problems of the Petitioner were compounded by the show cause notice issued to the Petitioner on 30.07.2024 by GeM calling upon to explain why its account on GeM be not suspended.

CONTENTIONS ON BEHALF OF THE PETITIONER:

10. Petitioner has been in the business of providing IT services and products to several Government entities including but not limited to Departments in the Defence sector, SPG, Airport Authority of India Ltd., BHEL, Power Grid Corporation of India, ONGC, Central Bank of India, DRDO, NIA Delhi, NIC Delhi, NTRO, GAIL, BSES Rajdhani Power Limited. The list of customers placed on record includes as many as 108 institutions. Petitioner has been in the business for over 32 years and has more than 300 staff members on its rolls. Petitioner has a stellar and impeccable reputation amongst all its prestigious and high profile customers and has given no cause of complaint to anyone. Petitioner has to its credit several appreciation letters from Government departments/PSUs and with this background, there was no reason why senior officials/directors would indulge in an act of forgery so as to tarnish the image and reputation of the Petitioner and harm its on-going business, for the sake of one tender.

11. The Supreme Court in *Kulja Industries Limited v. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Limited and Others*, (2014) 14 SCC 731, has elucidated a set of comprehensive factors, that are required to be taken into consideration by the Competent Authority before taking a decision of blacklisting/debarring, but these factors have not been taken into account by NDMC before taking the impugned decision. Relevant factors are as follows:-

“(a) The actual or potential harm or impact that results or may result from the wrongdoing.

(b) The frequency of incidents and/or duration of the wrongdoing.

(c) Whether there is a pattern or prior history of wrongdoing.

(d) Whether the contractor has been excluded or disqualified by an agency of the Federal Government or has not been allowed to participate in State or local contracts or assistance agreements on the basis of conduct similar to one or more of the causes for debarment specified in this part.

(e) Whether and to what extent did the contractor plan, initiate or carry out the wrongdoing.

(f) Whether the contractor has accepted responsibility for the wrongdoing and recognized the seriousness of the misconduct.

(g) Whether the contractor has paid or agreed to pay all criminal, civil and administrative liabilities for the improper activity, including any investigative or administrative costs incurred by the Government, and has made or agreed to make full restitution.

(h) Whether the contractor has cooperated fully with the government agencies during the investigation and any court or administrative action.

(i) Whether the wrongdoing was pervasive within the contractor's organization.

(j) The kind of positions held by the individuals involved in the wrongdoing.

(k) Whether the contractor has taken appropriate corrective action or remedial measures, such as establishing ethics training and implementing programs to prevent recurrence.

(l) Whether the contractor fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the debarring official.”

12. Observing that blacklisting has serious consequences and fall out and thus blacklisting/debarment action must be reasonable, fair and proportionate to the gravity of the offence, the Supreme Court in *Kulja Industries (supra)*, specially emphasized on looking into: (a) past conduct and track record of the entity; (b) response of the entity in accepting the alleged fault and taking necessary steps to rectify/investigate the wrong; and (c) position of the employees involved. In other words, the Supreme Court recognized that there could be cases where few employees may be involved in the wrong doing without the knowledge of the management and thus the entire company should not be penalized for the unauthorized acts of those employees. NDMC has not tested the case of the Petitioner on the touchstone of parameters/factors in *Kulja Industries (supra)* and completely overlooked that: (a) forgery was committed by the two ex-employees of the Petitioner purely for personal gains and without the knowledge

of Petitioner's officials in the top management; (b) immediately on this shocking revelation, Board members resolved to initiate investigation into the matter, which was followed by a formal inquiry by a third party having nothing to do with the Petitioner, to ensure independence, fairness and transparency in the inquiry process; (c) criminal complaints were filed by authorised representatives against the employees, followed by application under Section 156(3) Cr.P.C. for registration of FIR; (d) impeccable and unblemished past record of over 32 years in business dealings with Government departments/PSUs, including defence services; and (e) services of the delinquent employees were terminated, without a delay once the Inquiry Officer indicted them, in keeping with policy of zero tolerance for corruption. Had the Competent Authority of NDMC carefully looked into these aspects brought out in the representation, the decision would have been otherwise.

13. In *Hyundai Rotem Company v. Delhi Metro Rail Corporation*, 2018 SCC OnLine Del 6690, Co-ordinate Bench of this Court while testing a blacklisting order passed by DMRC and following the judgments of the Supreme Court in *Kulja Industries (supra)*; and *Chairman, All India Railway Recruitment Board and Another v. K. Shyam Kumar and Others*, (2010) 6 SCC 614, in the context of proportionality of a blacklisting order, observed that an order of blacklisting an entity may be subject to judicial review if it is concluded that it was not within the range of action and for so determining, some benchmark must be followed. Reference was also made to the judgment of this Court in *Coastal Marine Engineering Construction and Engineering Limited and Another v. Indian Oil Corporation Ltd. and Others*, 2019 SCC OnLine Del 6542, for the same proposition.

14. Petitioner company is involved in several tenders at any given point of time and it is neither possible nor feasible for Directors of the Petitioner to be involved in the procedural aspects of the process of submission of bids. In fact their role is focussed towards enhancing customer base, business initiatives and managing finances of the Company. It has been a long standing practice in the company that the Directors assign customer accounts to employees right at the start of the Financial Year or at the time of their joining and it is left to them to execute the assigned tasks and responsibilities including bidding in the tenders and completing the required formalities of submitting the requisite bid documents. In the instant case, Sh. Puspendra Singh was authorized and responsible for overseeing the entire tender process including but not limited to scrutinizing documents, attending meetings, signing the requisite documents, submission of bids etc. When the bid in the present case was submitted in June, 2022, Petitioner was concomitantly working on 62 tenders and for processing each bid, an employee was designated to oversee the entire tender process including submission of the bid documents. Being a large organization involved in several tenders, Petitioner has to rely on its employees and trust their honesty and integrity and this mechanism of delegation has withstood the test of time for over three decades. The present case is the first and the only aberration, where

employees breached the trust reposed in them by the management and tampered with the Turnover Certificate, only to subserve their personal interests.

15. Petitioner has no involvement even remotely in the act of forgery committed by its employees in connivance with representative of Respondent No. 2. The independent inquiry conducted by an advocate by profession, has clearly revealed and fortified this fact. Sh. Puspendra Singh, Business Manager was working with the Petitioner since August, 2021 and was part of the Sales Team. He confessed that he had been quoting for tenders in Railway projects in his previous jobs and came in touch with Sh. Chandan Kumar in 2021 in one assignment where Sh. Chandan Kumar sought his help in quoting for a Railway tender. At that stage, Sh. Chandan Kumar promised that a certain part of the gratification of that tender would be given to Sh. Puspendra Singh as an incentive but money was not received. When NDMC floated the tender, Sh. Chandan Kumar approached him and proposed that he should bid for the tender through Respondent No.2 as the OEM. He stated that on 24.06.2022, Sh. Chandan Kumar was present in the premises of the Petitioner company and at the time of submission of bid, when it was realized that Respondent No. 2 was not meeting the financial turnover criteria as per the tender conditions, at the instance of Sh. Chandan Kumar, Sh. Sunil Kumar Srivastava was instructed to edit the document and change the turnover from Rs.28,20,10,671/- to Rs.128,20,10,671/-. Sh. Puspendra Singh accepted that the document was edited and that he had neither sought approval from the Management to change the turnover reflected in the certificate nor informed them as it was late in the evening and later tendered an apology to the Management. The confessional statement of Sh. Puspendra Singh was corroborated by Sh. Sunil Kumar Srivastava who added that Sh. Chandan Kumar had assured that he would manage everything at the customer end as well as with his company. Once the two employees have admitted that they forged the document and this was without the knowledge and/or consent of the Management, no blame can be placed on the Petitioner. These statements and the inquiry report have been completely overlooked by NDMC even though the same were part of the representation of the Petitioner, referred to in the impugned order. The impugned decision is thus arbitrary and consequently violative of Article 14 of the Constitution of India.

16. Petitioner has been held vicariously liable for the wrongful acts of its delinquent employees overlooking the crucial fact that these employees have clearly admitted and confessed to the commission of the act of forgery for their personal gains. The role played by the two employees and the modus operandi adopted by them in editing the Turnover Certificate has been brought forth by the Petitioner in the additional affidavit dated 08.11.2024, filed pursuant to order dated 25.10.2024 directing the Petitioner to explain the manner in which the bid in question came to be submitted. It is a settled law that there is no vicarious liability unless the Statute concerned provides for it. It is equally settled that the principal will be responsible for the acts of his agent only where the agent does

an act which is within the scope of authority granted to it or does the act under the actual control of the principal i.e. for master's liability to arise, act by the agent must be one which was authorized by the master. [Ref.: Sitaram Motilal Kalal v. Santanuprasad Jaishankar Bhatt, 1966 SCC OnLine SC 210]. Notably, though NDMC has attempted to impeach the credibility of the internal inquiry during the course of oral arguments before this Court but there is no finding in this regard in the impugned decision.

17. The impugned order is also vitiated on ground of clear discrimination between the Petitioner and Respondent No. 2, as no action has been taken against the latter even though the allegation of NDMC was that there is collusion between the two in generating forged and fabricated document to meet the bid eligibility conditions. On 05.12.2023, NDMC had itself written to GeM that Respondent No. 2 was involved in forgery. Internal investigation by the Petitioner also revealed the active role played by Sh. Chandan Kumar, an employee of Respondent No. 2 in the entire scheme of forging the Turnover Certificate. Yet, admittedly no action has been taken by NDMC against Respondent No. 2. Most conveniently, Respondent No. 2 now takes a stand before this Court that the Turnover Certificate sent by it indicated the correct and factual turnover and the act of forgery was committed by Petitioner's employees while uploading the Turnover Certificate. Contrary to its earlier position, NDMC now supports and defends Respondent No. 2 by stating that there was no privity of contract between NDMC and Respondent No. 2. This position is incorrect as the tender document itself contemplated involvement of Respondent No. 2 and in fact the credentials of Respondent No. 2 were crucial factors for grant of tender viz. 'OEM financial documents required'; 'OEM experience requirements'; 'OEM servicing requirements'; 'other OEM requirements' and 'OEM's blacklisting status is relevant'. While Petitioner is not suggesting that Respondent No. 2 as an entity was responsible for the forgery but only urges that Petitioner has been selectively penalized for no fault while Respondent No. 2 being the author and custodian of the Turnover Certificate is continuing with its business with no blot or penalty of blacklisting.

18. In a recent judgment in Blue Dreamz Advertising Pvt. Ltd. and Another v. Kolkata Municipal Corporation and Others, 2024 SCC OnLine SC 1896, the Supreme Court upheld the order of the learned Single Judge quashing the blacklisting order and set aside the order of the Division Bench reversing the said decision, observing that blacklisting being a drastic remedy, Division Bench ought to have enquired whether conduct of the Appellant was part of the normal vicissitudes in business and common place hazards in commerce or whether Appellant had crossed the rubicon warranting a banishment order, albeit for a temporary period in larger public interest. In Modern Stage Service (Projects) v. India Tourism Development Corporation Ltd., 2025 SCC OnLine Del 2311, this Court observed that even though for a limited period of 3 years, nonetheless debarment order has the potential to cause irreparable harm to Petitioner's reputation in the market and also attaches stigma in terms of its prior conduct,

when considered in future tender bids. Proportionality has to be seen between the alleged act and the harm caused by it to the Respondent and the tender process. This decision is also relevant to the instant case since the Court found therein that no financial harm was caused to the Respondent as the tender was ultimately allotted to the third party with the lowest bid. In the present case, forgery was detected at the initial stage and therefore, the contract was never awarded to the Petitioner and no harm or financial loss was caused to NDMC, whereas the damage caused to Petitioner's impeccable reputation is irreversible.

19. In *Satya Builders, Represented by Rajat Sharma v. Northeast Frontier Railway Rep. by the Chief Engineer and Another*, 2025 SCC OnLine Gau 1824, even though the Guwahati High Court found as a matter of fact that Petitioner had submitted false credentials documents albeit later it had offered to submit the correct document, the Court while upholding the termination of Letter of Acceptance and forfeiture of earnest money deposit, Bank Guarantee and Performance Bank Guarantee, set aside the order of blacklisting the Petitioner from participation in any and all tenders for five years.

CONTENTIONS ON BEHALF OF NDMC:

20. The impugned decision of NDMC to blacklist the Petitioner is far from being arbitrary or whimsical, as alleged by the Petitioner. Petitioner admits that copy of the Turnover Certificate uploaded on the GeM portal on behalf of the Petitioner company was a forged document, intentionally fabricated by its employees, with a view to attain financial eligibility of Respondent No. 2's bid and equally admitted is the fact that the document was uploaded by employees of the Petitioner. Submission of forged document in a bidding process is a reason enough to justify the blacklisting decision, which was taken after giving show cause notice and personal hearing.

21. Main plank of the argument of the Petitioner is that the forgery was carried out by its employees along with representative of Respondent No. 2 and this was not in the knowledge of the management. It is urged that different tenders are allocated to different employees who alone are responsible for the entire bidding process and the management is not involved in the process of submitting bid documents. This stand is unbelievable as also untenable in law. It cannot be accepted or believed that junior executives of the Petitioner would not have pointed out at the very outset that the Turnover Certificate of Respondent No.2 was not meeting the eligibility condition and/or that at the time of bid submission, numerical '1' was added to the existing figure of turnover, more so, when Petitioner itself claims that it is extremely cautious of its reputation and has a policy of zero tolerance to corruption. Assuming that the management has chosen to keep itself aloof from the tendering process as a practise or business decision, it is at its own peril but in so far as NDMC is concerned, the decision is justified as submitting forged bid documents directly impacts the sanctity of tender process and it is against public interest to encourage such practices.

22. Petitioner has highlighted and asserted that it has an impeccable reputation and has been tendering for Government departments/agencies for decades with no complaints. None of these facts are in the knowledge of NDMC, with which Petitioner has no past dealings. Petitioner's credentials vis-a-vis third parties cannot be cited as a benchmark to establish Petitioner's credibility when the factum of forgery in the Turnover Certificate is candidly and fairly admitted. In any event, if by Petitioner's own case it has hundreds of on-going contracts with other entities, two years' blacklisting by NDMC, will not dent its otherwise flourishing business.

23. It goes without saying that before bidding, Petitioner with its vast experience, would have seen and known the tender conditions and process of bidding. Petitioner admittedly submitted a Turnover Certificate dated 24.03.2022, reflecting OEM's turnover as Rs.128,20,10,671/-, whereas the actual turnover was Rs.28,20,10,671/-. It was obviously known to the Petitioner that with a turnover of Rs.28,20,10,671/-, Petitioner was not eligible to participate in the tender process as the required turnover for OEM was Rs. 3743 lakhs in last three years and thus for obvious reasons, the Certificate was edited to add numerical '1' prior to the actual figure on the Certificate. During technical evaluation of the bids, a complaint was received by NDMC from one Sh. Uttam Kumar, Advocate vide e-mail dated 05.07.2022, pointing out that the Turnover Certificate submitted by the Petitioner was a forged document. Based on this, number of e-mails were sent by NDMC to the Chartered Accountant Firm who had issued the Certificate but there was no response to any of the e-mails.

24. Faced with this and before taking any decision, NDMC issued show cause notice dated 08.09.2022 to Respondent No. 2 followed by a show cause notice dated 09.09.2022 to the Petitioner. Reply of the Petitioner was considered and found unsatisfactory and in light of the serious act of forgery, Petitioner was blacklisted for three years, in public interest. However, after the order passed by this Court on 04.03.2024, matter was re-examined by NDMC and fresh show cause notice was issued on 26.04.2024. Impugned decision was taken after permitting the Petitioner to furnish its explanation in writing and granting personal hearing. Consistently, Petitioner admitted that the Turnover Certificate was forged and the only defence was that the forgery was by its employees, without the knowledge of the senior officers in the management. This was found to be an unsatisfactory response as Petitioner cannot absolve itself of the acts of its employees done with the authority of the Petitioner and accordingly, the impugned order was issued blacklisting the Petitioner for two years from the date of issue of the order.

25. Petitioner's plea that the two employees forged the Turnover Certificate for personal gains is also misconceived. It goes without saying that if the bid was accepted, the beneficiary was the company. In any event, this is not a valid defence. The tender in question was of a high value and Petitioner's senior officers ought to have been more cautious in ensuring that the bids were

properly submitted/uploaded with correct data and documents, especially with respect to eligibility conditions for bidding and that too when onus of final submission of the bids was on the Petitioner and not the OEM. It is clear that forgery in the Turnover Certificate was a well thought of plan, orchestrated to meet the threshold of required turnover and Petitioner cannot be absolved, even though the execution of the plan was by its employees.

26. NDMC sought explanation from Respondent No. 2 also and in response to its e-mails, Respondent No. 2 had claimed that the forged Turnover Certificate submitted with the bid was not sent by it and that forgery was committed by Petitioner's employees at the time of bid submission. The e-mail shared by Respondent No.2, attaching the Turnover Certificate was shown during personal hearing and substantiated the plea of Respondent No. 2.

27. Petitioner is well aware of the rules and regulations including General Terms and Conditions on GeM 3.0 (Version 1.21), GFR and the pre-integrity pact executed by the parties. Rule 175(1)(i)(h) of GFR which deals with 'Code of Integrity' provides that no official of a procuring entity or a bidder shall act in contravention of the Codes which includes making false declaration or providing false information for participation in a tender process or to secure a contract. Rule 175(2) provides that if a procuring entity, after giving a reasonable opportunity of being heard, comes to the conclusion that bidder has contravened the Code of Integrity, it may take appropriate measures. Rule 151(iii) of GFR deals with 'Debarment from Bidding' and stipulates that a procuring entity may debar a bidder from participating in any procurement process for a period not exceeding two years, if it determines that bidder has breached the Code of Integrity with a caveat under sub-Rule (iv) that debarment can only be after giving reasonable opportunity to the bidder to represent against such debarment. The action of the NDMC is within the four corners of the GFR and after granting opportunity of personal hearing to the officials of the Petitioner.

28. The pre-integrity pact between the parties clearly stipulated that any breach of the provisions by the bidder or anyone employed by it shall entitle NDMC to take all or any of the actions including debarring the bidder from participation in future bidding process for a period of five years, extendable further. Moreover, general terms and conditions on GeM, on which the parties acted, stipulated that these conditions shall act as valid agreement between seller/service provider and the buyer and paragraph 21 thereof permits administrative action such as suspension/debarment/removal from GeM, if a seller furnishes inaccurate, false, misleading or forged information/documents to the buyer including during the bidding process.

29. Heavy reliance of the Petitioner on the internal inquiry conducted against its employees and/or their consequent termination from service, is of no aid to the Petitioner. Firstly, plain reading of the inquiry report shows that the said inquiry was a mere eyewash. The proceedings were completed in one day on 15.09.2022 and that too when the inquiry commenced only at 04:00 PM. Statements were

recorded in a hurry and haste and importantly, the manner in which confessional statements have been made by the employees, sheds light on the fact that they were not voluntary and were either given under pressure and coercion by the senior officials of the Petitioner or out of inducement. Neither NDMC nor Respondent No. 2 was even remotely associated with the inquiry and therefore, the report is nothing more than a self-serving document of the Petitioner and inherently not credible. Pertinently, the Inquiry Officer did not even inquire into whether there was any involvement of the senior officials in the management in the entire bidding process and/or why an employee would bid with forged documents when it was the company which stood to benefit if the bid was ultimately accepted.

30. Filing of criminal complaints or an application under Section 156(3) read with Section 200 Cr.P.C. is also an eyewash as these steps were initiated only to cover up Petitioner's own wrongs and unlawful acts. In any event, this cannot take away the right of the NDMC to blacklist the Petitioner which stems from GFR, terms and conditions of the bid etc. The action of NDMC is commensurate with and proportionate to the gravity of the offence committed and the management of the Petitioner cannot take itself away from the act of its employees, done in the course of duty. There are no allegations of mala fides or bias against any official of NDMC in taking the impugned decision. Petitioner has acted against public interest and the sanctity of a bidding process in the public domain must be preserved. Petitioner has been independently debarred by GeM portal vide order dated 02.09.2024 to participate in any tender process for 60 days which ended on 01.11.2024 and which was not challenged by the Petitioner.

CONTENTIONS ON BEHALF OF RESPONDENT NO. 2:

31. By this writ petition, Petitioner calls upon this Court to enter into disputed questions of facts regarding involvement of the employee of Respondent No. 2 in the act of forgery of the Turnover Certificate and/or whether the management of the Petitioner had any role to play in the offence. It is trite that disputed questions of fact cannot be adjudicated in a writ jurisdiction and on this ground alone, this writ petition deserves to be dismissed. [Ref.: Harpati and Others v. State of NCT of Delhi and Others, 2023 SCC OnLine Del 4607].

32. Petitioner has approached this Court with unclean hands and concealed material facts and is thus not entitled to any relief in a writ jurisdiction. Petitioner contacted Respondent No. 2 vide e-mail dated 30.05.2022 requesting for supply of electronic tablets to participate in the NDMC tender floated on 28.05.2022 on GeM portal. Respondent No. 2 agreed to supply the tablets and vide e-mail dated 23.06.2022 provided the product link as also authorization letter dated 21.06.2022; Turnover Certificate dated 24.03.2022; BIS Renewal Certificate; Udyam Registration Certificate etc. The Turnover Certificate shared by Respondent No. 2 clearly reflected turnover of Rs.28,20,10,671/- for Financial Year 2021. However, at the time of submission of the bid, Petitioner uploaded a forged Turnover Certificate representing falsely the turnover as

Rs.128,20,10,671/- which came to the knowledge of Respondent No. 2 only after NDMC sought its explanation. Petitioner has not filed the correct Turnover Certificate sent to it by e-mail by Respondent No. 2, with a view to misguide this Court.

33. Respondent No. 2 cannot be blamed for the forgery. In fact by an e-mail dated 03.09.2022, it was brought to the notice of NDMC that the forged Turnover Certificate was not the one sent by Respondent No. 2 and that the same was edited without its knowledge. Show cause notice dated 08.09.2022 was received by Respondent No. 2 and its officials attended the hearing at NDMC's office on 15.09.2022 when Petitioner's official was also present. During this hearing, Respondent No. 2 had clarified that the Turnover Certificate provided to the Petitioner by e-mail dated 23.06.2022 differed from the one submitted by the Petitioner during the bidding process and the actual copy was shared. In fact, Respondent No. 2's financial status and certifications are regularly updated on GeM portal and manipulations are out of question. Respondent No. 2 was eligible to participate in the tender independent of the Petitioner and had no reason to forge its own documents.

34. The so-called internal inquiry conducted by the Petitioner was only a guise to escape the rigors of blacklisting. Respondent No. 2 gained knowledge of the inquiry only when copy of the writ petition filed by the Petitioner was served. It is beyond comprehension that a large organization such as the Petitioner with vast business sense and legal team would not even intimate Respondent No. 2 of the proposed inquiry and associate its officials in the same since the whole inquiry was about the Turnover Certificate purportedly issued by Respondent No. 2. The result of having the inquiry to the exclusion of Respondent No. 2 was naturally that Petitioner's management was conveniently absolved of the wrongdoing whereas employee of Respondent No. 2 was held responsible. The self-serving documents and statements of its employees taken under duress/coercion/pressure and/or inducement cannot help the Petitioner escape from the liability and penalties of committing serious offence of forgery.

35. Insofar as the complaint before SHO, Kalkaji Police Station filed on 23.12.2023 is concerned, the same was filed only after NDMC passed the initial blacklisting order on 07.12.2023 and even thereafter, no effective steps were taken by the Petitioner to prosecute the same. Moreover, admittedly, Petitioner was aware of the forgery committed from September, 2022 but the complaint was filed only on 23.12.2023, which clearly reflects the motive behind filing the complaint. The application under Section 156(3) read with Section 200 Cr.P.C. was filed as a strategy only to make that a part of the reply to show cause notice dated 13.05.2024 and create a smokescreen that Petitioner's top management was innocent. None of these complaints have any relevance to the act of forgery in the Turnover Certificate submitted during the bidding process and the repeated effort to malign Respondent No. 2 is in bad faith. The entire case of the Petitioner is only aimed at saving itself from blacklisting and shifting the entire

blame wrongly on Respondent No. 2. If the Petitioner boasts of its credentials and past track record, it cannot be overlooked that Respondent No. 2 has also been supplying products to various Government Departments across India for the last two decades and no complaint has been made. Respondent No. 2 has always been compliant with policies of the Government relating to tenders and has maintained high standards of integrity and transparency. Once it is an admitted case that the forgery was done in the Turnover Certificate at the time of uploading the bid, it substantiates that the Turnover Certificate sent by Respondent No. 2 was the correct Certificate and hence Respondent No. 2 cannot be blamed for the wrong bidding. Insofar as involvement of Sh. Chandan Kumar is concerned, the criminal complaint is pending and this decision will be taken by the competent Court. In any event, representative of Respondent No. 2 had no reason to connive in the forgery since all financial documents of Respondent No. 2 are on the GeM portal.

36. The allegations levelled by the Petitioner against Respondent No. 2 and its employee are baseless and clearly an afterthought to escape penal consequences. Both NDMC and GeM, after conducting investigation into the matter have not arrived at any adverse finding against Respondent No. 2 regarding manipulation or forgery of Turnover Certificate. Significantly, NDMC in its counter affidavit has admitted that documents shared by Respondent No. 2 with the Petitioner reflected correct turnover and clearly the onus of submitting factually correct bid documents was on the Petitioner.

ANAYSIS AND FINDINGS:

37. By this petition, Petitioner lays a challenge to order dated 07.06.2024 issued by NDMC blacklisting the Petitioner and debarring it from participating in any tender of NDMC for a period of two years. Genesis of the impugned order lies in a tender issued by NDMC for procurement of 4,159 pre-loaded electronic tablets on GeM on 28.05.2022. To participate in the tender, Respondent No. 2, which was the OEM, authorized the Petitioner to carry out the process of bidding. As per authorization by Respondent No. 2 through its representative Sh. Chandan Kumar, Petitioner participated in the bidding on behalf of the OEM and submitted the bids along with requisite documents, which included a Turnover Certificate of Respondent No. 2. The minimum turnover required as per the tender conditions was Rs. 3,743 lacs. Petitioner's authorized employees uploaded the Turnover Certificate dated 24.03.2022 reflecting a turnover of Rs. 128,20,10,671/- of Respondent No. 2, whereas, admittedly the turnover was Rs. 28,20,10,671/-. On receiving a complaint that the Turnover Certificate was forged, NDMC asked the Petitioner to verify the correctness and authenticity of the Certificate. On receipt of e-mail dated 02.09.2022 from NDMC, as per Petitioner's case, explanation was called from the two employees responsible for bidding and by Board Resolution dated 05.09.2022 it was decided to conduct a detailed enquiry into the matter. Formal inquiry was held by appointing an advocate as an Inquiry Officer to ensure a fair and unbiased inquiry, in which the employees allegedly confessed

that the Turnover Certificate was forged by them to meet the turnover criteria. It is pertinent to note that even going by the stand of the Petitioner, the Turnover Certificate was indeed forged albeit by Sh. Puspendra Singh and Sh. Sunil Kumar Srivastava along with Sh. Chandan Kumar and instead of the actual turnover of Rs.28,20,10,671/- of the OEM, the certificate was uploaded with a wrong turnover of Rs.128,20,10,671/-.

38. Impugned decision of NDMC is largely predicated on the fact that submission of a forged bid document at the time of bidding is a grave and serious offence and this act touches upon the credibility of a bidder and impacts the sanctity of the tender process. NDMC pleads that the employees had no vested interest as the ultimate beneficiary of award of tender was the Petitioner alone. NDMC also asserts that the forgery was clearly with an intent to meet the eligibility threshold of annual turnover, which was not met with the actual and correct turnover of the OEM. In the impugned order, NDMC has refused to accept the stand of the Petitioner that it could absolve itself from the offence committed by its employees in discharge of their duties and takes a position that forgery of the Turnover Certificate was a well thought of plan.

39. Broadly understood, Petitioner pegs its case on two points: (a) forgery was committed by Petitioner's employees for their own vested interests and management had no knowledge of uploading of forged certificate and thus cannot be held vicariously liable for acts, not authorized; and (b) decision to blacklist the Petitioner, which amounts to civil death, has been taken oblivious of the guidelines in Kulja Industries (supra). Added to this was the point that credibility of the Petitioner is beyond question in light of its business dealings with Government departments/agencies/PSUs etc. for over three decades and the list of includes 108 institutions. Petitioner is stated to have no past history of any misdemeanor. Much emphasis was also laid on the action taken to hold an inquiry into the misconduct of the delinquent employees and their consequent termination along with recourse to criminal action.

40. The moot question that thus arises for consideration is whether Petitioner can claim that it cannot be held vicariously liable for the forgery, admittedly committed by its employees. From a careful analysis of facts and arguments it is clear as day that Sh. Puspendra Singh was duly authorized to process the bid documents and upload them. In the additional affidavit filed by the Petitioner on 08.11.2024, it is stated that as per general practice in Petitioner's organization, Directors assign customer accounts to their employees and in the present case, Sh. Puspendra Singh was authorized and responsible for overseeing the entire tender process in question, including but not limited to scrutinizing documents, attending meetings, signing the requisite documents and submitting the bids. It is also stated that the designated employees of the Petitioner scrutinize all documents in relation to the bid and handle the submission thereof. It is thus clear that Sh. Puspendra Singh scrutinized and submitted the bid under authorization of the Petitioner and hence with its knowledge and consent.

41. Law with respect to vicarious liability of an employer for acts and omissions of the employees is no longer *res integra*. In *Sitaram Motilal (supra)*, the Supreme Court restated the law laid down by Lord Denning in *Ormord v. Crosville Motor Services Ltd.*, (1953) 2 ALL ER 753 that owner is not only liable for negligence of the driver, if the driver is his servant acting in the course of his employment but also where the driver is, with the owner's consent, driving the car for his own purpose. This principle was reiterated by the Supreme Court in *Pushpabai Purshottam Udeshi and Others v. Ranjit Ginning & Pressing Co. (P) Ltd. and Another*, (1977) 2 SCC 745. In *Sohan Lal Passi v. P. Sesh Reddy and Others*, (1996) 5 SCC 21, the Supreme Court held that the crucial test is whether the initial act of the employee was expressly authorized and lawful. If it was, then the employer shall nevertheless be responsible for the manner in which the employee acts. If the dispute revolves around the mode or manner of execution of the authority of the master by the servant, master cannot escape the liability so far as the third parties are concerned on the ground that he had not actually authorized the particular manner in which the act was done. It was also held that the accident in that case took place when the act authorized was being performed in a mode which may not be proper but nonetheless was directly connected with the course of employment and was not an independent act for a purpose which had no nexus or connection with the business of the employer so as to absolve him from the liability. In *Salmond's Law of Torts (Twentieth Edn.)*, it is stated as follows:-

"On the other hand it has been held that a servant who is authorised to drive a motor vehicle, and who permits an unauthorised person to drive it in his place, may yet be acting within the scope of his employment. The act of permitting another to drive may be a mode, albeit an improper one, of doing the authorised work. The master may even be responsible if the servant impliedly, and not expressly, permits an unauthorised person to drive the vehicle, as where he leaves it unattended in such a manner that it is reasonably foreseeable that the third party will attempt to drive it, at least if the driver retains notional control of the vehicle."

42. In *Halsbury's Laws of England*, Fourth Edn., Vol. 16, para 739 is held as follows:-

"Where the act which the employee is expressly authorised to do is lawful, the employer is nevertheless responsible for the manner in which the employee executes his authority. If, therefore, the employee does the act in such a manner as to occasion injury to a third person, the employer cannot escape liability on the ground that he did not actually authorise the particular manner in which the act was done, or even on the ground that the employee was acting on his own behalf and not on that of his employer."

43. I may also allude to a judgment of the Privy Council in *United Africa Company Limited v. Saka Owoade*, (1957) 3 ALL ER 216, wherein it was laid down that a master is liable for his servant's fraud perpetrated in the course of

master's business, whether the fraud was for master's benefit or not, if it was committed by the servant in the course of his employment.

44. In *Punjab National Bank v. Smt. Durga Devi & Others*, 1977 SCC OnLine Del 93, Division Bench of this Court held that acts of fraud or collusion by bank officials with a view to benefit a person presenting a forged or materially altered cheque results in payment being made by the bank against such a cheque and such an act of the bank employees, being within the course of their employment, is binding on the bank at the instance of the person who is damnified by the fraud albeit the bank is free to take action against its officials. In *Smt. Niranjan Kaur v. M/s New Delhi Hotels Ltd. and Others*, 1987 SCC OnLine Del 313, this Court observed that a master is not responsible for wrongful act done by his servant unless it is done in the course of employment and it is deemed to be so done if it is either: (1) a wrongful act authorized by the master; or (2) a wrongful and unauthorized mode of doing some act authorized by the master. It was also observed that a master is liable even for acts which he has not authorized, provided they are so connected with acts which he has authorized that they may rightly be regarded as modes albeit improper modes of doing them. If a servant does negligently that which he was authorized to do carefully or if he does fraudulently that which he was authorized to do honestly, his master will answer for that negligence, fraud or mistake.

45. In *Poongottil Prasad v. Melattur Grama Panchayat and Another*, 2023 SCC OnLine Ker 5596, the Kerala High Court observed that ordinarily a person is liable for his own wrongful acts and one does not incur any liability for acts done by others, however, principle of vicarious liability makes certain persons liable for acts of others. This principle applies where the law presumes that 'he who does an act through another is deemed in law to do it himself'. Commonly accepted examples of vicarious liability are in cases of relationship between principal and agent, master and servant and partners in each other's tort. Fundamental requirements to apply vicarious liability are that there should be a certain relationship between the two parties and that the wrongful act should be done in such a way that it is connected to the relationship. It would be useful at this stage to refer to a judgment of this Court in *CE Info Systems Pvt. Ltd. and Another v. Gas Authority of India Ltd.*, 2019 SCC OnLine Del 7779, where a challenge was laid by the Petitioner to an order debarring it from participating in bidding process related to a tender floated by GAIL, for a period of three years, based on an allegation that Petitioner had submitted a forged certificate indicating that it had completed certain works for IOCL for a certain value. There was no dispute that the certificate was forged but the Petitioner contended that this did not warrant a punitive measure as the certificate was furnished by its employee who was not authorized to do so and moreover, it did not affect Petitioner's eligibility for participating in the tender in question. Challenge to the debarring order was laid by the Petitioner on five fronts, the first of them being that the forged completion certificate was not issued by its authorized officer and emphasis was laid on a Power of Attorney furnished along with the bid indicating

that one of the General Managers of the Petitioner company was constituted as the attorney to act on behalf of the Petitioner in respect of the said tender. Court negated the contentions, observing that it was wholly unpersuasive that the document had been furnished by an unauthorized person inasmuch as Petitioner had furnished a letter of authority in favour of Shri Sandeep Rathore, which also indicated that he was authorized for any subsequent correspondence/communication in relation to the bid documents submitted by the Petitioner. Court also held that the fact that Petitioner submitted a forged document was enough for GAIL to take a decision not to deal with the Petitioner and the question whether Petitioner derived any benefit from the same is relevant only to determine the quantum of punishment.

46. In the aforesaid case, Court also referred to the guidelines laid down by the Supreme Court in *Kulja Industries (supra)*, but declined to interfere with the debarment order observing that Petitioner did seem to derive benefit from submission of the forged document for the reason that although Petitioner claimed to be eligible on the basis of work executed for Atlas Comnet, it did not provide the document sought by GAIL for establishing the same and instead supplied forged completion certificate, allegedly issued by IOCL, showing that Petitioner had completed work of the value required as eligibility condition. It was observed that it was obvious that intention of the Petitioner was to acquire eligibility to participate in the bidding process based on the contract with IOCL, conveniently ignoring the requirement of providing documents of experience of working with Atlas Comnet, basis which Petitioner had initially claimed to be eligible for participating in the bidding process. Significantly, Court also held that notwithstanding the provisions of the terms of the contract, GAIL would have the authority to take a decision not to enter into business with the contractor, if it is found that contractor had indulged in fraudulent practices as this is an inherent right available with any authority. Reference was made in this context to the judgement in *Patel Engineering Limited v. Union of India and Another*, (2012) 11 SCC 257. On the aspect of principle of natural justice, Court noted that Petitioner was put to notice before taking the action of blacklisting.

47. From the conspectus of the aforesaid judgments, it is luminously clear that an employer or a master cannot distance himself from the acts or omissions of the employee/servant where the acts or omissions are in the course of employment and authorized by the employer/master, even if the acts or omissions are through wrongful and unauthorized modes so long as they have a direct nexus with the employment. In the instant case, it is an admitted case of the Petitioner that Sh. Puspendra Singh was duly authorized to take necessary steps towards the bidding process and therefore his act of submitting the bid documents, including the forged Turnover Certificate was an act in the course of employment. In fact, Petitioner has itself placed on record job description of Sh. Puspendra Singh, which shows his role and responsibilities and inter alia includes revenue generation by selling IT infrastructure services and solution in Government sectors etc.; participating in Government procurement projects

through tenders; liasoning; coordinating and negotiating prices with OEMs; preparing quotations as per customer requirement; coordinating with all teams to process bid/tender related activities etc. Therefore, once the bidding process was carried out by an employee, authorized by the Petitioner to do that act, Petitioner cannot distance itself and contend that it be absolved of the liability. It bears repetition to state that a master is liable even for acts he has not authorized, provided they are connected with the employment or the acts which were authorized and the only exception that can be carved out is where the employee does an act which is not even remotely connected with his scope of employment and is his independent act, which is not the case here.

48. A significant aspect of this case, which weighs heavily against the Petitioner is that there is no dispute that the Turnover Certificate was forged. It is equally undisputed that the Certificate was uploaded by employees of the Petitioner, duly authorized to process and submit the tender documents. It is crucial to note that Respondent No. 2/the OEM has not only taken a categorical stand before NDMC and on an affidavit before this Court that its officials had vide e-mail dated 23.06.2022 provided the product link for the electronic tablets, the goods that were to be supplied under the tender in question after it was decided that Respondent No. 2 being the OEM would supply the electronic tablets and along with the product link, it had sent several documents to the Petitioner including Authorization Letter dated 21.06.2022, a BIS Renewal Certificate, an Udyam Registration Certificate as also the Turnover Certificate dated 24.03.2022, among other documents. It is also stated in the affidavit that the Turnover Certificate as shared by Respondent No. 2 reflected a turnover of Rs.28,20,10,671/- of Respondent No. 2 for Financial Year 2020-21. E-mail with its attachment containing the Turnover Certificate, which indeed reflects the turnover as Rs.28,20,10,671/-, has been filed by Respondent No.2 and importantly, this document has been concealed by the Petitioner. It is an uncontroverted position that Respondent No. 2's financial status and certifications were regularly updated on the GeM Portal and/or that Respondent No. 2 was able to establish in the personal hearing that the Turnover Certificate it had shared with the Petitioner before uploading, reflected the actual and correct turnover. This completely explains the position of NDMC in not taking any action against Respondent No. 2, which is one of the contention and grievance of the Petitioner albeit the role of its representative is under examination in the pending criminal case and hence no observation is made here. Be that as it may, the responsibility to submit and upload the bid was of the Petitioner and therefore, due caution ought to have been taken at the senior level to ensure that the bid is submitted with true and correct information and supporting documents and therefore, the fact that NDMC has not taken any action against Respondent No. 2 is inconsequential.

49. The main stake of the argument of the Petitioner with respect to the forgery of the Turnover Certificate is that the Management of the Petitioner was completely unaware of the forgery by its employees. As noted above, Petitioner cannot claim immunity for the acts of its employees done in the course of their

employment. Even otherwise, the onus of submitting factually correct information and documents was on the Petitioner. The tender in question was a high value bid and it is unbelievable that the Management of the Petitioner had completely distanced itself from the process of preparing the documents etc. for submission of the bid and assuming that it did, it was at its own peril and NDMC cannot be faulted for taking action once it was clear that a forged bid document had been submitted. Also it cannot be glossed over that with a turnover of Rs.28,20,10,671/-, Petitioner was ineligible to bid and therefore, the ultimate beneficiary of the award of contract must accept responsibility for the forgery to achieve the eligibility condition. The argument that NDMC has nothing to lose since ultimately the tender was not accorded is irrelevant since the sanctity of a tender process is required to be maintained and therefore, a party which indulges in wrongdoings at the stage of bidding cannot be heard to say that no penalty should be imposed. Assuming a situation where no complaint was received highlighting the forgery in the Turnover Certificate, the contract may have been awarded to the Petitioner basis a forged bid document which was against public interest.

50. Relying heavily on the judgement of the Supreme Court in *Kulja Industries (supra)*, it was urged that before taking a decision to debar/blacklist an entity, the Competent Authority must take into account: whether contractor has accepted responsibility for the wrongdoing and recognized the seriousness of the misconduct; whether the contractor has co-operated fully with the Government agencies during investigation and any Court or administrative action; the positions held by the individuals involved in the wrongdoings; whether contractor fully investigated the circumstances surrounding the cause for debarment and if so, made the result of investigation available to the debarring official; and whether contractor has taken appropriate corrective action or remedial measures such as establishing ethics training and implementing programs to prevent recurrence, but in the instant case, NDMC has not considered Petitioner's track record as also the disciplinary and criminal action taken by the Petitioner against the delinquent employees.

51. Coming to the aspect of in-house inquiry, Respondents are right that the inquiry began at 04:00 PM on 15.09.2022 and ended the same day. Inquiry Officer examined four persons i.e. Sh. Gopal Singh Bisht, Business Manager, Sh. Rakesh Choudhary, General Manager (HR), Sh. Puspendra Singh, Business Manager and Sh. Sunil Kumar Srivastava, Business Engagement Executive. All the four persons were employees of the Petitioner and admittedly neither Respondent No. 2 nor NDMC were involved in the inquiry. Sh. Gopal Singh Bisht stated that the bid was submitted by Sh. Sunil Kumar Srivastava and Sh. Puspendra Singh along with one Sh. Chandan Kumar who was Authorized Representative of Respondent No. 2 and that at 08:15 PM, he received an OTP for submission of the bid, which he shared after he received a call from Sh. Sunil Kumar Srivastava and that he was not informed of any change in the bid documents. Sh. Rakesh Choudhary stated that Sh. Puspendra Singh and Sh.

Sunil Kumar Srivastava had a clean verification report before joining and there was no history of misconduct. His statement centered around the post-bid action of issuing Show Cause Notices to Sh. Puspendra Singh and Sh. Sunil Kumar Srivastava on 05.09.2022 and their replies, wherein the two admitted that they had forged the Turnover Certificate by editing the figure of Rs.28,20,10,671/- to read as Rs.128,20,10,671/-. Basis these confessional statements, the Inquiry Officer rendered a finding that Sh. Sunil Kumar Srivastava changed the Turnover Certificate on instructions of Sh. Puspendra Singh and Sh. Chandan Kumar to meet the targets for gratification and recommended the Management of the Petitioner to initiate appropriate disciplinary proceedings.

52. Respondents are right in their submission that this is a self-serving internal inquiry of the Petitioner, without involving NDMC or the OEM, whose Turnover Certificate was in question and which entity was finally blamed by the Inquiry Officer. In any event, whether the employees of the Petitioner gave confessional statements under any threat or inducement will come forth once the criminal case registered by Petitioner against its employees concludes. In a writ petition, it is beyond the remit of this Court to enter into the issues whether the statements of the employees of the Petitioner were out of their free volition or under threat or coercion and/or whether other officials of the Petitioner were involved. In any event, management of the Petitioner cannot absolve itself even if the confessional statements were voluntarily made by applying the principle of vicarious liability and thus, the holding of the in-house inquiry and/or its report cannot rescue the Petitioner insofar as NDMC is concerned. As the impugned decision indicates the same is predicated on the seriousness and gravity of forging of bid document and principle of vicarious liability.

53. As far as criminal action is concerned, Respondents have brought forth that the first complaint was filed with the Kalkaji Police Station after a lapse of one year i.e. on 23.12.2023, despite the fact that Petitioner was fully aware of the forgery from September, 2022. The second complaint was filed after show cause notice was issued to the Petitioner on 26.04.2024 and this was despite the fact that Petitioner knew that no FIR had been lodged on the earlier complaint. The timing of the second complaint was one day before filing reply to the said show cause notice. For the sake of completeness, it is also relevant to note the order of the Judicial Magistrate, Patiala House Court, passed on 03.12.2024 while disposing of the application filed by the Petitioner under Section 156(3) Cr.P.C. seeking registration of the FIR against the employees. The application was dismissed by applying the principles and guidelines laid down by this Court in Alok Kumar v. Harsh Mander and Another, 2023 SCC OnLine Del 4213, however, the Trial Court granted an opportunity to the Petitioner to pursue its complaint under Section 200 Cr.P.C. and took cognizance of the complaint to this extent and matter was fixed for pre-summoning evidence of the Petitioner. It was observed by the Court in the said order that much credibility cannot be attached to an in-house inquiry report, which was aimed at a disciplinary action against the employees as also that the employees had nothing to gain out of the

transaction and the only beneficiaries would have been the two companies involved in the agreement to bid. It was observed that the employees had no reason to upload a fabricated Turnover Certificate for procuring the tender without instructions of the seniors. While the Court is conscious of the fact that these are observations of a Criminal Court but the only purpose to highlight them is to emphasize on two crucial aspects viz. employees had no individual benefit in forging the Turnover Certificate and the ultimate beneficiary if the contract was awarded was the company, a view which this Court also holds. The in-house inquiry or the criminal action initiated by the Petitioner is well taken, however, this does not render the decision of blacklisting illegal or arbitrary. Submission of admittedly forged documents with a bid is a good enough reason for NDMC to take the action it did in public interest and to maintain sanctity of the tender process.

54. NDMC has also rightly placed reliance on General Financial Rules, 2017 published by Department of Expenditure, Ministry of Finance, Government of India which provides for debarment of bidders who breach the Code of Integrity. Rules 151 and 175(1) of GFR are as follows:-

“Rule 151 Debarment from bidding.

(i) A bidder shall be debarred if he has been convicted of an offence—

(a) under the Prevention of Corruption Act, 1988; or

(b) the Indian Penal Code or any other law for the time being in force, for causing any loss of life or property or causing a threat to public health as part of execution of a public procurement contract.

(ii) A bidder debarred under sub-section (i) or any successor of the bidder shall not be eligible to participate in a procurement process of any procuring entity for a period not exceeding three years commencing from the date of debarment. Department of Expenditure (DoE) will maintain such list which will also be displayed on the Central Public Procurement Portal.

(iii) A procuring entity may debar a bidder or any of its successors, from participating in any procurement process undertaken by it, for a period not exceeding two years, if it determines that the bidder has breached the code of integrity. The Ministry/Department will maintain such list which will also be displayed on their website.

(iv) The bidder shall not be debarred unless such bidder has been given a reasonable opportunity to represent against such debarment

xxx xxx xxx

Rule 175 (1) Code of Integrity

No official of a procuring entity or a bidder shall act in contravention of the codes which includes

(i) prohibition of

(a) making offer, solicitation or acceptance of bribe, reward or gift or any material benefit, either directly or indirectly, in exchange for an unfair advantage in the procurement process or to otherwise influence the procurement process.

(b) any omission, or misrepresentation that may mislead or attempt to mislead so that financial or other benefit may be obtained or an obligation avoided.

(c) any collusion, bid rigging or anticompetitive behavior that may impair the transparency, fairness and the progress of the procurement process.

(d) improper use of information provided by the procuring entity to the bidder with an intent to gain unfair advantage in the procurement process or for personal gain.

(e) any financial or business transactions between the bidder and any official of the procuring entity related to tender or execution process of contract; which can affect the decision of the procuring entity directly or indirectly.

(f) any coercion or any threat to impair or harm, directly or indirectly, any party or its property to influence the procurement process.

(g) obstruction of any investigation or auditing of a procurement process.

(h) making false declaration or providing false information for participation in a tender process or to secure a contract;

(ii) disclosure of conflict of interest.

(iii) Disclosure by the bidder of any previous transgressions made in respect of the provisions of subclause (i) with any entity in any country during the last three years or of being debarred by any other procuring entity."

55. It can be seen from the Rules that a procuring entity has the right and prerogative to debar a bidder from participating in a procurement process for a period not exceeding two years, if it determines that bidder has breached the Code of Integrity. Clause (h) of Rule 175(1)(i) provides that making a false declaration or providing false information to secure a contract would amount to breach of Code of Integrity. Even from this angle, NDMC was well within its rights to take the impugned action in the circumstances it did. The pre-integrity pact between the parties clearly stipulated that any breach of the provisions by the bidder or anyone employed by it shall entitle NDMC to take all or any of the actions including debarring the bidder from participation in future bidding process for a period of five years, extendable further. Moreover, general terms and conditions on GeM, on which the parties acted, stipulated that these conditions shall act as valid agreement between seller/service provider and permit administrative action such as suspension/debarment/removal from GeM, if a seller furnishes inaccurate, false, misleading or forged information/documents to the buyer including during the bidding process, as flagged by NDMC.

56. Insofar as the judgment of the Supreme Court in Kulja Industries (supra) is concerned, the Supreme Court no doubt lays emphasis on the guidelines formulated by the Government in USA for protecting public interest from contractors and recipients who are non-responsible, lack business integrity and engage in dishonest or illegal conduct etc. as is evident from reading of the judgment. Relevant paragraphs from the judgment are as follows:-

"22. The guidelines also stipulate the factors that may influence the debarring official's decision which include the following:

- (a) The actual or potential harm or impact that results or may result from the wrongdoing.
- (b) The frequency of incidents and/or duration of the wrongdoing.
- (c) Whether there is a pattern or prior history of wrongdoing.
- (d) Whether the contractor has been excluded or disqualified by an agency of the Federal Government or has not been allowed to participate in State or local contracts or assistance agreements on the basis of conduct similar to one or more of the causes for debarment specified in this part.
- (e) Whether and to what extent did the contractor plan, initiate or carry out the wrongdoing.
- (f) Whether the contractor has accepted responsibility for the wrongdoing and recognized the seriousness of the misconduct.
- (g) Whether the contractor has paid or agreed to pay all criminal, civil and administrative liabilities for the improper activity, including any investigative or administrative costs incurred by the Government, and has made or agreed to make full restitution.
- (h) Whether the contractor has cooperated fully with the government agencies during the investigation and any court or administrative action.
- (i) Whether the wrongdoing was pervasive within the contractor's organization.
- (j) The kind of positions held by the individuals involved in the wrongdoing.
- (k) Whether the contractor has taken appropriate corrective action or remedial measures, such as establishing ethics training and implementing programs to prevent recurrence.
- (l) Whether the contractor fully investigated the circumstances surrounding the cause for debarment and, if so, made the result of the investigation available to the debarring official."

23 As regards the period for which the order of debarment will remain effective, the guidelines state that the same would depend upon the seriousness of the case leading to such debarment.

24 Similarly in England, Wales and Northern Ireland, there are statutory provisions that make operators ineligible on several grounds including fraud, fraudulent trading or conspiracy to defraud, bribery, etc.

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."

57. In my view, it is not open for the Petitioner to contend that the Competent Authority of NDMC has not taken into consideration the factors enumerated in the guidelines in the aforementioned judgment. Petitioner had made a detailed representation dated 23.05.2024 to NDMC in which all issues as canvassed before this Court, were detailed. Petitioner pointed out that the forgery of the Turnover Certificate was unknown to the Petitioner and without its knowledge and consent. It was brought forth that show cause notices were issued to the employees engaged in submission of the bid documents and it was resolved by the Board to conduct an inquiry by appointing an independent Inquiry Officer. Statements made by the two employees were also brought to notice of NDMC along with the report of the Inquiry Officer and the fact of subsequent termination of two delinquent employees. Criminal action initiated against the employees was also brought forth in the representation. The past history of working with Government organizations, PSUs etc. was also highlighted along with the impeccable track record and proven integrity of the Petitioner. Impugned order dated 07.06.2024 reflects that the representation was taken into consideration by the Competent Authority before taking a decision in the matter along with mitigating factors. However, having considered the issues raised by the Petitioner, NDMC was of the view that blacklisting for two years was the appropriate action. The order is a reasoned order holding that Petitioner cannot claim innocence by placing the onus of forging bid documents on its employees who indulged in forgery during the course of official discharge of their duties and the beneficiary was the Petitioner as a whole. It was rightly observed that being a high value bid, Petitioner ought to have been more cautious in submission of facts and documents apart from the fact that when the documents were uploaded by the Petitioner's employees, the onus was on the Petitioner to submit factually correct information and documents after due verification. What weighed with the Competent Authority was also the fact that Petitioner admitted forgery in the document and never claimed that it was a mistake or error. Thus it cannot be urged that the Competent Authority had not applied its mind to the points raised or the mitigating factors.

58. It is true that blacklisting is a serious action and amounts to civil death of a business entity. It is equally settled that before taking a decision for blacklisting

or debaring any entity, the Competent Authority must arrive at an objective satisfaction taking into account relevant consideration and eschewing irrelevant ones. [Ref.: M/s Erusian Equipment & Chemicals Ltd. v. State of West Bengal and Another, (1975) 1 SCC 70]. It has been repeatedly affirmed by the Supreme Court that before taking action of blacklisting/debarment, principles of natural justice must be followed by issuing a show cause notice and giving an opportunity of hearing to the entity against whom action is sought to be taken to ascertain if there is any rationale behind the alleged misconduct. [Ref.: Joseph Vilangandan v. The Executive Engineer, (PWD), Ernakulam and Others, (1978) 3 SCC 36, Raghunath Thakur v. State of Bihar and Others, (1989) 1 SCC 229 and Gorkha Security Services v. Government (NCT of Delhi) and Others, (2014) 9 SCC 105]. Indisputably, in the present case, these parameters are duly met inasmuch as show cause notice was issued and Petitioner was given opportunity of presenting its case.

59. In *State of Odisha and Others v. Panda Infraproject Limited*, (2022) 4 SCC 393, the Supreme Court held that debarment is an effective method for disciplining deviant suppliers/contractors who may have committed acts of omission and commission and negated the plea that even if the alleged action was the first offence committed by the contractor, it was of no avail where the allegations were serious. Relevant paragraphs are as follows:-

"24. As per the law laid down by this Court in a catena of decisions "debarment" is recognised and often used as an effective method for disciplining deviant suppliers/contractors who may have committed acts of omission and commission. It is for the State or appropriate authority to pass an order of blacklisting/debarment in the facts and circumstances of the case. Therefore, the High Court has erred and has exceeded its jurisdiction in exercise of powers under Article 226 of the Constitution of India by quashing and setting aside the blacklisting order, that too, without advertent to the serious allegations and the act of omission and commission on the part of the contractor which led to a serious incident of collapse of ten metre slab while concrete work of the deck was going on and due to which one person died and eleven others were injured. It was specifically found that the safety arrangements were lacking severely in the construction work zone. It was also found that quality assurance was not emphasised as stipulated in the codes and manuals and as per the agreement. Therefore, the High Court ought to have considered the seriousness of the incident in which due to omission and commission on the part of the contractor in constructing the flyover one person died and eleven others were injured.

25. The next question which is posed for consideration of this Court is, whether, in the facts and circumstances of the case the contractor was required to be debarred/blacklisted permanently?

26. In *Kulja Industries [Kulja Industries Ltd. v. Western Telecom Project BSNL]*, (2014) 14 SCC 731, this Court has observed that "debarment" is never permanent and the period of debarment would invariably depend upon the

nature of the offence committed by the erring contractor. In the said decision this Court emphasised on prescribing guidelines by determining the period for which the blacklisting should be effective. It is observed and held by this Court that while determining the period for which the blacklisting should be effective, for the sake of objectivity and transparency it is required to formulate broad guidelines to be followed. It is further observed that different periods of debarment depending upon the gravity of the offences, violations and breaches may be prescribed by such guidelines.

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28. Duration of blacklisting cannot be solely per offence. Seriousness of the lapse and the incident and/or gravity of commission and omission on the part of the contractor which led to the incident should be the relevant considerations. In a given case, it may happen that the commission and omission is very grave and because of the serious lapse and/or negligence, a major incident would have taken place. In such a case, it may be the contractor's first offence, in such a case, the period/duration of the blacklisting/banning can be more than three years. However, as the said guidelines are not under challenge, we rest the matter there and leave it to the State Government to suitably amend and/or modify the said office memorandum. However, what we have observed above can be a guide while determining the period of debarment/blacklisting.

29. In the instant case, it might be true that the offence was the first offence committed by the contractor. However, considering the seriousness of the matter that due to the omission and commission on the part of the contractor a serious incident had occurred as there was a collapse of a ten metre slab while constructing a flyover in which one person died and eleven others injured, as such the contractor does not deserve any leniency. However, to debar him permanently can be said to be too harsh a punishment. But considering the subsequent OM dated 26-11-2021 reproduced hereinabove (to which as such we do not agree as observed hereinabove), we are of the opinion that if the blacklisting is restricted to five years, it may be in the fitness of things."

60. In *W.B. State Electricity Board v. Patel Engineering Co. Ltd. and Others*, (2001) 2 SCC 451, the Supreme Court emphasized on the degree of care that should be taken in a bidding process and that it was essential to maintain the sanctity and integrity of the tender process as also award of a contract. One of the decisions of the Supreme Court where the blacklisting was found to be justified also needs a mention. In *Patel Engineering Limited (supra)*, Petitioner had chosen to go back on its offer of paying a premium of Rs.190.53 crores per annum after realising that the next bidder quoted a much lower amount. The Supreme Court held that whether the decision of the Petitioner was bona fide or mala fide required a further probe

but the dereliction in which the Petitioner had indulged if not handled firmly, was likely to result in recurrence of such activity not only on part of the Petitioner but

also others who deal with public bodies. The Supreme Court also observed that there was no illegality or irrationality in the conclusion of the Respondent that Petitioner was not commercially reliable and trustworthy in the light of its conduct. In fact, in *Kulja Industries (supra)*, the party was blacklisted on account of a fraudulent withdrawal of huge amount of money which was not due to it, in collusion and conspiracy with officials of the Respondent Corporation and the Supreme Court in fact upheld the decision to blacklist the Petitioner but only directed reconsideration of the period of blacklisting.

61. The facts of this case come close to the decision of this Court in *CE Info Systems Pvt. Ltd. (supra)*, facts of which have been brought out in detail in earlier part of the judgment. At the cost of repetition, in the said case, the Court was examining an order passed by GAIL debarring the Petitioner from participating in the bidding process for three years basis an allegation that Petitioner had submitted a forged certificate indicating that it had completed certain works for IOCL for a certain value indicated therein. Petitioner did not dispute that the certificate was forged but contended that the same was furnished by its employee, who was not authorized to do so and therefore, there was no warrant for a punitive measure. Petitioner contended inter alia that the forged certificate was not issued by the authorized officer. GAIL, on the other hand, disputed that the forged certificate was not issued by the authorized officer and sought to establish his authorization. It was also contended that Petitioner did not qualify the eligibility criteria but for the forged completion certificate.

62. After looking into the rival contentions of the parties, the Court came to a conclusion that it was wholly unpersuasive that the document which was admittedly forged was not submitted by an authorized person and held that the fact that Petitioner had submitted a forged document was sufficient for GAIL to take a decision not to deal with the Petitioner and that it could not be accepted that submission of the forged document was of no consequence. The question whether Petitioner derived any benefit from the forgery was relevant only to determine the quantum of punishment and in this context, Court referred to and relied on the judgment in *Kulja Industries (supra)*.

63. Delving into the facts of the case, the Court observed that in the forged completion certificate, Petitioner indicated having completed work at a value of over Rs.39 lacs with an intent to claim eligibility to participate in the bidding process. It was held that the Executive Authority has the discretion to decline entering into any contract with the person if the authority is of the opinion that it is undesirable to enter into a contractual relationship subject to the limitation that the decision is not arbitrary and unreasonable. GAIL had issued a show cause notice to the Petitioner and gave full opportunity to meet the allegations. In the context of the argument of the petitioner that in case GAIL found document to be forged, the only recourse available with GAIL was to reject the bids and forfeit the earnest money, the Court held that notwithstanding the provisions of the contract, GAIL would always have authority to take a decision

not to enter into business with a contractor if it found that the contractor had indulged in fraudulent practices. This was held to be an inherent right available with any authority and there was no requirement to specify this in the contract. In the instant case also, principles of natural justice were complied with by NDMC and in light of the fact that admittedly a forged Turnover Certificate was submitted during the bidding process on behalf of the Petitioner, in my view, NDMC was well within its right to take the impugned decision, which cannot be termed as arbitrary or unreasonable.

64. Learned Senior Counsel for the Petitioner laboured hard to emphasise on the credentials of the Petitioner by referring to its impeccable track record and proven integrity, substantiated by its contracts with various Government as also Public Sector Undertakings, including Ministry of Petroleum and Natural Gas, Ministry of Defence, National Informatics Centre, Ministry of Power, NTPC, Airport Authority of India, Power Grid Corporation of India, IIT, Mumbai, BHEL etc., with a view to urge that these mitigating factors, when seen cumulatively do not justify blacklisting. NDMC has refuted this argument on the ground that it has no knowledge of the contracts executed by the Petitioner with other entities and is only concerned with the manner in which the bid was submitted by the Petitioner with NDMC. No doubt, past history and impeccable track record are mitigating factors to be taken into consideration while taking a decision on blacklisting or the period thereof. Even taking these factors into account, I am unable to agree with the Petitioner that in light of the serious act of forgery of a crucial bid document, which is an admitted position, the decision to debar/blacklist by NDMC was uncalled for. In *Chairman, All India Railway Recruitment Board (supra)*, the Supreme Court summarised the law on proportionality as follows:-

"36. *Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)]* applies to a decision which is so reprehensible in its defiance of logic or of accepted moral or ethical standards that no sensible person who had applied his mind to the issue to be decided could have arrived at it. Proportionality as a legal test is capable of being more precise and fastidious than a reasonableness test as well as requiring a more intrusive review of a decision made by a public authority which requires the courts to "assess the balance or equation" struck by the decision-maker. Proportionality test in some jurisdictions is also described as the "least injurious means" or "minimal impairment" test so as to safeguard the fundamental rights of citizens and to ensure a fair balance between individual rights and public interest. Suffice it to say that there has been an overlapping of all these tests in its content and structure, it is difficult to compartmentalise or lay down a straitjacket formula and to say that *Wednesbury [Associated Provincial Picture Houses Ltd. v. Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)]* has met with its death knell is too tall a statement. Let us, however, recognise the fact that the current trend seems to favour proportionality test *Wednesbury Corpn., (1948) 1 KB 223 : (1947) 2 All ER 680 (CA)]* has not met with its judicial burial and a State burial, with full honours is surely not to happen in the near

future.

37. Proportionality requires the court to judge whether action taken was really needed as well as whether it was within the range of courses of action which could reasonably be followed. Proportionality is more concerned with the aims and intention of the decision-maker and whether the decision-maker has achieved more or less the correct balance or equilibrium. The court entrusted with the task of judicial review has to examine whether decision taken by the authority is proportionate i.e. well balanced and harmonious, to this extent the court may indulge in a merit review and if the court finds that the decision is proportionate, it seldom interferes with the decision taken and if it finds that the decision is disproportionate i.e. if the court feels that it is not well balanced or harmonious and does not stand to reason it may tend to interfere.

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39. The courts have to develop an infeasible and principled approach to proportionality, till that is done there will always be an overlapping between the traditional grounds of review and the principle of proportionality and the cases would continue to be decided in the same manner whichever principle is adopted. Proportionality as the word indicates has reference to variables or comparison, it enables the court to apply the principle with various degrees of intensity and offers a potentially deeper inquiry into the reasons, projected by the decision-maker."

65. Applying the aforesaid principles, it cannot be said that the decision blacklisting the Petitioner for two years is so reprehensible in its defiance of logic or of accepted moral or ethical standards that no sensible person after application of mind would have arrived at. The decision was certainly within the range of the course of action which anyone in the given facts and circumstances would have taken. It cannot be glossed over that sanctity of tenders has to be maintained and applying any objective criteria of counter balancing the gravity of the offence with mitigating circumstances, I am unable to conclude that even the period of debarment is unreasonable.

66. The judgments relied upon by the Petitioner, in my view, do not aid the Petitioner. As noted above, in *Kulja Industries* (supra), the Supreme Court referred to the guidelines issued by the Government in USA which need to be taken into consideration by the Authority taking a decision to blacklist/debar an entity as also to determine the period thereof. All factors that Petitioner pleads in the present petition were placed before the Competent Authority and taken into consideration. Looking at the gravity of the act of forgery by the employees of the Petitioner and its vicarious liability for the acts of its employees committed in discharge of duty, a decision was taken to blacklist the Petitioner. The judgement has been followed by NDMC in letter and spirit.

67. The decision of the Supreme Court in *Blue Dreamz* (supra) is of no avail to the Petitioner. In the said case, the Supreme Court held that where the case is of

an ordinary breach of contract and explanation offered by the person concerned raises a bona fide dispute, blacklisting/debarment as a penalty ought not to be resorted to, as by debarment a person/entity is commercially ostracized resulting in serious consequences and therefore debarment should not be too readily invoked for ordinary cases of breach of contract. In the said case, the disputes between the parties related to fulfilment of reciprocal obligations in the bid document. While Appellant claimed that Respondent did not issue work orders, format of bank guarantee, refused No Objection Certificate for obtaining electricity connection etc. Respondent claimed that bank guarantee was not a mode of payment and in the joint inspection it was found that work was not completed on all allotted locations. In this backdrop, the Supreme Court concluded that these reasons fell far short of rendering the conduct of the Appellant abhorrent as to justify invocation of drastic remedy of blacklisting. In fact, in this judgment itself, the Supreme Court noted that in *Kulja Industries (supra)*, the blacklisted party had allegedly fraudulently withdrawn a huge amount of money in collusion and conspiracy with officials of corporation and in *Patel Engineering Limited (supra)*, the concerned party had gone back on its offer after realizing that the next bidder had quoted a lower amount and these two cases bring out the contrast between the cases of that ilk and others like the case in *Blue Dreamz (supra)*.

68. *Coastal Marine (supra)* was again a case which related to breach of terms of contract where the Respondent alleged that Petitioner had failed to mobilize the marine spread as required under the contract. The Court observed that although there were allegations that Petitioner had not submitted the charter party as required and without going into the controversy of whether Petitioner could submit a charter party or an MoU, it could not be ignored that the vessels were present at the required port for performance of the work in question and therefore, non-submission of the document did not warrant action of blacklisting. It was observed that this was not a case where Petitioner's conduct was so wanton and reprehensible so as to effectively disqualify the Petitioner from conducting its business for three years. On the issue of proportionality, referring to the judgment in *Kulja Industries (supra)*, the Court set aside the order of blacklisting on the ground that the impugned action was taken purely due to non-performance of contractual obligations. Court also observed that in the given facts it was apparent that a bona fide dispute was raised by the Petitioner with respect to its obligations and there was no material to indicate that IOCL had found Petitioner's conduct so reprehensible that it was undesirable to deal further with the Petitioner.

69. In *Hyundai Rotem Company (supra)*, Petitioner had challenged an order of DMRC blacklisting the Petitioner for five years on the ground that it had secured the contract on the basis of false declaration in its offer and was guilty of fraudulent practice. Referring to Clause (h) of Rule 175(1)(i) and Rule 151(iii) of GFR, where debarment action can be taken for a period not exceeding two years and the conduct of the Petitioner, the Court did not interfere with the decision of

blacklisting per se, however, taking into account the mitigating factors that Petitioner had conducted an inquiry and taken disciplinary action against its employees responsible for the submission of the bids as also the fact that there were several divisions of the Petitioner being a large organization with some amount of autonomy in conducting its business etc., the Court was of the view that period of debarment was disproportionate. It is also noticed in the judgment that during the course of arguments Court had suggested the period of debarment be reduced to 3 years but considering that this was the remit of the Respondent, the petition was disposed of with a direction to DMRC to reconsider the period of blacklisting in light of the observations made and principles in *Kulja Industries* (supra).

70. Reliance on the judgment of the Guwahati High Court in *Satya Builders* (supra) is also misplaced. Reading of the judgment shows that the said case pertained to submission of false credential documents with the bid for which the Respondent terminated the letter of award and forfeited the earnest money, bank guarantee and performance bank guarantee to the tune of Rs.3,08,93,889.65 along with imposing penalty of debarring/blacklisting for five years. The Guwahati High Court did not interfere in forfeiture of the amount but held that penalty of blacklisting was harsh and set aside the same but without any reasoning. This judgment, with due respect, does not persuade this Court as there is no reasoning as to why blacklisting order was interfered with besides the fact that the Court did not think it fit to interfere with forfeiture of a huge amount in light of the serious and grave conduct of the Petitioner in furnishing false credential documents with the bid.

71. For the aforesaid reasons, the impugned order warrants no interference by this Court in exercise of its writ jurisdiction and the present petition is dismissed along with pending application.

72. It is, however, made clear that nothing stated in this judgment will have any bearing in the pending criminal case referred to above and the same shall be decided on its own merit.