

Ref: No.: DATA/MSPARK/BD/NHAI/2024-2025/126

Date: 02nd September 2024

To,
Regional Officer,
National Highways Authority of India
G 5&6 , Sector 10 , Dwarka,
New Delhi – 110075

Sub: Reopening of Infracon Portal and Removing Blacklisting Status

Dear Sir,

Please refer the debarment order dated 30.05.2024 issued vide letter number 12001/1/RO-W-UP/Agra Bypass/23298. We have filed a writ case WRIT - C No. - 5398 of 2024 and the Hon'ble high court has quashed the debarment order issued vide Letter no. 2024: AHC-LKO:58162-DB dated 27.08.2024.

Since based on debarment order of dated 30.05.2024 you have acknowledged Infracon to block our site for further bidding as it is showing blacklisted till date, and there is no change in status on Infracon is found whereas Hon'ble High Court has already passed the order on 27.08.2024.

Hence, you are requested to inform the Infracon about the high court decision and to open our Infracon portal and remove the blacklisting status with immediate effect without further delay which is showing on Infracon Portal for M/s Data Technosys Engineers Pvt. Ltd. and M/s MSPARK Futuristics & Associates.

Sincerely Yours,

M/s Data Technosys Engineers Pvt. Ltd. in association with
M/s MSPARK Futuristics & Associates



C B Raman
Authorized Signatory

Enclosure: As above

Cc:

1. PS to Secretary, Ministry of Road Transport & Highways, New Delhi
2. PS to Managing Director, NHIDCL, New Delhi
3. Principal Secretary, UP PWD Lucknow (U.P)
4. Regional Officer, Morth, Lucknow (U.P)
5. Engineer-in-Chief, UP, PWD, Lucknow (U.P)
6. Chief General Manager (Tech.)-UP, NHAI, New Delhi
7. Project Director, NHAI, PIU, Agra- with the direction to upload on datalake portal
8. Web-Admin- for circulating this letter to NHAI

Court No. - 3

Case :- WRIT - C No. - 5398 of 2024

Petitioner :- M/S Data Technosys (Eng.)Pvt. Ltd. Thru.
Authorized Representative Shri Manish Kumar

Respondent :- National Highways Authority Of India And
Another

Counsel for Petitioner :- Neeraj Kumar Singh

Counsel for Respondent :- Sarvesh Kumar Dubey

Hon'ble Mrs. Sangeeta Chandra,J.

Hon'ble Brij Raj Singh,J.

1. Heard Shri J.N. Mathur, learned Senior Advocate assisted by Shri Neeraj Kumar Singh and Shri Rajeev Rai, learned counsel for the petitioner and Shri Sarvesh Kumar Dubey, Advocate who appears for the respondents.

2. This writ petition has been filed with the following main prayers:-

"(i). issue a writ order or direction in the nature of certiorari quashing the Debarment order Later 30.5.2004 issued by the respondent National Highways Authority of India against the petitioner (Anx-1).

(ii). issue a writ order or direction in the nature of Certiorari quashing the show Cause Notice dated 29/27.05.2013 issued by the respondent National Highways Authority of India to the petitioner Annexure 8 to this writ petition ;

(iii). issue a writ, order or direction in the nature of mandamus directing the respondents not to take any action in furtherance of the debarment order dated 30.5.2024 as Annexure 1 to the writ petition ;

(iv). issue any other writ, order or direction of an appropriate nature which the Hon'ble Court may deem fit and proper under the facts and circumstances of the case ;

(v). To allow this writ petition and award costs of the petitioner."

3. It is the case of the petitioner that respondents had issued a NIT/Request for Proposal (REP) for providing "Consultancy Services for (i) Preparation of Project Feasibility Report (in short 'PFR') cum Detailed Project Report (in short 'DPR') of four laning of Agra by-pass (northern) connecting left over portion of various National Highways/Expressways surrounding the Agra City in the State of U.P. (hereinafter referred to as "Project-1") on

20.07.2017.

4. The petitioner participated in the said bid and being H1, petitioner was awarded the contract on 14.12.2017. A contract agreement was signed between the parties on 08.02.2018. Some additional work of Consultancy Services was also requested to be carried out by the petitioner by letter dated 04.04.2018, with respect to preparation of PFR and DPR of construction of inner Ring Road between Deori Road to NH-3 (approximate 8 kms). The petitioner submitted DPR for additional work also (hereinafter referred to as 'Project-II').

5. On 27/29.05.2023, the respondents issued a show cause notice alleging that the petitioner had put his reliability and credibility into question and Authority is liable to proceed with actions as envisaged under the Contract and granted opportunity of 14 days to submit a reply.

6. The petitioner submitted its reply on 12.6.2023, explaining its position and rebutting all the allegations made in the show cause notice. On 10.08.2023, a meeting was arranged for personal hearing by the respondents wherein the petitioner was called to explain its case. One of the partners of the consortium had appeared in the said meeting. On 22.08.2023, the respondents directed the petitioner to submit remedial measures for discrepancies found in the DPR, failing which necessary action as per contract agreement would be taken by the competent authority.

7. On 04.09.2023, petitioner requested the respondents to close the case initiated by show cause notice dated 27/29.05.2023 and requested for release of remaining fees. The respondents intimated the petitioner by letter dated 30.09.2023 that the contractor had pointed out about additional discrepancies in the DPR which would necessitate additional land acquisition which may cause delay in the DPR. In the said letter, a threat was extended

to the petitioner that the respondents would proceed against the petitioner as per provisions of the contract.

8. The petitioner submitted a reply on 31.10.2023 with regard to the minutes of the meeting dated 10.08.2023 drawn by the respondents and also filed objection to the proposed action to be taken against the petitioner. Without any further hearing in the matter, the petitioner has been served a debarment order dated 30.05.2024 through E-mail on 04.06.2024. The petitioner has been debarred from future participation in any works of Ministry of Road Transport & Highways Government of India/National Highways Authority of India/NHIDCL/State PWD for a period of One year as per Clause 7.4.2 of the General Conditions of Contract and further a penalty of Rs.12,59,990/- has been imposed in accordance with Clause 7.3.1 of the contract agreement.

9. Learned counsel for petitioner had pointed out that initially show cause notice that was issued to the petitioner on 27/29.05.2023, there is no mention about the punishment proposed to be given to the petitioner. It has only been mentioned that for the alleged aforesaid discrepancies, the respondents shall take action as per the provisions of the Contract. Such show cause notice was vague and in violation of the judgment rendered by the Hon'ble Supreme Court in the case of **Gorkha Security Services vs. Government (NCT of Delhi) and others** reported in **(2014) 9 SCC 105**.

10. Learned counsel for petitioner has also referred to the judgment rendered in **UMC Technologies Private Limited vs. Food Corporation of India and another (2021) 2 SCC 551** wherein the Supreme Court has observed that show cause notice must spell out clearly as to the penalty proposed to be imposed or its contents be described in such a manner that it can be clearly inferred that there is an intention on the part of the Issuer of the notice to blacklist/debar and there is a clear intention

which can be gathered from the contents of such notice so that the noticee is adequately informed and a meaningful opportunity to submit a reply against a show cause notice against such black listing/debarment is available to the noticee. Since the notice was vague, any of the penalty which are mentioned in paras 7.3. and 7.4. of the contract agreement could have been imposed upon the petitioner for the alleged discrepancies in the DPR.

11. Learned counsel for the petitioner has further placed reliance upon various judgments mentioned as under:-

(i) M/s. Erusian Equipment and Chemicals Ltd., vs. Union of India and others (1975) 1 SCC 70 (Paras 15 and 19) ;

(ii) Raghunath Thakur vs. State of Bihar and others (1989) 1 SCC 229 (Para 4) ;

(iii). Kulija Industries Ltd., vs. Chief General Manager, Western Telecom Project, BSNL and others (2014) 14 SCC 731 (Para 17 and 28.2) ;

(iv). Vet India Pharmaceuticals Limited vs. State of U.P. and another (2021) 1 SCC 804 (Paras 10 and 12)."

12. Learned counsel for the petitioner has taken us to the contents of the show cause notice and also the correspondence between the parties undertaken thereafter and the order impugned dated 30.05.2024.

13. Shri Sarvesh Kumar Dubey, learned counsel for respondents has raised a preliminary objection regarding the maintainability of the writ petition challenging the order impugned, which imposes a penalty of almost Rs.12,59,990/- and also debars the petitioner for a period of One year. It has been pointed out that the Arbitrator can look into all or any of the dispute arising from the Contract under Section 17 and it has also been pointed out that till such time that the Arbitrator is appointed under Section 9,

the Commercial Court concerned can also look into the grievance of the petitioner and pass appropriate orders with regard to black listing.

14. Learned counsel for the respondents has pointed out the show cause notice and also the correspondence undertaken thereafter between the parties including the deficiencies pointed out in the DPR which had caused loss of more than Rs.84 crores to the respondents. It has been pointed out that the revised DPR/remedial measures suggested by the petitioner would have entailed further land acquisition and also lead to not only cost overrun but also time overrun.

15. Learned counsel for the respondents has pointed out the letters dated 16.11.2022 and 24.11.2022 respectively, wherein the discrepancies in the DPR submitted by the petitioner have been detailed and the difficulties that were going to be faced by the respondents for such discrepancies in taking remedial measures have also been detailed. It has been submitted that in the letter dated 24.11.2022, there is a specific mention of the respondents proposing to take action under Paragraph 7.3.1(ii) of the contract agreement.

16. It has been submitted that these two letters were issued much before show cause notice which was issued in May, 2023 and the respondents were in constant touch with the petitioner, as is evident from the letter dated 24.11.2022 written to them wherein also mention has been made that action can be taken under Clause 7.3 and 7.4 of the General Conditions of Contract agreement dated 08.02.2018.

17. Learned counsel for the respondents have also pointed out a letter dated 09.01.2023, where mention has been made regarding action being proposed as per Clause 7.3 and 7.4 of General Conditions of Contract. It has been pointed out that the petitioner's firm was so irresponsible

that it did not carry out any detailed survey of the area and the Gas Authority of India Limited Pipe-lines which were running were being affected and the Gas Authority of India Limited also wrote a letter to the National Highways Authority of India which entailed a revision of the DPR submitted by the petitioner.

18. It is evident from the order dated 30.05.2024 that NHAI was financially burdened with additional expenditure for construction of 30 culverts due to Gail Gas Pipe lines being found running at Ch. 1+502, Ch.5+631 and from Ch.8+157 to Ch.10+000. The interchange and re-alignment of the service road lead to additional construction. Moreover, shifting of GAIL Gas Pipeline for almost two kms and shifting of Water Pipeline of the Indian Oil Corporation Limited and the interchange of Agra by-pass also entailed a lot of expenses not only in terms of cost overrun but also in terms of time overrun, which is more significant regarding requirement of additional land acquisition to be carried out of 0.4683 hectares. It has been submitted that the total cost of the changes/remedial measures, because of the deficiencies in the DPR provided by the petitioner was more than Rs.84 crores but the respondents have only imposed a penalty of Rs.12,59,990/- on the petitioner, as per the terms of the contract.

19. It is also been argued that the debarment is only for a period of one year. Learned counsel for the respondents have also referred to several judgments reported in **N.H.A.I. vs. Ganga Enterprises and another (2003) 7 SCC 410 (Para 6) ; Deep Industries Limited vs. Oil and Natural Gas Corporation Ltd and another (2020) 15 SCC 706 (Paras 9, 18, 19); Pimpri Chinchwad Municipal Corporation & others vs. Gayatri Construction Company and another (2008) 8 SCC 172 (Paras 6, 8, 12, 13, and 16) thereon and State of U.P. and others vs. Bridge and Roof Company (India) Limited (1996) 6 SCC 22 (Paras 16, 21)** to press his

preliminary objection regarding the maintainability of the writ petition.

20. It is further been submitted that the counter affidavit that has been filed by the respondent showing the conduct of the petitioner from time to time has not been specifically controverted in the rejoinder affidavit and the conduct of the petitioner, being of such a nature, as has been mentioned in the counter affidavit to which no specific rebuttal has come forward in the rejoinder affidavit. The debarment for one year as mentioned in the impugned order is in fact a very less penalty that has been imposed.

21. Learned counsel for the respondents has specifically pointed out the observations made by the Hon'ble Supreme Court in State of **Odisha and others vs. Panda Infra Projects Limited (2022) 4 SCC 393** (Paras 23, 24, 25, 26, 28) thereof regarding duration of blacklisting and how it is to be governed by the nature of the lapse noticed on the part of the contractor and also the judgment rendered by the Supreme Court in the case of Kulija Industries (supra) and Paragraphs 27 to 28 thereof.

22. Having gone through the said judgment, and having heard learned counsel for the parties at length, we have perused the correspondence undertaken between the parties before issuance of the show cause notice dated 29.05.2023 and also the correspondence that has been undertaken thereafter including the minutes of meeting dated 10.08.2023. Although the respondents have specifically mentioned about their intention to take action under Clause 7.3 and 7.4 of the General Conditions of Contract in their other correspondence in the show cause notice that was issued, only a vague reference has been made that action shall be taken as per the provisions of the contract. There is no specific mention in the show cause notice regarding proposed blacklisting/debarment order, although it can be inferred from paragraph 7.3 and 7.4 of the General Conditions of Contract that this may be one of

the penalties that can be additionally imposed.

23. In view of the law settled by the Supreme Court, this Court is of the considered opinion that any show cause notice that is issued to the noticee must contain a specific mention of the penalty proposed to be imposed for the lapse, if any, noticed by the respondents-authority.

24. We, therefore, set aside the impugned order dated 30.05.2024 only to the extent of debarment of the petitioner for a period of One year as mentioned in Clause 7.4.2 of the General Conditions of Contract leaving it open for the respondents to issue a fresh show cause notice within a week from the date of receipt of copy of this order to the petitioner mentioning clearly the action proposed to be taken by them so that the noticee is fully informed regarding the allegations and the proposed penalty and the petitioner shall on service of such show cause notice through E-mail, submit its reply within ten days thereafter.

25. An appropriate order shall be passed by the respondents taking into consideration the reply submitted by the petitioner within a further period of two weeks thereafter.

26. Since all the material regarding the correspondence undertaken between the parties right from November, 2022 onward is already available with the petitioner, it is expected that no adjournments or time extensions be sought by the petitioner.

27. The writ petition stands disposed of.

(Brij Raj Singh, J.) (Sangeeta Chandra,J.)

Order Date :- 27.8.2024

Pks

Email**Support INFRACON**

Fwd: Reopening of Infracon portal and Removing Blacklisting Status

From : Abhijit Kulkarni <abhijitkulka.385n@gov.in>
Subject : Fwd: Reopening of Infracon portal and Removing Blacklisting Status
To : Support INFRACON <support-infracon@gov.in>
Cc : KRISHNA TIWARI <kk.tiwari07@nhidcl.com>

Tue, Sep 10, 2024 01:29 PM

 1 attachment

Thank You.

Regards,

Lt Col Abhijit M Kulkarni
General Manager (Information Technology)
NHIDCL, Delhi
011-26768960

From: deepaksaxena@nhai.org
To: "Abhijit Kulkarni" <abhijitkulka.385n@gov.in>
Sent: Friday, September 6, 2024 6:55:51 PM
Subject: Fwd: Reopening of Infracon portal and Removing Blacklisting Status

Sent from my iPhone

Begin forwarded message:

From: "Chairman, NHAI" <chairman@nhai.org>
Date: 6 September 2024 at 6:40:59 PM IST
To: "Member Admin, NHAI" <memberadmin@nhai.org>
Cc: "Jain M.K , CGM(Tech)" <mk.jain@nhai.org>, "Saxena Deepak,GM (IT)" <deepaksaxena@nhai.org>, "Dhal Ajay , GM (T)" <akdhal@nhai.org>
Subject: FW: Reopening of Infracon portal and Removing Blacklisting Status

From: DATA AGRA <dataagra18@gmail.com>
Sent: 06 September 2024 18:34
To: RO West UP <rowestup@nhai.org>
Cc: Chairman, NHAI <chairman@nhai.org>; ps-morth@nic.in; rolkorth@gmail.com; PIU Agra <agra@nhai.org>; md@nhidcl.com; support-infracon@gov.in
Subject: Re: Reopening of Infracon portal and Removing Blacklisting Status

REMINDER - 2

Dear sir,

Please find the letter attached herewith.

With Regards,
Data Technosys Engineers Pvt Ltd in association with
MSPARK Futuristics & Associate

On Wed, Sep 4, 2024 at 6:21 PM DATA AGRA <dataagra18@gmail.com> wrote:

REMINDER - 1

Dear sir,

Please find the letter attached herewith.

With Regards,
Data Technosys Engineers Pvt Ltd in association with
MSPARK Futuristics & Associates

On Mon, Sep 2, 2024 at 7:59 PM DATA AGRA <dataagra18@gmail.com> wrote:

Dear sir,

Please find the letter attached herewith.

With Regards
Data Technosys Engineers Pvt Ltd in association with
MSPARK Futuristics & Associates

 **Reminder-2.pdf**
2 MB
