



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO.9366 OF 2024

BNC Power Projects Limited

A Company Incorporated under the
provisions of the Companies Act 1956,
Having its Registered Office at 3rd Floor,
Mantri Alpine, Above Crystal Honda
Showroom, Bangalore Mumbai Highway,
Bavdhan Budurk, Pune through
Mr. Girish B. Chaudhari Director

... Petitioner

V/s.

1. Maharashtra State Electricity
Transmission Co. Ltd.

Through its Chairman and
Managing Director

A Company Incorporated under the
provisions of Companies Act 1956,
Having its Registered Office at 8th Floor,
Prakashganga, Plot No-C-19, E- Block,
Bandra – Kurla Complex, Bandra (E). 400051.

2. The Chief Engineer (Projects)

Having its Registered Office at 8th Floor,
Prakashganga, Plot No-C-19, E-Block,
Bandra – Kurla Complex, Bandra (E). 400051.

... Respondents

Mr Janak Dwarkadas, Senior Advocate with Mr. Sharan Jagtiani,
Senior Advocate a/w Mr. Hrishikesh Ram More i/by Suraj Dessai
Almida for the Petitioner.

Mr. Anil Sakhare, Senior Advocate i/by Mr. Abhijeet Joshi for the
Respondents.

**CORAM : DEVENDRA KUMAR UPADHYAYA, CJ. &
ARIF S. DOCTOR, J.**

RESERVED ON : 9TH MAY 2024

PRONOUNCED ON : 28TH JUNE 2024

JUDGEMENT : (PER ARIF S. DOCTOR, J.)

The challenge in the present Petition is to an order dated 14th March 2024, by which Respondent No.1 (*"the Respondent"*) has debarred the Petitioner for a period of one year, from participating in all tenders floated by the Respondent. The Respondent is the Maharashtra State Electricity Transmission Company Limited, which is a statutory authority within the definition of "State" under Article 12 of the Constitution of India. The Petitioner is a registered vendor with the Respondent, and has in the past, executed various projects for and on behalf of the Respondent.

2. Before adverting to the rival contentions, it is useful to set out the following facts: -

- i. In the year, 2018, the Respondent had, vide an order dated 7th May 2018 debarred the Petitioner for a period of one year i.e. upto 6th May 2019 from participating in any tenders floated by the Respondent ("*the first order of debarment*"). It is not in dispute that the Petitioner did not challenge the first order of debarment.
- ii. Thereafter, in the year 2021, vide a resolution dated 14th May 2021, the Respondent implemented a policy titled "*Policy and Procedure for Debarring/Blacklisting of Agencies from Business Dealings with MSETCL*" ("*the Debarment Policy*"). Clauses 6.1(1) and 6.1(7) of the Debarment Policy provide as follows, viz.

"6.1(1) The Directors, Proprietors, Partners, Employee(s) or owner of bidder have been either jointly or severally been found guilty of malpractices such as fraud including but not limited to

submission of Bids that contain false information, fake or forged documents/certificates/guarantees, substitution of bid document, concealment of such information in the Bid with an intent to influence the outcome of eligibility screening or at any other stage of the public bidding in his favor, etc.

6.1(7) Unauthorized use of one's name or using the name of another entity/person for purpose of public bidding."

- iii. On 31st October 2023 the Respondent issued a Show Cause Notice ("*the SCN*") to the Petitioner in which the Respondent *inter alia* set out as follows, viz.

"MSETCL has recently received various representations against M/s BNC Power Projects Limited, Pune establishing the above facts and after verifying documentary evidence it is noticed that,

A] In Tender No. SE/EHV/CC/KLWT-03/2004/05, M/s BNC Power Projects Limited, Pune has participated and become L1 by

manipulating the price bid and by tampering with Tender documents.

B] In E-Tender No.SE/EHV/O&M/C/NSK/T-17/2012-13, for Nasik zone, M/s BNC Power Projects Limited, Pune has submitted fake documents subsequently said Tender had been cancelled and refloated due to submission of fake document by M/s BNC Power Projects Limited, Pune.

*From the above, it is proved beyond reasonable doubt that, during debarment period, M/s BNC Power Projects Limited, Pune have participated in MSETCL's tenders, through Shell firm and secured an order. Further, M/s BNC Power Projects Limited, Pune has an established track record of committing fraudulent activities in competitive bidding. Hence, by this notice, M/s BNC Power Projects Limited, Pune is hereby called upon submit statement/ say in the form of Reply in response to this Show Cause Notice within 14 days from the issuance of this notice, as to **why M/s BNC Power Projects Limited, Pune should not be debarred/black-listed for future works** in MSETCL as per MSETCL Debarment and Blacklisting Policy dated: 14-05-2021.*

In the event of non-receipt of any reply within the stipulated period as above, action as deemed fit will be initiated and no representation/submissions thereafter will be accepted which may be please be noted.”

- iv. The Petitioner responded to the SCN and *inter alia* dealt with the charges levelled therein. The Respondent however proceeded to pass an order dated 23rd February 2024 debarring the Petitioner for a period of one year from participating in any tenders floated by the Respondent (*“the subsequent order of debarment”*). However, since this order was passed without affording the Petitioner an opportunity of personal hearing the Petitioner challenged the same by filing Writ Petition (L) No.6665 of 2024 essentially on the grounds of violation of natural justice. This Court, vide an order dated 29th February 2024 set aside the subsequent order of debarment and *inter alia*

directed the Respondent to afford the Petitioner an opportunity of hearing and to thereafter take an appropriate decision. The Respondent thereafter granted the Petitioner a personal hearing, after which the Petitioner passed the Impugned Order.

3. Mr. Dwarkadas, Learned Senior Counsel appearing on behalf of the Petitioner at the outset submitted that the Respondent's action of debarring the Petitioner from participating in any tender floated by the Respondent for a period of one year was plainly *mala fide*. He submitted that this was manifestly clear since (i) the Respondent had retrospectively applied the debarment policy to debar the Petitioner in respect of events well past and in respect of which no policy existed at the relevant time (ii) that the very substratum of the SCN was untenable since the entity which the Respondent alleged was an associate company (shell firm) of the Petitioner, namely M/s. Sai Hotline Services ("*Sai Hotline*") was infact an independent entity and (iii) that the Respondent

had not only dealt with Sai Hotline as an independent entity, but had expressly granted Sai Hotline approval to appoint the Petitioner as a sub-contractor in respect of the very tender which the Respondent alleged that the Petitioner had obtained by committing breach of the policy.

4. In support of his first contention he pointed out that the Respondent had suddenly in the year 2023, sought to retrospectively apply the debarment policy in respect of events which pertained to the year 2018-2019. He submitted that this conduct on the part of the Respondent was itself manifestly arbitrary, unreasonable and *malafide* since the same debarred the Petitioner on the basis of policy which admittedly did not even exist at the time when the Respondent alleged that the Petitioner committed breach of the same. He thus submitted that the Petitioner could not have been debarred for something which was not impermissible and/or for which there was no specific policy at the relevant time.

5. Mr. Dwarkadas then invited our attention to the SCN and pointed out that the basic gravamen of the charge against the Petitioner was that the Petitioner had during the previous period of debarment (i.e. 7th May 2018 to 6th May 2019), intentionally participated in a tender floated by the Respondent to obtain an order worth Rs. 56 crores in respect of the work of shifting/height raising of EHV towers infringing Mumbai-Ahmadabad High Speed Railway Corporation Limited (NHSRCL) corridor ("*NHSRCL tender*") in the name of its associate company (shell firm) i.e. M/s. Sai Hotline. He submitted that this contention, was also plainly misconceived since (a) Sai Hotline was infact an independent entity and not a shell company of the Petitioner as alleged in the SCN (b) the fact that Sai Hotline was an associate company was well known to the Respondent since the Petitioners had themselves disclosed this fact in various balance sheets filed by them, all of which the Respondent was privy to and (c) that this fact alone in no manner could be construed to mean that the Petitioner had in any manner violated the first order of debarment as set out in the said SCN since there was no specific bar against an

associate company from bidding and the debarment applied to the Petitioner alone. He submitted that several companies had associate companies/subsidiary companies and it would be absurd to suggest that an order passed against one company would *ipso facto* apply to all associate and/or subsidiary companies.

6. He then submitted that the Respondent had infact vide a letter dated 13th August 2020 expressly granted Sai Hotline approval for subletting the work in respect of the NHSRCL tender to the Petitioner. He invited our attention to the letter dated 13th August 2020 and pointed out that the same explicitly recorded as follows, viz.

"Vide letter under reference 4, you have requested for approval for subletting the work to M/s BNC Power Projects Ltd. Considering the Credentials of M/s BNC Power Projects Ltd for execution of the work of EHV Transmission lines, the permission is given for subletting the work to M/s BNC Power Projects Ltd subject to Terms and Condition number 14 of the PO i.e. "Subletting of the work shall not relieve the contractor i.e. M/s Sai Hot Line Services from any liability or

obligation under the contract and it will be the responsibility of you for the acts, defaults and neglects of the contractor, his agent, servant or workman etc.”

Basis the above, he submitted that the Respondent having expressly granted Sai Hotline the permission to sublet the said work under the NHSRCL tender to the Petitioner, it was not open for the Respondent in the year 2023 to contend that (i) the Petitioner had in any manner committed a breach of the said debarment policy or (ii) that the Respondent only became aware of this for the first time in the year 2023. He submitted that such a contention on the part of the Respondent was plainly false and made evident that the Respondent was acting in an arbitrary, unreasonable and *malafide* manner, clearly with some predetermined object in mind.

7. Mr. Dwarkadas then submitted that even assuming that clause 6.1(7) of the debarment policy was applicable, the Respondent had completely misconstrued the same. He invited our attention to clause 6.1(7) of the debarment policy and pointed out that the purport and object of the same was to

ensure that there was no benami participation in the tender process. He pointed out that a plain reading of clause 6.1(7) of the debarment policy did not prohibit bidding by an associate company, but only prohibited 'benami' bidding. He thus submitted that what clause 6.1(7) infact prohibited was (a) either the unauthorized use of one's name *or* (b) the use of the name of another entity/person for purpose of bidding. He submitted that in the facts of the present case the Petitioner had done neither, since the Petitioner had (i) not used the name of Sai Hotline to bid (ii) that Sai Hotline was an independent entity and was neither a benami nor a shell company of the Petitioner and (iii) the Respondent had specifically granted Sai Hotline to appoint the Petitioner as a sub-contractor in respect of the NHSRCL tender.

8. Mr. Dwarkadas then went on to submit that for the Respondent to claim that the Petitioner had violated clause 6.1(7) it was incumbent upon the Respondent to first demonstrate as to how it was infact the Petitioner who had bid for the NHSRCL tender in the name of Sai Hotline without the

authority of Sai Hotline or in the name of Sai Hotline. He pointed out that neither did the SCN contain any such charge/allegation nor did the Impugned Order render any such finding. He thus submitted that therefore the question of the Respondent contending that the Petitioner had violated clause 6.1(7) of the debarment policy did not arise.

9. Mr. Dwarkadas then submitted that the Respondent had infact extensively dealt with Sai Hotline as an independent entity both prior to and after the first order of debarment. In support of his contention, he invited our attention to various letters dated 27th July 2015, 20th October 2015, 11th February 2016, 27th September 2016, 25th March 2017, 30th March 2017 and 20th April 2017, issued by the Respondent to Sai Hotline and by which Sai Hotline had been independently allotted various works by the Respondent. He thus submitted that there was no merit in the Respondent's contention that Sai Hotline was not an independent agency but was a mere shell company of the Petitioner.

10. Mr. Dwarkadas then submitted that though the debarment policy contained a provision for appeal, the same was really in the nature of an appeal from Caesar to Caesar. He pointed out that the Impugned Order was passed by a panel comprising of the Chairman & Managing Director, Director (Projects), Director (finance) and Chief Legal Advisor and the appeal from such decision was to the Board of Directors of the Respondent which essentially comprised of the same individuals who had passed the Impugned Order. He thus submitted that the alternate remedy prescribed was purely illusory in the present case. He thus submitted that the Petitioner had no option to approach this Hon'ble Court by way of the present Writ Petition.

11. Basis the above, he submitted that the Petition deserves to be allowed.

12. *Per contra*, Mr. Sakhare, Learned Senior Counsel appearing on behalf of the Respondent highlighted that that the first order of debarment had been passed in view of the fact

that the Respondents had found that the Petitioner had in the tender floated by Bihar State Power Transmission Company Limited (BSPTCL) in 2017, made use of forged and/or fabricated documents as result of which the Petitioner was debarred till 6th May 2018 from participating in any tender floated by the Respondent. He pointed out that the Petitioner had not challenged the first order of debarment and had thus accepted the very serious charges levelled against the Petitioner. He submitted that given this, the question of the Petitioner participating in any tender process through an associate /shell company would naturally be impermissible.

13. Mr. Sakhare then invited our attention to the Additional Affidavit filed by the Respondent to point out that there could be no manner of doubt that Sai Hotline was an associate/shell company of the Petitioner. He pointed out that (i) the Petitioner's Annual Report for the year 2016-17 and 2019-20 listed Sai Hotline under as "*Associates*", (ii) the partners of Sai Hotline were blood relatives of the Directors of the Petitioner Company and (iii) that the Director of the Petitioner, namely one

Mr. Rajesh Chaudhary had attended a meeting held on 1st November 2023 in respect of the NHRCL tender and had signed the attendance sheet on behalf of Sai Hotline. He then invited our attention to paragraph 20 of the Impugned Order where all these facts were set out and pointed out that the Petitioner had not denied any of this. Basis this, he submitted that there could be no manner of doubt that Sai Hotline was an associate/shell company of the Petitioner.

14. Mr. Sakhare then submitted that there was absolutely no merit in the Petitioner's contention that the Respondent could not have retrospectively applied the debarment policy. He pointed out that this contention was untenable since the power to blacklist and/or debar an entity was a power which was inherent in the Respondent. In support of his contention, he placed reliance upon the judgement of the Hon'ble Supreme Court in the case of ***Patel Engineering Limited Vs. Union of India and Another***¹ which *inter alia* held as follows, viz.

¹ (2012) 11 SCC 257

"25. The bid document is not a statutory instrument. Therefore, the rules of interpretation, which are applicable to the interpretation of statutes and statutory instruments, are not applicable to the bid document. Therefore, in our opinion, the failure to mention blacklisting to be one of the probable actions that could be taken against the delinquent bidder does not, by itself, disable the second respondent from blacklisting a delinquent bidder, if it is otherwise justified. Such power is inherent in every person legally capable of entering into contracts."

He thus submitted that there could be no manner of doubt that the Respondent had an inherent power to blacklist and/or debar any entity if there was a justifiable reason to do so.

15. Mr. Sakhare then placed reliance upon a judgement of the Hon'ble Supreme Court in the case of ***Silppi Constructions Contractors vs. Union of India and Another***² in support of his contention that the Respondent was wholly justified in debarring the Petitioner by taking into consideration the conduct of an associate and/or sister concern of the

² (2020) 16 SCC 489

Petitioner i.e. Sai Hotline. He pointed out that the Hon'ble Supreme Court had in the said judgement, held as follows, viz.

"22. It was next urged that the Division Bench erred in holding that the adverse remarks recorded against the sister company could not be gone into in the absence of any challenge by the sister company. We accept this contention. In our considered view if the tendering authority is using any adverse material of the sister company against the petitioner firm then the petitioner firm would be entitled to urge that the adverse remarks are not called for or that the adverse remarks are not justified or that the adverse remarks cannot be taken into consideration while considering the tender of the petitioner firm."

Basis the above, Mr. Sakhare submitted that the Respondent was entirely justified in debarring the Petitioner by considering the conduct of Sai Hotline.

16. Mr. Sakhare then refuted the contention of Mr. Dwarkadas that the alternate remedy of the Appeal which was provided under the debarment policy was not an efficacious one. He denied the Petitioner's contention that the appeal would be

unefficacious. He pointed out that the panel designated in the debarment policy for challenging any order of debarment comprised of Board of Directors. He thus submitted that there was no merit in the Petitioner's contention that the remedy of appeal as provided in the debarment policy was thus an empty formality as contended by the Petitioner. Basis this he submitted that the Respondent was wholly justified in passing the Impugned Order and therefore submitted that the Petition be dismissed.

17. Mr. Dwarkadas in dealing with the submissions advanced on behalf of the Respondent at the outset submitted that the Respondent could not go beyond the charge in the SCN basis which the Petitioner had been debarred. He pointed out from the Impugned Order that the only basis on which the Petitioner had been debarred was that Sai Hotline was an associate/shell company which the Respondent claimed to have become aware of only in 2023. He thus submitted reference to the facts based on which the first order of debarment was passed and/or the fact that the Director of the Petitioner had

attended the meeting on 1st November 2023 in respect of the NHSRCL tender were wholly immaterial since these were not the charges based upon which the Petitioner had been debarred. He pointed out from the impugned order that the only finding to debar the Petitioner was that Sai Hotline was an associate (shell company) of the Petitioner and nothing else.

18. He then placed reliance upon the judgement of the Hon'ble Supreme Court in the case of ***Gorkha Security Services Vs. Government (NCT of Delhi) And Others***³ to submit that charges in a SCN must be precise to enable a noticee to understand the case which has to be met. He thus submitted that since in facts of the present case, the Petitioner had been debarred solely on the ground that Sai Hotline was an associate (shell company) of the Petitioner in whose name the Petitioner had bid for the NHSRCL tender, the Respondent could *firstly*, not now travel beyond that charge and *secondly*, that was the only case which the Petitioner was required to meet.

³ (2014) 9 SCC 105

19. Mr. Dwarkadas then submitted that neither of the two judgements upon which reliance had been placed by the Respondent would be of assistance to the Respondents since neither were applicable to the facts of the present case. He first pointed out that the judgement of the Hon'ble Supreme Court in the case of **Patel Engineering Limited** (supra) would have no application since in the facts of that case the charge framed was precise and crucially was admitted unlike in the present case where the Petitioner had disputed that the Petitioner had participated in the NHSRCL tender in the name of Sai Hotline. He then submitted that even the judgment of the Hon'ble Supreme Court in the case of **Silppi Constructions Contractors** (supra) would have no application since *firstly* the said judgement was rendered in the context of a challenge to a tender and was not a case of backlisting and *secondly* in the said case there were allegations made against an entity which was accepted by such sister company/entity. He pointed out that in the present case no allegations whatsoever have been made against Sai Hotline unlike the case in **Silppi Constructions Contractors** (supra). He thus submitted that

there was no merit in the Respondents submissions and the Respondent had neither on facts or in law been able to justify passing the Impugned Order.

20. After having heard Learned Senior Counsel appearing for both sides as also considered the judgements relied upon by them, we find merit in the submissions advanced on behalf of the Petitioner. We thus find that the action of the Respondent in debarring the Petitioner in the manner in which it has been done by the Respondent cannot be sustained for the following reasons, viz.

A. At the outset it is as crucial as it is curious to note that while the SCN indeed levelled very serious charges against the Petitioner *inter alia* of the manipulation of price bid, tampering with tender documents and submitting fake documents, there is no finding to this effect in the Impugned Order. The Impugned Order proceeds to debar the Petitioner only on the ground that Sai Hotline was an associate/shell company of the

Petitioner of which fact the Respondent claims to have become aware of only in the year 2023 and on no other ground. There is absolutely no finding whatsoever on the other most serious charges levelled/set out in the SCN i.e. in respect of the manipulation and falsification of documents, etc. Therefore, what we have to see is whether the finding of the Respondent that Sai Hotline, being an associate company of the Petitioner, could entitle the Respondent in the year 2023 to debar the Petitioner on this ground alone and any action, based on the events which took place in the year 2019 and of which the Respondent was aware of, can be said to be arbitrary, unreasonable and mala fide.

- B. Therefore, leaving aside for the moment the Petitioner's contention that the said policy could not have been retrospectively applied, what we find from the facts of the present case, which are borne out from the record, is that the Petitioner could not have been

said to have committed a breach and/or violation of the debarment policy for the reason that (i) the fact that Sai Hotline was an associate company was always in the knowledge of the Respondent as Petitioner had admittedly disclosed the same in the relevant balance sheets (ii) the first order of debarment was specific only to the Petitioner and made no mention of associate company etc. and (iii) *crucially*, the Respondent had expressly, vide its letter dated 3rd August 2020 granted Sai Hotline permission to appoint the Petitioner as a sub-contractor in respect of the NHSRCL tender.

- C. Thus, we find it incredulous for the Respondent to contend in the SCN that the Petitioner had breached the debarment policy when infact the Respondent has expressly granted Sai Hotline permission to appoint the Petitioner as the sub-contractor for the NHSRCL tender in the year 2020 itself. It is thus equally unstatable for the Respondent to contend that the

Respondent became aware of the fact that Sai Hotline was an associate company of the Petitioner only in the year 2023.

D. We therefore have no hesitation in holding that in the present case, it is not open for the Respondent to contend that the Petitioner had breached the debarment policy, because even if we were to accept the contention of the Respondent, the very conduct of the Respondent makes manifestly clear that the Respondent had expressly condoned any such alleged breach by *inter alia* permitting Sai Hotline to appoint the Petitioner as a sub-contractor in respect of the NHSRCL tender. It is thus we find that it is not open for the Respondent to contend that Petitioner had violated the debarment policy.

E. On the aspect of alternate remedy, it is now more than well settled that the mere existence of an alternate remedy would not by itself oust the jurisdiction of the

High Courts in the exercise of its discretionary powers. In this context it is useful to set out the observations of the Division Bench of the Allahabad High Court in the case of ***Dr. Ram Manohar Lohia Institute of Medical Sciences and Ors. vs. Charu Mahajan and Ors.***⁴ which held as follows, viz.

"There cannot be any quarrel on the legal proposition that exercise of jurisdiction under Article 226 of the Constitution of India by the High Courts is discretionary. There is also no dispute to the legal principle that availability of alternative remedy provided by the relevant statute is not an absolute bar to entertain a writ petition; rather the High Court has discretion whether to entertain the writ petition or not bearing in mind the facts of the case being brought before the Court. One of the self-imposed restrictions on entertaining a writ petition is that this Court should not normally entertain the writ petition where effective and efficacious alternative remedy is available, however, simultaneously it should also be borne in mind that mere availability of an alternative remedy not exhausted by the party approaching this Court invoking writ jurisdiction, does not oust the

4 MANU/UP/1069/2023

jurisdiction of the Court that will render a writ petition not maintainable."

Thus, it is clear that the mere existence of an alternate remedy would not by itself affect the discretionary jurisdiction under Article 226 of the Constitution of India.

- F. In the present case, we find it fit to exercise our jurisdiction under Article 226 of the Constitution of India because we unhesitatingly find that the Respondent has indeed acted in a not only in a most arbitrary, unreasonable and *malafide* manner but also as we have already noticed, in a most curious manner. We say so because, (i) the Respondent has suddenly in the year 2023 sought to retrospectively apply the debarment policy to events/facts which took place in 2019 (ii) these events/facts were clearly within the knowledge of the Respondent well prior to 2023 (iii) No reasoning has been provided in respect of the very

serious allegations raised in the SCN in respect of manipulation of price bid, tampering with tender documents and submitting fake documents in the Impugned Order and (iv) accepting the Respondent's contention, that the power to blacklist is inherent, the fact that the Respondent has chosen not to exercise this inherent power but to specifically apply a policy which came into force in 2021 to the events of 2019. Also, *most curiously*, the Respondent does not appear to have taken any action against Sai Hotline, the very entity which the Respondent has claimed the Petitioner has bid through for the NHRCL tender. It is thus considering the totality of these facts, we find it fit to exercise our jurisdiction under Article 226 of the Constitution of India given that in our view, the conduct of the Respondent is patently arbitrary, unreasonable and *malafide*.

G. We find that the judgments in case of ***Patel Engineering*** (supra) as also ***Silppi Constructions***

(supra) do not in any manner aid the case of the Respondent. The facts in both judgements and the context in which they came to be delivered are entirely different from the facts in hand. We accept the contention that the power to blacklist/debar an entity is an inherent power, however even such power must be exercised in a bonafide manner and not in an arbitrary and/or capricious manner, which is precisely what has been done in the present case. We say so only because the Respondent has itself for reasons which we are unable to fathom and for which no explanation was forthcoming from the Respondent, expressly permitted the Petitioner to act as sub-contractor in respect of the NHRCL tender. This being so, it is not open to the Respondent to do an *volte facie* by now debarring the Petitioner solely on the ground that Sai Hotline is an associate company, when the Respondent expressly permitted Sai Hotline to appoint the Petitioner as sub-contractor for the NHRCL tender.

H. Equally, the judgement in the case of ***Silppi Construction*** (supra) does not aid the case of the Respondent. The said judgement was rendered in the context of a tender matter and did not pertain to blacklisting of tenderer but regarding rejection of a bid submitted by a sister concern company. Also, in the case of ***Silppi Construction*** (supra) the sister company had admitted the breach whereas in the present case as stated above the Respondent had not taken any steps against Sai Hotline. Therefore, the judgement in ***Silppi Construction*** (supra) would not be applicable to the facts and circumstances of this case.

21. Hence for the aforesaid reasons, we allow the Petition in terms of prayer clauses (a) and (b).

22. No order as to costs.

(ARIF S. DOCTOR, J.)

(CHIEF JUSTICE)