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

\+ O.M.P.(I) (COMM.) 250/2026

M/S BAFNA GLOBAL VENTURE PVT. LTD. .....Petitioner

Through: Mr. Tanmay Mehta, Mr. Pranav Sarthi, Ms. Prachi Dhingra, Mr. Udit Bajpai, Mr. Ayush Raj, Mr. Utkarsh Vatsa, Advocates
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versus

NATIONAL COUNCIL OF EDUCATIONAL RESEARCH AND TRAINING (NCERT) & ANR. .....Respondents

Through: None.

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA

O R D E R

% 24.06.2026

1. The present petition has been filed under Section 9 of the Arbitration and Conciliation Act, 1996 ("Arbitration Act") seeking urgent order/directions to restrain the respondent no. 1, including, its officers, agents, and representatives, and/or employees from invoking the Bank Guarantee no. 0005NDDG00220426 for a sum of Rs.6,09,20,000/- (Rupees Six Crore Nine Lakh Twenty Thousand Only) furnished by petitioner, pursuant to the order dated 22nd June, 2026.

2. Learned counsel appearing for the petitioner submits that by the impugned order dated 22nd June, 2026, the respondent no. 1 has arbitrarily terminated the GeM Contract dated 01st December, 2025, forfeited the

aforesaid Bank Guarantee with immediate effect and has debarred/blacklisted the petitioner for a period of two years from participation in procurement process of National Council of Educational Research and Training ("NCERT").

3. It is submitted that the action taken by the respondent no. 1 is completely arbitrary, and the impugned order is in gross violation of the Principles of Natural Justice, as no hearing had been granted to the petitioner before passing of the same.

4. It is submitted that the petitioner had invoked *force majeure* in relation to GeM Contract, in view of the fact that the bleaching agent for the purpose of manufacturing of paper, i.e., Hydrogen Peroxide was not available on account of war in Iran. He, thus, submits that the petitioner who had to supply paper to respondent no. 1 under the GeM Contract, could not fulfil the balance supply of paper.

5. He submits that by way of the impugned order, a common Blacklisting and Termination Order has been issued, without any oral hearing to the petitioner. He further submits that none of the submissions as made by the petitioner in the reply to the Show Cause Notice dated 13th April, 2026 was considered. He further submits that mere contractual breach does not entail action for blacklisting.

6. Learned counsel appearing for the petitioner relies upon the judgment of the Supreme Court in the case of ***A.K.G. Construction and Developers Pvt. Ltd. Versus State of Jharkhand and Others, 2026 SCC OnLine SC 520***, and in particular relies upon paragraphs 22 to 24, which are reproduced as under:

"xxx xxx xxx

22. ***Returning to the facts of the present case, at the outset, it is apparent that the show cause notice dated 04.06.2024 does not purport to be a show cause notice for blacklisting at all. It perhaps expects the contractor to assume that it is for termination as well as for blacklisting. Even if we accept the submissions of Mr. Kumar Anurag Singh that, as there is no provision for prior notice before termination, this show cause notice must be taken to be for blacklisting, we are of the opinion that it still falls short of the requirement of a proper show cause notice for blacklisting. This is for the reason that as the decision to blacklist is independent of the decision to terminate, the Department must demonstrate application of mind before it takes the next step of blacklisting the contractor, over an order of termination. Upon taking such a decision, it must also issue a show cause notice calling upon the contractor to explain why a consequential order of blacklisting should also not be passed. The letter must be indicative of the proposed decision to blacklist and the requirement of the contractor to respond to it. The show cause notice dated 04.06.2024 falls short of these requirements. Similarly, the final order of blacklisting, dated 23.08.2024, also does not list the reasons as to why an order of blacklisting has become necessary.***

23. *The contractual relationship between the parties is governed by two legal regimes. While GCC governs termination, the 2012 Rules govern blacklisting. Proceedings for termination should not be conflated with proceedings for blacklisting.* ***In the latter action, what is at stake is the future of the contractor. A blacklisting order assumes that the contractor is an incorrigible entity, at least for some time to come, in this case such an assumption was intended to operate for five years. For giving effect to such a premise, there has to be sufficient evidence, clear application of mind and stronger adherence to principles of natural justice.*** *The blacklisting order dated 23.08.2004 falls short of this requirement and is liable to be set aside.*

24. *As a consequence of our decision to set aside the blacklisting order, we would have required the Department to issue a fresh show cause notice indicative of the reasons as to why a blacklisting order is felt necessary and to thereby call upon the contractor to show cause. However, in view of the fact that the order of termination cum blacklisting was passed on 23.08.2024, and since then almost more than one and a half year has already passed, without there being a stay of the said order in the meantime, we are of the opinion that the*

relief to be granted can suitably be moulded by directing that the order of blacklisting will cease to operate with immediate effect. This order will benefit the appellant more than the Department, because directing issuance of a fresh show cause notice will only lead to further litigation.

xxx xxx xxx"

(Emphasis Supplied)

7. By referring to the aforesaid judgment, learned counsel appearing for the petitioner submits that the decision to blacklist is independent of the decision to terminate. Thus, in case the respondent no. 1 intended to blacklist the petitioner and also terminate the petitioner, separate Show Cause Notices in that regard ought to have been issued.

8. Learned counsel appearing for the petitioner further relies upon the judgment in the case of ***Blue Dreamz Advertising Private Limited and Another Versus Kolkata Municipal Corporation and Others, (2024) 15 SCC 264,*** and in particular, relies upon paragraph 25 of the said judgment, which reads as under:

"xxx xxx xxx

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

xxx xxx xxx"

(Emphasis Supplied)

9. By referring to the aforesaid judgment, learned counsel appearing for the petitioner submits that in cases of ordinary breach of contract, where the explanation offered by the person concerned raises a *bona fide* dispute, blacklisting/debarment as a penalty ought not to be resorted to.

10. Learned counsel appearing for the petitioner also relies upon the

judgment of the Division Bench of this Court dated 25th April, 2019 in ***LPA No. 264/2019*** titled as *"M/s Ace Integrated Solutions Ltd. Versus Food Corporation of India & Anr."*, and in particular, relies upon the following paragraphs:

> *"xxx xxx xxx*
>
> *19.* ***In fact we must remind ourselves of the consistent line of judicial opinion of the Supreme Court in the matter of blacklisting of entities by government agencies in relation to contracts, where the Supreme Court not only mandates the requirement of a show-cause notice but goes further to say that there is a requirement of hearing before a person is placed on a blacklist. This mandate arises from a convergence of two aspects : firstly, that blacklisting visits a person with a "civil consequence" inasmuch as it casts a slur, attaches a stigma and creates a barrier between the blacklisted person and State entities in matters of commercial transactions; and secondly, that the fundamentals of fair play require that a person should be afforded an opportunity to represent his case before being put on a blacklist at the hands of a State entity.*** *This has been the verdict of the three Judge Bench of the Supreme Court in the case of* ***M/s. Erusian Equipment & Chemicals Ltd. Vs. State of West Bengal &Anr****.(and a connected matter) reported as* ***(1975) 1 SCC 70,****where, addressing the issue as to whether a person who has been put on the blacklist by a State Government is entitled to a notice to be heard, the Supreme Court held as follows:-*
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> > *"12. Under Article 298 of the Constitution the Executive power of the Union and the State shall extend to the carrying on of any trade and to the acquisition, holding and disposal of property and the making of contracts for any purpose. The State can carry on executive function by making a law or without making a law. The exercise of such powers and functions in trade by the State is subject to Part III of the Constitution. Article 14 speaks of equality before the law and equal protection of the laws.* ***Equality of opportunity should apply to matters of public contracts. The State has the right to trade. The State has there (sic) the duty to observe equality. An ordinary individual can choose not to deal with any person. The Government cannot choose to exclude persons by discrimination. The order of blacklisting has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who is on the approved list is unable to enter into advantageous relations with the Government because of the order of***

blacklisting. A person who has been dealing with the Government in the matter of sale and purchase of materials has a legitimate interest or expectation. When the State acts to the prejudice of a person it has to be supported by legality.

x x x x x x

> ***"15.The blacklisting order does not pertain to any particular contract. The blacklisting order involves civil consequences. It casts a slur. It creates a barrier between the persons blacklisted and the Government in the matter of transactions. The black lists are "instruments of coercion".***
>
> *"20.Blacklisting has the effect of preventing a person from the privilege and advantage of entering into lawful relationship with the Government for purposes of gains.* ***The fact that a disability is created by the order of blacklisting indicates that the relevant authority is to have an objective satisfaction. Fundamentals of fair play require that the person concerned should be given an opportunity to represent his case before he is put on the blacklist."***

It is pertinent to note that in the case of ***Erusian Equipment****(supra), the Supreme Court was evaluating the submission made that the State Government can choose to deal with a person in whom the State has trust; that the contract in question was not under a statute; that blacklisting was an internal and confidential step; and further, that the rights under Articles 14, 19 and 21 of the Constitution do not extend to compelling a party, including the Government, to negotiate or enter into a contract.* ***It was further argued on behalf of the State that the duty to act fairly would not always mean a duty to hear an affected party; that, while public blacklisting is not confidential, departmental blacklisting is a confidential matter; and also that the rules of natural justice do not operate at the time of entering into the contract. And yet the Supreme Court held that an opportunity of hearing before blacklisting is a requirement of the fundamentals of fair play.***

xxx xxx xxx

21. Even in the recent case of ***Caretel Infotech Ltd. vs. Hindustan Petroleum Corporation Limited & Ors****. decided on 09.04.2019 and reported as* ***2019 SCC Online SC 494****, the Supreme Court has struck the same note, observing that the mere issuance of a show cause notice for visiting a bidder with the severe consequence of blacklisting, is unsustainable, in the following words:*

> *"26. We may also look at this aspect from another perspective. Blacklisting has very serious consequences.* ***A show cause notice may result in blacklisting or may not result in blacklisting. The mere show cause notice being issued, to visit such a severe consequence on a bidder, may be difficult to sustain.***
>
> *"27.The case of the appellant is further fortified by even the language used in the show cause notice. The show cause notice itself, in the last paragraph, calls upon the appellant to show cause as to why suitable action for blacklisting "should not be initiated".* ***Pursuant to the response of the appellant, the next stage would have been the initiation of the blacklisting process, if the explanation was not found satisfactory****. The term used in the blacklisting clause 20(i), on the other hand, talks about a situation where blacklisting has already been initiated. Plain English words used must be given their ordinary grammatical meaning, an aspect discussed in a little more detail hereinafter."*
>
> *Reference to the next stage, viz. initiation of the blacklisting process, in the paragraph quoted above, would in our opinion, include an opportunity of hearing being given to the party likely to be affected.* ***A mere show cause notice, unless the explanation given in the written response to such show cause notice is being accepted, is not sufficient and a noticee must have the opportunity of hearing before blacklisting.***
>
> *xxx xxx xxx"*
>
> *(Emphasis Supplied)*

11. By referring to the aforesaid judgement, learned counsel appearing for the petitioner submits that it is a fundamental of fair play that a person should be awarded an opportunity to represent his case, before being put on a blacklist at the hands of an entity.

12. Learned counsel appearing for the petitioner thus submits that the action taken by respondent no. 1 is totally illegal and arbitrary.

13. He draws the attention of this Court to the Letter dated 17th March, 2026, i.e., Document No. 10 attached to the present petition, to submit that the petitioner had invoked the *force majeure* in relation to the GeM

Contract, as back as March, 2026. The relevant portion of the Letter dated 17th March, 2026 issued by the petitioner, is reproduced as under:

> *"xxx xxx xxx*
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> In the paper industry specifically, the above developments are presently causing:
>
> 1. Severe shortage and irregular availability of waste paper, which is the principal raw material used by the OEM mill for manufacturing the contracted paper.
> 2. Sharp increase in prices of raw materials, coal, chemicals, plastic packaging material and additives used in paper manufacturing.
> 3. Significant rise in fuel, power, and transportation costs, which directly affect paper production and dispatch.
> 4. Logistical disruptions and uncertainty in freight availability affecting both raw material procurement and the movement of finished goods.
> 5. Owing to the ongoing war situation involving Iran, the supply chain for key industrial gases and chemical derivatives has been severely impacted. In particular, Hydrogen Peroxide (H_2O_2), which is a crucial input in the paper manufacturing process, is largely dependent on gas-based production linked to supplies originating from or routed through the affected regions. Our chemical suppliers have categorically informed us that their manufacturing plants have either significantly reduced operations or have been temporarily shut down due to non-availability of these gases. It is pertinent to note that hazardous chemicals such as Hydrogen Peroxide cannot be stored in large quantities due to safety and regulatory constraints.
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> *xxx xxx xxx"*

14. By referring to the aforesaid, learned counsel appearing for the petitioner submits that the issue with regard to the severe shortage of the raw material for the purpose of manufacturing of paper was brought to the notice of respondent no. 1.

15. Learned counsel for the petitioner also relies upon Document No. 16, attached to the present petition, which is the Office Memorandum ("OM") dated 29th April, 2026 issued by the Ministry of Finance, Government of India, wherein, the Government of India has specifically issued the following direction:

> *"xxx xxx xxx*
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> 3. While the term "War" is defined as an event triggering *Force Majeure* as stated above, for ample clarity it is to reiterate that the ongoing West Asia situation should be treated as war. In cases where disruptions arising from the prevailing West Asia situation have directly affected, or consequentially impacted contractual obligations (for goods and services contracts, construction/ works contracts with Government Agencies), the procuring entities may invoke Force Majeure.
>
> *xxx xxx xxx"*

16. He, thus, submits that the action as taken by the respondent no. 1 ought not to have been taken. He further submits at the time of passing the impugned order, none of the submissions as raised by the petitioner have been taken into account, and a mechanical order has been passed by the respondent no. 1.

17. The matter requires consideration.

18. This Court notes that none appears for the respondents, despite advance notice.

19. Issue notice to the respondents, by all modes.

20. Accordingly, let reply be filed by the respondents, within a period of four weeks.

21. Rejoinder thereto, if any, be filed within a period of two weeks, thereafter.

22. Considering the submissions made before this Court, it is directed that no coercive action shall be taken for invoking the Bank Guarantee bearing no. 0005NDDG00220426 dated 10th December, 2025 amounting to Rs. 6,09,20,000/-, in pursuance to the Order dated 22nd June, 2026, invoking the Bank Guarantee, till the next date of hearing.

23. Further, no coercive steps shall be taken against the petitioner, pursuant to the impugned order dated 22nd June, 2026.

24. List before the Roster Bench on 20th July, 2026.

MINI PUSHKARNA, J
(VACATION JUDGE)

JUNE 24, 2026
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