

8th April, 2025

BLACKLISTING OF A CONTRACTOR MUST BE JUSTIFIED AGAINST THE NATURE OF ALLEGED BREACH

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1. Introduction

- 1.1. Breach of contract or failure to perform a contract or abide by the terms of a contract can usually lead to termination of contract or a claim for specific performance or damages and compensation or payment of dues.
- 1.2. In a contract arising out of a tender, blacklisting of the contractor may also be available as a remedy for breach, if the tender terms provide for such.
- 1.3. In matters of tender, the parties are bound by the terms of the contract and by the provisions of the Indian Contract Act, 1872 alongwith the precedents on the issue.
- 1.4. Supreme Court and High Courts have provided that blacklisting, as a remedy for breach, cannot be applied arbitrarily.

2. **Techno Prints vs. Chhattisgarh Textbook Corporation (2025 SCC OnLine SC 343)**

- 2.1. In a tender where Techno Prints (appellant) was a successful bidder, Chhattisgarh Textbook Corporation (respondent) entered into a contract with the appellant.
- 2.2. One of the terms of the tender provided that in the event of non-fulfilment of the condition of completing the printing work by the contractor, the tenderer would have the right to put the contractor in Black List for 3 years and security deposit and EMD will be forfeited.
- 2.3. At a later stage, the respondent issued a show cause notice upon the appellant as to why it should not be blacklisted for breach of a contractual term.
- 2.4. The appellant accepted the non-fulfilment of contractual condition by reason of the covid-19 pandemic.

- 2.5. The show cause notice was challenged before the High Court of Chhattisgarh. The Single Bench dismissed the challenge on the ground that appellant had the right to reply to the show cause notice, thus, the dispute is pre-mature to be brought before a Court.
- 2.6. In the appeal against the said order, the Appellate Bench took a similar view which led to the filing of an appeal before the Supreme Court.
- 2.7. The Supreme Court considered two issues: (a) whether a challenge to a show cause notice can be entertained by a court or it is at a pre-mature stage and (b) whether nature of the breach justified the decision of calling upon the appellant to show cause as to why they should not be blacklisted.
- 2.8. In *Kulja Industries Limited vs. Chief General Manager Western Tekecom Project, BSNL [(2014) 14 SCC 731]* and *The Blue Dreamz Advertising Pvt. Ltd. vs. Kolkata Municipal Corporation (2024 SCC OnLine SC 1896)*, the Supreme Court has laid down the guiding principles which operate as the circumstances in which a contractor can be blacklisted.
- 2.9. Irrespective of the contractual terms, the breach must have been without sufficient grounds and the measures of blacklisting must be reasonable.
- 2.10. The Supreme Court observed that although the present proceeding was filed at the stage of show cause notice and blacklisting order had not been passed yet but the guiding principles need to be borne in mind before a show cause notice is issued.
- 2.11. In the facts of the present case, the Court found that the respondent did not have any reason to issue a show cause notice calling upon the appellant to explain why it should not be blacklisted.

- 2.12. The fundamental finding is that a breach of such nature does not warrant blacklisting at all, thus the question of issuing a show cause notice which may lead to an order of blacklisting does not arise at all.
- 2.13. The Court also clarified that by virtue of the contractual terms, the Authority has inherent power to blacklist a contractor but there must be reasonable ground to exercise such power.
- 2.14. An order of blacklisting is a drastic step and the law on this issue is well settled. The show cause notice or the order of blacklisting must thus not proceed without ascertaining whether the nature of alleged breach makes out a case for blacklisting.
- 2.15. There have to be strong, independent and overwhelming materials to resort to this power given the stigmatic consequences that an order of blacklisting has on a contractor.
- 2.16. On the other hand, if the nature of the breach is so deviant or aberrant so as to warrant a punitive measure, the remedy of blacklisting may be considered and justified in such circumstances.
- 2.17. These principles primarily rest on the idea that an order of blacklisting may effectively last for a pre-determined period, however, it has long-term ill-effects on the business of a contractor.
- 2.18. The Court also held that issuance of a show cause notice in most cases is an empty formality and is issued with a pre-determined mind. Higher probability is that it will lead to an order of blacklisting.
- 2.19. Since the Court found that blacklisting was not justified in this case, the show cause notice was quashed and set aside. The Court however clarified that it shall be open for the respondent to forfeit the EMD amount.
- 3. Judicial principles**
- 3.1. In *The Blue Dreamz Advertising Pvt. Ltd. vs. Kolkata Municipal Corporation (2024 SCC OnLine SC 1896)* Supreme Court has held that when the conduct of the contractor is not so abhorrent then invocation of blacklisting is an unjustifiable drastic remedy and disproportionate penalty. Any decision to blacklist should be strictly within the parameters of law and has to comport with the principle of proportionality.
- 3.2. Blacklisting was considered to be a justified punishment in *The State of Odisha vs. M/s Panda Infraproject Limited [(2022) 4 SCC 393]* as in the incident of collapse of a ten-meter concreteslab, serious lapse was found in the conduct of the contractor which had even led to deaths and injuries. In such case, the Court found debarment to be an effective method for disciplining deviant suppliers/contractors who may have committed acts of omission and commission. Further, the action of blacklisting was taken after following due procedure and after issuance of the show cause notice, thus, debarment cannot be said to be in violation of principles of natural justice.
- 3.3. In *DSS Imagetech Pvt. Ltd. vs. Indian Council of Medical Research*, the Delhi High Court, relying on various other decisions held that blacklisting of a contractor has a more far-reaching effect and adverse consequence than a mere exercise of a contractual power to claim damages or terminate the contract. Its effect is all-pervasive and in fact amounts to “civil death” of the contractor as it affects the contractor’s commercial dealings and businesses with other agencies as well. The conduct must be so reprehensible so as to invite a punitive measure and cannot be resorted to merely on account of bona fide controversies relating to contractual matters. It is a trite law that blacklisting of a contractor visits the Contractor with civil consequences in as much as it casts a slur, attaches a stigma and creates a barrier between the blacklisted person and the State entities in matters of commercial transactions.
- 4. Conclusion**
- 4.1. Blacklisting is a grave punishment and it must only arise from an action equally grave. Blacklisting as a penalty for breach cannot be imposed in the absence of compelling circumstances that justify such action.
- 4.2. The courts have plainly stated that a mere allegation of contractual breach cannot, per se, lead to an order of blacklisting.
- 4.3. Thus, tender terms which provide for such action must be interpreted and applied cautiously.
- A copy of the judgment is annexed hereto at **page 3 to 16**.

2025 SCC OnLine SC 343

In the Supreme Court of India
(BEFORE J.B. PARDIWALA AND R. MAHADEVAN, JJ.)

Techno Prints ... Appellant(s);

Versus

Chhattisgarh Textbook Corporation and Another ... Respondent(s).

Civil Appeal No. of 2025 (Arising out of SLP(C) No. 10042/2023

Decided on February 12, 2025

Advocates who appeared in this case :

Mr. Gaurav Agarwal, Sr. Adv., Mr. Chandrashekhar A Chakdabbi, Adv., Mr. Vaibhav Shukla, Adv., Mr. Himanshu Sinha, Adv., Mr. Anshul Rai, Adv., For Petitioner(s)

Mr. Ankit Mishra, Adv., Mr. Archit Mandhyan, Adv., Ms. Kanupriya Mishra, Adv., Mr. Shantanu Krishna, AOR., For Respondent(s)

ORDER

1. Leave granted.

2. This appeal arises from the judgment and order passed by the High court of Chhattisgarh at Bilaspur in Writ Appeal No. 72 of 2023, by which the writ appeal filed by the appellant herein, came to be dismissed and thereby the judgment and order passed by the Learned Single Judge, rejecting the writ petition of the appellant came to be affirmed.

3. The facts giving rise to this appeal may be summarized as under:—

(a) The appellant herein, is in the business of printing past many years.

(b) The appellant company is one of the 30 firms, registered with the Chhattisgarh Text Book Corporation (respondent no. 1 herein).

(c) The subject matter of this litigation is the show cause notice that came to be issued by the respondent no. 1 to the appellant firm, calling upon the firm to show cause as to why it should not be blacklisted for a period of three years and the EMD of Rs. 5,00,000/- (Rupees Five Lakh only), be forfeited. The appellant firm was also called upon to show cause as to why the loss incurred by the corporation, due to its default in fulfilling its terms of contract, be recovered.

4. Prima facie, it appears that the petitioner firm was declared as L-1 in one of the tenders issued by the corporation i.e. the respondent no. 1. According to the respondent no. 1, the appellant firm violated few clauses of the tender agreement.

5. The relevant clauses of the tender document/agreement which according to the respondent no. 1, have been breached, read thus:—

" 16.1 Period of supply of books maximum 90 days as per mentioned in the work order from the date of printing order. It will be imperative upon the bidder to complete the allotted printing & binding work within stipulated time period i.e. maximum 90 days as per mentioned in the work order. In emergency the CGPPN will reduce period for supply of books as per requirements. The 22/52 decision of the Managing Director in this regard will be final and binding on concerned bidder.

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16.3 If the progress of work at any stage is found slower than expected and if the Nigam is convinced that the printer will not be able to complete the work in time, the Nigam shall cancel the contract in full or in part and give it to other printer at the cost and risk of defaulting printer. In the event of such cancellation, the security deposit/EMD of the printer shall be forfeited and the printer will not be entitled to any compensation.

xxx xxx xxx

16.9 If the tenderer is awarded to the lowest rate printer on the basis of L-1 rate of group/groups and Nigam allots the printing works to the tenderer on the basis of his L1 rate (Lowest Tenderer) of group/groups then also if tenderer refuses to do the printing work or work not completed, in this condition Nigam has right to put the tenderer in BLACK LIST for 3 (Three) years and security deposit and EMD will be forfeited."

6. The show cause notice issued by the respondent no. 1 was made a subject matter of challenge, by filing writ petition before the High Court.

7. The Learned Single Judge rejected the writ petition holding as under:—

"8. Having heard the contention put forth on either side and on perusal of records what is required to be taken note of at this juncture is the opening paragraph of the order of the High Court in WPC No. 1297/2021 (Sharda Offset Printers Pvt. Ltd. v. Chhattisgarh Textbook Corporation) and the operative part of the judgment of the said writ petition is reproduced hereunder for ready reference:

"1. The challenge in this writ petition is to the order dated 02.01.2021 passed by respondent No. 1 whereby the petitioner has been blacklisted for a period of 3 years. 23. Therefore, when the order of blacklisting is compared with the show cause notice, in the instant case, it clearly spells out that the order of blacklisting exceeded the grounds which were given in show cause. The main emphasis was that the petitioner has received paper material in excess of bank guarantee for which the agreement contains measures under Clause 6.1.4. The blacklisting was made under Clauses 13.3 & 13.6 of the agreement with respect to furnishing of bank guarantee. Even Clause 3 was not part of the show cause. The show cause notice was only confined to Clause 13.3 & 13.6. Reading of clause 13.3 & 13.6 would show that they are in general terms as Clause 13.3 purports that any failure to fulfill contractual obligations or breach of any provisions of agreement, may render the bidder to be blacklisted. Clause 13.6 further purports that if the printer is found to influence any staff of the Nigam in any unauthorised manner will also be blacklisted. In the Statement of Chinta Ram Sahu and in police enquiry against him, nothing was found against the petitioner and omnibus inference cannot be drawn that the petitioner had influenced the staff of the Corporation and had influenced the Police, thereby the petitioner was liable to be blacklisted. 24. Applying the principles laid down by the Supreme Court, I am of the view that the blacklisting order in this case travelled beyond the scope of show cause notice, as such, is liable to be quashed. Accordingly the order dated 02.01.2021 is quashed. With the above observations, this writ petition is allowed."

9. The plain reading of the aforesaid order would clearly give an indication that the challenge in the earlier round of litigation was confined to the order of blacklisting. Further that the High Court had only tested the order of blacklisting qua the show cause notice that was earlier issued on 13.04.2020 while deciding the writ petition. The High Court at no point of time had precluded the respondents from conducting an inquiry and proceeding in accordance with law. It had only found the order of blacklisting earlier passed on 02.01.2021 to be bad in law and contrary to the contents of the show cause notice dated 13.04.2020.

10. The plain reading of the averments of the show cause notice would by itself show that the respondents have made certain serious allegations against the petitioner in respect of the lifting of the papers from the respondent-Corporation by material suppression of facts so far as furnishing of the Bank Guarantee is concerned.

11. Only because the earlier order of blacklisting having been quashed by the High Court would not preclude the respondent-Corporation from initiating appropriate proceedings for the irregularity committed by the petitioner, if any, in accordance with law. That it is for this reason that the petitioner has been issued with a fresh show cause notice spelling out the allegations that has been made against him. The petitioner can very well provide all the

explanations to the allegations made to the respondents supported with all relevant documents in their support. Upon such explanation being submitted the respondent authorities are duty bound to duly consider the same and after due consideration alone, can they take an appropriate decision to proceed further, if required.

12. Further, what is also reflected from the proceedings is that, subsequent to allowing of the earlier writ petition, the respondents have now issued with a detailed show cause notice to the petitioner on 14.12.2022, which is under challenge in the present writ petition. The notice would clearly give an indication of the details of the papers that the petitioner had collected for the printing and publication purpose at the different point of time from the respondent-Corporation. The core question that needs to be consider is that since there was no challenge to the show cause notice earlier and that it was order of blacklisting alone which was under challenge, would not preclude the respondents from conducting an inquiry in respect of an allegation as is reflected in the show cause notice against the petitioner.

13. The further question to be considered also is the fact that if at all if the earlier writ petition stands allowed which was exclusively challenging the order of blacklisting would it not amount to the respondents being precluded for all time to come from initiating any action in respect of any illegality which was detected by the respondents in respect of the contract entered into between the petitioner and the respondents. All the contentions and the allegations that the petitioner raises is only trying to establish the fact that the allegations leveled against the petitioner does not stand the test of law as it has already been subjected to test in the earlier round of litigation i.e. in WPC No. 1325/2021. Whereas on the perusal of the order of the earlier writ petition would clearly give an indication that the challenge in the said writ petition was only to the order of blacklisting. That it was only the order of blacklisting which was subjected to scrutiny by the writ Court and it was only the order of blacklisting which has been set aside/quashed. The writ Court in the earlier judgment in WPC No. 1325/2021 has not held that the allegations leveled against the petitioner is not made out. All that it has been held by the writ Court was that the grounds raised for blacklisting, was not reflected in the show cause notice and the order of blacklisting was traveling beyond the scope of the show cause notice.

14. Under the circumstances, the subsequent show cause notice in respect of the same contract would be sustainable and the same cannot be held to be either arbitrary or bad in law at this stage. The petitioner would have all the rights and liberty to put up their explanation so far as the allegations are concerned in their response which they are required to submit to the show cause notice. That upon such reply being furnished the authorities concerned are duty bound to duly consider the same and then take an appropriate decision whether to proceed further on the show cause notice proceedings in the light of the explanation so submitted by the petitioner or not?

15. This view of this Court stands fortified from the order of the Hon'ble Supreme Court in the case of "STATE OF UTTAR PRADESH v. BRAHM DATT SHARMA" (1987) 2 SCC 179 and "SECRETARY, MINISTRY OF DEFENCE v. PRABHASH CHANDRA MIRDHA" (2012) 11 SCC 565. This Court in the recent past in WPC No. 4431/2019 (Kavita Sharma v. State of Chhattisgarh) while deciding the matter on an inquiry report that was furnished to the petitioner therein had while deciding the writ petition on 05.12.2019 in paragraphs No. 11 to 14 has held as under:

"11. The High Court in exercise of its powers under Article 226 of the Constitution of India would not substitute itself as a fact finding body to ascertain the correctness in respect of the allegations made neither can this Court in exercise of writ jurisdiction conduct a roving enquiry against the allegations which have been levelled against the petitioner.

12. The Supreme Court in the case of State of Uttar Pradesh v. Brahm Datt Sharma [(1987) 2 SCC 179] dealing with the scope of judicial interference in disciplinary matters was of the opinion that, "the purpose of issuing show cause notice is to afford an

opportunity of hearing to the Government servant and once cause is shown and is open to the Government to consider the matter in the light of the facts and submissions placed by the Government servant, only thereafter a final decision in the matter could be taken. Interference by the Court before that stage would be premature and the Hon'ble Supreme Court went on holding that, the High Court in our opinion ought not have interfered with the show cause notice.

13. Again, the Hon'ble Supreme Court in the case of Secretary, Ministry of Defence v. Prabhash Chandra Mirdha [(2012) 11 SCC 565] in paragraph 8, 10 & 12 has held as under: — "8. The law does not permit quashing of chargesheet in a routine manner. In case the delinquent employee has any grievance in respect of the charge-sheet he must raise the issue by filing a representation and wait for the decision of the disciplinary authority thereon. 10. Ordinarily a writ application does not lie against a charge-sheet or show-cause notice for the reason that it does not give rise to any cause of action. It does not amount to an adverse order which affects the right of any party unless the same has been issued by a person having no jurisdiction/competence to do so. A writ lies when some right of a party is infringed. In fact, chargesheet does not infringe the right of a party. It is only when a final order imposing the punishment or otherwise adversely affecting a party is passed, it may have a grievance and cause of action. Thus, a charge-sheet or show-cause notice in disciplinary proceedings should not ordinarily be quashed by the court. 12. Thus, the law on the issue can be summarised to the effect that the charge-sheet cannot generally be a subject matter of challenge as it does not adversely affect the rights of the delinquent unless it is established that the same has been issued by an authority not competent to initiate the disciplinary proceedings. Neither the disciplinary proceedings nor the charge-sheet be quashed at an initial stage as it would be a premature stage to deal with the issues.

14. Keeping in view the aforesaid legal pronouncements as is laid down by the Hon'ble Supreme Court and also taking into consideration the fact that the petitioner has also submitted a detailed reply to the show-cause notice, the authorities are yet to take a decision on the show-cause notice. The present writ petition in its present form would not be sustainable. The authorities concerned are expected to take a decision objectively, considering all the submissions that the petitioner has made in the reply to the Show-Cause Notice."

16. Given the said facts, reserving the right of the petitioner to submit a detailed reply to the show cause notice, the writ petition at this juncture stands rejected."

8. The appellant being dissatisfied with the order passed by the Learned Single Judge, rejecting his writ petition went in appeal.

9. The Appellate Court dismissed the appeal, holding as under:—

"4. A careful perusal of the aforesaid part of the notice would show that it is only a show cause notice and appellant's response has been sought to decide the issue and nothing has been adjudicated to say that the respondent has already taken final decision in the matter. The learned Single Judge after detailed hearing has clearly held in paragraphs No. 9 to 14 as under:—

"9. The plain reading of the aforesaid order would clearly give an indication that the challenge in the earlier round of litigation was confined to the order of blacklisting. Further that the High Court had only tested the order of blacklisting qua the show cause notice that was earlier issued on 13.04.2020 while deciding the writ petition. The High Court at no point of time had precluded the respondents from conducting an inquiry and proceeding in accordance with law. It had only found the order of blacklisting earlier passed on 02.01.2021 to be bad in law and contrary to the contents of the show cause notice dated 13.04.2020.

10. The plain reading of the averments of the show cause notice would by itself show

that the respondents have made certain serious allegations against the petitioner in respect of the lifting of the papers from the respondent-Corporation by material suppression of facts so far as furnishing of the Bank Guarantee is concerned.

11. Only because the earlier order of blacklisting having been quashed by the High Court would not preclude the respondent-Corporation from initiating appropriate proceedings for the irregularity committed by the petitioner, if any, in accordance with law. That it is for this reason that the petitioner has been issued with a fresh show cause notice spelling out the allegations that has been made against him. The petitioner can very well provide all the explanations to the allegations made to the respondents supported with all relevant documents in their support. Upon such explanation being submitted the respondent authorities are duty bound to duly consider the same and after due consideration alone, can they take an appropriate decision to proceed further, if required.

12. Further, what is also reflected from the proceedings is that, subsequent to allowing of the earlier writ petition, the respondents have now issued with a detailed show cause notice to the petitioner on 14.12.2022, which is under challenge in the present writ petition. The notice would clearly give an indication of the details of the papers that the petitioner had collected for the printing and publication purpose at the different point of time from the respondent-Corporation. The core question that needs to be consider is that since there was no challenge to the show cause notice earlier and that it was order of blacklisting alone which was under challenge, would not preclude the respondents from conducting an inquiry in respect of an allegation as is reflected in the show cause notice against the petitioner.

13. The further question to be considered also is the fact that if at all if the earlier writ petition stands allowed which was exclusively challenging the order of blacklisting would it not amount to the respondents being precluded for all time to come from initiating any action in respect of any illegality which was detected by the respondents in respect of the contract entered into between the petitioner and the respondents. All the contentions and the allegations that the petitioner raises is only trying to establish the fact that the allegations leveled against the petitioner does not stand the test of law as it has already been subjected to test in the earlier round of litigation i.e. in WPC No. 1325/2021. Whereas on the perusal of the order of the earlier writ petition would clearly give an indication that the challenge in the said writ petition was only to the order of blacklisting. That it was only the order of blacklisting which was subjected to scrutiny by the writ Court and it was only the order of blacklisting which has been setaside/quashed. The writ Court in the earlier judgment in WPC No. 1325/2021 has not held that the allegations leveled against the petitioner is not made out. All that it has been held by the writ Court was that the grounds raised for blacklisting, was not reflected in the show cause notice and the order of blacklisting was traveling beyond the scope of the show cause notice.

14. Under the circumstances, the subsequent show cause notice in respect of the same contract would be sustainable and the same cannot be held to be either arbitrary or bad in law at this stage. The petitioner would have all the rights and liberty to put up their explanation so far as the allegations are concerned in their response which they are required to submit to the show cause notice. That upon such reply being furnished the authorities concerned are duty bound to duly consider the same and then take an appropriate decision whether to proceed further on the show cause notice proceedings in the light of the explanation so submitted by the petitioner or not?"

10. In such circumstances record to above, the appellant is here before this Court with the present appeal.

11. We have heard Mr. Gaurav Agarwal, the learned senior counsel, appearing for the appellant and Mr. Ankit Mishra, the learned counsel appearing for the respondent nos. 1 and 2, respectively.

12. We take notice of the order passed by this Court dated 17.05.2023, the same reads thus:

—
"Mr. Priyank Upadhyay, learned Advocate on Record accepts notice on behalf of the respondents. Hence, issue of formal notice to the respondents is dispensed with.

Objections to the petition, if any, be filed.

In the meanwhile, there shall be stay of further proceedings pursuant to the notice dated 14.12.2022."

13. Thus, it appears that by way of interim order, the further proceedings of the show cause notice were stayed.

14. The short point that falls for our consideration in this appeal is whether we should entertain this appeal arising from a challenge to the show cause notice.

15. The second point that falls for our consideration is whether the respondents in the facts of this case more particularly having regard to the nature of violation were justified in calling upon the appellant to show cause as to why they should not be blacklisted for a period of three years.

16. It is true that ordinarily, a Writ Court should not entertain any petition, seeking to challenge a show cause notice unless the Court is convinced that the same has been issued by an authority having no jurisdiction, or the same is tainted with mala fides.

17. Here is a case where the appellant was assigned a contract of printing books by the corporation. This contract was entered into sometime in 2020. Unfortunately, from mid 2020, the entire country was in the grip of COVID-19 pandemic. It has been fairly accepted by the appellant that the obligation in terms of the contract could not be discharged due to circumstances beyond its control. In other words, the appellant was prescribed to abide by the time period which was prescribed in the tender notice.

18. The aforesaid at best could be said to be a case of breach of contract. The only point is whether such a breach of contract would entail the consequences of getting blacklisted.

19. It is true that the terms of the tender document do provide that if the party is unable to fulfill its terms of agreement, he would be liable to be blacklisted.

20. We do not propose to test the legality and validity of such stipulation in the tender agreement. The inherent power is always there with the party floating the tender. However, we are testing its reasonableness on the basis of the facts which are before us. In other words, has the appellant done something so gross that it deserves to be blacklisted.

21. Mr. Gaurav Agarwal, the learned senior counsel appearing for the appellant would submit that one cannot blacklist or even be called upon to show cause as to why you should be blacklisted, unless there is an intent to cheat or take undue advantage which is not there in the present case. He would submit that there is nothing to indicate that the appellant deliberately defaulted. In such circumstances, the proceedings instituted against the appellant deserves to be dropped.

22. On the other hand, the learned counsel appearing for the corporation would submit that the action of blacklisting would not depend upon as to whether default of the appellant herein, was deliberate or not, or there was any intention to take undue advantage or to cheat or not. It depends upon the contravention of the contract and the damage caused to the respondents.

23. The show cause notice reads thus:

"Chhattisgarh Textbook Corporation

Office Complex, Block-B, Sector-24 Atai Nagar, Nava Raipur

No./2806/PPN/Printing/2020-21/2022 Raipur on 14/12/2022

To,

Techno Prints,

Behind Banjari Mata Mandir,

Near Heera Steel,

Rawanbhata

Raipur Chhattisgarh.

Subject : Show cause notice.

Ref:— Your letter dated 23.12.2020, 06.01.2021, 03.06.2021, 08.11.2021, 03.12.2021, 15.02.2022, 01.04.2022 regarding EMD refund for the academic session 2020-2021.

The EMD amount deposited by you in the textbook printing tender for the education session 2020-2021 has been sought through the letters referred to in the subject. In this regard, the factual details of the textbook printing done by you for the education session 2020-2021 are presented as follows-

For working on the L1 rates received from you by participating in the issued tender for the printing of textbooks under the education session 2020-2021 by the Corporation contract was done on Date 23.12.2019. In paragraph 6.1 of the textbook printing tender issued by the CG Textbook Corporation in the education session 2020-2021, the printing capacity of 08 m tonne per day for single web offset machine and 16 m tonne per day for double or more web offset machines was fixed for the printers.

Accordingly, work order for the printing work of about 1267.496 MT of textbooks is provided to you through the referred work orders as per the agreed capacity of double offset machine filled by you in the tender and L-1 in 10 groups details of which are as follows:

Order No. 3776 Date 08.01.2020

GROUP MEMBER	SUB GROUP NUMBER	NAME OF BOOK	CLASS	APPROX PAGE NO.	BOOK NO.	70 GSM PAPER QUANTITY IN M. TONNE	220 GSM COVER PAPER SHEETNO	L-1
	A	English (SZ)	5	108	236275	55.182	60250	0.2090
	A	English (SZ)	5	108	14208	3.138	3623	0.2090
	B	English (SZ)	6	128	248514	68.789	63371	0.2090
	B	English (SZ)	6	128	13698	3.792	3493	0.2090
13	B	Ganit (SZ)	7	272	2589769	152.326	66037	0.2090
17	A	Hindi (SZ)	2	104	239607	53.888	61100	0.2090
17	A	Hindi (SZ)	2	104	34201	7.692	8721	0.2090
38	A	Hindi Sargujiha -Sanskrit (SZ)	3	160	30295	10.482	7725	0.2090
38	A	Hindi Sargujiha -Sanskrit (SZ)	3	160	5396	1.867	1376	0.2090
38	B	Ganit (SZ)	4	160	214923	74.363	54805	0.2090
<i>Total</i>						431.698	330501	

Order No. 4013 Date 17.01.2020

GROUP MEMBER	SUB GROUP NUMBER	NAME OF BOOK	CLASS	APPROX PAGE NO.	BOOK NO.	70 GSM PAPER QUANTITY IN M. TONNE	220 GSM COVER PAPER SHEET NO.	L-1
	A	Vigyan (SZ)	10	360	234862	182.840	59890	0.2150
	B	English (SZ)	7	144	236402	73.616	60283	0.2090
	B	English (SZ)	7	144	9034	2.813	2304	0.2090
Total						259.269	122477	

ORDER NO. 4460 DATE 18.02.2020

GROUP MEMBER	SUB GROUP NUMBER	NAME OF BOOK	CLASS	APPROX PAGE NO.	BOOK NO.	70 GSM PAPER QUANTITY IN M. TONNE	220 GSM COVER PAPER SHEETNO	L-1
1	B	Science (SZ)	10	216	16563	7.737	4224	0.20
1	C	Ganit (SZ)	6	244	246729	130.187	62926	0.20
1	A	History and Civics (SZ)	6	128	8717	2.413	2223	0.20
20	B	Paryawaran (SZ)	7	124	239544	64.234	61084	0.2090
20	A	Hindi (SZ)	3	128	240413	66.546	61305	0.2090
20	A	Hindi (SZ)	7	128	8850	2.450	2257	0.2090
	B	Yog Siksha Part-1 (SZ)	1	56	534393	64.715	53481	0.2090
	C	Ganit (SZ)	2	180	209730	81.637	55244	0.2090
	B	Ganit (SZ)	3	196	216645	91.825	38316	0.2150
	A	Shyamala Sanskrit (SZ)	10	192	150260	62.388	1472	0.2150
	A	Shyamala Sanskrit (SZ)	10	192	5772	2.397	478792	0.2150
Total						576.529	478792	

Printing tender clause 16.1 mentions that

16.1 Period of supply of books maximum 90 days as per mentioned in the work order from the date of printing order. It will be imperative upon the bidder to complete the allotted printing & binding work within stipulated time period i.e. maximum 90 days as per mentioned in the work order. In emergency the CGPPN will reduce period for supply of books as per requirements. The decision of the Managing Director in this regard will be final and binding on concerned bidder.

In the sequence of which the printers who were given the printing work order under the printing work order A, 4460 dated 18.02.2020, were instructed to complete the printing and

delivery work within 60 days from the date of issue of the printing order as per the deadline.

In this regard, your letter was received in the office on 05.03.2020, through which you have requested to extend the time period to 90 days, while the corporation had also entered into an agreement with other 24 printers, out of which on the said date Printing work orders were also issued to 09 other printers as per the same time limit. Barring 02 organizations affiliated to you, Ramraja Printers and Pragati Printers, no objection was lodged in relation to the said printing work order by other printers.

Post textbook printing tender, in paragraph 91, provision was made for supply of paper for printing to the printers as follows:—

9.1 After issuance of letter of acceptance the selected bidder shall furnish bank guarantee/FDR valid for one year from any nationalized/schedule bank for 20% of the cost of paper required to complete the work entrusted to him. If bidder is L-1 in more than one group he may furnish bank guarantee/FDR (as mentioned above) for one or more number of groups, and CGPPN will allot the paper double the amount of bank guarantee/FDR deposited by him, for the allotted group/groups. For example- if the bidder deposits bank guarantee/FDR for one group (i.e. 20% of cost of paper required to complete the work of concerned group) than paper required for that particular/single group will be allotted but quantity of paper should not exceed double of the amount of bank Guarantee/FDR. Next allotment of paper will be done strictly after 80% supplies received in concern depot. If the progress of the printing work is found unsatisfactory then MD CGPPN reserve the right to allot the remaining work of concern group/remaining group to another printer on L-1 rate according to his capacity.

According to the above provision of the tender, you have to print textbooks by 17.02.20 about 280 MT Reel paper was supplied, against which you have submitted your complaint, in situation of date 11.03.2020, the books were supplied to the depot using only 136 MT of paper.

According to provision of Printing Tender Clause 16.3:—

16.3 If the progress of work at any stage is found slower than expected and if the Nigam is convinced that the printer will not be able to complete the work in time, the Nigam shall cancel the contract in full or in part and give it to other printer at the cost and risk of defaulting printer. In the event of such cancellation, the security deposit/EMD of the printer shall be forfeited and the printer will not be entitled to any compensation.

Accordingly, for the slow pace of printing work, you were issued notice letter No. 4825 dated 11.03.2020 by the corporation, after which you sent the letter dated 17.03.2020 to the positive branch of the corporation and gave the printing order No. 4480 dated 18.02.2020 due to non-availability of the following textbooks for positive printing, inability, was expressed in the printing work-

GROUP MEMBER	SUB GROUP NUMBER	NAME OF BOOK	CLASS	APPROX PAGE NO.	BOOK NO.	70 GSM PAPER QUANTITY IN M. TONNE	220 GSM COVER PAPER SHEETNO	L-1
	B	Science (SZ)	6	216	16563	7.737	4224	Techno
	A	Hindi (SZ)	7	128	240413	66.546	61305	Techno
	A	Hindi (SZ)	7	128	8850	2.450	2257	Techno
	A	Shyamla Sanskrit (SZ)	10	192	150260	62.388	38316	Techno

	A	Shyamala Sanskrit (SZ)	10	192	5772	2.397	1472	Techno
Total				421858	141.518	141.518	107574	

According to the approval of the Managing Director, in point A.02 of the printing order No. 4480 dated 18.02.2020, the following points were mentioned in relation to the supply of positive/CDs -

2. According to clause 13.3.1 of the tender to the printers by the Corporation As far as possible positive/CD of the books mentioned in the supply order will be given along with the printing order. In case of having only one positive set, the printers will have to take turns (sharing basis) to complete the printing work using the positive set or CD directly. Printing plate will have to be made by CTP and printed. Check the positive/CD as far as possible. After receiving the positives, in case of shortage or damage in any positives, it will be the responsibility of the printer to complete the printing work by creating new positives from the CD supplied by the corporation. Necessary terms and conditions regarding the positive/CD being supplied are attached.

According to the above paragraph, in the printing work order issued on 18.02.2020, the printing work was completed by other printers using positive/CD on sharing basis. No objection was lodged by him in this. Accordingly, you have clearly violated the provisions of clause 13.3.1 of the tender.

Again by sending a letter to the Corporation on 13.04.2020, you were informed about the closure of the printing press dated 22.03.2020, as well as a request was made to extend the printing and distribution work by 02 months from 17 April 2020 due to the Corona lockdown.

Due to Corona lockdown on behalf of the corporation, the period of printing work has been extended from 17th April 2020 to 17th May 2020 till the date of printing and distribution, till the email letter dated 28.04.2020, out of 1267.496 melons allotted by the corporation as per your printing capacity, only 549.927 melons have been printed. Final consent was given for the printing of while the other printers of the corporation completed the allotted work by continuing the printing work even during the corona lockdown.

According to the report of the NIC branch of the Corporation, the printing capacity till 22.03.2020, the date of implementation of the Corona Lockdown, by you as per 90 days (in the last 75 days, the printing work allotted by the Chhattisgarh Textbook Corporation was 1267.5 MT, out of which 15213 textbooks of Niton i.e. 11.15 percent Only the printing work was completed.

According to provision of Printing Tender Clause 16.3:—

16.3 If the progress of work at any stage is found slower than expected and if the Nigam is convinced that the printer will not be able to complete the work in time, the Nigam shall cancel the contract in full or in part and give it to other printer at the cost and risk of defaulting printer. In the event of such cancellation, the security deposit/EMD of the printer shall be forfeited and the printer will not be entitled to any compensation.

Printing and distribution work of unprinted 717.569 meter textbooks of your firm by the corporation. Printers had to be supplied and completed. Of the 1267.496 MT allocated by you, only 549.927 MT work was completed as follows:—

GROUP MEMBER	SUB GROUP NUMBER	NAME OF BOOK	CLASS	APPROX PAGE NO.	BOOK NO.	70 GSM PAPER QUANTITY IN M. TONNE	220 GSM COVER PAPER SHEET NO.	L-1
10	A	English	5	108	236275	55.182	60250	0.2090

		(SZ)						
10	A	English (SZ)	5	108	14208	3.318	3623	0.2090
10	B	English (SZ)	6	128	248514	68.789	63371	0.2090
10	B	English (SZ)	6	128	13698	3.792	3493	0.2090
13	B	Ganit (SZ)	7	272	258969	152.326	66037	0.2090
17	A(i)	Hindi (SZ)	2	104	107652	24.211	27451	0.2090
62	C(i)	Hindi (SZ)	2	104	32000	7.197	8160	0.2090
38	A	Hindi Sargujiha-sanskrit (NZ)	3	160	30295	10.482	7725	0.2090
38	A	Hindi Sargujiha-sanskrit (NZ)	4	160	214923	74.363	54805	0.2090
38	B	Ganit (NZ)	4	160	214923	74.363	54805	0.2090
17	B	English (SZ)	7	144	236402	73.616	60283	0.2090
17	B	English (SZ)	7	144	9034	2.813	2304	0.2090
20	B	Paryavaran (SZ)	3	124	239544	64.234	61034	0.2090
11	B	Science (SZ)	6	216	16563	7.737	4224	0.2090
Total					1663473	549.927	424186	

It is mentioned in printing tender clause 16.9 that:—

16.9 If the tenderer is awarded to the lowest rate printer on the basis of L-2 rate of group/groups and Nigam allots the printing works to the tenderer on the basis of his 1-1 rate (Lowest Tenderer) of group/groups then also if tenderer refuse to do the printing work or work not completed. In this condition Nigam has right to put the tenderer in BLACKLIST for 3 (Three) years and security deposit and EMD will be forfeited.

Since even after being L-1 in different groups of the tender, due to not completing the allotted textbook printing within the stipulated time period, the Corporation had to get it completed by allotting it to other printers, therefore the tender clause 16.3 and 16.9. Why not recover the said compensation from your security amount and balance deposits as per the provision of clause 16.3 and 16.9?

In the light of the above mentioned facts, you have clearly violated the provisions of section 16.1, 16.3, 13.3.

Why not invoke provision 16.9 against you? In respect of the mentioned facts, give written reply to the show cause notice issued as above within 02 weeks from the date of receipt of the notice.

(Ordered by the Managing Director)

General Manager
Chhattisgarh Textbook
Corporation
Raipur

Page number//PPN/Printing/2020-21/2022 Raipur Date//2022

Copy to.

1. Personal Assistant, Honorable President, C.G, Textbook Corporation Raipur for information.
2. Personal Assistant Managing Director C.G. Textbook Corporation Raipur for information.

General Manager
Chhattisgarh Textbook Corporation
Raipur"

(Emphasis supplied)

24. Thus, according to the Corporation the appellant herein violated the clauses 13.3, 16.1, 16.3 and 16.9 respectively of the terms of the Agreement. The sum and substance of all these clauses is that if the appellant is unable to complete the work of printing within the stipulated period of time then the consequences would be blacklisting. The Corporation rejected the say of the appellant herein that he was unable to adhere to the prescribed time limit due to the Covid-19 pandemic.

25. This Court in *Kulja Industries Limited v. Chief General Manager Western Telecom Project BSNL*, (2014) 14 SCC 731 : AIR 2014 SC 9 has made pertinent observations as regards the power of an Authority to blacklist a company on the basis of the terms of the underlying contract. In the said case, Kulja Industries (Contractor) was blacklisted by BSNL (Authority) on the allegations of having obtained fraudulent payments from the Authority. This Court in the said case set aside the order of blacklisting passed by the Authority as it had the effect of permanently affecting the business of the contractor. This Court identified the limits of powers of statutory authorities to take coercive actions against companies. This Court after examining the terms and conditions prescribed in the tender document relating to disqualification and blacklisting observed that the power to disqualify a contractor was provided for in the tender document and such power could be read as an inherent power and in terms of the same, the Authority would have to show that the supplier:

- a. Habitually failed to supply the equipment in time;
- b. The equipment supplied by the supplier did not perform satisfactorily or were not of a particular standard; or
- c. Failed to honour the bid without sufficient grounds.

26. Undoubtedly, *Kulja Industries* (supra) looked into the final order of blacklisting passed by the Authority concerned. We are still at the stage of a show cause notice. However, what is important to note, are the aforesaid three guiding situations or grounds on which the Authority may be justified in exercising its power to blacklist the contractor.

27. This Court in *The Blue Dreamz Advertising Pvt. Ltd. v. Kolkata Municipal Corp.*, 2024 INSC 589 while quashing and set aside the blacklisting order as affirmed by the High Court in almost identical facts observed as under:

1. In case there exists a genuine dispute between the parties based on the terms of the contract, blacklisting as a penalty cannot be imposed.
2. The penalty of blacklisting may only be imposed when it is necessary to safeguard the public interest from irresponsible or dishonest contractors, and
3. The Corporation being a statutory body, have a higher threshold to satisfy before passing such blacklisting order and therefore, the measures undertaken by it should be reasonable.

28. Again, the aforesaid decision of this Court was rendered in a case where the blacklisting order was already passed.

29. However, what is important for us to say is that when there are guiding principles explained by this Court as to when & in what circumstances a blacklisting order can be passed then, in our opinion such principles should also be borne in mind by the Authority at the time of

issuing a show cause notice. We say so because in the facts of a given case like the one on hand, on the face of which it could be said that there was no good reason for the Authority to issue a show cause notice calling upon the contractor why he should not be blacklisted. Why ask the contractor to face the proceedings when applying the aforesaid principles, the issue of show cause notice would be an empty formality. We are saying all this keeping in mind the peculiar facts of this case.

30. Therefore, the Authority is expected to be very careful before issuing a show cause notice. It is expected to understand the facts well and try to ascertain what sort of violation is said to have been committed by the contractor. As noted above, there is always an inherent power in the Authority to blacklist a contractor. But possessing such inherent power and exercising such power are two different situations and connotations. There may be a power but there should be reasonable ground to exercise such power.

31. To put it by way of an illustration, the Police has the power to arrest but it is not necessary that in all cases arrest must be effected. The Police should know whether at all arrest is necessary.

32. We may put it in a slightly different way. Take for instance, the show cause notice in the present case is the final order of blacklisting. The final order in any case cannot travel beyond the show cause notice. Therefore, we take the show cause notice as the final order. Whether it makes out a case for blacklisting? This should be the test to determine whether it is a genuine case to blacklist a contractor or visit him with any other penalty like forfeiture of EMD, recovery of damages etc. We say so because once an order of blacklisting is passed the same would put an end to the business of the person concerned. It is a drastic step. Once the final order blacklisting the Contractor is passed then the Contractor is left with no other option but to go to the High Court invoking writ jurisdiction under Article 226 of the Constitution and challenge the same. If he succeeds before the Single Judge then it is well and good otherwise he may have to prefer a writ appeal or LPA as the case may be. This again would lead to unnecessary litigation in the High Courts. The endeavour should be to curtail the litigation and not to overburden the High Courts with litigations of the present type more particularly when the law by and large is very well settled and there is no further scope of any debate.

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

34. Plainly, if a contractor is to be visited with the punitive measure of blacklisting on account of an allegation that he has committed a breach of a contract, the nature of his conduct must be so deviant or aberrant so as to warrant such a punitive measure. A mere allegation of breach of contractual obligations without anything more, per se, does not invite any such punitive action.

35. Usually, while participating in a tender, the bidder is required to furnish a statement undertaking that it has not been blacklisted by any institution so far and, if that is not the case, provide information of such blacklisting. This serves as a record of the bidder's previous experience which gives the purchaser a fair picture of the bidder and the conduct expected from it. Therefore, while the debarment itself may not be permanent and may only remain effective for a limited, pre-determined period, its negative effect continues to plague the business of the debarred entity for a long period of time. As a result, it is viewed as a punishment so grave, that

it must follow in the wake of an action that is equally grave.

36. In the overall view of the matter more particularly in the peculiar facts of the case, we have reached the conclusion that asking the appellant herein to file his reply to the show cause notice and then await the final order which may perhaps go against him, leaving him with no option but to challenge the same before the jurisdictional High Court will be nothing but an empty formality. Even otherwise, issuing of show cause notice if not always then at least most of the times is just an empty formality because at the very point of time the show cause notice is issued the Authority has made up its mind to ultimately pass the final order blacklisting the Contractor. In other words, the show cause notice in most of the cases is issued with a pre-determined mind. It has got to be issued because this Court has said that without giving an opportunity of hearing there cannot be any order of blacklisting. To meet with this just a formality is completed by the Authority of issuing a show cause notice.

37. We clarify that it shall be open for the respondent Corporation to forfeit the EMD of Rs. 5,00,000/-. However, the show cause notice calling upon the appellant as to why it should not be blacklisted is quashed and set aside.

38. Without saying anything further, we dispose of this appeal in the aforesaid terms.

39. Except the blacklisting part, all other parts of the show cause notice, are remained untouched.

40. Pending application(s), if any, shall stand disposed of.

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