ISOLATORS AND ISOLATORS THROUGH ITS PROPRIETOR MRS. SANDHYA MISHRA

v.

MADHYA PRADESH MADHYA KSHETRA VIDYUT VITRAN CO. LTD. AND ANR.

(Civil Appeal Nos. 2890-2891 of 2023)

APRIL 18, 2023

[DINESH MAHESHWARI AND SANJAY KUMAR, JJ.]

Contract – Imposition of penalty, debarment/blacklisting of the appellant-firm – Requirement of specific show-cause notice – Held: Cancellation orders dtd. 19.11.19 and 21.11.19 cannot be read as show-cause notice specifically for the purpose of imposition of penalty – Finality attaching to the action of cancellation cannot be read as a due notice for imposition of penalty even if the respondents chose to employ the expression 'cancelled with imposition of penalty' *in those orders – Thus, the action of the respondents in imposing the penalty without even putting the appellant to notice as regards this proposed action cannot be approved – Further, even the order debarring the appellant for a period of 3 years for default in making the requisite supplies has its own shortcomings – Appellant had indeed made substantial supplies against the purchase orders in question – On 18.09.2019, the respondent No.2 dealing with the procurement specifically informed the appellant that the supply under the purchase order in question was to be deferred – After such an order of deferment, there had not been any other communication or even indication from the respondents which would have informed the appellant to resume supplies – Debarment order was issued against the appellant without due regard to the undeniable factual situation where the entire blame could not have been foisted upon or shifted towards the appellant – Impugned orders imposing penalty and debarring the appellant are quashed and set aside.*

Practice & Procedure – Maintainability of fresh appeal after withdrawal of the earlier one and after another round of approach to the High Court – Discussed.

A **Allowing the appeals, the Court**

HELD: 1.1 Imposition of penalty cannot be approved for two major factors: The first and foremost being that in the show-cause notice dated 26.11.2019, the appellant was put to notice only as regards the proposition of debarment and in the said B **notice, nothing was indicated about the proposed imposition of penalty. Though in the cancellation orders dated 19.11.2019 and 21.11.2019, the respondents purportedly reserved their right to take appropriate steps, those orders cannot be read as show-cause notice specifically for the purpose of imposition of penalty.** C **The submissions on behalf of the respondents in this regard that the said orders dated 19.11.2019 and 21.11.2019 have attained finality do not take their case any further. Finality attaching to the action of cancellation cannot be read as a due notice for imposition of penalty even if the respondents chose to employ the expression '*cancelled with imposition of penalty*' in those** D **orders. Looking to the terms of contract, quantification of the amount of penalty (if at all the penalty is considered leviable) could not have been carried out without affording adequate opportunity of response to the appellant. That being the position, the action of the respondents in imposing the penalty without** E **even putting the appellant to notice as regards this proposed action cannot be approved. [Paras 23][470-A-E]**

UMC Technologies Private Limited v. Food Corporation of India and Anr. **(2021) 2 SCC 551;** *A.P. State Financial Corporation v. C.M. Ashok Raju and Ors.* **(1994) 5 SCC 359 : [1994] 1 Suppl. SCR 474 – relied on.**

F **1.2 Secondly, the authority concerned has proceeded to impose the maximum of penalty to the tune of 10% of the deficit supply without specifying as to why the maximum of penalty was sought to be imposed. In this regard, the relevant factors as indicated by the appellant could not have been ignored altogether.** G **Unfortunately, the High Court has totally omitted to consider this aspect of the grievance of the appellant. Though, ordinarily, for such an omission of the High Court, the course would have been to remit the issue for consideration but, no useful purpose would**

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be served by remitting such an issue in this matter. This is for the simple reason that imposition of penalty against the appellant cannot be approved because of the want of specific show-cause notice. Moreover, no specific quantum of loss has been specified by the respondents so as to justify the imposition of maximum of penalty. [Paras 23.1, 23.2][470-E-G]

1.3 Even the order debarring the appellant for a period of 3 years for default in making the requisite supplies carries its own shortcomings. The appellant had indeed made substantial supplies against the purchase orders in question. On 18.09.2019, the respondent No. 2 dealing with the procurement specifically informed the appellant that the supply under the purchase order in question is to be deferred. After such an order of deferment, there had not been any other communication or even indication from the respondents which would have informed the appellant to resume supplies. The written submissions on behalf of the respondents do not answer the root question in the matter as to how the appellant could have been made solely responsible for delay or default in supply after the communication dated 18.09.2019 when the respondents themselves informed the appellant that taking of balance delivery was being deferred (until further instructions). In the length and breadth of the arguments on behalf of the respondents, it has nowhere been pointed out if such "further instructions" were ever issued to the appellant before issuance of the cancellation orders dated 19.11.2019 and 21.11.2019 as also before issuance of show-cause notice dated 26.11.2019. That being the position, the debarment order had been issued against the appellant without due regard to the undeniable factual situation where the entire blame could not have been foisted upon or shifted towards the appellant. The impugned orders dated 23.04.2021 in W.P. No. 12075 of 2020 and dated 13.12.2021 in Review Petition are set aside; and the writ petition filed by the appellant is allowed. Impugned orders dated 30.07.2020 in debarment of the appellant and dated 17.08.2020 in imposition of penalty are quashed and set aside. Such debarment is annulled for all practical purposes and the order dated 30.07.2020 shall not operate against the rights and interests of the appellant in any future tender process. [Paras 24, 26, 26.1][470-H; 471-A-F; 472-A-C]

A *Gorkha Security Services v. Government (NCT of Delhi) and Ors.* **(2014) 9 SCC 105 : [2014] 13 SCR 617;** *Raghunath Thakur v. State of Bihar and Ors.* **(1989) 1 SCC 229 : [1988] 3 Suppl. SCR 867;** *M/s Erusian Equipment and Chemicals Ltd. v. State of West Bengal and Anr.* **(1975) 1 SCC 70 : [975] 2 SCR 674 – referred to.**

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Case Law Reference

[2014] 13 SCR 617	**referred to**	**Para 16.2**
(2021) 2 SCC 551	**relied on**	**Para 16.2**
[1994] 1 Suppl. SCR 474	**relied on**	**Para 17.1**
[1988] 3 Suppl. SCR 867	**referred to**	**Para 19.3**
[1975] 2 SCR 674	**referred to**	**Para 19.3**

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D CIVIL APPELLATE JURISDICTION: Civil Appeal Nos. 2890-2891 of 2023.

From the Judgment and Order dated 23.04.2021 in WP No.12075 of 2020 and dated 13.12.2021 in RP No.894 of 2021 of the High Court of Madhya Pradesh Principal Seat at Jabalpur.

E Vinay Navare, Sr. Adv., R. M. Sharma, Prashant R Dahat, T. R. B. Sivakumar, Advs. for the Appellant.

Bharat Singh, AAG, Ashish Pandey, Kshitiz Singh, Amit Pawan, Advs. for the Respondents.

The Judgment of the Court was delivered by

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DINESH MAHESHWARI, J.

Leave granted.

2. The present appeals are in challenge to the order dated 23.04.2021 as passed by the High Court of Madhya Pradesh, Principal G Seat at Jabalpur in Writ Petition No. 12075 of 2020 whereby the High Court partly allowed the writ petition and while maintaining the order of debarment as passed against the appellant, modified its term of operation by making the same effective from 13.02.2020 for a period of three years, instead of being effective from 30.07.2020. The appellant has also challenged the order dated 13.12.2021 in Review Petition No. 894

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of 2021, whereby the High Court dismissed the review petition against the said order dated 23.04.2021.

3. Shorn of unnecessary details, the case of the appellant has been as follows:

3.1. The appellant, being a proprietorship firm, has been in the business of manufacturing and repairing of transformers, having its plant at 83, Sector I, Industrial Area, Govindpura, Bhopal for past 30 years. The only customers of the appellant are the distribution companies (Discoms).

3.2. Two tenders, bearing numbers 494 and 532[1], were floated by the respondent Madhya Pradesh Madhya Kshetra Vidyut Vitran Company Limited[2]. In relation to TS-494, a purchase order was issued by the respondents on 30.06.2017 for the supply of 586 distribution transformers (DTR) - Level I. The period for the supply was specified as six months starting from the third month of the purchase order issue date. However, the appellant received the purchase order through email on 13.09.2017 and physically on 15.09.2017. The appellant made a request to the respondents to modify the delivery schedule due to delay of 75 days in the receipt of the purchase order, as also to adjust the rates as per Goods and Services Tax (GST), which came into effect on 01.07.2017.

3.3. The appellant has averred that despite receiving no response from the respondents, they had proceeded to submit drawings for approval on 04.10.2017, with the intention of commencing production. In addition, the appellant made two separate requests, dated 13.09.2017 and 18.11.2017, for modifications of the delivery schedule and adjustments of rates in accordance with GST. According to the appellant, on 28.11.2017, the department responded only to the request for approval of drawings and disregarded the request for rescheduling of supplies.

3.4. A revised order, incorporating GST, was issued by the respondents on 02.01.2018. However, the request for rescheduling of supplies made by the appellant was ignored and, instead, the order stated that the appellant was already running late in their supply schedule. Thereafter, a notice dated 13.02.2018 was issued alleging that the appellant was responsible for the delay in supply. The appellant, by letter

[1] Hereinafter also referred to as 'TS-494' and 'TS-532' respectively.
[2] 'MPMKVVCL', for short.

A dated 18.02.2018, responded that there was no delay on their part while againseeking modification of the delivery schedule.

3.5. It has been the case of the appellant that despite making five separate requests to reschedule the supply, no response was received from the respondents. The appellant submitted yet another letter dated
B 07.03.2018, requesting for extension of time. The appellant has stated the grievance that despite their efforts to supply Level-I transformers, starting from 02.05.2018 and delivering 300 transformers, the respondents did not reschedule the supply, and instead imposed late supply penalties on the appellant's bills; and deducted penalties to the tune of over Rs. 11 lakh from the bills of the appellant for 300 transformers.
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3.6. On the other hand, the appellant had received a purchase order from the respondents for the supply of 593 transformers for Tender No. TS-532, which was for the supply of 63 KVA and 25 KVA level-II transformers. The total requirement for the respondents and two other Discoms was around 75,000 transformers. The purchase order was issued
D on 22.02.2018 by the respondents and was received by the appellant through email on 03.03.2018. According to the appellant, as for 25 KVA transformers, they submitted the drawings for approval on 19.04.2018, which were approved by the respondents on 09.05.2018. Subsequently, the appellant began manufacturing 100 transformers of Lot-1 under the
E contract and offered the same for inspection to the respondents through a letter dated 29.05.2018. On 04.06.2018, a stage inspection was conducted, and clearance was granted on 05.06.2018.On 22.06.2018, the appellant was directed to supply the aforementioned 63 KVA Transformers to West Zone Discom (Indore) through a purchase order, which was executed without any breach.
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3.7. It has been the case of the appellant that on the intervening night of 20th and 21st August 2018, an extraordinary storm accompanied by heavy rains caused the roof of their plant to collapse. As a result, most of the raw material, which was stored for the manufacture of transformers, was destroyed. Only 50 transformers from the fourth lot
G of the aforementioned purchase order were saved, as they were complete in all respects and had already been packed up for delivery. These 50 transformers were supplied on 01.09.2018.

4. On 18.09.2019, the respondent No. 2 Chief General Manager (Procurement), MPMKVVCLsent a letter to the appellant in relation to
H TS-532 that they had decided to defer the balance deliveries of 593

Nos. of transformers under the said contract until further instructions. The relevant contents of said letter read as under: -

"No. MD/ MK /04/P-III/TS-494/2824 Bhopal, dated 18/09/2019

To,

M/s. Isolators & Isolators,

Plot No. 83 Sector. 1,

Industrial Area, Govindpura,

Bhopal – 462023 MP

Sub- Supply of BIS Certified Level- II/0433 KVA.2s KVA Conventional Distribution Transformer against Saubhagya Yojana – Deferment of Supply thereof.

Ref. This Order PO No. MD/MK/04/TS-532/P-III/2166 dated 22.02.2018.

Dear Sir,

The order under reference above has been placed on you or supply of BIS Certified Level- II/0433 KVA.2s KVA Conventional Distribution Transformer against Saubhagya Yojana. Against the scheduled deliveries of BIS Certified Level- II/0433 KVA.2s KVA Conventional Distribution Transformer as mentioned therein, it has been decided to defer the balance deliveries of the same ie. 593 Nos till further instructions.

The other terms and conditions shall be remain same."

5. However, an order dated 19.11.2019 was issued by the respondent No. 2 cancelling the supply of balance quantity of 286 Level-1 transformers under TS-494. The relevant contents of said letter are reproduced as under: -

"No. MD/MK/04/P-III/3491 Bhopal, dated: 19.11.2019

To,

M/s Isolators & Isolators,

Plot No.- 83 Sector-1,

Industrial Area, Govindpura,

Bhopal-462023 (M.P.).

Sub:- Cancellation of Purchase Order No. MD/MK/04/TS-494/P-III/1988 dated 30.06.2017 for supply of BIS Certified, Level-l, 11/0.433 KV, 25 KVA Conventional Distribution Transformers for unsupplied quantity.

Ref:- 01. This office RCA No. MDIMK/04/TS-494/P-III/1987 dated 30.06.2017

02. This office letter No. MD/MK/04/P-III/4872 dated 02.11.2018.

Purchase order MD/MK/04/P-IIl/TS-494/1988 dated 30.06.17 for supply of 586 nos. BIS Certified, Level-l, 11/0.433 KV, 25 KVA Conventional Distribution Transformers was issued to your firm. The delivery schedule of above Purchase Order was as below-

Sep17	Oct 17	Nov 17	Dec 17	Jan 18	Feb 18
98	98	98	98	97	97

Your firm has not supplied any quantity even lapse of schedule period of six months i.e. up to Feb-18. After repeated telephonic requests, a letter was issued vide letter no. MD/MK/04/TS-494P-lll/6099 dated 13.02.2018. Subsequently, 300 Nos. DTRs were supplied against above purchase Order and remaining 286 Nos. DTRs have not been supplied till date.

It was informed to your firm vide letter referred above for non-supply of 25 KVA Level-l DTRs and initiating stern action against the against your firm. In addition you were also informed that the number of DTRs equivalent to unsupplied quantity will be purchased from other firm at the risk and cost of your firm.

As per tender clause -12 delivery and supply of material of Annexure-II of TS -494 read with clause 28 cancellation of rate contract of Annexure -II the competent authority has accorded approval for cancellation of PO NO. MD/MK/04/TS-494/P-lll/1988 dated 30.06.2017 for 286 Nos. unsupplied quantity of 25 KVA DTRs with imposition of penalty.

Therefore, PO NO. MD/MK/04/TS-494/P-III/1988 dated 30.06.2017 for 286 Nos. of 25 KVA DTRs is hereby cancelled with imposition of penalty on unsupplied quantity. Other punitive action as per terms of the tender will be initiated separately."

6. Subsequently, the respondent No. 2issued another order dated 21.11.2019 cancelling the supply of the remaining quantity of transformers under TS-532 too. The relevant contents of said letter are also reproduced as under: -

"No. MD/MK/04/P-III/3593 Bhopal, dated: 21.11.2019

To,

M/s lsolators&lsolators,

Plot No. - 83 Sector-1,

Industrial Area, Govindpura,

Bhopal-462023 (M.P.)

Sub:- **Cancellation of Purchase Order No. MD/MK/04/TS-532/P-III/2166 dated 22.02.2018 for supply of BIS Certified, EEL-II, 11/0.433 KV, 25 KVA Conventional Distribution Transformers for unsupplied quantity.**

Ref:- 01. This office RCA No. MD/MK/04/TS-4532/P-III/2092 dated 20.01.2018.

02. This office letter No MD/MK/04/P-III/2824 dated 18.09. 2019.

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Purchase order MD/MK/04/P-III/TS-532/2166 dated 22.02.2018 for supply of 593 nos BIS Certified, EEL-II, 11/0. 433 KV. 25 KVA Conventional Distribution Transformers was issued to your firm. The delivery schedule of above Purchase Order was as below-

April, 18	**May, 18**	**June, 18**	**July, 18**	**Aug, 18**	**Sep, 18**
100	100	1001	00	100	93

Firm offered 100 nos. DTRs for stage inspection against the Purchase order. The inspection was carried out on 04.06.18 and stage clearance letter was issued vide letter no. 1469 dtd 05.06.18. In general procedure, after the stage clearance, firm has to offer the material for final inspection but M/s Isolators &

A Isolators, Bhopal has never offered the DTRs for final inspection till date.

It was informed to your firm vide letter referred above for non-supply of 25 KVA EEL-II DTRs and initiating stern action against your firm.

B As per tender clause 04 "Delivery of materiel" of Annexure-IV of TS - 532 read with clause 17 "Cancellation/Termination of Purchase order of Annexure -III, the competent authority has accorded approval for cancellation of PO NO. MD/MK/04/TS-532/P-III/2166 dated 22.02.2018 for 593 Nos. unsupplied quantity C of 25 KVA DTRs with imposition of penalty.

Therefore, PO NO.MD/MK/04/TS-532/P-III/2166 dated 22.02.2018 for 593 Nos. of 25 KVA DTRs is hereby cancelled with imposition of penalty on unsupplied quantity. Other punitive action as per terms of the tender will be initiated separately.

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SD/-
Chief General Manager (Proc.)
O/o MD (CZ) MPMKVVCL, Bhopal."

E 7. On 26.11.2019, a notice was issued by the respondent No. 2 asking the appellant to show-cause within 15 days as to why they should not be debarred from participating in further tenders on account of non-supply of transformers. In the said notice dated 26.11.2019, the Chief General Manager (Procurement), after referring to the background aspects relating to the purchase orders issued to the appellants; the F appellant's failure to effect the necessary supplies within time schedule; and cancellation of the purchase orders, stated as under: -

"*** *** ***

Your firm had offered 100 nos. DTRs for stage inspection against the Purchase order. The inspection was carried out on G 04.06.18 and stage clearance letter was issued vide letter no.1469 dtd 05.06.18. In general procedure, after the stage clearance, your firm were required to offer the material for final inspection but the above DTRs were not offered by your firm for final inspection.

Therefore, the PO No. MD/MK/04/P-III/TS-532/2166 H dated 22.02.18 has been cancelled vide letter no. MD/MK-04/P-

III/3593 dated 21.11.2019 with imposition of penalty on unsupplied quantity. With note that other punitive action as per terms of the tender will be initiated separately.

As per Tender Clause 17 of Annexure-III. General Terms and Condition:-

The Purchaser may upon written notice of default, terminate/cancel the purchase order/contract in whole or for a part quantity with recovery of liquidate damages at the rate of 10% of ex-works price(s) of stores not delivered by them or liability on account of risk and cost, whichever is higher in the circumstances detailed hereunder:-

17.1. If in the opinion of the Purchaser, the supplier fails to deliver the material within the time specified or during the period for which extension has been granted by the Purchaser.

17.4. In pursuance to clause no. 17.1, 17.2 &17.3 above, Purchaser maydebar the supplier/contractor for further business with Purchaser for a declared period on breach of the Purchase Order.

Since MPMKVVCL was in urgent need of 25 KVA DTRs for completion of urgent works under Government Schemes but your firm hadnot complied with the provisions of tender therefore both the purchase orders MD/MK-04/P-III/TS-494/1988 dated 30.06.17 and TS-532/2166 dated 22.02.18 have been cancelled.

In view of above default on your part, this office is sending this notice asking you to clarify as to why strict action as per tender terms should not be taken against you for blatant violation of Purchase Order andfor the large insensitivity shown by you to a number of government development schemes which were severely hit due to non-executing of Purchase Order issued upon your firm. Also intimate that why your firm should not be debarred as per Tender Provisions stated above. You have also been given sufficient time to supply the material but you have ignoredthe set timeliness persistently and knowingly.

Please submit your reply within 15 days and in case you want personal hearing then intimate to this office within 07 days from issue Of this letter, failing which, it will be presumed that you have no plausible explanation to offer in your defense and

A then this office would be constrained to take action towards debarment of your firm for non-performance in material supply. Hence kindly take due cognizance andsend your reply within time given."

8. The appellant responded to the aforementioned notice on B 30.11.2019, setting out the circumstances for which, theyhad been unable to undertake the supply against the purchase orders. However, the respondent issued an order dated 13.02.2020 debarring the appellant from participating in future tenders for a period of three years. A representation was made by the appellant on 27.02.2020 requesting the respondents to reconsider and recall the order dated 13.02.2020 but in C vain. In the said order dated 13.02.2020, the Chief General Manager (Procurement), after recounting the background aspects including the said show-cause notice dated 26.11.2019, stated and ordered as under:-

"*** *** ***

D In view of above default on your part, this office had sent a notice ofdebarring for violation of PO Terms & Conditions, asking you to clarify as towhy strict action as per tender terms should not be taken against you forblatant violation of Purchase Order and for the large insensitivity shown byyou to a number of Government Development Schemes. You were alsointimated that E why your firm should not be debarred as per Tender Provisionsstated above. You were also given 15 day's time to furnish a reply of notice ofdebarring to this office personal hearing.

Your firm vide letter no.I&I/BPL/19-20/Reply/1025 dated 30.11.2019 has submitted reply to debarring notice and your firm F could not produce anydocument/statement which restrains the firm from debarring. Your firm hasviolated Tender conditions as stipulated in TS-494 and TS-532.

Therefore, after given full opportunity and due consideration, thecompetent authority has accorded approval to recover penalty G on rejectedand unsupplied DTRs from the firm. Further. M/s Isolators, Bhopal and itsCompany/Firms should be debarred for future business for the period of 3(Three) years.

Accordingly, your firm M/s Isolators & Isolators. Bhopal havingregistered office at Plot No.-83 Sector-I, Industrial Area. H Govindpura. Bhopal-462023 (M.P.) is hereby debarred for

participating in tenders of MPMKVVCLfor a period of 3(Three) years from the date of issuance of this letter. All ofyour associated concerns and their Business dealings with this companyhave also been banned for the same period."

9. In the given circumstances, the appellant approached the Madhya Pradesh High Court, Principal Seat at Jabalpur by way of WP No. 7579 of 2020 challenging the aforesaid order dated 13.02.2020. The High Court, by its order dated 08.07.2020, set aside the order dated 13.02.2020 and permitted the respondents to pass a fresh order within 15 days after affording an opportunity of hearing to the appellant.

10. Thereafter,by a notice dated 16.07.2020, the appellant was called for hearing through video-conferencing on 20.07.2020. Duringthis video-conferencing, three representatives of the appellant including its proprietor were afforded the opportunity of hearing and thereafter, the Chief General Manager (Procurement)-respondent No. 2 proceeded to passa detailed order on 30.07.2020, while point-by-point dealing with all the relevant submissions, as made by the appellant through the letters dated 27.02.2020 and 18.07.2020 as also by the three representatives. Ultimately, the orders were maintained to the effect that penalty on rejected and unsupplied transformers shall be recovered from the appellant firm; and the appellant firm and its subsidiary/affiliated company/ firms shall stand debarred from participating in tenders of MPMKVVCL for a period of three years from date of issuance of that order.The respondent No. 2 finally ordered as under: -

"*** *** ***

Therefore, after given full opportunity and due consideration, the competent authority has accorded approval to **recover penalty on rejected and unsupplied DTRs from the firm. Further, M/s. Isolators & Isolators, Bhopal and its subsidiary/ affiliated Company/[Firms should be debarred for future business for the period of 3 (Three) years.**

Accordingly, your firm **M/s Isolators & Isolators, Bhopal having registered office at Plot No.- 83 Sector-I, Industrial Area, Govindpura, Bhopal-462023 (M.P.) is hereby debarred for participating in tenders of MPMKVVCL for a period of years from the date of issuance of this letter. All of your associated concerns and their Business dealings with this Company have also been the same period (*sic*).**"

A 11. Later, the respondent No. 2 also issued another order dated 17.08.2020, imposing penalty on the appellantto the tune of Rs.27,98,960/- in relation to TS-532, being 10% of the ex-works price of the quantity not deliveredtogether with GST @ 18%. Therelevantcontents of the said order dated 17.08.2020 read as under:-

B "*** *** ***

Purchase order MD/MK/04/P-III/TS-532/2166 dated 22.02.2018 for supply of 593 nos BIS Certified, Level-II, 11/0. 433 KV. 25 KVA Conventional Distribution Transformers was issued to your firm. For not making complete supply as per the C conditions of tender no. 532 and for violating the terms and conditions of the tender, this office vide letter no. MD/MK/P – III/3593 dated 21/11/2019 had imposed penalty for non-supply of 593 items and cancelled your order. As per letter no. 3593 dated 21/11/2019 your firm is liable to pay the penalty amount as under

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Sr No.	Particulars	Qty. (in nos.)	Ex-Works Price Rs. Per No. July, 18	Freight (in Rs.)	Total (in Rs.)
A	Ex-works + freight cost of total quantity ordered	593	40,000	750	23720000
B	Penalty amount (10% of the ex-works price of quantity not delivered)	-	-	-	2372000
C	GST 18%	-	-	-	2798960
D	Total penalty with GST	Total			2798960

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G **(Total penalty amount Rs. Twenty Seven lakh Ninety Eight Thousand Nine Hundred Sixty only)**

Therefore, you are requested to kindly deposit the penalty amount of Rs. 27,98,960/- (Rs. Twenty Seven lakh Ninety Eight Thousand Nine Hundred Sixty only) vide demand draft in the account of the company within 15 days failing which appropriate H action against your form shall be taken."

12. Being aggrieved of the aforesaid orders dated 30.07.2020 and 17.08.2020, the appellant preferred another writ petition in the High Court, being W.P. No. 12075 of 2020 that has been considered and disposed of by the impugned order dated 23.04.2021.

13. In its order dated 23.04.2021, the High Court took note of the rival submissions where on one hand, the appellant contended that the impugned orders were suffering from violation of principles of natural justice; that there was no reason recorded in the orders impugned by the respondents for taking the extreme and extraordinary measure of debarringthe appellant; that after substantial supply of transformers against purchase order No. 586, cancelling the order for supply of remaining transformers was suffering from malice in law; and that the respondents had deliberately not considered the factors regarding extraordinary rainfall and storm between 20.08.2018 and 21.08.2018, resulting in damage to the plant and loss of raw material. On the other hand, it was contended on behalf of the respondents that blacklisting or debarring was orderedafter giving full opportunity to the contractor, who was at fault in not supplying the material as per the terms of the contract;that there was nothing illegal or arbitrary in exercise of powers when the respondents took recourse to the relevant clauses of the purchase order; and that reliance of the appellant on *force majeure* clause was also misplaced, for no suchinformation was furnished within 15 days, as required by the terms of the contract.

14. Having taken note of the rival submissions, respectively in paragraphs 5 and 6 of the order impugned, in the next paragraph, the High Court proceeded to state its opinion that the order of blacklisting contained justified and plausible reasons and no case for exercising extraordinary powers under Article 226 of the Constitution of India was made out. The High Court observed that the appellant failed to substantiate the lapsesin not supplying the required transformers as per contract. Thereafter, the High Court merely observed that the second order of debarment was passed on 30.07.2020 but factually, the appellant-firm was debarred by the order dated 13.02.2020 and therefore, provided a slight modification in the manner that the period of 3 years' debarment would be reckoned w.e.f.13.02.2020. With these observations and modifications, the High Court proceeded to dispose of the writ petition filed by the appellant.The relevant passages in the order so passed by the High Court read as under: -

A "7. Considering the rival contention of the parties and perusal of record, we are also of the opinion that so far as the orderof blacklisting is concerned, it contains the reason and in no way we find those reasons unjustified. Considering the existing fact situation of the case, we find that the assigned reason appear to be *prima-facie*, plausible and are sufficient to maintain the order of blacklisting. In the circumstances, as have been set forth before us, exercising extraordinary power under Article 226 of the Constitution of India, interference in a decision making process is not permissible when the orders have been passed after following the principle of natural justice and are supported by plausible reasons. Indubitably the petitioner's firm failed to substantiate the lapses on their part for not supplying the required transformers as per the contract. We do not find any such reason available in the case holding the orders passed by the respondents illgal and arbitrary. Therefore, interference in the matter under Article 226 of the Constitution of India is not warranted. However, we have noticed that the order of debarment has been passed on 30.07.2020 restraining the petitioner from participating in further tender proceedings of respondents, but, factually the petitioner firm was debarred vide order dated 13.02.2020, the first order, which was set aside by this Court. Accordingly, the period of three years debarring the petitioner be considered to be reckoned w.e.f. 13.02.2020 and would be ended accordingly after completion of three years from the said date.

8. Accordingly, the petition is partly allowed modifying the order of debarment making the same effective w.e.f. 13.02.2020 till the period of three years."

15. At this juncture, we may also take note of the fact that as against the aforesaid order dated 23.04.2021 passed in W.P. No. 12075 of 2020, the appellant had earlier approached this Court by way of SLP(C) No. 13571 of 2021 but then, sought permission to withdraw with liberty to take recourse to other appropriate remedy in accordance with law. By the order dated 24.09.2021, the said SLP(C) No. 13571 of 2021 was, accordingly, dismissed as withdrawn with liberty as prayed. Thereafter, the appellant filed a review petition in the High Court that came to be summarily rejected by the High Court with a short order dated 13.12.2021 that reads as under:-

"On hearing learned counsels, we do not find any error apparent on the face of the record that calls for any interference.

In the absence of any error on the face of the record, this review petition is dismissed."

16. Assailing the orders so passed by the High Court, learned senior counsel for the appellant has essentially put forward two principal contentions. In the first place, it has been argued that the show-cause notice dated 26.11.2019was only about debarment but then, the respondents proceeded to pass the orders debarring the appellant for 3 years as also imposing penalty. Even in regard to the question of penalty, according to the learned counsel, as per Clause 4 of the contract, the quantum of penalty could have been from ½% to 10% for delay in delivery but the respondents have chosen to impose the maximum thereof without assigning any reason as to why the highest of such quantum was chosen. In the second place, learned counsel has contended that the order debarring the appellant and the order imposing penalty both were challenged in the writ petition but the High Court chose to consider only the challenge with respect to the order of the debarment and nothing was considered about the order imposing penalty.

16.1. With reference to the facts of the case, learned senior counsel has submitted that the appellant is manufacturer of transformers and by the very nature of its product, the distribution company like the respondents are the only purchasers and that way, the present one is a case of single purchase market. The appellant had been supplying transformers to the respondents since the year 1989 without any default or difficulties and in the totality of circumstances, delay in execution of the present purchase orders,that had occurred because of the reasons and circumstances explained by the appellant, debarment for a maximum period of 3 years and imposition of maximum penalty had been highly disproportionate and too harsh. Learned counsel has particularly referred to the fact that as regards TS-494, the appellant had supplied 300 out of 586 transformers and as regards TS-532, the appellant had supplied all the 63 KVA transformers. The want of supply of other transformers had been for the reasons explained by the appellant and entire fault could not have been attributed to the appellant alone. In this regard, learned counsel has particularly underscored the submissions that by the letter dated 18.09.2019,the respondents deferred the delivery and thereafter,there was no communicationfor withdrawing deferment. In this background,

A the order cancelling contract on 21.11.2019 for want of supply could have only been considered as arbitrary and unreasonable.

16.2. The learned counsel has also relied upon the decisions of this Court in ***Gorkha Security Services v. Government (NCT of Delhi) and Ors.*****: (2014) 9 SCC 105** and ***UMC Technologies Private Limited*** B ***v. Food Corporation of India and Anr.*****: (2021) 2 SCC 551** to submit that show-cause notice must indicate the proposed action and in the show-cause notice in question, there being no indication of the proposed action of imposing penalty, the order imposing penalty remains patently illegal and deserves to be set aside.

C 17. In the present case, while preliminarily entertaining thepetitions seeking leave to appeal, this Court had taken note of the facts regarding earlier filing of the petition, being SLP(C) No. 13571 of 2021 against the order dated 23.04.2021 passed in W.P. No. 12075 of 2020; and the appellant having withdrawn on 24.09.2021 with liberty to take recourse to other appropriate remedy in accordance with law. As noticed,thereafter, D the appellant filed a review petition in the High Court that came to be summarily rejected by the High Court after finding no error apparent on the face of the record. In this backdrop, this Court had left the question of maintainability of the petitions, particularly in challenge to the original order dated 23.04.2021 open.

E 17.1. In regard to the above question, learned senior counsel has referred to a decision of this Court in the case of***A.P. State Financial Corporation v. C.M. Ashok Raju and Ors.*****: (1994) 5 SCC 359** to submit that the first order of the High Court dated 23.04.2021 cannot be said to have attained finality. He would also submit that the order dated F 23.04.2021 suffered from several errors apparent on the face of record, including that the challenge to the order imposing penalty was not even gone into but, the High Court rejected the review petition without even examining the record.

18. *Per contra*, learned counsel for the respondents has duly G supported the orders impugned with particular reference to Clauses 13, 14 and 15 of the conditions of purchase order No. TS-494 and Clauses 8,10 and 17 of TS-532. The learned counsel would submit that since the appellant did not comply with the terms and conditions of the contract, a notice was issued on 13.02.2018 which was followed by the communications dated 02.05.2018, 12.06.2018, 16.08.2018 and H

01.09.2018 about dispatch instructions for supply of transformers Level-I. According to the learned counsel, the appellant having failed to fulfil the terms and conditions of TS-494, by the order dated 19.11.2019, the respondents rightly cancelled the said purchase order with imposition of penalty for non-supply of 286 transformers. It has been argued that the said termination order had never been challenged by the appellant and the same has attained finality. As regards the supply of 593 DTRs Level-II, the appellant was informed by the communication dated 22.02.2018 that the respondents had reserved the right to defer, reduce or reschedule the supply as per the requirement. According to the learned counsel, the appellant having failed to make the requisite supplies despite various requests, by the communication dated 18.09.2019, the appellant was informed about deferment of supply until further instructions.

19. As noticed, the aforesaid communication of deferment dated 18.09.2019 has been strongly relied upon by the learned counsel for the appellant to submit that after such communication, the respondents never issued instructions for supply or for withdrawal of such deferment and, therefore, the blame could have been shifted on the appellant.During the course of submissions, in regard to the aforesaid line of arguments, we posed pointed query to the learned counsel for the respondents and afforded him an opportunity on 28.02.2023 to take all instructions while posting the matter for further hearing. Learned counsel for the respondents has endeavoured to submit that the said communication dated 18.09.2019 is of no adverse impact on the validity of the orders passed against the appellant. As regards the said communication dated 18.09.2019 and the contentions of the appellant on that basis, the learned counsel for the respondents has further submitted the additional written submissions and having regard to the questions involved, we deem it appropriate to reproduce the relevant passages of such written submissions as follows: -

> "4. That a submission on behalf of petitioner has been made before this Hon'ble Court that vide letter dated 18.09.2019 **(Page 148 Of SLP)**, the respondent/Electricity Company himself has deferred the supply of 593 transformers of Level-II and as such, there is no fault on the part of the petitioner-firm in supplying 593 transformers. In this respect, it is most humbly submitted that the said submission on behalf of Petitioner is only to cover-up its defaults in not supplying the 593 transformers as per time schedule

prescribed. The petitioner herein has not produced any document which can be treated as against the answering respondents and as such, an adverse inference cannot be drawn against the answering respondents. The submissions made by the petitioner are contrary to the material evidence available on records, thus, same are liable to be rejected. The petitioner herein was awarded the contract on 22.02.2018 for supply of 593 transformers of level-II and in that regard a purchase order was issued along with terms and conditions of said Contract to the petitioner. It is submitted that as per terms and conditions and also admitted position is that the said supply of 593 transformers had to be made within 6 months from the date of award of said Contract/Purchase order. The Petitioner herein has not produced a single document before the forums below nor before this Hon'ble Court that he was always ready to supply the 593 transformers but the respondents refused to either accept or defer the said supply. Even after 18.09.2019, the petitioner has not produced a single evidence on record to show that he was ready to supply the said transformer which had to be supplied within 6 months from the date of purchase order i.e. on or before 22 August, 2019. After considering the gross violations of terms and conditions of supply of said transformers, virtually after an expiry of more than one year, when it was found that petitioner is not at all interested in supply the said 593 transformers, the answering respondent had no option but to terminate the said purchase order vide order dated 21.11.2019 which has never been challenged before any competent forum.

5. That it is further most respectfully submitted that even if it assumed for the sake of argument, though it is not admitted, that the answering respondents himself have deferred the supply of said 593 transformers, still the adverse inference cannot be drawn against the answering respondents on the ground that it is for the petitioner-firm who has to prove on record that the 593 transformers have always been ready for supply to the answering respondents. It is further most respectfully submitted that onus is upon the petitioner to prove that petitioner was always ready to supply the said 593 transformers but the answering respondents have refused the same or deferred the same.

6. It is further most respectfully submitted that the letter dated 18.09.2019 of answering respondents cannot be taken into consideration against the answering respondents in view of the fact that despite various opportunities and communications made to the petitioner by the answering respondents for supply of said 593 Transformers, the petitioner has not even pay any heed on that and finally has chosen not to supply the said transformers on one pretext or other. The answering respondents most humbly submit that this Hon'ble Court may kindly see the reasons given in detail while cancelling the said Purchase order vide order dated 21.11.2019 and also while declaring the petitioner blacklisted vide order dated 30.07.2020."

19.1. The learned counsel has submitted that keeping in view the past conduct of the appellant and violation of the terms and conditions of contract and purchase order, they had rightly cancelled the same and imposed penalty on unsupplied quantity by another detailed order dated 21.11.2019. It is submitted that even the said order dated 21.11.2019 has never been challenged in any forum and has attained finality. According to the learned counsel, imposition of penalty has been consequential to the aforesaid order dated 21.11.2019 and the same had been as per the terms and conditions of the rate/contract/purchase order.

19.2. With reference to the show-cause notice dated 26.11.2019 and the reply dated 30.11.2019, it has been argued that the order dated 13.02.2020 was passed after extending full opportunity of hearing to the appellant and when the said order was challenged in the High Court in Writ Petition No. 7579 of 2020 and the High Court directed the respondents to pass a fresh order after affording opportunity of hearing to the appellant, the authority concerned passed detailed speaking order dated 30.07.2020 after giving full opportunity of hearing to the appellant and after duly considering the financial loss suffered by the respondents due to non-supply of transformers.

19.3. It has been argued that the writ petition was duly defended with reference to Clause 14 of purchase order and the High Court has rightly rejected the principal contention of the appellant even while giving a partial relief of making the order of debarment effective from 13.02.2020. Thus, according to the learned counsel, no case for interference is made out. The decisions of this Court in the case of ***Raghunath Thakur v. State of Bihar and Ors.*****: (1989) 1 SCC 229**;***M/***

A ***s Erusian Equipment and Chemicals Ltd. v. State of West Bengal and Anr.*: (1975) 1 SCC 70**;and an order dated 13.12.2019 passed in **Civil Appeal No. 9417 of 2019- *M/s Daffodills Pharmaceuticals Ltd. and Anr. v. State of U.P. and Anr.*** have been relied upon.

20. Having given thoughtful consideration to the rival submissions
B and having examined the record, we are clearly of the view that the impugned order as passed by the High Court in practically denying the principal relief claimed by the appellant cannot be approved and the writ petition filed by the appellant deserves to be allowed to the extent of annulling the effect of debarment and quashing the imposition of penalty.

C 21. As regards the principles of law applicable to the case, we need not elaborate on various decisions cited at the Bar. Suffice it would be to take note of the decision in ***UMC Technologies Private Limited*** (supra) wherein, the substance of the other relevant decisions has also been duly noticed by this Court while explaining the principles governing such actions of debarment/blacklisting. Therein, this Court, *inter alia*,
D underscored the requirement of specific show-cause notice and referred to the settled principles in the following terms: -

> "**13.** At the outset, it must be noted that it is the first principle of civilised jurisprudence that a person against whom any action is sought to be taken or whose right or interests are being affected
E should be given a reasonable opportunity to defend himself. The basic principle of natural justice is that before adjudication starts, the authority concerned should give to the affected party a notice of the case against him so that he can defend himself. Such notice should be adequate and the grounds necessitating action and the
F penalty/action proposed should be mentioned specifically and unambiguously. An order travelling beyond the bounds of notice is impermissible and without jurisdiction to that extent. This Court in *Nasir Ahmad* v. *Custodian General, Evacuee Property*, (1980) 3 SCC 1 has held that it is essential for the notice to specify the particular grounds on the basis of which an action is proposed
G to be taken so as to enable the noticee to answer the case against him. If these conditions are not satisfied, the person cannot be said to have been granted any reasonable opportunity of being heard.
>
> **14.** Specifically, in the context of blacklisting of a person or
H an entity by the State or a State Corporation, the requirement of a

valid, particularised and unambiguous show-cause notice is particularly crucial due to the severe consequences of blacklisting and the stigmatisation that accrues to the person/entity being blacklisted. Here, it may be gainful to describe the concept of blacklisting and the graveness of the consequences occasioned by it. Blacklisting has the effect of denying a person or an entity the privileged opportunity of entering into government contracts. This privilege arises because it is the State who is the counterparty in government contracts and as such, every eligible person is to be afforded an equal opportunity to participate in such contracts, without arbitrariness and discrimination. Not only does blacklisting take away this privilege, it also tarnishes the blacklisted person's reputation and brings the person's character into question. Blacklisting also has long-lasting civil consequences for the future business prospects of the blacklisted person.

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16. The severity of the effects of blacklisting and the resultant need for strict observance of the principles of natural justice before passing an order of blacklisting were highlighted by this Court in *Erusian Equipment & Chemicals Ltd.* v. *State of W.B.*, (1975) 1 SCC 70 in the following terms: (SCC pp. 74-75, paras 12, 15 & 20)

"*12*. … 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.

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15.…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 blacklists are "instruments of coercion".

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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."

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17. Similarly, this Court in *Raghunath Thakur* v. *State of Bihar*, (1989) 1 SCC 229 struck down an order of blacklisting for future contracts on the ground of non-observance of the principles of natural justice. The relevant extract of the judgment in that case is as follows: (SCC p. 230, para 4)

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"*4*. … [I]t is an implied principle of the rule of law that any order having civil consequences should be passed only after following the principles of natural justice. It has to be realised that blacklisting any person in respect of business ventures has civil consequence for the future business of the person concerned in any event. Even if the rules do not express so, it is an elementary principle of natural justice that parties affected by any order should have right of being heard and making representations against the order."

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18. This Court in *Gorkha Security Services* v. *State (NCT of Delhi)*, (2014) 9 SCC 105 has described blacklisting as being equivalent to the civil death of a person because blacklisting is stigmatic in nature and debars a person from participating in government tenders thereby precluding him from the award of government contracts. It has been held thus: (SCC p. 115, para 16)

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"*16*. It is a common case of the parties that the blacklisting has to be preceded by a show-cause notice. Law in this regard is firmly grounded and does not even demand much amplification. The necessity of compliance with the principles of natural justice by giving the opportunity to the person against whom action of blacklisting is sought to be taken has a valid and solid rationale behind it. With blacklisting, many civil and/or evil consequences follow. It is described as "civil death" of

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a person who is foisted with the order of blacklisting. Such an order is stigmatic in nature and debars such a person from participating in government tenders which means precluding him from the award of government contracts."

19. In light of the above decisions, it is clear that a prior show-cause notice granting a reasonable opportunity of being heard is an essential element of all administrative decision-making and particularly so in decisions pertaining to blacklisting which entail grave consequences for the entity being blacklisted. In these cases, furnishing of a valid show-cause notice is critical and a failure to do so would be fatal to any order of blacklisting pursuant thereto."

22. As regards maintainability of these appeals, learned counsel for the appellant has rightly referred to the decision in ***A.P. State Financial Corporation*** (supra) wherein, while dealing with an akin question about maintainability of fresh appeal, after withdrawal of the earlier one and after another round of approach to the High Court,this Court, *inter alia*, observed as under: -

"6. Learned counsel for the contesting respondents have strenuously contended that the special leave petitions against the judgment of the Division Bench of the High Court in writ appeals, having been rejected by this Court, the High Court judgment has achieved finality and, as such, these appeals are liable to be dismissed on that short ground. We do not agree with the learned counsel. This Court while rejecting the petitions as withdrawn, granted liberty to the petitioner to approach the High Court and point out the case which was sought to be pleaded before this Court. In other words, this Court prima facie found the contentions of the petitioner to be plausible and, as such, granted liberty to raise the same before the High Court. The High Court heard the parties at length and passed a reasoned order running into 16 pages. In the facts and circumstances of this case, we are not inclined to agree with the learned counsel that the judgment of the High Court in writ appeals has achieved finality."

22.1. Having regard to the above, and overall circumstances of the case we find no reason to treat the impugned order dated 23.04.2021 as final and deem it appropriate to examine the challenge on merits.

A 23. As regards the question of penalty, we find force and substance in the contentions urged on behalf of the appellant that such an imposition cannot be approved for two major factors: The first and foremost being that in the show-cause notice dated 26.11.2019, the appellant was put to notice only as regards the proposition of debarment and in the said notice, nothing was indicated about the proposed imposition of penalty. Though B in the cancellation orders dated 19.11.2019 and 21.11.2019,the respondents purportedly reserved their right to take appropriate steps, those orders cannot be read as show-cause notice specifically for the purpose of imposition of penalty. The submissions on behalf of the respondents in this regard that the said orders dated 19.11.2019 and C 21.11.2019 have attained finality do not take their case any further. Finality attaching to the action of cancellation cannot be read as a due notice for imposition of penalty even if the respondents chose to employ the expression '*cancelled with imposition of penalty*' in those orders. Looking to the terms of contract, quantification of the amount of penalty (if at all the penalty is considered leviable) could not have been carried D out without affording adequate opportunity of response to the appellant. That being the position, the action of the respondents in imposing the penalty without even putting the appellant to notice as regards this proposed action cannot be approved.

E 23.1. Secondly, the authority concerned has proceeded to impose the maximum of penalty to the tune of 10% of the deficit supply without specifying as to why the maximum of penalty was sought to be imposed. In this regard, the relevant factors as indicated by the appellant could not have been ignored altogether. Unfortunately, the High Court has totally omitted to consider this aspect of the grievance of the appellant.

F 23.2. Though, ordinarily, for such an omission of the High Court, the course would have been to remit the issue for consideration but, we are of the view that no useful purpose would be served by remitting such an issue in this matter. This is for the simple reason that imposition of penalty against the appellant cannot be approved because of the want G of specific show-cause notice. Moreover, no specific quantum of loss has been specified by the respondents so as to justify the imposition of maximum of penalty. Viewed from any angle, the impugned order dated 17.08.2020 is required to be set aside.

24. Even the order debarring the appellant for a period of 3 years H for default in making the requisite supplies carries its own shortcomings.

As noticed, the appellant had indeed made substantial supplies against the purchase orders in question. Fact of the matter further remains that on 18.09.2019, the respondent No. 2 dealing with the procurement specifically informed the appellant that the supply under the purchase order in question is to be deferred. It has rightly been argued on behalf of the appellant that after such an order of deferment, there had not been any other communication or even indication from the respondents which would have informed the appellant to resume supplies. We have reproduced hereinabove all the relevant passages in the additional written submissions on behalf of the respondents, made in an effort to meet with the arguments concerning the effect and impact of the said communication dated 18.09.2019. It is at once apparent that the respondents have not been able to rebut the contention urged in this regard on behalf of the appellant. The written submissions on behalf of the respondents do not answer the root question in the matter as to how the appellant could have been made solely responsible for delay or default in supply after the communication dated 18.09.2019 when the respondents themselves informed the appellant that taking of balance delivery was being deferred (until further instructions). In the length and breadth of the arguments on behalf of the respondents, it has nowhere been pointed out if such "further instructions" were ever issued to the appellant before issuance of the cancellation orders dated 19.11.2019and 21.11.2019 as also before issuance of show-cause notice dated 26.11.2019. That being the position, we are clearly of the view that the debarment order had been issued against the appellant without due regard to the undeniable factual situation where the entire blame could not have been foisted upon or shifted towards the appellant. Hence, the impugned order dated 30.07.2020 debarring the appellant is also required to be set aside.

25. Before concluding, we are impelled to observe that, in fact, the High Court had had the opportunity to correct the obvious errors in its order dated 23.04.2021, particularly when the review petition was placed before it for consideration because one part of the matter (concerning penalty) was not even considered and as regards other part too, the pertinent contentions of the appellant did not acquire the requisite attention of the High Court. Unfortunately, the High Court chose to dismiss the review petition without even looking into the relevant factors, including the oneconcerning the impact of the communication dated 18.09.2019. The High Court having not dealt with the matter in the correct

A perspective whether in disposal of the writ petition or in disposal of the review petition, both the impugned orders could only be disapproved.

26. Accordingly, and in view of the above, these appeals succeed and are allowed. The impugned orders dated 23.04.2021 in W.P. No. 12075 of 2020 and dated 13.12.2021 in Review Petition No. 894 of 2021 B are set aside; and the writ petition filed by the appellant is allowed. The impugned orders dated 30.07.2020 in debarment of the appellant and dated 17.08.2020 in imposition of penalty are quashed and set aside.

26.1. Having regard to the period of debarment in terms of the impugned order dated 30.07.2020, we deem it appropriate to provide C that such debarment is annulled for all practical purposes and the said order dated 30.07.2020 shall not operate against the rights and interests of the appellant in any future tender process. The order dated 17.08.2020 imposing penalty having also been set aside, no recovery shall be made from the appellant thereunder and if any amount has been recovered, the same shall be refunded to the appellant within a month from today or D else, it shall carry simple interest at the rate of 9% per annum from the date of recovery and until the date of repayment.The parties shall bear their own costs.

Divya Pandey Appeals allowed.
(Assisted by : Shevali Monga, LCRA)