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HIGH COURT OF CHHATTISGARH, BILASPUR

Order Reserved on: 28/01/2021

Order Delivered on : 19/02/2021

WPC No. 2390 of 2020

- Raipur Construction Pvt. Ltd. A Company Duly Incorporated Under The Provisions Of The Companies Act, 1956 And Having Its Office At 24 Ground Floor, Babla Complex, G.E. Road, Raipur Chhattisgarh

---- **Petitioner**

Versus

1. State of Chhattisgarh Through Secretary, Urban Administration And Development Department, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur Chhattisgarh
2. Bilaspur Smart City Ltd., Through Its Managing Director, 3rd Floor, Vikas Bhawan, Nehru Chowk, Bilaspur, District Bilaspur Chhattisgarh
3. Manager, Bilaspur Smart City Ltd., 3rd Floor, Vikas Bhawan, Nehru Chowk, Bilaspur, District Bilaspur Chhattisgarh
4. M/s Prakash Asphaltings And Toll Highways (India) Ltd. And Ganpati Infrastructure (M/s Path-Gi (JV), Mall Road, Mhow, Indore, Madhya Pradesh.
5. M/s Dineshchandra R. Agrawal Infracon Pvt. Ltd., 401, The Grand Mall, S.M. Road, Opposite State Bank Zonal Office, Ambawadi, Ahmedabad Gujarat

---- **Respondents**

-
- For Petitioner : Shri Manoj Paranjpe, Shri K. Rohan & Shri Bharat Sharma, Advocates.
- For Respondent/State : Shri Chandresh Shrivastava, Deputy Advocate General
- For Respondent No. 2 : Shri Prafull N Bharat, Shri Mateen Siddiqui, and Shri and 3 Faisal Akhtar, Advocates
- For Respondent No. 4 : Shri Rajeev Shrivastava, Shri Ankit Singhal and Shri Om Kukreja, Advocates.
-

WPC No. 2396 of 2020

- Raipur Construction Pvt. Ltd. A Company Duly Incorporated Under The Provisions Of The Companies Act, 1956 And Having Its Office At 24 Ground Floor, Babla Complex, G.E. Road, Raipur Chhattisgarh

---- **Petitioner**

Versus

1. State of Chhattisgarh Through Secretary, Urban Administration And Development Department, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur Chhattisgarh
2. Bilaspur Smart City Ltd., Through Its Managing Director, 3rd Floor, Vikas Bhawan, Nehru Chowk, Bilaspur, District Bilaspur Chhattisgarh.
3. Manager, Bilaspur Smart City Ltd., 3rd Floor, Vikas Bhawan, Nehru Chowk, Bilaspur, District Bilaspur Chhattisgarh
4. M/s Prakash Asphaltings And Toll Highways (India) Ltd. And Ganpati Infrastructure (M/s Path-Gi (JV), Mall Road, Mhow, Indore, Madhya Pradesh



5. M/s Dineshchandra R. Agrawal Infracon Pvt. Ltd., 401, The Grand Mall, S.M. Road, Opposite State Bank Zonal Office, Ambawadi, Ahmedabad Gujarat

---- Respondents

For Petitioner : Shri Manoj Paranjpe, Shri K. Rohan & Bharat Sharma, Advocates.
For Respondent/State : Shri Chandresh Shrivastava, Deputy Advocate General
For Respondent No. 2 : Shri Prafull N Bharat, Advocate, Shri Mateen Siddiqui, and 3 and Shri Faisal Akhtar, Advocates.
For Respondent No. 4 : Shri Rajeev Shrivastava, Shri Ankit Singhal and Shri Om Kukreja, Advocates.

WPC No. 2860 of 2020

- M/s Prakash Asphaltings And Toll Highways (India) Ltd., a Company incorporated and registered under the provisions of the Companies Act 1956, Having Its Registered Office at 76, Mall Road, Mhow, District Indore, Madhya Pradesh, through its authorized signatory Shri Mayank Agrawal.

---- Petitioner

Versus

1. Bilaspur Smart City Ltd. Through Its Managing Director, 3rd Floor, Pingle Bhawan, Nehru Chowk, Bilaspur District Bilaspur Chhattisgarh
2. The Manager Bilaspur Smart City Ltd. 3rd Floor, Pingle Bhawan, Nehru Chowk, Bilaspur, District Bilaspur, Chhattisgarh.

---- Respondents

For Petitioner : Shri Rajeev Shrivastava, Shri Ankit Singhal and Shri Om Kukreja, Advocates.
For Respondents : Shri Prafull N Bharat, Advocate, Shri Mateen Siddiqui, Shri Faisal Akhtar, Advocates.

WPC No. 2872 of 2020

- M/s Prakash Asphaltings and Toll Highways (India) Ltd. A Company Incorporated And Registered Under The Provisions Of The Companies Act, 1956, having its Registered Office at 76, Mall Road, Mhow, District Indore, Madhya Pradesh

---- Petitioner

Versus

1. Bilaspur Smart City Ltd. Through Its Managing Director, 3rd Floor, Pingle Bhawan, Nehru Chowk, Bilaspur, District Bilaspur Chhattisgarh.
2. The Manager Bilaspur Smart City Ltd., 3rd Floor, Pingle Bhawan, Nehru Chowk , Bilaspur , District Bilaspur , Chhattisgarh.

---- Respondents

For Petitioner : Shri Rajeev Shrivastava, Shri Ankit Singhal and Shri Om Kukreja, Advocates.
For Respondents : Shri Prafull N Bharat, Advocate, Shri Mateen Siddiqui, Shri Faisal Akhtar, Advocates.



WPC No. 3150 of 2020

- Raipur Construction Pvt. Ltd. a Company Duly incorporated under the provisions of the Companies Act, 1956 And Having Its Office At 24 Ground Floor, Babla Complex, G.E. Road, Raipur, Chhattisgarh.

---- Petitioner

Versus

1. State of Chhattisgarh Through Secretary, Urban Administration And Development Department, Mahanadi Bhawan, Mantralaya, Naya Raipur, District Raipur, Chhattisgarh
2. Bilaspur Smart City Ltd., Through Its Managing Director, 3rd Floor, Vikas Bhawan, Nehru Chowk, Bilaspur, District Bilaspur, Chhattisgarh
3. Manager Bilaspur Smart City Ltd., 3rd Floor, Vikas Bhawan, Nehru Chowk, Bilaspur, District Bilaspur, Chhattisgarh

---- Respondents

For Petitioner : Shri Manoj Paranjpe, Shri K. Rohan & Shri Bharat Sharma
Advocates.
For Respondent/State : Shri Chandresh Shrivastava, Deputy Advocate General
For Respondent No. 2 : Shri Prafull N Bharat, Advocate, Shri Mateen Siddiqui,
and 3 and Shri Faisal Akhtar.

WPC No. 3151 of 2020

- Raipur Construction Pvt. Ltd. A Company duly incorporated under the provisions of the Companies Act, 1956 and having its Office at 24 Ground Floor, Babla Complex , G.E. Road , Raipur , Chhattisgarh.

---- Petitioner

Versus

1. State of Chhattisgarh Through Secretary, Urban Administration And Development Department, Mahanadi Bhawan, Mantralaya, Naya Raipur , District Raipur Chhattisgarh.
2. Bilaspur Smart City Ltd. Through Its Managing Director , 3rd Floor, Vikas Bhawan, Nehru Chowk, Bilaspur , District Bilaspur Chhattisgarh.
3. Manager Bilaspur Smart City Ltd., 3rd Floor, Vikas Bhawan, Nehru Chowk, Bilaspur , District Bilaspur Chhattisgarh.

---- Respondents

For Petitioner : Shri Manoj Paranjpe, Shri K. Rohan & Bharat Sharma,
Advocates.
For Respondent/State : Shri Chandresh Shrivastava, Deputy Advocate General
For Respondent No. 2 : Shri Prafull N Bharat, Advocate, Shri Mateen Siddiqui,
and 3 and Shri Faisal Akhtar.



WPC No. 3188 of 2020

- M/s Prakash Asphaltings And Toll Highways (India) Ltd. A Company Incorporated And Registered Under The Provisions Of The Companies Act., 1956, Having Its Registered Office At 76, Mall Road, Mhow, District- Indore, Madhya Pradesh, Through Its Authorized Signatory Shri Mayank Agrawal

---- Petitioner

Versus

1. Bilaspur Smart City Ltd. through its Managing Director, 3rd Floor, Pingle Bhawan, Nehru Chowk, Bilaspur, District- Bilaspur, Chhattisgarh.
2. The Manager Bilaspur Smart City Ltd., 3rd Floor, Pingle Bhawan, Nehru Chowki, Bilaspur, District- Bilaspur, Chhattisgarh
3. P.K. Panchaity S/o Late Dr. U.K. Panchaity Aged About 58 Years Manager, Bilaspur Smart City Limited, Bilaspur, Chhattisgarh.
4. Dena Bank Through Its Branch Manager, Address South Tukoganj, District- Indore, Madhya Pradesh

---- Respondents

For Petitioner

: Shri Rajeev Shrivastava, Shri Ankit Singhal and
Shri Om Kukreja, Advocates.

For Respondents No. 1 & 2

: Shri Prafull N Bharat, Shri Mateen Siddiqui, and Shri
Faisal Akhtar, Advocates.

Hon'ble Shri P.R. Ramachandra Menon, Chief Justice
Hon'ble Shri Parth Prateem Sahu, Judge

C A V Order

Per P.R. Ramachandra Menon, Chief Justice

1. All these writ petitions are connected together by a common thread of the same texture. The subject matter relates to the tender floated by the Respondent-Bilaspur Smart City Limited. The challenge raised is against cancellation of the Second tender (after cancelling the First tender) and in respect of the subsequent/Third tender proceedings, besides the instance of blacklisting the parties concerned and other incidental aspects.
2. The main points that arise for consideration are:
 - (a) Whether the repeated cancellation of the tender floated by the Respondent-Bilaspur Smart City Limited is with intent to extend undue favours to anybody of choice of the Respondents?



- (b) Whether the blacklisting of the Tenderer ordered by the Respondent-Bilaspur Smart City Limited without issuing any show cause notice is correct or sustainable in law?
- (c) Whether the disqualification of the Petitioner-Company in WPC No. 2390/2020 and WPC No. 2396/2020 {M/s. Raipur Construction Pvt. Ltd.} in the Second round of tender is correct or justified?
- (d) Whether the disqualification of the Petitioner in WPC No. 2860/2020 and WPC No. 2872/2020 {M/s. Prakash Asphaltings & Toll Highways (India) Ltd.} in the Second round of tender after declaring them as already qualified and placing them at L1, based on some complaint as to the alleged suppression of the work in hand - to assess the bid capacity, is in order?
- (e) Whether blacklisting of the Petitioner in WPC No. 3150/2020 and WPC No. 3151/2020 (same Petitioner Company in WPC No. 2390/2020 and WPC No. 2396/2020) as per order dated 11.11.2020 and the subsequent proceedings dated 24.11.2020 informing that the physical bid of the said Petitioner cannot be opened in the Third round of tender in view of the blacklisting ordered on 11.11.2020 and the further order dated 25.11.2020 rejecting the bid submitted in respect of the Third tender, is correct and justified?
- (f) Whether the 'decision making process' pursued by the Respondent-Bilaspur Smart City Limited is transparent and sustainable in law; both with regard to the question of 'disqualification' and the 'blacklisting' of the parties concerned?
- (g) Is the version of the Petitioners in WPC No. 3150/2020, WPC No. 3151/2020 (same petitioner in WPC No. 2390 and WPC No. 2396/2020) that the agreement stated as executed between the said Petitioner and the Raipur Smart City Ltd. on 05.08.2020 (with reference to the existing work in hand produced by the Respondent/Bilaspur Smart City Ltd. alongwith the covering memo) is forged/concocted, or acceptable to be acted upon with reference to the relief sought for?

3. We heard Shri Manoj Paranjpe, Shri K. Rohan and Shri Bharat Sharma, the learned counsel for the Petitioner-Raipur Construction Pvt. Ltd. in WPC No. 2390/2020, 2396/2020, 3150/2020 and WPC No. 3151/2020, Shri Rajeev





Shrivastava, Shri Ankit Singhal and Shri Om Kukreja for the Petitioner-M/s. Prakash Asphaltings & Toll Highways (India) Ltd. in WPC No. 2872/2020, 2860/2020 and 3188/2020, besides Shri Chandresh Shrivastava, the learned Deputy Advocate General for the State, Shri Prafull N. Bharat, Shri Mateen Siddiqui and Shri Faisal Akhtar, Advocates for the Respondent-Bilaspur Smart City Limited.

4. The sequence of events starts from the day when the Respondent-Bilaspur Smart City Ltd. issued a Tender notification dated 09.06.2020 inviting bids for construction of bituminous road and drain works from Arpa River Indira Setu to Shanichari Rapta (Left Side). A similar tender was floated in respect of similar construction for the same stretch on the 'Right side' as well. The Petitioner-Raipur Construction Pvt. Ltd. contends that though they had participated, they were wrongly declared as ineligible vide order dated 25.07.2020. However, the said tender came to be cancelled by the Respondent-Bilaspur Smart City Ltd. on 25.07.2020 who issued a fresh tender for the work on the same day. The Petitioner-Raipur Construction Pvt. Ltd. responded to the Second round of tender and participated in the bids, but this time again, the Petitioner-Raipur Construction Pvt. Ltd. was declared ineligible as per order dated 08.09.2020, which according to the said Petitioner, was only to extend undue favours to the other contractor {Petitioner-M/s. Prakash Asphaltings & Toll Highways (India) Ltd. in WPC No. 2872/2020, 2860/2020 and 3188 of 2020}. The Petitioner-Raipur Construction Pvt. Ltd. raised a complaint against the bidder by name M/s. Prakash Asphaltings & Toll Highways (India) Ltd. who was found eligible and placed at L1 and then challenged the disqualification of the Petitioner and in qualifying M/s. Prakash Asphaltings & Toll Highways (India) Ltd. in respect of the two different tenders by filing to separate writ petitions as WPC No. 2390 of 2020 and WPC No. 2396 of 2020.



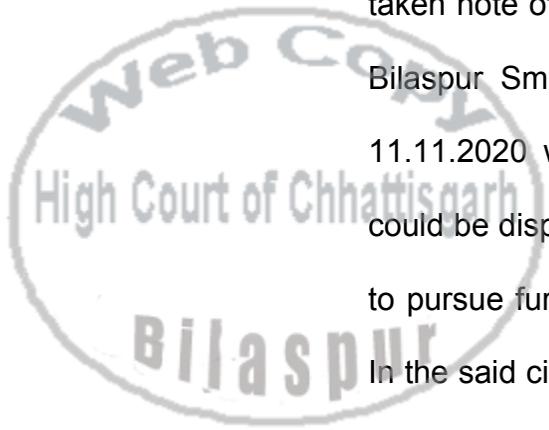


5. The disqualification of the Petitioner M/s. Raipur Constructions Pvt. Ltd. and the qualifying of M/s. Prakash Asphaltings & Toll Highways (India) Ltd. placing them at L1 was sought to be justified by the 2nd respondent-Awarder by filing return before this Court in WPC No. 2390/2020 and WPC No. 2396/2020. However, during pendency of the above proceedings, the said Respondent-Bilaspur Smart City Ltd. passed an order on 17.11.2020, based on the complaints preferred, holding that there was suppression of material facts with regard to the 'work in hand' for assessing the bid capacity from the part of M/s. Prakash Asphaltings & Toll Highways (India) Ltd. and accordingly, the said tender was cancelled and M/s. Prakash Asphaltings & Toll Highways (India) Ltd. was blacklisted. After cancelling the Second tender, the Respondent-Bilaspur Smart City Ltd. proceeded with further steps by floating a similar tender; however adding some additional clause/clarification with regard to the tender while issuing the Third tender notification on 06.11.2020. Cancellation of the Second tender and disqualification of M/s. Prakash Asphaltings & Toll Highways (India) Ltd. for the alleged suppression of fact and issuance of the Third tender notification dated 06.11.2020 are put to challenge from their side by filing WPC No. 2860/2020 and 2872/2020, simultaneously seeking for a direction to complete the tender process pursuant to the Second tender notified on 25.07.2020. WPC No. 3188/2020 has been filed by the very same Petitioner (in WPC No. 2872/2020 and 2860/2020) challenging the subsequent developments pursued by the Respondent-Bilaspur Smart City Ltd. causing the EMD furnished by the Petitioner to be forfeited by giving instructions to the Bankers, notwithstanding the interim order passed by this Court on 24.11.2020 in WPC No. 2872/2020 and 2860/2020) and for causing enquiry of the high handed action and punish the guilty persons for defrauding with the system to favour a particular bidder and burdening the public exchequer by cancelling the tender time and again.





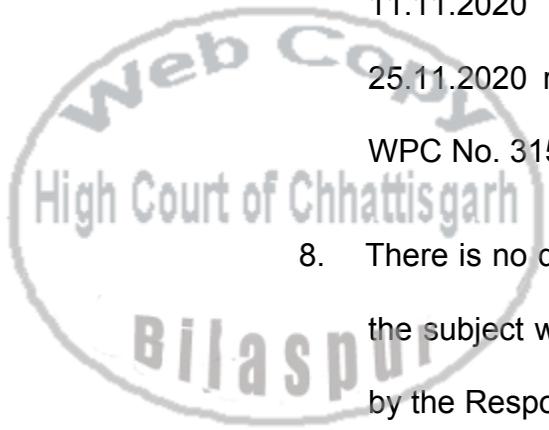
6. The blacklisting of the Petitioner- M/s. Prakash Asphaltings & Toll Highways (India) Ltd. {in WPC No. 2860/2020, 2872/2020 and 3188/2020} was sought to be challenged separately by filing WPC No. 2897/2020 and 2989/2020, with a specific contention that such blacklisting was ordered without issuing any notice or affording any opportunity of hearing, and hence, not sustainable in view of the settled position of law. The above two writ petitions came up for consideration before this Court on 24.11.2020, when the challenge against cancellation of the Second tender raised by the said Petitioners by way of WPC No. 2860/2020 and WPC No. 2872/2020 was taken note of. It was conceded by the learned counsel for the Respondent-Bilaspur Smart City Ltd. that the impugned order of blacklisting dated 11.11.2020 was passed without issuing any notice and that the matters could be disposed of with liberty to the Respondent-Bilaspur Smart City Ltd. to pursue further steps in accordance with law, after issuing proper notice. In the said circumstance, the blacklisting of M/s. Prakash Asphaltings & Toll Highways (India) Ltd. ordered on 11.11.2020 was set aside without prejudice to the rights and liberties of the Respondent-Bilaspur Smart City Ltd. to pursue further steps in accordance with law, after issuing notice to the Petitioner seeking for an explanation and giving an opportunity of hearing in this regard. Hence, no grievance exists with regard to the question of blacklisting of the Petitioner-M/s. Prakash Asphaltings & Toll Highways (India) Ltd., as on date.
7. While so, pursuant to the Third round of tender proceedings for the same work issued by the Respondent-Bilaspur Smart City Ltd., M/s. Raipur Constructions Pvt. Ltd. {Petitioner in WPC No. 2390/2020, 2396/2020, 3150/2020 and 3151/2020} submitted its bid within the specified time. They were however served with an order dated 11.11.2020 (stated as received by e-mail dated 17.11.2020) informing that, pursuant to the disqualification in the Second tender, their EMD furnished in the Second round has been





forfeited and that they have been debarred/blacklisted from participating in the tender process issued by the Respondent-Bilaspur Smart City Ltd. for a period of two years. With reference to the said blacklisting in reference to the Second round, M/s. Raipur Constructions Pvt. Ltd. were informed, as per the proceedings dated 24.11.2020 issued by the Respondent-Bilaspur Smart City Ltd., that the physical bid submitted by them in the Third round could not be opened and vide order dated 25.11.2020, the bids submitted by M/s. Raipur Constructions Pvt. Ltd. were rejected. This made M/s. Raipur Constructions Pvt. Ltd. to challenge the order of blacklisting dated 11.11.2020 and the subsequent proceedings dated 24.11.2020 and 25.11.2020 refusing to open the technical bid and the rejection by filing WPC No. 3150/2020 and WPC No. 3151/2020.

8. There is no dispute to the chronology of dates and events with reference to the subject work involved, as contained in the two separate tenders floated by the Respondent-Bilaspur Smart City Ltd. by way of the First, Second and Third rounds of tender notifications. Admittedly, there is no challenge against cancellation of the First tender and the dispute is only with regard to the course and proceedings in respect of the Second and Third round of tender notifications. In the Second round, as noted already, M/s. Raipur Constructions Pvt. Ltd. was disqualified; whereas M/s. Prakash Asphaltings & Toll Highways (India) Ltd. was initially qualified and placed at L1. The said proceeding was sought to be justified by the Respondent-Bilaspur Smart City Ltd. in the return filed by them in WPC No. 2390/2020 and 2396/2020 (filed by M/s. Raipur Constructions Pvt. Ltd. challenging the impugned proceedings). It was thereafter, that M/s. Prakash Asphaltings & Toll Highways (India) Ltd. was disqualified and declared as ineligible for not revealing the existing work in hand (to assess the bid capacity), followed by cancellation of the Second tender and the blacklisting ordered against them. The instance of blacklisting against M/s. Prakash Asphaltings & Toll





Highways (India) Ltd. without issuing any notice to them has already been interdicted by this Court as per judgment dated 24.11.2020 in WPC No. 2897/2020 and 2898/2020. As such, the remaining questions with regard to the Second tender is whether the Respondent-Bilaspur Smart City Ltd. was justified in disqualifying M/s. Raipur Constructions Pvt. Ltd. (Petitioner in WPC No. 2390/2020 and 2396/2020) and if they were justified in subsequently disqualifying M/s. Prakash Asphaltings & Toll Highways (India) Ltd. (Petitioner in WPC No. 2860/2020 and 2872/2020) after initially justifying the qualification of M/s. Prakash Asphaltings & Toll Highways (India) Ltd. in the proceedings filed before this Court by way of return filed in WPC No. 2390/2020 and WPC No. 2396/2020.

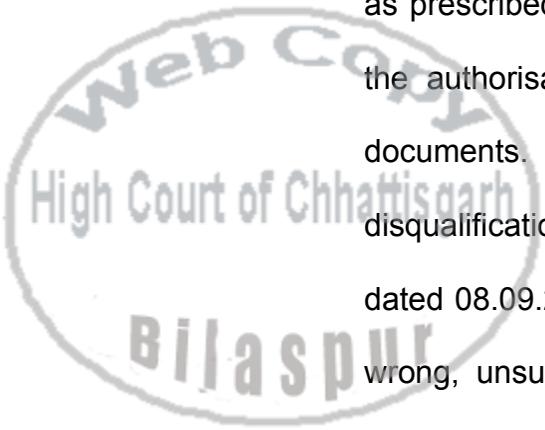
9. With regard to the first point as to whether the Respondent-Bilaspur Smart City Ltd. was justified in disqualifying M/s. Raipur Construction Pvt. Ltd; the specific case projected is that the terms and conditions of the bid insisted to satisfy various requirements as specified therein. Pursuant to the said Second tender proceedings notified on 25.07.2020, six bidders participated in the exercise including M/s. Raipur Construction Pvt. Ltd. and M/s. Prakash Asphaltings & Toll Highways (India) Ltd. The disqualification of M/s. Raipur Construction Pvt. Ltd. is as per Annexure P/9 dated 08.09.2020 in WPC No. 2390/2020 and WPC No. 2396/2020; which is for the reasons including that the documents relating to turnover were not signed/counter-signed both by the bidder and the Chartered Accountant and that 'Annexure-3' relating to the total executed civil engineering work performed on all classes of civil engineering construction for the last five years was not filled up (but for attaching the certificate issued by Engineer-in-Chief) whereas, as per the RFP, the information was to be given in the prescribed format. That apart, the authorisation letter from the OEMs was to be submitted alongwith the pre-qualification documents online, which was also not done.





10. Despite hearing the matter at length, M/s. Raipur Construction Pvt. Ltd. could not satisfy this Court that the documents were signed/counter-signed as prescribed and that they had submitted the experience certificate of similar work in the requisite manner. The submission of the learned counsel that all the relevant documents to show the credentials had already been produced, does not persuade this Court to hold that it will be a substitute for the requirement as to the signing/counter-signing as specified. Similarly, it has not been substantiated by M/s. Raipur Construction Pvt. Ltd. that they had submitted experience certificate of similar work in the required manner, as prescribed in the tender notification/conditions or that he had submitted the authorisation letter from OEMs alongwith the other pre-qualification documents. This being the position, it cannot be held that the disqualification of M/s. Raipur Construction Pvt. Ltd. as per Annexure P/9 dated 08.09.2020 ordered by the Respondent-Bilaspur Smart City Ltd. was wrong, unsustainable or unjustified in any manner. As it stands so, the challenge raised in **WPC No. 2390/2020 and WPC No. 2396/2020** stands repelled.

11. The remaining question in the above two writ petitions is with regard to the qualification of M/s. Prakash Asphaltings & Toll Highways (India) Ltd. which is sought to be set aside. In fact, M/s. Prakash Asphaltings & Toll Highways (India) Ltd. was subsequently disqualified by the Respondent-Bilaspur Smart City Ltd. (after filing WPC No. 2390/2020 and WPC No. 2396/2020 by M/s. Raipur Construction Pvt. Ltd.) as per the proceedings dated 07.11.2020 (Annexure P/8) which is under challenge by M/s. Prakash Asphaltings & Toll Highways (India) Ltd. in WPC No. 2860/2020 and 2872/2020 and hence, this has to be considered alongwith the challenge raised in the said two cases. There is a contention for the Petitioner-M/s. Raipur Construction Pvt. Ltd. in WPC No. 2390/2020 and 2396/2020 that the 4th Respondent-M/s. Prakash Asphaltings & Toll Highways (India) Ltd.

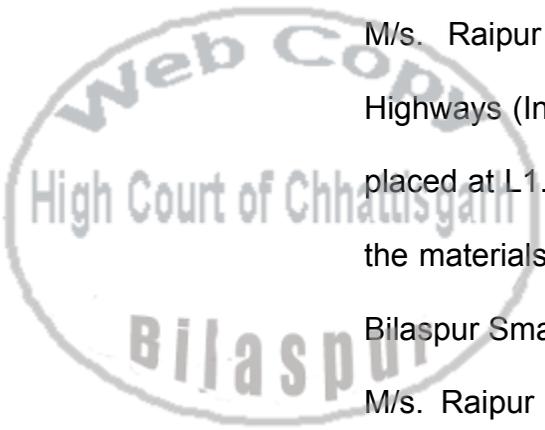




who is the Petitioner in the other two cases (WPC No. 2860/2020 and WPC No. 2872/2020) has not disclosed all the work in hand at the time of submitting the bid and that extraneous consideration was being extended to them. Similarly, a plea has been raised by the Petitioner-M/s. Prakash Asphaltings & Toll Highways (India) Ltd. to the effect that undue favours are sought to be extended by the Respondent-Bilaspur Smart City Limited to the sole remaining qualified tenderer M/s. Radheshyam Agrawal, in the third round.

12. As pointed out already, in the Second round of tender, after disqualifying M/s. Raipur Construction Pvt. Ltd., M/s. Prakash Asphaltings & Toll Highways (India) Ltd. was identified as the qualified bidder who came to be placed at L1. The said selection was sought to be justified with reference to the materials on record, as on the date of filing return, by the Respondent-Bilaspur Smart City Ltd. in WPC No. 2390/2020 and 2396/2020 preferred by M/s. Raipur Constructions Pvt. Ltd. challenging their disqualification and cancellation of the tender. It was much thereafter, that things took a different turn, leading to cancellation of the Second tender in which M/s. Prakash Asphaltings & Toll Highways (India) Ltd. was identified as the successful bidder, as per Annexure P/8 intimation dated 07.11.2020 (in WPC No. 2860/2020 and WPC No. 2872/2020).

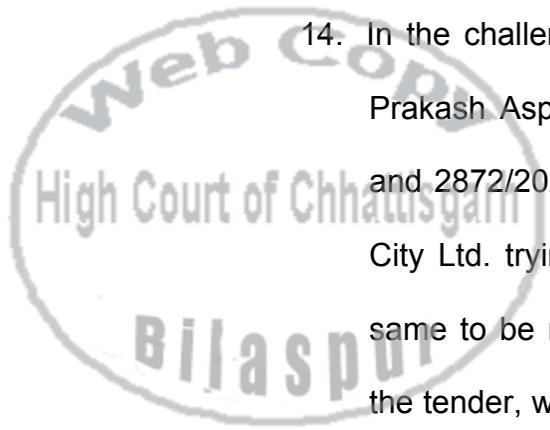
13. It is quite evident that absolutely no reason has been stated for cancelling the Second tender where M/s. Prakash Asphaltings & Toll Highways (India) Ltd. was identified as the successful bidder. This has been subjected to challenge by filing WP(C) No. 2860/2020 and WPC No. 2872/2020 within 48 hours by filing the said proceedings on 09.11.2020. It was much later, that some other insinuations were levelled against M/s. Prakash Asphaltings & Toll Highways (India) Ltd. as to the 'alleged suppression of material facts' with regard to the 'work in hand' which was having a bearing with regard to





the assessment of the bid capacity of the tenderer, in turn leading to the blacklisting of M/s. Prakash Asphaltings & Toll Highways (India) Ltd. as per the proceedings dated 11.11.2020. This made M/s. Prakash Asphaltings & Toll Highways (India) Ltd., the successful bidder, to challenge the 'blacklisting' separately by filing WPC No. 2897/2020 and 2898/2020, where the impugned proceedings came to be interdicted for having issued without giving an opportunity of hearing and accordingly, the said writ petitions have been allowed, based on the admitted factual position from the part of the Respondents.

14. In the challenge against cancellation of the Second tender raised by M/s. Prakash Asphaltings & Toll Highways (India) Ltd. in WPC No. 2860/2020 and 2872/2020, a return has been filed by the Respondent-Bilaspur Smart City Ltd. trying to improve their case by finding reasons and seeking the same to be read into Annexure P/8 order dated 07.11.2020 for cancelling the tender, which legally may not be permissible in view of the law declared by the Constitution Bench of the Supreme Court on the point in ***Mohinder Singh Gill & Another v. The Chief Election Commissioner, New Delhi & Others***; {(1978) 1 SCC 405} to the effect that administrative orders cannot be improved by raising pleadings in the counter affidavit. In the return, the Respondent-Bilaspur Smart City Ltd. points out that after justifying the selection of M/s. Prakash Asphaltings & Toll Highways (India) Ltd. as the successful bidder in the Second round (by filing a return in a challenge raised by M/s. Raipur Construction Pvt. Ltd. in WPC No.2390/2020), some additional facts came upto the surface. The National Highway Authority of India as well as the Madhya Pradesh Road Development Corporation Limited (who had awarded some works) furnished certain material information with respect to the Petitioner-M/s. Prakash Asphaltings & Toll Highways (India) Ltd., which clearly spelt out that M/s. Prakash Asphaltings & Toll Highways (India) Ltd., while submitting the bid document, had not





disclosed all civil construction works in hand; {in response to the queries raised, with reference to the involvement of M/s. Prakash Asphaltings & Toll Highways (India) Ltd}. This made the Tender Committee meeting convened on 04.11.2020 to recommend action to be taken under Clause 47 of the request for proposal (RFP) to disqualify the said bidder, forfeit the EMD and to debar for two years. The said recommendation was accepted by the Empowered Committee in the meeting held on 06.11.2020, which led to the blacklisting order dated 11.11.2020 (which was the subject matter of challenge in WPC No. 2897/2020 and 2898/2020, where they have already been set aside). The aforesaid stand of the Respondent-Bilaspur Smart City Ltd. trying to find reasons for cancellation of the Second tender ordered as per Annexure P/8 (where no reason is given) is put to challenge and scrutiny.

15. Shri Rajeev Shrivastava, the learned counsel for the Petitioner-M/s. Prakash Asphaltings & Toll Highways (India) Ltd. submits that the so-called additional facts with regard to the disputed works were very much available with the Respondent-Bilaspur Smart City Ltd. The factual and legal position were sought to be ascertained by the Respondent-Bilaspur Smart City Ltd. by calling for opinion from the Chartered Accountant and also from the Lawyer, copy of which proceedings have been produced alongwith the rejoinder as Annexure R/6 and R7. The relevant portions of the said documents are to the following effect:

"Opinion of the Chartered Accountant:

In view of the above reply it is clear that the EPC work or the Physical Construction work was not assigned to Prakash Asphalting & Toll Highways (India) Ltd. (PATH)

Opinion of the Lawyer:

Thus non furnishing of the details of works by PATH GI (JV) in Annexure 4 of the RFP with regard to Beohari-Bansuklisidhi Road and Bilaspur Pathrapali four lane would not have any bearing for the present tender as the



information sought by you in the tender document is with respect to prime contractor only, lead member only therefore it is not necessary that every member of the consortium should disclose all his works in hand in Annexure 4 of the RFP document"

16. The queries raised by the Respondent-Bilaspur Smart City Ltd. and the answers given by the National Highway Authority of India vide Annexure R/1 dated 14.10.2020 are to the following effect:

"Sl. No.	Queries of Bilaspur Smart City Ltd.	Reply of PIU Bilaspur, NHAI
1.	Whether the above road project was to be developed under Hybrid Annuity method? If yes whether selection of M/S Prakash Asphaltings & Toll Highways (India) Ltd. In the said Road Project was meant to only as an investor?	Yes, the Bilaspur- Pathrapali project is being developed on Hybrid Annuity Mode. The agreement has been signed by M/S Bilaspur Pathrapali Road Pvt. Ltd. Which is a Limited Liability Company which has been promoted and incorporated by the Consortium consisting of Adani Enterprises Ltd. And Path (India) Ltd. Which had bid as a Consortium. Adani Enterprises Ltd. is the lead Member of the Consortium with 74% share. Path (India) Ltd. Has 26% equity stake.
2.	Who was, under the above work awarded by your organization was responsible for the physical construction (EPC) of the road project?	M/S Bilaspur Pathrapali Road Pvt. Ltd., the Concessionaire of NHAI has signed the EPC Contract with Adani Infra (India) Ltd. for Civil Construction work.
3.	According to your records which agency has carried out/being carrying out the job of EPC for the captioned project? If it was not Prakash Asphaltings & Toll Highways (India) Ltd. then whether any specific permission was required to be obtained from National Highway Authority for the same. If yes, whether any such approval was applied by the said Prakash Asphaltings & Toll Highways (India) Ltd? If so whether any such permission was given by you. In addition to your reply kindly also provide documentary records in respect to the matter.	The responsibility/liability for construction rests with M/s BPRPL, M/s Adani Infra (India) is the EPC Contractor of M/s BPRPL, M/s BPRPL has signed EPC Contract with M/s Adani Infra (India) with the consent of NHAI. It is informed that whatever communication has been made with NHAI, it has been made by M/s BPRPL which is an SPV of Adani Infra (India) Ltd. & PATH (India) Ltd., PATH (India) itself were never communicated anything with NHAI.
4.	What was the overall role and scope of work of M/s Prakash Asphaltings & Toll Highways (India) Ltd. In the above mentioned project?	M/s Prakash Asphaltings & Toll Highways (India) Ltd. is only a JV Partner with 26% equity Stake in M/s BPRPL. NHAI deals only with M/s BPRPL for execution of Contract and not individually to any of the member of the Consortium."





17. Similarly, the clarification given by the Madhya Pradesh Road Development Corporation Ltd. on 13.10.2020 has been produced as Annexure R/2; wherein the name of the Petitioner-M/s. Prakash Asphaltings & Toll Highways (India) Ltd. has been mentioned as the successful bidder and as to the subsequent formation of SPV - M/s. Beohari Bhansukhli Pathways Pvt. Ltd. In fact, the Respondent-Bilaspur Smart City Ltd. had sought for clarification referring to the non-revealing of two different works, in the list of ongoing construction work in Annexure-4; which was clearly answered by the Petitioner-M/s. Prakash Asphaltings & Toll Highways (India) Ltd. vide Annexure R/4 dated 23.09.2020 giving the particulars of the different companies to whom the EPC work was given. We find it appropriate to extract the same as well, to have an easy reference, as given below:

"Letter No. 7574/ADBVI/MPRDC/CW/Pkg-13/Part-I/2020

Bhopal Dated 13/10/2020

To,

Authorized Signatory
Bilaspur Smart City Limited (BSCL)
Pingle Bhawan, Nehru Chowk, Bilaspur,
Chhattisgarh- 495001

Sub:- Clarification on Development of Beohari- Bansukli- Sidhi Road to two lane in the State of Madhya Pradesh on Hybrid Annuity Mode- Package- 13.

Ref:- Your office letter No. 1696/BSCL/2020-21 Bilaspur dated 01.10.2020

This has a reference to your office letter No. 1696/BSCL/2020-21 Bilaspur dated 01.10.2020 the point wise clarification to the queries is as below:

1. Yes, the road project under Package- 13 is to be developed on Hybrid Annuity Mode. M/s Prakash Asphaltings & Toll Highways (India) Ltd. had been the successful bidder and as per provisions of the bid document they have formed an SPV " BEOHARI BANSUKLI PATHWAYS PVT. LTD", who have entered into Concession Agreement dated 04.06.2020.
2. As per Concession Agreement dated 04.06.2020 SPV "BEOHARI BANSUKLI PATHWAYS PVT. LTD" is responsible for the execution of the project. A copy of letter No. PATH/PPPPMPRSP/2020-21/Pkg-13/157 dated 04.06.2020 attached herewith
3. Same as S. N. 2, as requested a copy of the agreement dated 04.06.2020 is enclosed.
4. M/s Prakash Asphaltings & Toll Highways (India)Ltd. had been the successful bidder and subsequently formed the SPV " BEOHARI BANSUKLI PATHWAYS PVT. LTD".

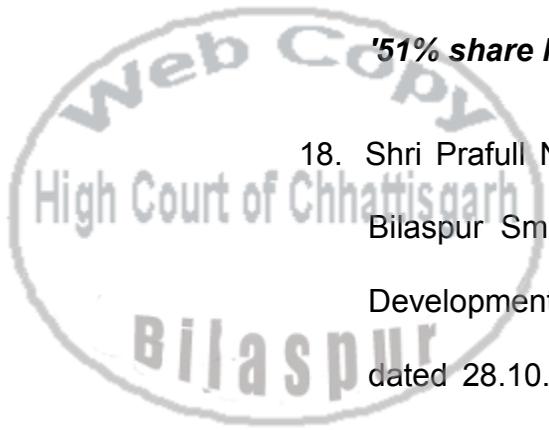
Encl:- As above 06 pages.

Sd/-
(Gopal Singh)
O/c Chief Engineer (ADB VI/VII)
MPRDC, Bhopal"



On issuance of Annexure R/5 letter dated 16.10.2020 by the Respondent-Bilaspur Smart City Ltd. to the Madhya Pradesh Road Development Corporation Ltd. requesting that further clarification was necessary, as to who was responsible for the physical civil construction work in respect of the relevant project, it was answered by the Madhya Pradesh Road Development Corporation Ltd. vide Annexure R/6 dated 28.10.2020 that: "***M/s. Beohari Bhansukhli Pathways Pvt. Ltd. (SPV) will be responsible for physical civil construction works in which M/s. Prakash Asphaltings & Toll Highways (India) Ltd (the Petitioner) has '51% share holding'.***"

18. Shri Prafull N Bharat, the learned counsel appearing for the Respondent-Bilaspur Smart City Ltd. submits that since the Madhya Pradesh Road Development Corporation Ltd. has made it clear, as per Annexure R/6 dated 28.10.2020, that M/s. Prakash Asphaltings & Toll Highways (India) Ltd. was having 51% share holding, there was a clear suppression of material fact as to the ongoing work in hand by the prime contractor in Annexure-4 submitted alongwith the tender and it was for this suppression, that steps were recommended to be taken in terms of Clause 47 of the RFP, as recommended by the Tender Committee vide Annexure R/8 proceedings held on 04.11.2020; which came to be approved by the Empowered Committee in its meeting held on 06.11.2020 vide Annexure R/9, leading to the disqualification of the Petitioner-M/s. Prakash Asphaltings & Toll Highways (India) Ltd., forfeiture of the EMD and also ordering blacklisting for a period of two years alongwith. Similar proceedings were pursued in respect of M/s. Raipur Construction Pvt. Ltd. as well, because of non-disclosure of the work in hand, in connection with the work assigned to them by Raipur Smart City Ltd. (with reference to the work order and agreement dated 05.08.2020) while submitting their bid in the





Second tender. The learned counsel submits that in view of the reply furnished by the Madhya Pradesh Road Development Corporation Ltd. vide Annexure R/6 dated 28.10.2020, pointing out that the Petitioner-M/s. Prakash Asphaltings & Toll Highways (India) Ltd. was having "51% share holding", the Petitioner was the "prime contractor" and it was the duty of the 'prime contractor' to have disclosed the existing commitments and all ongoing civil construction works in Annexure-4, where there is a failure.

19. Shri Rajeev Shrivastava, the learned counsel for the Petitioner-M/s. Prakash Asphaltings & Toll Highways (India) Ltd. points out that, no such obligation was mulcted on the Petitioner as evident from the 'Note' attached to Annexure-4 (forming part of the Second round of tender); whereas the burden virtually came to be incorporated only by amending the 'Note' subsequently, when the Third tender notification dated (06.11.2020) was published on 07.11.2020. Specific reference is made to the above Annexures forming part of the Second tender and the Third tender respectively, and we find it appropriate to have the same extracted to have easy reference:

Annexure-4 of Second Tender

"Annexure-4

Existing commitments and ongoing all classes of civil Engineering construction works, by the Prime Contractor

S.No.	Project Name	Description of work	Contract No. & Year	Name & Address of the Client	Value of Contract (Rs. Lakhs)	Date of issue of work order	Stipulated Date of Completion	Stipulated period of completion in months	Anticipated date of completion **	Value of work done up to date of issue of NIT (Rs. Lakhs) **	Probable value of work remaining to be completed (Rs. Lakhs) **	Anticipated months required for completion of balance works	Value of claims or dispute if any, pending
1	2	3	4	5	6	7	8	9	10	11	12	13	14

Note (i) ** Enclose certificates from Engineer-In-Charge(s) in charge (Not below the rank of Executive Engineer or equivalent) for value of work remaining to be completed, value of work done, anticipate date of completion.
(ii) Tenderer may attach certified copies of work order issued by Engineer-in-Charge not below the rank of Executive Engineer."



Annexure-4 of Third tender

"Annexure-4

Existing commitments and ongoing all classes of civil Engineering construction works, by the Prime Contractor

S.No.	Project Name	Description of work	Contract No. & Year	Name & Address of the Client	Value of Contract (Rs. Lakhs)	Date of issue of work order	Stipulated Date of Completion	Stipulated period of completion in months	Anticipated date of completion **	Value of work done up to date of issue of NIT (Rs. Lakhs) **	Probable value of work remaining to be completed (Rs. Lakhs) **	Anticipated months required for completion of balance works	Value of claims or dispute if any, pending
1	2	3	4	5	6	7	8	9	10	11	12	13	14

Note (i) Attach certificates issued by the competent authority of the Department and Bidder should attach copy of Work-Order & Completion.

Or

Bidder should provide details in Annexure 04 with Seal & Signature of himself and Bidder should attach certified copies of work order and Balance Work Certificate remaining to be completed, value of work done, anticipate date of completion, issued by Engineer-In-Charge not below the rank of Executive Engineer.

(ii) It is clarified that the existing commitments would mean and include all kind of work awarded to the bidder from any one in respect of any work including work awarded in respect of any road under Build Operate Transfer (BOT), Annuity method, Hybrid Annuity Method or other mode. It is further clarified that even if the work of road awarded to the bidder requires creation of a separate special purpose vehicle (SPV) for execution of such project, for the purpose of existing commitment the same shall be included and complete details of all existing commitments including the above are to be given in Annexure-4."

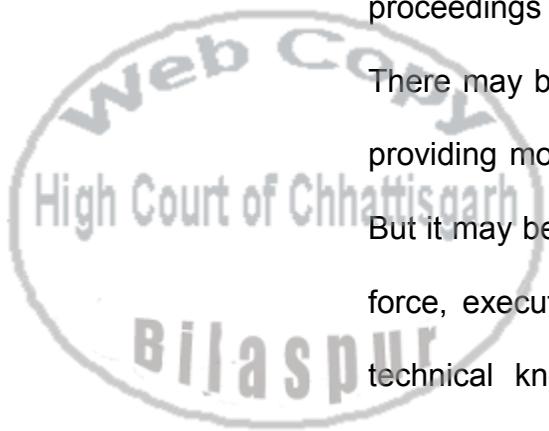
From the above, it is crystal clear that the 'alternative clause' under Note

(i) as well as Note (ii) in Annexure-4 of the Third tender notification were not existing as part of the Note in Annexure-4 attached to the Second tender notification. The addition of such a clarification in the Third round itself shows that no idea was conveyed to the participating bidders of the Second tender to have the particulars disclosed in the manner as it is intended in the Third round of tender notification and hence, no fault or lapse can be attributed to the Petitioner-M/s. Prakash Asphaltings & Toll Highways (India) Ltd. in this regard.

20. Yet another important aspect to be noted is that the heading/title of Annexure-4 attached to the Second as well as the Third round tender speaks about the disclosure of the particulars by the "**prime contractor**". It is important to note that the term 'prime contractor' has not been defined anywhere in the NIT or such other proceedings in connection with the tender.



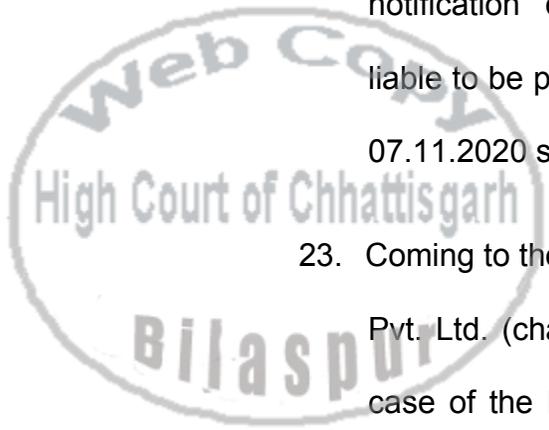
21. Shri Prafull N. Bharat, the learned counsel for the Respondent-Bilaspur Smart City Ltd. submits that since the Petitioner-M/s. Prakash Asphaltings & Toll Highways (India) Ltd. is stated as having "51% share holding" in M/s. Beohari Bhansukhli Pathways Pvt. Ltd. (SPV), as certified by the Madhya Pradesh Road Transport Corporation Ltd. vide Annexure R/6, the Petitioner is to be treated as the 'prime contractor' and hence, it was for the Petitioner-M/s. Prakash Asphaltings & Toll Highways (India) Ltd. to have disclosed all such particulars. We find it difficult to agree to the said proposition, for the reason that the tender notification/terms and conditions and the relevant proceedings attached thereto are silent as to who the "prime contractor" is. There may be cases where one of the parties to the Joint Venture may be providing more finance than the contribution of the other, as agreed upon. But it may be the latter, who is to arrange the entire infrastructure and work force, executing the work at the site. The former may not be having the technical know-how, whereas the latter alone may be having it, with qualified Engineers, work force, equipments and infrastructure and to be held responsible to get things done. As such, the 'extent of investment' may not be the 'litmus test' to identify the 'Prime Contractor', unless it is declared so, in the Tender Conditions/General or Special instructions.
22. With regard to the assessment of the 'bid capacity' in terms of Clause 10 of the NIT dated 25.07.2020, different factors may contribute in this regard. As it stands so, it was obligatory for the Respondent-Bilaspur Smart City Ltd. to have defined the term '**prime contractor**' in the tender proceedings with clarity, to fix the liability upon the parties concerned. Having not chosen to do so, it is not correct or proper for the Respondent-Bilaspur Smart City Ltd. to interpret the same in the manner they want to have it and draw adverse inference against the successful bidder, more so when the 'clarificatory note' amended and incorporated in the Third round of tender (in Annexure-4) was never there in the Annexure-4 attached to the Second tender. In the





said circumstance, we hold that the 'decision making process' pursued by the Respondent-Bilaspur Smart City Ltd. in finalising the Second tender, leading to cancellation of the same, is not at all correct or justified. Annexure P/8 challenged in WPC No. 2860/2020 and 2872/2020 stands set aside. The Respondent-Bilaspur Smart City Ltd. has to take the proceedings to logical conclusion treating the Petitioner-M/s. Prakash Asphaltings & Toll Highways (India) Ltd., placed at L1 as qualified in all respects. It goes without saying that the further steps pursued by the Respondent-Bilaspur Smart City Ltd. by issuing the 'Third tender notification' dated 07.11.2020 and the subsequent proceedings are not liable to be proceeded further and hence, the Third tender notification dated 07.11.2020 stands set aside.

23. Coming to the question of blacklisting the Petitioner-M/s. Raipur Construction Pvt. Ltd. (challenged in WPC No. 3150/2020 and 3151/2020), the specific case of the Petitioner is that absolutely no notice whatsoever was issued before passing Annexure P/1 order. It is the case of the Respondent-Bilaspur Smart City Ltd. as put forth by Shri Prafull N. bharat, that a prior notice was issued on 23.09.2020 (Annexure R-2/3) to the above Petitioner which is vehemently denied by Shri Paranjpe, the learned counsel for the Petitioner; pointing out that there is absolutely no whisper as to the 'proposal for blacklisting' in the notice dated 23.09.2020 which is for a different purpose. The legal position is well settled by the Apex Court that, before ordering blacklisting, a specific notice has to be issued as to the proposal, giving an opportunity to explain the relevant circumstances, and that the matter can be finalised only after considering the explanation with proper application of mind. Shri Paranjpe sought to rely on the decisions rendered by the Apex Court in ***Vetindia Pharmaceuticals Limited v. State of Uttar Pradesh***; {2020 SCC OnLine SC 912} and ***UMC Technologies Private Limited v. Food Corporation of India***; {2020 SCC





OnLine SC 934}. For convenience of reference, we find it appropriate to extract paragraphs 21 and 25 of the UMC Technologies Private Limited (supra) which lays down the law in crystal clear terms:

"21. Thus, from the above discussion, a clear legal position emerges that for a show cause notice to constitute the valid basis of a blacklisting order, such notice must spell out clearly, or its contents be such that it can be clearly inferred therefrom, that there is intention on the part of the issuer of the notice to blacklist the noticee. Such a clear notice is essential for ensuring that the person against whom the penalty of blacklisting is intended to be imposed, has an adequate, informed and meaningful opportunity to show cause against his possible blacklisting.

25. The mere existence of a clause in the Bid Document, which mentions blacklisting as a bar against eligibility, cannot satisfy the mandatory requirement of a clear mention of the proposed action in the show cause notice. The Corporation's notice is completely silent about blacklisting and as such, it could not have led the appellant to infer that such an action could be taken by the Corporation in pursuance of this notice. Had the Corporation expressed its mind in the show cause notice to black list, the appellant could have filed a suitable reply for the same. Therefore, we are of the opinion that the show cause notice dated 10.04.2018 does not fulfil the requirements of a valid show cause notice for blacklisting. In our view, the order of blacklisting the appellant clearly traversed beyond the bounds of the show cause notice which is impermissible in law. As a result, the consequent blacklisting order dated 09.01.2019 cannot be sustained."

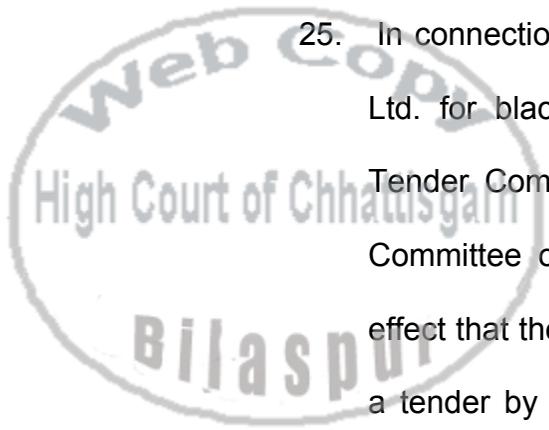
24. It is in conformity with the law already declared by the Supreme Court in ***Gorkha Security Services v. Government (NCT of Delhi) and Others;*** {(2014) 9 SCC 105} as to the mandatory requirement of affording an opportunity of being heard before ordering blacklisting. The legal position was virtually conceded from the part of the Respondent-Bilaspur Smart City Ltd. as well, when the blacklisting of the other Petitioner-M/s. Prakash Asphaltings & Toll Highways (India) Ltd. was challenged in WPC No. 2897/2020 and WPC No. 2898/2020; which came to be finalised as per judgment on 24.11.2020 setting aside the impugned proceedings without prejudice to the rights of the Respondent-Bilaspur Smart City Ltd. to proceed afresh in accordance with law. This being the position, the





challenge raised by the Petitioner-Raipur Construction Pvt. Ltd. in WPC No. 3150/2020 and WPC 3151/2020 against Annexure P/1 order of blacklisting is sustained and the impugned orders are set aside. But the challenge against Annexure P/2 dated 24.11.2020 and Annexure P/3 dated 25.11.2020 rejecting the bid of the Petitioner-Raipur Construction Pvt. Ltd. in the Third round of tender is not having any significance as we have already interdicted cancellation of the Second tender and floating of the Third tender dated 07.11.2020. This is more so since, when the basic order goes, the subsequent orders also should go.

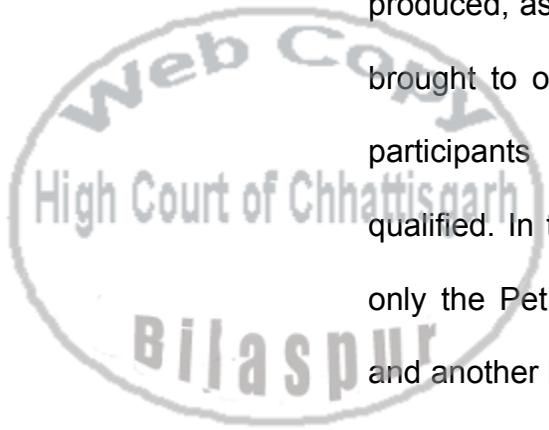
25. In connection with the steps taken by the Respondent-Bilaspur Smart City Ltd. for blacklisting the Petitioners, pursuant to the proceedings of the Tender Committee held on 04.11.2020, as approved by the Empowered Committee on 06.11.2020, a specific case has been brought out to the effect that the Petitioner-Raipur Construction Pvt. Ltd. was already awarded a tender by M/s. Raipur Smart City Ltd; that work order was awarded to them and an agreement was also executed on 05.08.2020, but the said particulars were not disclosed by them when they submitted their bid on 10.08.2020 in respect of the Second tender floated by M/s. Bilaspur Smart City Ltd; thus attracting suppression of material fact, which warranted action in terms of Clause 47 of the RFP (disqualification, forfeiture of EMD and blacklisting). A copy of the agreement dated 05.08.2020 executed between the Petitioner and the Raipur Smart City Ltd. has been produced by the Respondent-Bilaspur Smart City Ltd. The version of the Petitioner-M/s. Raipur Construction Pvt. Ltd. is that no such agreement was executed on 05.08.2020; that the document produced by the Raipur Smart City Ltd. is a forged/fabricated and concocted one and further that the above forged agreement dated 05.08.2020 has been introduced at the instance of somebody else. This made us to pass an order on 25.01.2021 directing the Respondent-Bilaspur Smart City Ltd. to give the particulars as to the





sequence of events and directing to produce the 'inward/outward Register' as to the various correspondences with the Raipur Smart City Ltd. Pursuant to the said direction, copies of the relevant documents have been produced by the Respondent-Bilaspur Smart City Ltd. alongwith the covering memo dated 27.01.2021. The date of receipt of the complaint, the course of action pursued by the Respondent-Bilaspur Smart City Ltd. by addressing the various institutions concerned with regard to the issue involved, the reply obtained, further clarification sought for, copies of the envelopes as to the correspondences, entries in their inward/forward register etc. are all produced, as part of the documents alongwith the covering memo. It is also brought to our notice that in the First tender notification, there were four participants and none of the participants including the Petitioner got qualified. In the Second tender, there were 'six' participants, among whom only the Petitioner-M/s. Prakash Asphaltings & Toll Highways (India) Ltd. and another M/s. Dineshchandra R. Agrawal Infracon Pvt. Ltd. turned to be the qualified bidders. The other Petitioner-M/s. Raipur Construction Pvt. Ltd. was disqualified for the reasons already dealt with.

26. Since the Petitioner-Prakash Asphaltings & Toll Highways (India) Ltd. who was qualified in the Second round of tender was subsequently disqualified and blacklisted as per proceedings dated 17.11.2020, referring to the alleged suppression of material fact as to the existing/ongoing contracts (which we have interdicted), there remained only one bidder whose rate was found to be Rs. 2.5 Crores above L1 and hence, the Second tender was cancelled leading to issuance of the Third tender. In the Third round, only two participants were there i.e. M/s.Raipur Constructions Pvt. Ltd. and one Radheshyam Agrawal. The Petitioner-M/s. Prakash Asphaltings & Toll Highways (India) Ltd. did not participate as they had already challenged cancellation of the Second tender by filing WPC No. 2860/2020 and 2872/2020. Taking stock of the situation, we find that the course of action





pursued by the Respondent-Bilaspur Smart City Ltd. has been properly explained, connecting all the links to form a chain and no malafide act or intent on the part of the Respondent-Bilaspur Smart City Ltd. is substantiated. The contentions raised by the Petitioners to the contrary are repelled.

27. With regard to the disputed agreement dated 05.08.2020 (stated as executed by the Petitioner-M/s. Raipur Construction Pvt. Ltd. with Raipur Smart City Ltd.) and awarding of the work order, it is the case of the Petitioner-M/s. Raipur Construction Pvt. Ltd. that though they had participated and come out successful, they were never given the 'LoI' by the Raipur Smart City Ltd. as on the date of submission of the Second tender on 10.08.2020. There was no scope for executing any agreement without awarding 'LoI'. With reference to Annexure P/21 dated 02.01.2021 issued by Raipur Smart City Ltd., it is pointed out by the learned counsel for the Petitioner-Raipur Construction Pvt. Ltd. that 'effective agreement' was executed only on 29.10.2020 and further that the Raipur Smart City Ltd. had made clear that there were no records as to service the LoI or the work order to the Petitioner-Raipur Constructions Pvt. Ltd., to infer that they were aware of the work in hand, to have included it in Annexure-4 (as the ongoing works) as part of their Second tender. The learned counsel also made a specific reference to the difference in signature of the Officer stated as representing the Petitioner-Raipur Construction Pvt Ltd., as it appears in agreement dated 05.08.2020 and the 'effective agreement' stated as entered into on 29.10.2020. The learned counsel requested the Court to make a comparative analysis, in support of the contention that the agreement dated 05.08.2020 produced by the Respondent-Bilaspur Smart City Ltd. is false, forged, fabricated and concocted. We find that there is black and white difference between the signature of the officer representing the Petitioner as contained in the agreement dated 05.08.2020 and the one



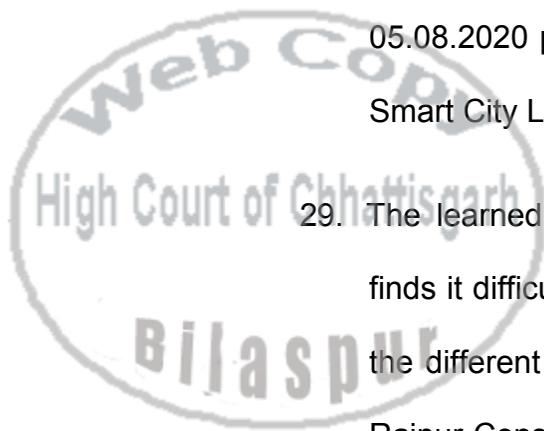


dated 29.10.2020, though the signature of the officer representing the Respondent-Bilaspur Smart City Ltd. remains to be the same.

28. Shri Prafull N Bharat, the learned counsel for the Respondent-Bilaspur Smart City Ltd. draws our attention to the signature of the party representing the Petitioner-Raipur Construction Ltd. in the agreement dated 05.08.2020 and the proceedings signed by the authorised officer of the very same Petitioner-Company in WP(C) No. 2396/2020. The said signature of the authorised officer who signed the proceedings in WPC No. 2396/2020 appears to be exactly similar, as contained in the agreement dated 05.08.2020 produced alongwith the reply filed by the Respondent-Bilaspur Smart City Ltd. in WPC No. 3150/2020.

29. The learned counsel for the Petitioner-M/s. Raipur Construction Pvt. Ltd. finds it difficult to explain; but for stating that the persons authorised to sign the different writ petitions/proceedings are different. But the Petitioner-M/s. Raipur Construction Pvt. Ltd. is the same in all the four writ petitions; which is a 'Company' incorporated under the relevant provisions of the Indian Companies Act, 1956. The Petitioner-M/s. Raipur Construction Pvt. Ltd. is represented in **WPC No. 3150/2020** through **Mohd. Asgar**, while it is through **Mohd. Amir** in **WPC No. 2396/2020**. This means the signature to the agreement dated 05.08.2020 *prima facie* has to be presumed as having subscribed by **Mohd. Amir** who is the signatory to **WPC No. 2396/2020** (representing the same Company) and the contentions to the contrary are only to be rejected. It is ordered accordingly.

30. The Respondent-Bilaspur Smart City Ltd., based on the repeated representations made by the Petitioner-M/s. Raipur Construction Pvt. Ltd. (with reference to the omission to mention all the on-going works in hand, as on the date of submission of the tender and with reference to the work awarded by the Raipur Smart City Ltd.) had sought for a specific clarification





from the Raipur Smart City Ltd. vide letter bearing No. BSCL/2020-21/1666, dated 28.09.2020 (filed alongwith the covering memo dated 27.01.2021), which is to the following effect:

"क्रमांक/बीएससीए/2020-21/1666

बिलासपुर, दिनांक 28/09/2020

प्रति,

प्रबंध संचालक
रायपुर स्मार्ट सिटी लिमिटेड
रायपुर (छ.ग.)

विषय:- मेसर्स रायपुर कंस्ट्रक्शन को जारी कार्यादेश एवं अनुबंध की पुष्टि बाबत।

विषयांतर्गत ज्ञात हो कि बिलासपुर स्मार्ट सिटी लिमिटेड द्वारा इंदिरा सेतु से पुराना सरकण्डा पुल होते हुए शनिचरी रपटा तक, दाई ओर नदी किनारे सड़क निर्माण हेतु सिस्टम टेण्डर नम्बर 66554 लागत 4944.83 लाख, RFP जारी दिनांक 25/07/2020 आमंत्रित किया गया था, जिसके निविदा की कार्यवाही प्रक्रियाधीन है।

बिलासपुर स्मार्ट सिटी लिमिटेड द्वारा सिस्टम टेण्डर नम्बर 66554 में निविदाकार द्वारा प्रस्तुत दस्तावेजों का परीक्षण किया गया व 6 निविदाकारों में से 4 निविदाकार क्पेनुंसपपिमक व 2 निविदाकार Qualified घोषित किये गये हैं।

इसी परिपेक्ष्य में मेसर्स रायपुर कंस्ट्रक्शन से संबंधित निम्न दो दस्तावेजों की पुष्टि की जानी हैं।

1. रायपुर स्मार्ट सिटी लिमिटेड अंतर्गत ग्रीन कॉरीडोर, युथहाब तथा वेंडिंग जोन के कार्य की लागत 16.73 करोड़ बाबत मेसर्स रायपुर कंस्ट्रक्शन प्रायवेट लिमिटेड को पत्र क्रमांक 625/स्मार्ट सिटी/2020 दिनांक 05/08/2020 को महाप्रबंधक (E&T) द्वारा जारी कार्यादेश
2. रायपुर स्मार्ट सिटी लिमिटेड अंतर्गत ग्रीन कॉरीडोर, युथहाब तथा वेंडिंग जोन कार्य की लागत राशि 16.73 करोड़ बाबत मेसर्स रायपुर कंस्ट्रक्शन प्रायवेट लिमिटेड एवं रायपुर स्मार्ट सिटी लिमिटेड महाप्रबंधक (E&T) के मध्य किया गया अनुबंध दिनांक 05/08/2020।

उपरोक्त दोनों दस्तावेजों की छायाप्रति संलग्न है। कृपया पुष्टि करने का कष्ट करें कि उपरोक्त कार्यादेश रायपुर स्मार्ट सिटी लिमिटेड द्वारा मेसर्स रायपुर कंस्ट्रक्शन को जारी किया गया है एवं उपरोक्त कार्य हेतु रायपुर स्मार्ट सिटी लिमिटेड एवं रायपुर कंस्ट्रक्शन को जारी किया गया है एवं उपरोक्त कार्य हेतु रायपुर स्मार्ट सिटी लिमिटेड एवं रायपुर कंस्ट्रक्शन के मध्य दिनांक 05/08/2020 को अनुबंध किया गया है। अरपा नदी के विकास बाबत छत्तीसगढ़ शासन की महत्वकांक्षी योजना के निविदा के संबंध में निर्णय लेने हेतु उपरोक्त जानकारी की आवश्यकता है। कृपया शीघ्र उपलब्ध कराने का कष्ट करें।

संलग्न:-(1) कार्यादेश दिनांक 05/08/2020 की छायाप्रति।
(2) अनुबंध दिनांक 05/08/2020 की छायाप्रति।
(प्रबंध निदेशक द्वारा आदेशित)

हस्ताक्षर
28/09/2020



प्रबंधक
बिलासपुर स्मार्ट सिटी लिमिटेड
बिलासपुर (छ.ग.)

पृ.क्र. / बीएससीएल / 2020-21

बिलासपुर, दिनांक 28/09/2020

प्रतिलिपि:-

1. कलेक्टर बिलासपुर की ओर सादर सूचनार्थ प्रेषित।
2. प्रबंध निदेशक, बिलासपुर स्मार्ट सिटी लिमिटेड की ओर सादर सूचनार्थ।
3. महाप्रबंधक (E&T), रायपुर स्मार्ट सिटी लिमिटेड की ओर सादर सूचनार्थ।

प्रबंधक
बिलासपुर स्मार्ट सिटी लिमिटेड
बिलासपुर (छ.ग.)"

31. This was answered by the Raipur Smart City Ltd. vide letter bearing
No. 6772/Smart City/2020, dated 01.10.2020 in the following manner:

"क्रमांक/6772/स्मार्ट सिटी/2020

रायपुर, दिनांक 01/10/2020

प्रति,
प्रबंध निदेशक
बिलासपुर स्मार्ट सिटी लिमिटेड
बिलासपुर (छ.ग.)

विषय:- मेसर्स रायपुर कंस्ट्रक्शन को जारी कार्यादेश एवं अनुबंध की पुष्टि बाबत।

संदर्भ:- आपका पत्र क्र. बीएससीएल/2020-21/1666 रायपुर दिनांक 28/09/2020

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विषयांतर्गत लेख है कि मेसर्स रायपुर कंस्ट्रक्शन से संबंधित निम्न दो दस्तावेजों की पुष्टि किये जाने हेतु आपका पत्र प्राप्त हुआ है:-

1. रायपुर स्मार्ट सिटी लिमिटेड अंतर्गत ग्रीन कॉरीडोर, युथहब तथा वेंडिंग जोन के कार्य की लागत 16.73 करोड़ बाबत मेसर्स रायपुर कंस्ट्रक्शन प्रायवेट लिमिटेड को पत्र क्रमांक 625/स्मार्ट सिटी/2020 दिनांक 05/06/2020 को महाप्रबंधक (E&T) द्वारा जारी कार्यादेश।
2. रायपुर स्मार्ट सिटी लिमिटेड अंतर्गत ग्रीन कॉरीडोर, यूथहब तथा वेंडिंग जोन के कार्य की लागत राशि 16.73 करोड़ बाबत मेसर्स रायपुर कंस्ट्रक्शन प्रायवेट लिमिटेड एवं रायपुर स्मार्ट सिटी लिमिटेड महाप्रबंधक (E&T) के मध्य किया गया अनुबंध दिनांक 05/08/2020

उपरोक्त दोनों दस्तावेज उपलब्ध नस्ती अनुसार रायपुर स्मार्ट सिटी लिमिटेड द्वारा जारी किया गया जिसकी पुष्टि की जाती है। एजेंसी द्वारा आज तक निर्माण कार्य प्रारंभ नहीं किया गया है।



(प्रबंधक संचालक महोदय द्वारा आदेशित)

हस्ताक्षर
प्रबंधक (सिविल)
रायपुर स्मार्ट सिटी लिमिटेड

क्रमांक / / स्मार्ट सिटी / 2020

रायपुर, दिनांक / / 2020

प्रतिलिपि:-

1. कलेक्टर, बिलासपुर की ओर सादर सूचनार्थ प्रेषित।
2. प्रबंध संचालक, रायपुर लिमिटेड की ओर सादर सूचनार्थ।

हस्ताक्षर
प्रबंधक (सिविल)
रायपुर स्मार्ट सिटी लिमिटेड"

32. **Two days thereafter, referring to the very same letter dated 28.09.2020, without further request from anybody, the Raipur Smart City Ltd. issued another letter dated 03.10.2020 addressing the Respondent-Bilaspur Smart City Ltd. which is to the following effect:**

"क्रमांक / 6800 / स्मार्ट सिटी / 2020

रायपुर, दिनांक 03 / 10 / 2020

प्रति,

प्रबंध निदेशक
बिलासपुर स्मार्ट सिटी लिमिटेड
बिलासपुर (छ.ग.)

विषय:- मेसर्स रायपुर कंस्ट्रक्शन को जारी कार्यादेश एवं अनुबंध की पुष्टि बाबत।

संदर्भ:- आपका पत्र क्र. बीएससीएल / 2020-21 / 1666 रायपुर दिनांक 28 / 09 / 2020

—00—

विषयांतर्गत लेख है कि मेसर्स रायपुर कंस्ट्रक्शन से संबंधित निम्न दो दस्तावेजों की पुष्टि किये जाने हेतु आपका पत्र प्राप्त हुआ है:-

1. रायपुर स्मार्ट सिटी लिमिटेड अंतर्गत ग्रीन कॉरीडोर, यूथहब तथा वेंडिंग जोन के कार्य की लागत 16.73 करोड़ बाबत मेसर्स रायपुर कंस्ट्रक्शन प्रायवेट लिमिटेड को पत्र क्रमांक 625 / स्मार्ट सिटी / 2020 दिनांक 05 / 06 / 2020 को महाप्रबंधक (E&T) द्वारा जारी कार्यादेश।
2. रायपुर स्मार्ट सिटी लिमिटेड अंतर्गत ग्रीन कॉरीडोर, यूथहब तथा वेंडिंग जोन के कार्य की लागत राशि 16.73 करोड़ बाबत मेसर्स रायपुर कंस्ट्रक्शन प्रायवेट लिमिटेड एवं रायपुर स्मार्ट सिटी लिमिटेड महाप्रबंधक (E&T) के मध्य किया गया अनुबंध दिनांक 05 / 08 / 2020।

उपरोक्त दोनों दस्तावेज उपलब्ध नस्ती अनुसार रायपुर स्मार्ट सिटी लिमिटेड द्वारा जारी किया गया जिसकी पुष्टि की जाती है। दिनांक 01 / 10 / 2020 को सूचना के अधिकार के अंतर्गत जनसूचना अधिकारी से प्राप्त प्रकरण का परीक्षण किया गया जिसमें पाया गया कि उपरोक्त कार्य हेतु रायपुर स्मार्ट सिटी लिमिटेड द्वारा जारी L.O.A. एवं कार्यादेश एजेंसी मेसर्स रायपुर कंस्ट्रक्शन प्रायवेट लिमिटेड को प्राप्ति की पावती नहीं है।



(प्रबंधक संचालक महोदय द्वारा आदेशित)

हस्ताक्षर
प्रबंधक (सिविल)
रायपुर स्मार्ट सिटी लिमिटेड

क्रमांक / / स्मार्ट सिटी / 2020

रायपुर, दिनांक / / 2020

प्रतिलिपि:—

1. कलेक्टर, बिलासपुर की ओर सादर सूचनार्थ प्रेषित।
2. प्रबंध संचालक, रायपुर लिमिटेड की ओर सादर सूचनार्थ।

प्रबंधक (सिविल)
रायपुर स्मार्ट सिटी लिमिटेड"

33. **Since the Raipur Smart City Ltd. has admitted execution of the agreement dated 05.08.2020 and since the specific query raised by the Bilaspur Smart City Limited was not fully answered, another letter was issued by the Respondent-Bilaspur Smart City Ltd. {Annexure P/14 (WPC No. 3150/2020) dated 17.11.2020} which was evasively answered by the Raipur Smart City Ltd. stating that 'Effective Agreement' was executed with M/s. Raipur Constructions Pvt. Ltd. only on 29.10.2020, as per the reply dated 02.01.2021 in the following terms:**

"क्रमांक : 7395 / स्मार्ट सिटी / 2011

रायपुर दिनांक 02 / 01 / 2021

प्रति,

प्रबंधक
बिलासपुर स्मार्ट सिटी लिमिटेड
बिलासपुर

विषय:— रायपुर स्मार्ट सिटी लिमिटेड अंतर्गत ग्रीन कॉरिडोर यूथहब के कार्य लागत 16.37 करोड़ बाबत।

संदर्भ:— बिलासपुर स्मार्ट सिटी पत्र क्र. 2008 / बिएससीएल / 2020-21 बिलासपुर दिनांक 17 / 11 / 2020

—00—

संदर्भित पत्र का अवलोकन हो। रायपुर स्मार्ट सिटी लिमिटेड द्वारा रायपुर कंस्ट्रक्शन प्रा. लि. के साथ विषयांकित कार्य हेतु प्रभावशील अनुबंध दिनांक 29 / 10 / 2020 को किया गया है।



हस्ताक्षर
प्रबंध संचालाक
रायपुर स्मार्ट सिटी लिमिटेड

क्रमांक 7396/स्मार्ट सिटी/2021

रायपुर दिनांक 02/01/2021

प्रतिलिपि:-

1. मेसर्स रायपुर कंस्ट्रक्शन प्रा.लि. की ओर सूचनार्थ।

हस्ताक्षर
प्रबंध संचालाक
रायपुर स्मार्ट सिटी लिमिटेड"

34. It is to be noted that M/s. Raipur Smart City Ltd. has virtually conceded the execution of the agreement dated 05.08.2020, but they have not stated anything with regard to the said Agreement dated 05.08.2020 in their letter dated 02.01.2021 but for mentioning that '**Effective Agreement**' was executed only on 29.08.2020. What is '**effective agreement**' or what is '**non-effective agreement**' is not mentioned anywhere. Since the factual aspects with regard to the suppression of the material facts are relevant to deal with the issue of 'blacklisting' and further since the disqualification of the Petitioner-Raipur Construction Pvt. Ltd. on the relevant grounds has already been upheld by this Court and moreover, since the blacklisting ordered as per Annexure P/1 impugned in WPC No. 3150/2020 and WPC No. 3151/2020 has been set aside with liberty to the Respondent-Bilaspur Smart City Ltd. to pursue appropriate steps in accordance with law, we do not make any further comments on this aspect, lest it should adversely affect the decision making process to be pursued by the Respondent-Bilaspur Smart City Ltd.

35. As put forth by Shri Rajeev Shrivastava, the learned counsel for the Petitioner-M/s. Prakash Asphaltings & Toll Highways (India) Ltd., the 'decision making process' pursued by the Respondent-Bilaspur Smart City Ltd. is bad, with regard to the cancellation of the Second tender, that too when no grounds have been mentioned in Annexure P/8. Further, no



obligation was cast upon the Petitioner-M/s. Prakash Asphaltings & Toll Highways (India) Ltd. to have revealed the particulars of the work in hand in the Second tender, in the manner as sought to be made in Annexure-4 attached to the Third tender and the relevant/modified 'Note' was incorporated in 'Annexure-4' only as per the subsequent amendment while issuing the Third tender and never before. It is pointed out that the relevant facts have to be considered while the irrelevant facts have to be ignored as held by the Apex Court in **Bangalore Medical Trust v. B.S.Muddappa & Others** (1991) 4 SCC 54 (para 48 and 49), where the Respondent-Bilaspur Smart City Ltd. has gone wrong. Reliance is also sought to be placed on the decision of the Apex Court in **Union of India & Others v. Dinesh Engineering Corporation & Another** (2001) 8 SCC 491 (para 12 and 16) to contend that if the relevant facts are not considered, it will make the decision arbitrary. Similar observations made by the Apex Court in **Lt. Governor, NCT & Others v. Ved Prakash alias Vedu** (2006) 5 SCC 228 (para 21 and 24) are also sought to be pressed into service.

36. As noted already, the repeated cancellation of the tender by the Respondent-Bilaspur Smart City Ltd. is not with intent to extend undue favours to anybody. But the 'decision making process' with regard to the cancellation of the Second tender is quite bad, as it was on wrongly holding the Petitioner-M/s. Prakash Asphaltings & Toll Highways (India) Ltd. as having suppressed material information with regard to the ongoing works in hand. As such, the said decision is liable to be treated as null and void in all respects.
37. In WPC No. 3188/2020, the Petitioner M/s. Prakash Asphaltings & Toll Highways (India) Ltd. challenges the steps taken by the Respondent-Bilaspur Smart City Ltd. in causing the EMD to be forfeited vide communication dated 25.11.2020. This was pursuant to the blacklisting of



the Petitioner as per order dated 17.11.2020. Since we have held that the order of blacklisting without issuing notice was bad, in turn setting aside the same as per judgment dated 24.11.2020 in WPC No. 2897/2020 and 2898/2020; that the alleged suppression of facts as to the works in hand by the Petitioner while submitting the Second tender is not correct or sustainable; that the cancellation of the Second tender was not legally justifiable; that the floating of the Third tender dated 06.11.2020 and the subsequent proceedings are not of any consequence and further that the Respondent-Bilaspur Smart City Ltd. is bound to take the proceedings to a logical conclusion treating the Petitioner-M/s. Prakash Asphaltings & Toll Highways (India) Ltd. as qualified (along with the other qualified bidder in the Second tender), the proceeding impugned in this writ petition giving instructions to the Respondent-Bank to forfeit the EMD is not correct or sustainable in the eye of law. It stands set aside.

38. In view of the above discussion, we answer the various questions framed by us in the following lines:

- (a) – that repeated cancellation of the tender floated by the Respondent-Bilaspur Smart City Ltd. is not with an intent to extend undue favours to anybody.
- (b) – that the blacklisting of the Tenderer ordered by the Respondent-Bilaspur Smart City Ltd. is neither correct nor sustainable in law.
- (c) – that the disqualification of the Petitioner-M/s. Raipur Constructions Pvt. Ltd. in WPC No. 2390/2020 and WPC No. 2396/2020 in the Second round of tender is correct and justified.
- (d) – that the disqualification of the Petitioner-M/s. Prakash



Asphaltings & Toll Highways (India) Ltd. in WPC No. 2860/2020 and WPC No. 2872/2020 in the Second tender is not in order.

(e) – that the blacklisting of the Petitioner-M/s. Raipur Constructions Pvt. Ltd. in WPC No. 3150/2020 and WPC No. 3151/2020 is not correct or justified.

(f) – that the 'decision making process' pursued by the Respondent-Bilaspur Smart City Ltd. with reference to the disqualification of M/s. Prakash Asphaltings & Toll Highways (India) Ltd. in WPC No. 2860/2020 and WPC No. 2872/2020 in the Second tender, as well as the decision making process in blacklisting M/s. Raipur Construction Pvt. Ltd. (Petitioner in WPC No. 3150/2020 and WPC No. 3151/2020) is bad.

(g) – that the version of the Petitioners in WPC No. 3150/2020, WPC No. 3151/2020 (same Petitioner in WPC No. 2390/2020 and WPC No. 2396/2020) that the agreement dated 05.08.2020 is forged or concocted is not correct or liable to be accepted.

39. In the above facts and circumstances, **WPC No. 2390/2020 and WPC No. 2396/2020** filed by M/s. Raipur Construction Pvt. Ltd. (challenging their disqualification and the declaration of M/s. Prakash Asphaltings & Toll Highways (India) Ltd. - 4th Respondent therein as the qualified bidder) stand dismissed as devoid of any merit.

40. **WPC No. 3150/2020 and WPC No. 3151/2020** filed by the very same Petitioner-M/s. Raipur Constructions Pvt. Ltd. challenging the blacklisting ordered as per Annexure P/1 dated 11.11.2020 stand allowed in part, setting aside Annexure P/1, with liberty to the Respondent-Bilaspur Smart





City Ltd. to pursue appropriate steps in accordance with law, after issuing show cause notice and after considering the objections, if any, in this regard.

41. **WPC No. 2860/2020** and **WPC No. 2872/2020** {filed by M/s. Prakash Asphaltings & Toll Highways (India) Ltd.} stand allowed insofar as Annexure P/8 proceedings dated 07.11.2020 cancelling the Second tender have been set aside. The Respondent-Bilaspur Smart City Ltd. is directed to proceed with further steps and finalise the "Second tender" proceedings dated 25.07.2020, treating the above Petitioner as duly qualified along with the other qualified bidders if any, as expeditiously as possible at any rate, within 'one month' from the date of receipt of a copy of this judgment.

42. **WPC No. 3188/2020** {filed by M/s. Prakash Asphaltings & Toll Highways (India) Ltd.} stands allowed to the extent as mentioned already.

43. The parties shall bear their cost.

Sd/-
(P.R. Ramachandra Menon)
CHIEF JUSTICE

Sd/-
(Parth Prateem Sahu)
JUDGE