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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment reserved on: 19.05.2026

Judgment pronounced on: 01.07.2026

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O.M.P. I. (COMM) 140/2026, I.A. 8757/2026 (For Exemption)

NCC LIMITED

.....Petitioner

Through: Mr. Parag P. Tripathi, Senior Advocate along with Mr. Rishi Agarwala, Ms. Aanchal Mullik, Mr. Daksh Arora, Mr. Rajat Sinha, Mr. Aparajito Sen and Ms. Rini Mehra, Advocates.

versus

AIRPORT AUTHORITY OF INDIA

.....Respondent

Through: Mr. Raghvendra Shankar, ASG with Mr. R Venkat Prabhat, Mr. Daksh Pandit, Mr. Neeraj Paulose Raj, Mr. S.D. Sharma, Mr. P.K. Gorai, Mr. Gagan Koehar, Ms. Pragya Bansal, Ms. Kashish Singhal and Ms. Kamna Behrani, Advocates.

CORAM:

HON'BLE MR. JUSTICE HARISH VAIDYANATHAN SHANKAR

J U D G M E N T

HARISH VAIDYANATHAN SHANKAR, J.

1. The present Petition has been filed by **NCC Limited¹**, under

¹ Petitioner



Section 9 of the **Arbitration and Conciliation Act, 1996**², seeking certain *ad interim* reliefs against the **Airport Authority of India**³.

2. The disputes between the parties are stated to emanate from a **Contract dated 09.11.2018**⁴ executed between the parties for the construction of the New Domestic Terminal Building and other allied structures (Phase I and II) at Patna Airport.

3. By way of the present Petition, the principal relief sought by the Petitioner is a stay on the operation and effect of the **Debarment Letter dated 23.03.2026**⁵ issued by the Respondent, whereby the Petitioner has been debarred from participating in any future tenders floated by the Respondent for a period of two (02) years. The Petitioner has further prayed for direction to the Respondent to take down from their website or any other platform of the public domain the Notice debarring the Petitioner. In addition thereto, the Petitioner has prayed for *ad-interim* and interim *ex parte* reliefs in terms of the aforementioned reliefs.

FACTUAL MATRIX:

4. The Petitioner is stated to be a company engaged in the business of construction and infrastructure development.

5. The Respondent is a statutory authority constituted under the **Airports Authority of India Act, 1994**⁶ and is entrusted with the development, maintenance and management of civil aviation infrastructure in India.

6. The Respondent issued a **Notice Inviting Tender dated**

² A&C Act

³ Respondent

⁴ Contract

⁵ Impugned Debarment Letter

⁶ AAI Act



16.03.2018⁷ for the “*Construction of New Domestic Terminal Building and Other Structures (Phase I and II) at Patna Airport*”. Pursuant thereto, the Petitioner emerged as the successful bidder and was awarded the tendered work *vide* **Letter of Award dated 05.10.2018**⁸. Thereafter, the parties executed the Contract, incorporating the General Conditions as well as the Special Conditions governing the project.

7. The contractual period prescribed for completion of the project was forty-eight (48) months, with the scheduled date of completion being 13.10.2022.

8. During the course of execution, the project encountered delays, the causes whereof remain disputed between the parties. According to the Petitioner, the delays were occasioned, *inter alia*, by restricted availability of work fronts, disruptions caused by the COVID-19 pandemic and delays in approvals attributable to the Respondent. The Respondent, however, disputes the said assertions and attributes the delays to the Petitioner.

9. The record further reflects that during a Progress Review Meeting held on 15.06.2023, the Respondent directed the substitution of the originally approved granite flooring with vitrified tiles. The completion period was thereafter extended from time to time and, ultimately, stood extended till 15.12.2025 without levy of liquidated damages.

10. The terminal building came to be inaugurated and partially commissioned on 03.06.2025. Subsequently, the Respondent issued a

⁷ NIT

⁸ LoA



Provisional Completion Certificate dated 09.12.2025⁹ certifying physical completion of the works. The said PCC was accompanied by Annexure-A, identifying certain defects and unfinished items which, according to the Respondent, were required to be attended to during the Defect Liability Period.

11. Following the issuance of the PCC, disputes arose between the parties regarding the quality of execution of works and the rectification of defects. The Respondent raised concerns relating, *inter alia*, to water seepage, concrete strength and deterioration of the vitrified flooring. The Petitioner disputed the said allegations and maintained that the works were executed in accordance with the contractual specifications and that any deterioration of the flooring occurred subsequent to the commissioning of the terminal building.

12. According to the Respondent, despite various communications dated 03.01.2026, 07.01.2026 and 20.01.2026, the Petitioner failed to furnish an acceptable programme for rectification of the defects identified by the Respondent.

13. In the aforementioned backdrop, the Respondent, on 12.01.2026, invoked Clause 14 of the Contract and initiated risk-and-cost procurement by issuing a Notice Inviting Tender for the replacement of the floor tiles, estimated at Rs. 3,18,50,400/-. The Petitioner disputes the legality and validity of the said action and asserts that the defect rectification activities were already underway.

14. Thereafter, the Respondent issued a **Show Cause Notice dated 30.01.2026¹⁰** proposing debarment of the Petitioner on allegations relating to delay in completion of the project, failure to rectify defects

⁹ PCC

¹⁰ Show Cause Notice



and deficiencies in execution of the contractual works.

15. The Petitioner submitted a detailed Reply dated 02.02.2026 to the Show Cause Notice, denying and disputing the allegations levelled against it in the Show Cause Letter. Upon consideration thereof, the Respondent proceeded to issue the Impugned Debarment Letter on 23.03.2026, debarring the Petitioner from participating in future tenders floated by the Respondent for a period of two years.

16. Aggrieved by the aforesaid action, the Petitioner has filed the present Petition under Section 9 of the A&C Act seeking interim protection against the operation and effect of the aforesaid debarment order pending invocation of arbitral proceedings.

SUBMISSIONS ON BEHALF OF THE PARTIES:

17. At the very threshold, the learned **Additional Solicitor General**¹¹ appearing on behalf of the Respondent would raise a preliminary objection to the maintainability of the present Petition under Section 9 of the A&C Act. It would be contended that the dispute sought to be agitated by the Petitioner does not arise out of, nor is it referable to, any contractual right or obligation emanating from the Contract executed between the parties.

18. It would be contended that the challenge is directed solely against the Debarment Letter, which constitutes an independent administrative measure taken by the Respondent in the exercise of its statutory and executive powers.

19. Learned ASG would submit that the validity of such an action falls squarely within the realm of public law and is therefore amenable only to judicial review by a Constitutional Court. It would accordingly

¹¹ ASG



be contended that the dispute sought to be raised is inherently non-arbitrable in nature and falls beyond the scope of arbitral adjudication, thereby rendering the present Petition under Section 9 of the A&C Act not maintainable.

20. Learned ASG would submit that the power to debar contractors is traceable to Section 20 of the AAI Act, read with Clause 35.12 of the **Airports Authority of India Works Manual, 2017**¹², the amendment thereto dated 16.01.2026 and Technical Instruction No. 148 dated 04.06.2024.

21. It would be contended that the source of the power exercised by the Respondent is entirely *dehors* the Contract executed between the parties and, therefore, the impugned action cannot be characterised as a contractual dispute merely because the alleged deficiencies arose during the execution of the contracted works.

22. It would further be contended that the Arbitration Clause contained in Clause 25 of the Contract extends only to disputes arising out of or relating to the Contract and cannot be expanded so as to encompass challenges to administrative or public law decisions taken by a statutory authority. Learned ASG for the Respondent would contend that the distinction between disputes arising from contractual rights and obligations, and those arising from the exercise of statutory or administrative powers, is fundamental and cannot be effaced merely because the factual backdrop is a contractual relationship.

23. In support of the aforesaid submissions, learned ASG would place reliance upon the decisions of the Hon'ble Supreme Court, *inter alia*, in **Vidya Drolia v. Durga Trading Corporation**¹³ and **Emaar**

¹² AAI Manual

¹³ (2021) 2 SCC 1



India Ltd. v. Tarun Aggarwal Projects LLP¹⁴ to contend that disputes involving exercise of sovereign, statutory or public law powers, or those requiring adjudication on principles ordinarily applied in judicial review, lie beyond the domain of private adjudication and are consequently non-arbitrable.

24. Learned ASG would further place reliance upon the decision of the Hon'ble Supreme Court in **Patel Engineering Ltd. v. Union of India**¹⁵ to submit that the power of blacklisting or debarment is an inherent executive power vested in the State and its instrumentalities and does not owe its existence to any contractual stipulation. It would be contended that the Impugned Debarment Letter is an exercise of such independent power, pertaining to the Respondent's decision regarding its future contractual dealings with the Petitioner.

25. Learned ASG would further place reliance upon the decision of the Hon'ble Supreme Court in **Verigamto Naveen v. Government of Andhra Pradesh**¹⁶ to submit that merely because the factual foundation of an action arises out of a contract, the dispute does not necessarily remain within the contractual sphere. It would be contended that where the impugned action is taken in exercise of a statutory or public law power, the dispute assumes a character distinct from the underlying contract. Accordingly, it would be urged that the challenge to the Impugned Debarment Letter cannot be treated as a purely contractual dispute.

26. Learned ASG would also place reliance upon the recent decision of the Hon'ble Supreme Court in **A.K.G. Construction and**

¹⁴ 2022 SCC OnLine SC 1328

¹⁵ (2012) 11 SCC 257

¹⁶ (2001) 8 SCC 344



Developers Pvt. Ltd. v. State of Jharkhand¹⁷ and the decision of this Court in ***Satish Chand Rajesh Kumar Pvt. Ltd. v. NDMC***¹⁸ to submit that proceedings for blacklisting or debarment are distinct from disputes arising under the underlying contract and cannot be conflated therewith.

27. It would be contended that such action operates prospectively, governing the future eligibility of a contractor to participate in public procurement processes. Learned ASG would further submit that the validity of such action falls to be examined on the touchstones of legality, proportionality and compliance with the Principles of Natural Justice, which are traditionally matters of public law adjudication.

28. Learned ASG would further submit that the Impugned Debarment Letter, on its own terms, demonstrates that the action taken by the Respondent is not directed towards enforcement of any contractual right *inter se* the parties. It would be pointed out that while issuing the Debarment Letter, the Respondent has expressly adverted to considerations relating to public interest, quality standards and the integrity of public procurement. Learned ASG would contend that the nature of the considerations taken into account by the Respondent itself indicates that the impugned action transcends the confines of the contractual relationship and operates in a field distinct from the rights and obligations arising under the Contract.

29. Learned ASG would further submit that the Impugned Order does not operate within the confines of the existing Contract but prospectively regulates the Petitioner's participation in future tenders floated by the Respondent. According to the Respondent, the issue of

¹⁷ 2026 SCC OnLine SC 520

¹⁸ 2022:DHC:1597



eligibility to participate in future public procurement processes is distinct from disputes arising under the Contract and consequently falls beyond the scope of the arbitration agreement.

30. Learned ASG would further submit that the Petitioner has erroneously conflated the cause giving rise to the action with the source of the power exercised. It would be argued that while the alleged deficiencies in performance may have furnished the occasion for initiation of proceedings, the authority to debar emanates from the Respondent's independent administrative powers and not from the Contract itself. Learned ASG would contend that the legal character of an action must be determined with reference to the source of the power exercised and not the factual circumstances which triggered its exercise.

31. Learned ASG would also place reliance upon the express recital contained in the Impugned Debarment Letter that the action has been taken without prejudice to the Respondent's other contractual rights and remedies. It would be submitted that the Respondent itself has treated debarment as distinct from the remedies available under the Contract, thereby reinforcing the position that the impugned action constitutes an independent administrative measure.

32. Learned ASG would further submit that the Impugned Debarment Letter is not confined to regulating the rights and obligations arising under the present Contract, but operates prospectively by rendering the Petitioner ineligible to participate in future tenders floated by the Respondent for a period of two years. It would be contended that the consequences flowing from the impugned action travel beyond the contractual framework presently governing the parties and concern the Respondent's future dealings with the



Petitioner.

33. Learned ASG would additionally submit that the present case does not involve termination of the Contract, invocation of any contractual remedy, or any action affecting the subsisting contractual rights of the parties. It would be contended that the Contract has substantially worked itself out and that a Provisional Completion Certificate has admittedly been issued.

34. According to the Respondent, the Petitioner seeks to equate debarment with termination, though the two operate in distinct spheres. While termination concerns rights and obligations arising under an existing contract, debarment concerns the decision of a public authority regarding future contractual engagements. Learned ASG would therefore submit that the impugned action neither alters nor determines any presently subsisting contractual right and consequently falls outside the scope of disputes capable of being preserved through proceedings under Section 9 of the A&C Act.

35. Learned ASG would accordingly submit that the dispute sought to be agitated by the Petitioner is non-arbitrable and incapable of reference to arbitration. It would therefore be contended that no arbitral proceedings could validly be invoked in relation to the challenge laid to the Impugned Debarment Letter and, consequently, the present Petition under Section 9 of the A&C Act is liable to be dismissed as not maintainable.

36. **Per contra**, learned senior counsel appearing on behalf of the Petitioner would submit that the Respondent seeks to artificially sever the Impugned Debarment Letter from the underlying contractual disputes, notwithstanding that the very foundation of the impugned action rests upon the allegations concerning the Petitioner's



performance under the Contract.

37. Learned senior counsel would contend that the arbitration agreement contained in Clause 25 of the Contract is couched in the widest possible terms and extends to all disputes arising out of or relating to the Contract. Reliance in this regard would be placed upon the decision of the Hon'ble Supreme Court in **Vidya Drolia** (*supra*) to contend that expressions such as “all disputes”, “arising out of” and “relating to” are required to receive a broad and liberal construction and that, unless expressly excluded, disputes having their genesis in the contractual relationship ought ordinarily to be regarded as arbitrable.

38. Learned senior counsel would further submit that the Impugned Debarment Letter itself proceeds on allegations relating to delay in execution of the project, quality of work, alleged defects, rectification obligations and other matters arising directly from performance of the Contract. According to the Petitioner, the challenge to the impugned action therefore falls squarely within the ambit of the arbitration agreement.

39. Learned senior counsel would additionally submit that neither the Contract Agreement nor the General Conditions of Contract confer any power upon the Respondent to debar the Petitioner on account of alleged deficiencies in contractual performance. It would be contended that Clause 41(a) of the Contract merely contemplates consequences flowing from violations of the Integrity Pact and does not authorise debarment on the basis of alleged breaches arising during execution of the works. It would therefore be argued that the Respondent cannot rely upon allegations of contractual breach while simultaneously contending that the resultant dispute falls outside the contractual



dispute resolution framework.

40. Learned senior counsel would, in this regard, place reliance upon the decision of this Court in ***Edapally to Kodungallur Highway Pvt. Ltd. v. NHAI***¹⁹ to contend that where debarment is founded upon allegations concerning performance of contractual obligations, the resultant dispute remains amenable to the contractual dispute resolution mechanism and can form the subject matter of proceedings under Section 9 of the A&C Act. It would be submitted that the present case stands on a similar footing since the impugned action is directly traceable to alleged deficiencies in the execution of the contractual works.

41. Learned counsel would further rely upon ***Sai Consulting Engineers Pvt. Ltd. v. Rail Vikas Nigam Ltd***²⁰ to submit that allegations relating to deficient contractual performance and penal consequences flowing therefrom are capable of arbitral adjudication. It would be contended that the Respondent cannot unilaterally determine disputed questions of contractual breach and thereafter contend that the resulting dispute falls outside the ambit of the arbitration agreement.

42. Learned senior counsel, in order to substantiate its stand, would place reliance upon ***SPS Engineering Ltd. v. Indian Oil Corporation Ltd.***²¹ to contend that where the allegations forming the basis of blacklisting or debarment are themselves disputed and arise from the contractual relationship, the same are inextricably connected with the underlying contract.

43. Learned senior counsel would submit that the allegations

¹⁹ 2026 SCC OnLine Del 1052

²⁰ 2013 SCC OnLine Del 679

²¹ (2004) 76 DRJ 259



concerning delay, defective performance and failure to rectify defects remain seriously disputed and are therefore liable to be adjudicated through the agreed dispute resolution mechanism, *i.e.*, Arbitration.

44. Learned senior counsel would additionally submit that the decision in ***Prabhatam Advertisement Pvt. Ltd. v. SDMC***²² recognises that where the grounds of blacklisting substantially overlap with pending contractual disputes, the forum seized of such disputes is best placed to examine the matter and avoid conflicting findings.

45. It would be contended that the present challenge similarly arises from allegations that are intrinsically connected with the contractual relationship between the parties. It would be contended that the Arbitral Tribunal would be seized of the disputes arising from the Contract, and therefore the present Impugned Debarment Letter and disputes arising therefrom would also form the subject matter of the disputes before the Arbitral Tribunal, thereby amenable to reliefs under Section 9 of the A&C Act.

46. Learned senior counsel would therefore submit that the challenge raised by the Petitioner is fundamentally rooted in disputes arising out of the Contract and that the present controversy falls within the scope of the arbitration agreement executed between the parties. It would accordingly be prayed that the preliminary objections raised by the Respondent be rejected and the Petition be held maintainable.

47. **Advancing submissions on merits**, learned senior counsel appearing on behalf of the Petitioner would submit that the Impugned Debarment Letter is founded entirely upon allegations concerning delay, quality of work and rectification of defects arising out of execution of the Contract. It would be contended that each of these

²² 2015:DHC:7088



allegations is seriously disputed by the Petitioner and remains yet to be adjudicated by any competent forum.

48. Learned senior counsel would submit that the Respondent has proceeded on the assumption that the Petitioner is solely responsible for the alleged deficiencies despite the Petitioner having furnished explanations regarding the causes of delays, disputed the allegations concerning the quality of work and relied upon independent test reports in support of its case. Learned senior counsel would therefore submit that the impugned action is predicated upon disputed questions of fact which remain unresolved and incapable of unilateral determination.

49. It would further be contended that the impugned debarment entails serious civil and commercial consequences. Learned senior counsel would submit that exclusion from participation in future tenders of the Respondent for a period of two years would result in substantial reputational harm and business prejudice to the Petitioner, which cannot be adequately remedied by an award of damages.

50. Learned senior counsel would therefore submit that the Petitioner has established a strong *prima facie* case for the grant of interim protection. It would be contended that the balance of convenience lies in favour of preserving its rights pending recourse to arbitration and that the Petitioner would suffer irreparable injury to its reputation and business. It would therefore be argued that refusal of interim protection would render the proposed arbitral proceedings largely inefficacious.

51. Learned senior counsel would accordingly pray that the operation and effect of the Impugned Debarment Letter be stayed pending initiation of arbitral proceedings between the parties.



52. **In rejoinder to the submissions made on merits by the learned senior counsel for the Petitioner**, the learned ASG appearing on behalf of the Respondent, while reiterating the objections regarding the maintainability of the present petition and without prejudice thereto, submitted that no case is made out for the grant of any interim protection.

53. It would be contended that the Impugned Debarment Letter came to be issued only after repeated notices, affording adequate opportunity to the Petitioner to respond, and due consideration of the explanation furnished by it. The Impugned action, therefore, cannot be characterised as arbitrary, unilateral or violative of principles of natural justice.

54. Learned ASG would further submit that the impugned action is founded upon serious deficiencies noticed during execution of the project, including delay in completion, concerns regarding quality of workmanship and failure to satisfactorily rectify the defects identified by the Respondent. It would accordingly be submitted that the explanations offered by the Petitioner in their reply to the Show Cause Notice were duly considered and the Impugned action was only taken on the ground that such explanation was found unsatisfactory.

55. It would further be contended that the Petitioner has failed to establish any irreparable injury warranting interference. Learned ASG would submit that the Impugned Order debarring the Petitioner merely regulates the Petitioner's participation in future tenders of the Respondent for a limited period and does not affect any subsisting contractual rights under the completed project, including any liquidated damages or encashment of bank guarantees.

56. Learned ASG would therefore submit that the Petitioner has



failed to establish a *prima facie* case, that the balance of convenience lies in their favour or that it would suffer irreparable injury in the absence of interim protection. It would accordingly be prayed that the present Petition be dismissed.

ANALYSIS:

57. This Court has heard the learned counsel appearing on behalf of the parties and, with their able assistance, carefully examined the pleadings, documents placed on record, and the judicial precedents relied upon in support of their respective submissions.

58. At the outset, it is necessary to address the preliminary objection raised by the Respondent regarding the maintainability of the present petition. The Respondent has contended that the dispute sought to be agitated by the Petitioner neither arises out of nor is referable to any contractual right or obligation emanating from the Contract executed between the parties. Since such an objection goes to the very root of the jurisdiction sought to be invoked under Section 9 of the A&C Act, this Court considers it appropriate to examine the same before adverting to the rival contentions on merits.

59. It is well settled that the jurisdiction of a Court under Section 9 of the A&C Act cannot be exercised in abstraction, or *de hors* the arbitration agreement and the disputes contemplated thereunder. The power conferred upon the Court to grant interim measures is ancillary, preservative, and protective in nature. Its invocation is necessarily predicated upon the existence of a valid and enforceable arbitration agreement governing the dispute in question.

60. Therefore, before this Court can proceed to examine whether the Petitioner is entitled to any interim protection, it is incumbent



upon the Petitioner, at least on a *prima facie* assessment, to establish not only the existence of a valid arbitration agreement but also that the dispute sought to be raised falls within the scope of such agreement and is capable of being referred to arbitration within the A&C Act. In the absence of this foundational requirement, the jurisdiction under Section 9 of the A&C Act cannot be invoked as an independent or self-sustaining remedy.

61. The aforesaid position stands reiterated in ***Kuber Mart Global Hub (P) Ltd. v. Kuber Mart Industries (P) Ltd.***²³, wherein this Court considered the scope and nature of the jurisdiction exercisable under Section 9 of the A&C Act and emphasized that the existence of a valid arbitration agreement covering the dispute in question constitutes a foundational prerequisite for the exercise of such jurisdiction. The relevant observations are reproduced hereunder:

“....

25. It is necessary to emphasize that the present petition does not arise under Section 11 of the A&C Act, which is confined to the limited question of the appointment of an arbitrator. The present proceedings have been instituted under Section 9 of the A&C Act, wherein this Court is called upon to exercise its jurisdiction to grant interim measures of protection. The scope and nature of judicial scrutiny under Section 9 are materially distinct and considerably broader than that contemplated under Section 11. While exercising jurisdiction under Section 9, the Court is required to apply the well-settled triple test governing the grant of interim relief, *namely*: (i) the existence of a *prima facie* case, (ii) balance of convenience, and (iii) likelihood of irreparable harm.

26. To augment, the Hon’ble Supreme Court, in ***Arcelor Mittal Nippon Steel (India) Ltd. v. Essar Bulk Terminal Ltd.***²⁴, has reiterated that these foundational principles are equally applicable to proceedings under Section 9 of the A&C Act.

27. Significantly, the requirement of establishing a *prima facie* case for the purposes of Section 9 of the A&C Act cannot be satisfied by the mere existence of an arbitration clause in the agreement between the parties. The *prima facie* case must extend

²³ 2026 SCC OnLine Del 3254

²⁴ (2022) 1 SCC 712



beyond the formal existence of an arbitration agreement and must encompass an assessment of whether the disputes sought to be referred are, in law, capable of being resolved through arbitration. Where the dispute is *ex facie* non-arbitrable or is barred from arbitration by operation of statute, the Court cannot grant interim relief on the assumption that arbitral proceedings would validly ensue.

28. In proceedings under Section 9 of the A&C Act, therefore, the Court does not function as a mere referral or facilitative forum. Rather, it is vested with substantive powers to scrutinize the legal tenability of the claims raised, the maintainability of the reliefs sought, and the jurisdictional foundation for invoking arbitral remedies.

29. Unlike Section 11 proceedings, where the scope of judicial interference is deliberately circumscribed and limited to a *prima facie* examination of the existence of an arbitration agreement, as explained in ***Vidya Drolia*** (*supra*), such limited scrutiny cannot be mechanically or indiscriminately transplanted into proceedings under Section 9 of the A&C Act. The legislative intent underlying Section 9 contemplates a more searching inquiry, particularly where the grant of interim measures may have far-reaching civil and commercial consequences.

30. Further, even otherwise, a careful and holistic reading of the judgment in ***Vidya Drolia*** (*supra*), particularly paragraph no. 80 thereof, makes it abundantly clear that disputes pertaining to tenancy rights governed by rent control legislation stand on a fundamentally different footing. The Hon'ble Supreme Court has unequivocally held that where a special statute confers exclusive jurisdiction upon designated statutory forums to adjudicate specific rights and obligations, such disputes are rendered non-arbitrable."

62. In the backdrop of the aforesaid legal position, the controversy arising in the present case is not confined merely to determining whether the Petitioner has satisfied the requirements for the grant of interim protection. The more fundamental issue that falls for consideration is whether the grievance sought to be projected by the Petitioner constitutes a dispute governed by the arbitration agreement contained in the Contract and is therefore arbitrable. Unless this threshold requirement is satisfied, no further examination of the Petitioner's entitlement to interim relief would be warranted.

63. Accordingly, the principal question that arises for determination



in the present case is whether the Debarment Letter issued by the Respondent forms part of the contractual disputes arising between the parties and is therefore amenable to arbitration, or whether it constitutes an independent action taken by the Respondent in exercise of its public law powers and consequently falls outside the scope of the arbitration agreement, as has been asserted by the Respondent. Axiomatically, the answer to this question is determinative of the maintainability of the present petition under Section 9 of the A&C Act.

64. In the present petition, it is necessary at the outset to note that the Petitioner does not seek protection against any threatened termination of the Contract, invocation of risk-and-cost procurement measures, recovery of contractual dues, encashment of bank guarantees, invocation of performance securities, or any other action taken in the exercise of rights and remedies arising under the Contract. The sole substantive relief sought is a stay of the operation, implementation, and effect of the Debarment Letter, whereby the Petitioner has been declared ineligible to participate in future tenders floated by the Respondent for a period of two years.

65. At this stage, the Court's inquiry must be directed towards the true nature and legal character of the impugned action, rather than merely the existence of a contractual relationship between the parties. The presence of an arbitration clause in the Contract does not, by itself, render every dispute between the parties arbitrable. What is required to be examined is whether the impugned debarment derives from, and is founded upon, the contractual rights and obligations of the parties, or whether it constitutes an independent exercise of power giving rise to legal consequences beyond the confines of the Contract.



66. The issue, therefore, is not whether disputes concerning the performance or execution of the Contract exist between the parties. Rather, the Court must determine whether the impugned action is referable to the exercise of contractual rights *inter se* the parties, or whether it emanates from the Respondent's statutory, administrative, or executive authority and operates in a sphere distinct from the contractual relationship. This distinction is of fundamental importance, for only upon identifying the true source of the power exercised and the legal character of the impugned action can the Court ascertain whether the dispute is capable of resolution through private adjudication in arbitration or falls outside the scope of the arbitral process.

67. In order to test the aforesaid proposition, this Court considers it apposite to first advert to the nature and effect of the Impugned Debarment Letter.

68. A perusal of the Impugned Debarment Letter reveals that the action taken by the Respondent is not directed towards the enforcement of any contractual remedy available under the Contract. The impugned action neither seeks recovery of any contractual dues, nor invokes any provision relating to termination, risk-and-cost procurement, encashment of securities or any other consequence operating within the four corners of the Contract.

69. The consequences flowing from the impugned action extend beyond the subsisting contractual relationship between the parties. The Debarment Letter operates prospectively and renders the Petitioner ineligible to participate in future procurement processes of the Respondent for a specified period. The action, therefore, is not confined to adjudication of rights and obligations arising under the



Contract but travels beyond the contractual framework presently governing the parties.

70. Considerable emphasis was placed by the Petitioner on the fact that the Impugned Debarment Letter is founded upon allegations relating to delay in execution, defects in workmanship and deficiencies in performance of contractual obligations.

71. Equally important, however, is the distinction between the factual backdrop giving rise to an action and the legal source of the power under which such action is taken. Merely because the allegations forming the basis of the impugned action are connected with the performance of the Contract may not necessarily give a contractual flavour to the debarment.

72. In this regard, the decision of the Hon'ble Supreme Court in **Vidya Drolia** (*supra*), reliance whereupon has been placed by both sides, assumes relevance.

73. The said decision recognises that arbitration agreements are ordinarily to be accorded a liberal and expansive construction, and that disputes having their genesis in a contractual relationship would, as a general rule, fall within the ambit thereof. While the Petitioner has relied upon the broad import attributed to expressions such as “*arising out of*” and “*relating to*”, the Respondent has drawn support from the principles governing arbitrability articulated therein. Both propositions are firmly embedded in law and admit of no controversy.

74. Equally, however, **Vidya Drolia** (*supra*), as well as the decision of the Hon'ble Supreme Court in **Emaar India Ltd.** (*supra*), underscore that the reach of arbitral adjudication, though wide, is not unbounded. Disputes involving the exercise of sovereign, statutory or public law powers, or those requiring adjudication upon standards



traditionally applied in the exercise of judicial review, stand on a footing distinct from ordinary private law disputes and may consequently fall beyond the domain of arbitration. The mere existence of a contractual backdrop, therefore, cannot be determinative. The enquiry must, therefore, ultimately be directed towards the true nature of the controversy, the source of the power exercised, and the character of the action sought to be impugned.

75. It is in the aforesaid backdrop that the decisions relied upon by the Respondent require consideration.

76. Further support for the Respondent's objection is found in the decision of the Hon'ble Supreme Court in **Patel Engineering (supra)**, wherein the Apex Court recognised that the power to debar or blacklist a contractor is not dependent upon the existence of an express contractual stipulation but inheres in the State's executive authority to enter into contracts. It was further held that such power is a necessary concomitant of the State's freedom to determine the persons with whom it will, or will not, engage in future contractual relations.

77. In that context, the Hon'ble Supreme Court in that judgement drew a clear distinction between disputes arising from existing contractual rights and obligations *inter se* the parties and decisions taken by the State in relation to its future commercial dealings with a contractor. The said distinction assumes considerable significance in the present case, where the challenge is directed not against the enforcement of any contractual right or remedy, but against a decision allegedly affecting the Petitioner's eligibility to participate in future tenders. The relevant observations in **Patel Engineering (supra)** are reproduced hereunder:



“14. The nature of the authority of the State to blacklist the persons was considered by this Court in the abovementioned case [“12. Under Article 298 of the Constitution the executive power of the Union and the State shall extend to the carrying on of any trade and to the acquisition, holding and disposal of property and the making of contracts for any purpose. The State can carry on executive function by making a law or without making a law. The exercise of such powers and functions in trade by the State is subject to Part III of the Constitution. Article 14 speaks of equality before the law and equal protection of the laws. Equality of opportunity should apply to matters of public contracts. The State has the right to trade. The State has there the duty to observe equality. An ordinary individual can choose not to deal with any person. The Government cannot choose to exclude persons by discrimination. The order of blacklisting has the effect of depriving a person of equality of opportunity in the matter of public contract. A person who is on the approved list is unable to enter into advantageous relations with the Government because of the order of blacklisting. A person who has been dealing with the Government in the matter of sale and purchase of materials has a legitimate interest or expectation.” (*Erusian Equipment case [(1975) 1 SCC 70]*, SCC p. 74, para 12)] and took note of the constitutional provision (Article 298) [“**298. Power to carry on trade, etc.**—The executive power of the Union and of each State shall extend to the carrying on of any trade or business and to the acquisition, holding and disposal of property and the making of contracts for any purpose: Provided that—(a) the said executive power of the Union shall, insofar as such trade or business or such purpose is not one with respect to which Parliament may make laws, be subject in each State to legislation by the State; and (b) the said executive power of each State shall, insofar as such trade or business or such purpose is not one with respect to which the State Legislature may make laws, be subject to legislation by Parliament.”] , which authorises both the Union of India and the States to make contracts for any purpose and to carry on any trade or business. It also authorises the acquisition, holding and disposal of property. This Court also took note of the fact that the right to make a contract includes the right not to make a contract. By definition, the said right is inherent in every person capable of entering into a contract. However, such a right either to enter or not to enter into a contract with any person is subject to a constitutional obligation to obey the command of Article 14. Though nobody has any right to compel the State to enter into a contract, everybody has a right to be treated equally when the State seeks to establish contractual relationships [“17. The Government is a Government of laws and not of men. It is true that neither the petitioner nor the respondent has any right to enter into a contract but they are entitled to equal treatment with others who offer tender or quotations for the purchase of the goods.



This privilege arises because it is the Government which is trading with the public and the democratic form of Government demands equality and absence of arbitrariness and discrimination in such transactions. Hohfeld treats privileges as a form of liberty as opposed to a duty. The activities of the Government have a public element and, therefore, there should be fairness and equality. The State need not enter into any contract with any one but if it does so, it must do so fairly without discrimination and without unfair procedure. Reputation is a part of a person's character and personality. Blacklisting tarnishes one's reputation.” (***Erusian Equipment case [(1975) 1 SCC 70]***, SCC p. 75, para 17)]. The effect of excluding a person from entering into a contractual relationship with the State would be to deprive such person to be treated equally with those, who are also engaged in similar activity.

15. It follows from the above judgment in ***Erusian Equipment case [(1975) 1 SCC 70]*** that the decision of the State or its instrumentalities not to deal with certain persons or class of persons on account of the undesirability of entering into the contractual relationship with such persons is called blacklisting. The State can decline to enter into a contractual relationship with a person or a class of persons for a legitimate purpose. The authority of the State to blacklist a person is a necessary concomitant to the executive power of the State to carry on the trade or the business and making of contracts for any purpose, etc. There need not be any statutory grant of such power. The only legal limitation upon the exercise of such an authority is that the State is to act fairly and rationally without in any way being arbitrary—thereby such a decision can be taken for some legitimate purpose. What is the legitimate purpose that is sought to be achieved by the State in a given case can vary depending upon various factors.

33. From the impugned order it appears that the second respondent came to the conclusion that: (1) the petitioner is not reliable and trustworthy in the context of a commercial transaction; (2) by virtue of the dereliction of the petitioner, the second respondent suffered a huge financial loss; and (3) the dereliction on the part of the petitioner warrants exemplary action to “curb any practice of ‘pooling’ and ‘mala fide’ in future”.

34. We do not find any illegality or irrationality in the conclusion reached by the second respondent that the petitioner is not (commercially) reliable and trustworthy in the light of its conduct in the context of the transaction in question. We cannot find fault with the second respondent's conclusion because the petitioner chose to go back on its offer of paying a premium of Rs 190.53 crores per annum, after realising that the next bidder quoted a



much lower amount. Whether the decision of the petitioner is bona fide or mala fide, requires a further probe into the matter, but, the explanation offered by the petitioner does not appear to be a rational explanation.”

78. The aforesaid decision clearly recognises that blacklisting or debarment is a power distinct from contractual remedies and operates in the sphere of future commercial dealings. Viewed in that light, the Impugned Debarment Letter bears attributes indicative of an exercise of the Respondent’s independent administrative authority rather than a contractual power arising under the Agreement.

79. Equally significant is the reliance of the Respondent on the decision of the Hon’ble Supreme Court in *Verigamto Naveen (supra)*. The said decision recognises that merely because the genesis of a dispute may be traceable to a contractual relationship, it does not invariably follow that the dispute remains confined to the realm of private law. The Hon’ble Supreme Court observed that where the impugned action is taken in exercise of a statutory, governmental or public law power, the matter may assume a distinct public law character notwithstanding the contractual backdrop against which it arises. In doing so, the Court emphasised the distinction between the factual cause giving rise to an action and the legal source of the power exercised. The relevant paragraph of the said Judgment is reproduced herein under:

“21. On the question that the relief as sought for and granted by the High Court arises purely in the contractual field and, therefore, the High Court ought not to have exercised its power under Article 226 of the Constitution placed very heavy reliance on the decision of the Andhra Pradesh High Court in **Y.S. Raja Reddy v. A.P. Mining Corpn. Ltd.** [(1988) 2 An LT 722] and the decisions of this Court in **Har Shankar v. Dy. Excise & Taxation Commr.** [(1975) 1 SCC 737], **Radhakrishna Agarwal v. State of Bihar** [(1977) 3 SCC 457], **Ramlal & Sons v. State of**



Rajasthan [(1976) 1 SCC 112], Shiv Shankar Dal Mills v. State of Haryana [(1980) 2 SCC 437], Ramana Dayaram Shetty v. International Airport Authority of India [(1979) 3 SCC 489] and Basheshar Nath v. CIT [AIR 1959 SC 149]. Though there is one set of cases rendered by this Court of the type arising in **Radhakrishna Agarwal case [(1977) 3 SCC 457]** much water has flown in the stream of judicial review in contractual field. In cases where the decision-making authority exceeded its statutory power or committed breach of rules or principles of natural justice in exercise of such power or its decision is perverse or passed an irrational order, this Court has interceded even after the contract was entered into between the parties and the Government and its agencies. We may advert to three decisions of this Court in **Dwarkadas Marfatia & Sons v. Board of Trustees of the Port of Bombay [(1989) 3 SCC 293], Mahabir Auto Stores v. Indian Oil Corpn. [(1990) 3 SCC 752] and Shrilekha Vidyarthi (Kumari) v. State of U.P. [(1991) 1 SCC 212]** Where the breach of contract involves breach of statutory obligation when the order complained of was made in exercise of statutory power by a statutory authority, though cause of action arises out of or pertains to contract, brings it within the sphere of public law because the power exercised is apart from contract. The freedom of the Government to enter into business with anybody it likes is subject to the condition of reasonableness and fair play as well as public interest. After entering into a contract, in cancelling the contract which is subject to terms of the statutory provisions, as in the present case, it cannot be said that the matter falls purely in a contractual field. Therefore, we do not think it would be appropriate to suggest that the case on hand is a matter arising purely out of a contract and, therefore, interference under Article 226 of the Constitution is not called for. This contention also stands rejected.”

(emphasis supplied)

80. The aforesaid distinction is of particular relevance in the present case. While the allegations relating to delay, quality of work and defective execution may have furnished the factual foundation for initiation of proceedings against the Petitioner, the authority invoked by the Respondent in issuing the Impugned Debarment Letter is asserted to emanate from powers independent of the Contract itself.

81. Further support for the Respondent’s contention is found in the recent decision of the Hon’ble Supreme Court in **A.K.G. Construction**



(*supra*). The Apex Court therein drew a clear distinction between proceedings relating to the termination of a contract and proceedings for blacklisting, observing that the two operate in different spheres and serve fundamentally different purposes. While termination concerns the parties' existing contractual relationship, blacklisting governs the authority's future dealings with the contractor and consequently carries wider civil and commercial consequences.

82. The Hon'ble Supreme Court in the said case emphasised that an order of blacklisting transcends the confines of the underlying contract and is therefore required to be examined on principles of legality, proportionality, application of mind and adherence to the Principles of Natural Justice. The decision thus reinforces the proposition that a challenge to a blacklisting or debarment order cannot be treated as a purely contractual dispute merely because the allegations giving rise thereto emanate from performance of the contract. The relevant paragraph of **A.K.G. Construction** (*supra*) reads as follows:

“18. The contractual conditions governing termination on the one hand and those that relate to blacklisting on the other are distinct and will be exercised independently. A decision of blacklisting is not automatic and certainly not a logical consequence of a decision of termination. Even after the Department decides to terminate the contract, there is still a choice of exercising the power of blacklisting. These decisions operate in two dimensions - past and subsisting for termination and future for blacklisting. In other words, an order of blacklisting transcends the existing contract and debars the contractor from contracts that could probably be executed in the next five years. In view of the serious consequences, it is necessary for the Department to issue a specific notice proposing blacklisting of a contractor and call for an explanation as to why an order of blacklisting should not be passed. This is exactly the purpose and object behind Rule 10.5.

22. Returning to the facts of the present case, at the outset, it is apparent that the show cause notice dated 04.06.2024 does not



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

23. The contractual relationship between the parties is governed by two legal regimes. While GCC governs termination, the 2012 Rules govern blacklisting. Proceedings for termination should not be conflated with proceedings for blacklisting. In the latter action, what is at stake is the future of the contractor. A blacklisting order assumes that the contractor is an incorrigible entity, at least for some time to come, in this case such an assumption was intended to operate for five years. For giving effect to such a premise, there has to be sufficient evidence, clear application of mind and stronger adherence to principles of natural justice⁵. The blacklisting order dated 23.08.2004 falls short of this requirement and is liable to be set aside.”

(emphasis supplied)

83. The decision of this Court in **Satish Chand Rajesh Kumar Pvt. Ltd.** (*supra*), also relied upon by the Respondent, is equally instructive. While examining the maintainability of a challenge to a debarment order, the Co-ordinate bench of this Court emphasised that the character of such action must be determined with reference to the source of the power exercised. It was then found that the debarment in that case was amenable to arbitration, as it was expressly founded upon a contractual stipulation and constituted a contractual remedy



available to the employer under the terms of the contract.

84. The said decision thus underscores the distinction between debarment traceable to contractual powers and debarment founded upon an independent statutory or administrative source. This distinction is of importance in the present case, where the Respondent asserts that the Impugned Debarment Letter is not referable to any provision of the Contract but derives its authority from the statutory and administrative framework governing the Respondent.

85. The common thread running through the aforesaid authorities is that the arbitrability of a dispute is not determined merely by the factual circumstances in which it arises. The enquiry must ultimately be directed towards the source of the power exercised, the nature of the action impugned and the legal consequences flowing therefrom. It is these considerations that must guide the determination of the issue presently before this Court.

86. This Court also considers it apposite to examine the scheme of Section 9 of the A&C Act, which empowers a Court to grant interim measures of protection before, during, or after arbitral proceedings but prior to the enforcement of the arbitral award. The provision authorises the Court to grant protective reliefs such as preservation of the subject matter of arbitration, securing the amount in dispute, preservation or inspection of property, grant of interim injunctions, appointment of receivers, and such other interim measures as may appear to be just and convenient. The jurisdiction under Section 9 is thus intended to preserve and protect the subject matter of the arbitration and to ensure that the arbitral proceedings are not rendered infructuous. For the sake of ready reference, the provisions of Section 9 of the A&C Act are reproduced hereunder:



“9. Interim measures, etc., by Court. - (1) A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court-

- (i) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or
- (ii) for an interim measure of protection in respect of any of the following matters, namely:

- (a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;
- (b) securing the amount in dispute in the arbitration;
- (c) the detention, preservation or inspection of any property or thing which is the subjectmatter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

- (d) interim injunction or the appointment of a receiver;

- (e) such other interim measure of protection as may appear to the Court to be just and convenient,

and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.

(2) Where, before the commencement of the arbitral proceedings, a Court passes an order for any interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the Court may determine.

(3) Once the arbitral tribunal has been constituted, the Court shall not entertain an application under sub-section (1), unless the Court finds that circumstances exist which may not render the remedy provided under section 17 efficacious.”

87. A plain reading of Section 9 of the A&C Act makes it evident that the interim reliefs contemplated therein must necessarily bear a direct and proximate nexus to the subject matter of the arbitration agreement and the disputes arising therefrom. The jurisdiction under Section 9 is intended to secure rights emanating from the contract and to preserve the efficacy of the arbitral proceedings in relation thereto. The expression “subject matter of the arbitration” has consistently



been understood to encompass the contractual rights and obligations of the parties, the works, goods, property, monies, or other contractual interests forming the foundation of the arbitral dispute.

88. In the present case, the interim relief sought against the Impugned Debarment Order does not answer this description. Debarment is not a matter arising out of the reciprocal contractual obligations undertaken by the parties, nor is it relatable to the performance, breach, enforcement, or preservation of rights flowing from the contract. Unless the contract itself expressly provides for debarment as one of the contractual rights or remedies available to either party, such action cannot be regarded as forming part of the subject matter of the arbitration agreement. Consequently, an order of debarment cannot ordinarily be made the subject matter of proceedings under Section 9 of the A&C Act.

89. Arbitration proceedings are fundamentally concerned with adjudicating disputes arising out of contractual rights and obligations. An order of debarment, however, operates on an entirely different plane. It does not merely regulate the rights and liabilities of the parties under an existing contract; rather, it affects the legal capacity of the concerned party to participate in future contractual relationships with the authority. In substance, therefore, debarment constitutes a restriction upon the person's ability to contract *in futuro*.

90. As noted earlier, such a restriction is not merely contractual in character but derives its significance from principles of public law. The authority to exclude a person from future contractual dealings is traceable to administrative powers, statutory authority, or other public law considerations. However, this Court is of the considered opinion that the ambit of contractual rights arising under a particular



agreement is necessarily confined to matters relating to the formation, performance, interpretation, enforcement, and breach of that very contract. Such rights cannot be extended to encompass actions operating prospectively so as to regulate or impair the ability of a party to enter into future contractual relationships.

91. The distinction between disputes arising out of an existing contractual relationship and actions affecting future contractual capacity has been recognised by the Hon'ble Supreme Court in **A.K.G. Construction** (*supra*), which clearly underscores that the latter belongs to a distinct legal domain.

92. Having examined the legal principles governing the distinction between contractual disputes, contractual capacity, and the exercise of independent statutory or administrative powers, the next question that arises for determination is whether the Respondent is able to identify a source of authority for the Impugned Debarment Order which exists independently of the contract executed between the parties.

93. In the considered opinion of this Court, the aforesaid question must be answered in the affirmative. The Respondent has specifically relied upon the AAI Manual, which constitutes the administrative framework governing the functioning of the Authority and prescribes the procedure as well as the circumstances in which debarment may be imposed. The existence of such an independent administrative framework demonstrates that the impugned action is not founded merely upon the contractual stipulations agreed between the parties.

94. The statutory foundation of the Respondent's authority also lends considerable support to this conclusion. Section 12 of the AAI Act enumerates the functions and responsibilities of the Airports Authority of India, while Section 20 of the AAI Act empowers the



Authority to enter into such contracts as may be necessary for the discharge of its statutory functions.

95. The statutory power to enter into contracts necessarily carries with it the corresponding discretion to determine the persons with whom the Authority may choose to contract, subject always to the limitations imposed by constitutional principles and administrative law. Equally, the power to decline future contractual dealings with a person, where justified under the governing statutory or administrative framework, is implicit in such statutory authority. Section 12 further authorises the Authority to take all such measures as may be necessary or expedient for effectively discharging the functions entrusted to it under the said Act.

96. Viewed in this statutory context, the power of debarment, as expressly recognised and regulated by the AAI Manual, cannot be regarded as a mere contractual remedy. Rather, it constitutes an exercise of administrative authority traceable to the statutory powers conferred upon the Respondent under the AAI Act. The source of the impugned power, therefore, lies not in the contract between the parties but in the statutory and administrative framework governing the functioning of the Respondent Authority.

97. At this juncture, it is also necessary to note that Clause 35.12 of the said Manual specifically provides for “*Action against contractor for unsatisfactory performance*” and authorises blacklisting or debarment of contractors on specified grounds, including where the performance of a contractor has been reported unsatisfactory during or upon completion of the work.

98. Significantly, the said power is not incorporated as a contractual remedy under the Contract Agreement or the General Conditions of



Contract, but exists as part of an independent administrative mechanism regulating the Respondent's future dealings with contractors. The Manual further prescribes a separate procedure for debarring contractors. The existence of such an independent framework lends considerable support to the Respondent's contention that the Impugned Debarment Letter emanates from powers distinct from the contractual remedies available under the Agreement. Clause 35.12 reads as under:

“35.12 Action against contractor for unsatisfactory performance

35.12.1 Any contractor can be blacklisted/debarred under following conditions:

- a. If he has submitted false certificate/documents as desired in the NIT.
- b. If the performance of contractor has been reported bad during/on completion of work.
- c. If an adverse advice is received from law enforcing agency or any other appropriate/related agency of Government of India/State Government.

35.12.2 The procedure to be adopted for debarring a contractor is given at Section 48.3 for works where tenders are accepted by ED or higher officer and at Section 48.4 where tenders are accepted by RED/APD (Kolkata/Chennai) and their subordinate officers.”

(emphasis supplied)

99. A plain reading of the aforesaid provision demonstrates that the power of debarment is conceived as a measure governing the Respondent's future contractual engagements and is triggered by considerations extending beyond the mere enforcement of contractual rights *inter se* the parties. This lends further support to the distinction between contractual remedies and the impugned action presently under challenge. It is pertinent to note that the Impugned Debarment Letter itself proceeds upon allegations of unsatisfactory performance and invokes considerations germane to contractor eligibility and future procurement. The subject matter of the impugned action substantially



corresponds with the field occupied by Clause 35.12.1(b) of the AAI Manual rather than any contractual provision governing performance, termination or recovery.

100. In the facts of the present case, a careful reading of the Impugned Debarment Letter reveals that although the allegations giving rise to the proceedings originate from the execution of the Contract, the impugned action is not directed towards the enforcement of any contractual right or remedy under the Agreement. The Impugned Debarment Letter repeatedly invokes considerations of public interest, quality standards, public infrastructure and integrity in public procurement, while recording that the consequences of the alleged deficiencies extend “beyond the confines of the contract”. The focus of the impugned action is not the determination of rights and obligations arising under the existing Contract, but the distinct question of whether the Petitioner ought to be permitted to participate in future tenders floated by the Respondent.

101. The Impugned Debarment Letter further clarifies that the debarment is without prejudice to the Respondent’s other rights and remedies under the Contract and in law, thereby treating the impugned action as separate and independent from the contractual remedies available under the Agreement. Viewed holistically, the nature, purpose and effect of the impugned action indicate that it operates as a measure regulating the Respondent’s future dealings with the Petitioner rather than as a contractual remedy arising out of the Contract.

102. During the course of the hearing, and in response to a specific query put by the Court, the Petitioner was unable to identify any provision of the Contract which expressly contemplated, authorised,



or reserved in favour of the Respondent the power to issue the Impugned Debarment Order.

103. The principal thrust of the Petitioner's submission was that, since the factual circumstances culminating in the debarment arose out of and were intrinsically connected with the execution and performance of the contractual obligations between the parties, the impugned action must necessarily be regarded as a dispute arising under the Contract. It was contended that the precise source of the Respondent's power to impose debarment was of little significance, for the action itself was rooted in alleged contractual defaults and was inseparably connected with the contractual relationship subsisting between the parties.

104. The Petitioner further sought to place reliance upon Clause 35.12.1(b) of the AAI Manual, contending that the said provision demonstrates that the exercise of the power of debarment is closely intertwined with the contractual dealings of the Respondent and its contractors and, therefore, must be regarded as contractual in character. According to the Petitioner, once the debarment is founded upon allegations arising during the course of contractual performance, the resultant dispute necessarily falls within the contractual sphere, irrespective of whether the power to impose such debarment is sourced from the Contract itself or from an independent administrative framework.

105. This Court, however, finds no merit in the aforesaid submissions and is unable to accept the line of reasoning advanced on behalf of the Petitioner.

106. The Petitioner's argument, in substance, seeks to equate the factual genesis of an action with the legal source of the power under



which such action is taken. Such an approach cannot be accepted. The mere fact that an administrative action is triggered by events occurring during the performance of a contract does not *ipso facto* transform the action into one arising under the contract. The determinative consideration is not the factual backdrop against which the power is exercised, but the legal source from which such power is derived. If the power to debar is not founded upon the contractual terms agreed between the parties, but emanates from an independent administrative or executive authority vested in the Respondent, the character of the action remains administrative, notwithstanding that the underlying allegations may relate to contractual performance.

107. To accept the Petitioner's contention would, in effect, require this Court to treat an administrative action as a contractual dispute solely because the facts giving rise to such action emerge from the contractual relationship. Such an approach would impermissibly enlarge the scope of the arbitration agreement and amount to reading into the Contract a subject matter which the parties themselves never agreed to submit to arbitration. This Court, while exercising jurisdiction under Section 9 of the A&C Act, cannot rewrite or expand the contractual bargain between the parties by bringing within the ambit of arbitration disputes that do not arise from the contractual rights and obligations embodied in the Contract.

108. Needless to state, if this Court entertains the present petition on merits and grants relief against the Impugned Debarment Order under Section 9 of the A&C Act, it necessarily has to proceed on the premise that the validity and legality of the debarment constitute disputes capable of being referred to and adjudicated through arbitration.

109. In the considered opinion of this Court, such an approach



would, in effect, render the legality of an administrative action amenable to arbitral scrutiny despite the absence of any contractual provision conferring jurisdiction upon the arbitral tribunal to examine such issues.

110. In the facts of the present case, where the impugned debarment derives its source from an independent administrative power of the Respondent rather than from the Contract itself, this Court is unable to accept an interpretation that would have the effect of converting a public law challenge into an arbitrable contractual dispute.

111. This Court also finds considerable merit in the Respondent's submission that challenges to orders of blacklisting or debarment are ordinarily tested on the well-established principles governing judicial review of administrative action, namely legality, reasonableness, proportionality, non-arbitrariness, fairness, and adherence to the Principles of Natural Justice. These standards are fundamentally public law standards and are directed towards examining the validity of the exercise of public power rather than the enforcement of reciprocal contractual obligations.

112. An arbitral tribunal, being a creature of contract and deriving its jurisdiction solely from the agreement between the parties, is principally concerned with the adjudication of disputes arising from contractual rights and obligations. The scrutiny of a debarment or blacklisting order, on the other hand, ordinarily requires an examination of whether the decision-making process satisfies the requirements of fairness, transparency, proportionality, and procedural propriety. Such an enquiry is qualitatively distinct from the determination of contractual disputes and reinforces the Respondent's contention that the present challenge transcends the ordinary domain



of private law adjudication.

113. Viewed from the aforesaid perspective, the contention advanced on behalf of the Respondent merits substantial acceptance. The Impugned Debarment Letter derives its character not from the contractual relationship between the parties, but from the Respondent's exercise of an independent administrative power regulating its future contractual and commercial dealings, unless such power has been expressly incorporated into and sourced from the Contract itself.

114. In view of the foregoing discussion, this Court has little hesitation in holding that the character of an action is determined not by the facts which trigger its exercise, but by the source from which the authority to undertake such action is derived. Where the power exercised is independent of the contractual framework and is directed towards regulating future dealings rather than enforcing existing contractual rights, the resulting dispute cannot automatically be brought within the ambit of arbitration merely because the underlying allegations originate in the course of contractual performance. If the matter were to rest solely on the principles emerging from the authorities discussed hereinabove, this Court would have little difficulty in sustaining the Respondent's preliminary objection regarding the non-arbitrable nature of the present challenge.

115. However, since the Petitioner has sought to rely upon a separate line of decisions to contend that disputes concerning debarment may, in appropriate cases, remain amenable to arbitration, it becomes necessary to examine whether the said authorities advance the Petitioner's case in the facts of the present matter.

116. Accordingly, this Court adverts to examine the decisions relied



upon by the Petitioner in support of the maintainability of the present Petition.

117. In the considered opinion of this Court, the reliance placed upon by the Petitioner on ***Edapally to Kodungallur Highway (supra)***, ***Sai Consulting Engineers (supra)***, ***SPS Engineering (supra)*** and ***Prabhatam Advertisement (supra)***, does not advance the Petitioner's case in the peculiar facts of the present matter.

118. In each of the aforesaid decisions, the Court was principally concerned with situations where the action of blacklisting or debarment either arose in the context of disputes already forming part of the contractual dispute resolution process, or was founded upon issues which themselves constituted direct subject matter of the contractual adjudication. The said decisions cannot be construed as laying down an absolute proposition that every order of blacklisting or debarment, merely because it is founded upon allegations arising during the performance of a contract, automatically becomes an arbitrable dispute.

119. This Court further notes that the decision in ***Prabhatam Advertisement (supra)*** itself recognises that the power of blacklisting is distinct from the power to recover contractual dues and is not extinguished merely because disputes concerning the underlying contract are pending adjudication. The Court expressly observed that pendency of arbitral proceedings does not, by itself, denude a public authority of its power to blacklist and that the power to blacklist constitutes a distinct and independent power.

120. Similarly, ***SPS Engineering (supra)*** was decided in the context of a challenge where the grounds forming the basis of blacklisting were themselves the subject matter of 'pending' arbitral proceedings



and where the Court also found non-compliance with Principles of Natural Justice. The decision turned upon its own factual matrix and cannot be read as laying down an inflexible rule that every challenge to a debarment order founded upon contractual allegations must necessarily be treated as an arbitrable dispute.

121. The reliance placed upon ***Sai Consulting Engineers (supra)*** is equally misplaced. The said decision turned upon its own peculiar factual matrix, where the Court found that the impugned blacklisting order had itself been founded upon alleged breaches of contractual obligations and had been passed with express reference to various clauses of the underlying agreement. It was in those circumstances that the Court observed that the respondent could not simultaneously justify the impugned action on the basis of contractual stipulations and yet contend that the resultant dispute fell outside the scope of arbitration. The Court accordingly left the issue of arbitrability to be examined by the arbitral tribunal in exercise of its jurisdiction under Section 16 of the A&C Act.

122. The reliance placed upon ***Edapally to Kodungallur Highway (supra)*** is equally distinguishable. In the said case, this Court found the petition maintainable primarily because the issue of debarment had already been treated by the parties themselves as falling within the contractual dispute resolution framework and had, in fact, travelled before the Independent Engineer as well as the Dispute Resolution Board, as per the contractual dispute resolution mechanism. This Court also attached significance to the conduct of the parties and the broad dispute resolution architecture contained in the concession agreement. No comparable circumstance exists in the present case. The said decision, therefore, turned upon the peculiar contractual



framework and conduct of the parties obtaining therein and cannot be construed as laying down a general proposition that every challenge to a debarment order issued by a statutory authority must necessarily be regarded as arbitrable.

123. The aforesaid authorities, relied upon by the Petitioner, are therefore distinguishable both on principle and on facts. Far from detracting from the conclusion arrived at hereinabove, the said decisions reinforce the proposition that the arbitrability of a dispute concerning blacklisting or debarment must ultimately depend upon the source of the power exercised, the nature of the action impugned and the relief sought in the proceedings.

124. At the cost of repetition, it is necessary to emphasize that the present dispute derives its essential character not from the Contract itself, but from the nature and source of the power sought to be exercised by the Respondent. The arbitration agreement undoubtedly governs disputes arising out of or relating to the Contract. However, the present proceedings are not concerned with enforcement, preservation or determination of any contractual right or obligation arising thereunder. The challenge is directed exclusively against the Respondent's decision to debar the Petitioner from participating in future tenders for a specified period, thereby regulating the Respondent's future commercial relationship with the Petitioner.

125. Importantly, neither the source of the impugned power nor the consequence flowing from its exercise can be located within the contractual dispute resolution framework. The authority to debar is asserted by the Respondent not under any provision of the arbitration agreement, but under its independent administrative framework governing public procurement and contractor eligibility.



126. In the considered opinion of this Court, acceptance of the Petitioner's submission would reduce the distinction between contractual disputes and administrative actions to a nullity. Any exercise of blacklisting or debarment power founded upon events occurring during performance of a contract would then become arbitrable merely because the factual foundation is contractual in origin. Such an approach would be contrary to the principles emerging from **Patel Engineering** (*supra*), **Verigamto Naveen** (*supra*) and **A.K.G. Construction** (*supra*). What determines arbitrability is not merely the factual source of the allegations, but the juridical character of the power exercised and the nature of the relief sought. Tested on that standard, the present challenge cannot be regarded as a dispute arising out of or relating to the Contract in the sense contemplated by the arbitration agreement.

127. The possibility that questions relating to delay, quality of work, or contractual performance may themselves be referable to arbitration does not alter the character of the present challenge. Even if such issues form part of arbitral proceedings *inter se* the parties, the legality of the impugned debarment remains a distinct question arising from the exercise of an independent administrative power.

128. Further, another circumstance which cannot be overlooked is that the Contract itself has substantially worked itself out. The terminal building stood commissioned on 03.06.2025 and a Provisional Completion Certificate was admittedly issued on 09.12.2025, *albeit* subject to certain defects being rectified during the Defect Liability Period. The impugned action does not terminate the Contract nor determine any subsisting contractual right under the Agreement. Rather, it concerns the Petitioner's future eligibility to



participate in procurement processes of the Respondent.

129. In view of the foregoing discussion, this Court is of the considered view that the Impugned Debarment Letter draws its authority from the Respondent's independent administrative and executive powers, as reflected in the statutory framework governing the Respondent and the administrative instruments issued thereunder, including the AAI Works Manual, and therefore, the Debarment Letter is held to be an administrative order and not an order issued in exercise of contractual conditions governing the parties amongst themselves. Hence, any relief *vis-à-vis* the Debarment Letter falls beyond the scope of the arbitration agreement contained in the Contract.

130. It is trite law that the relief under Section 9 of the A&C Act is ancillary to and in aid of arbitral proceedings. In the absence of an arbitrable dispute as the Petitioner has raised in the present Petition, no occasion arises for the grant of interim measures under the said provision.

131. In view thereof, once the challenge to the Impugned Debarment Letter is held to be non-arbitrable, the very foundation for the invocation of jurisdiction under Section 9 of the A&C Act disappears.

DECISION:

132. Accordingly, the preliminary objection raised by the Respondent is sustained. The present Petition under Section 9 of the A&C Act is held to be not maintainable and is consequently dismissed.

133. Having upheld the preliminary objection raised by the Respondent and having found the present Petition to be not



maintainable under Section 9 of the A&C Act, this Court does not consider it appropriate to examine the rival submissions advanced on the merits of the impugned Debarment Letter. Any observation on the merits of the allegations underlying the impugned action would be wholly unnecessary for the purposes of the present adjudication and may prejudice the rights and contentions of the parties in proceedings before a competent forum. The contentions of the parties on the merits are therefore left open.

134. It is clarified that this Court has expressed no opinion on the legality, validity or proportionality of the Impugned Debarment Letter, all of which remain open for consideration in appropriate proceedings before a competent forum in accordance with law.

135. Accordingly, the present Petition, along with pending Application(s), if any, is disposed of.

136. There shall be no order as to costs.

HARISH VAIDYANATHAN SHANKAR, J.
JULY 01, 2026/sm/DJ