

HIGH COURT OF JAMMU & KASHMIR AND LADAKH  
AT SRINAGAR

...

FAO no.13/2024

*Reserved on: 19.02.2025*

*Pronounced on: 11.03.2025*

1. Airports Authority of India through its Chairman, Rajiv Gandhi Bhawan Safdarjung Airport, New Delhi-110001
2. Executive Engineer (Commercial) Airports Authority of India Rajiv Gandhi Bhawan Safdarjung Airport, New Delhi-110001
3. Airport Director, Airports Authority of India, Srinagar International Airport, Srinagar
4. Senior Manager (Commercial), Airports Authority of India, Srinagar International Airport, Srinagar

.....Petitioner(s)

Through: Mr Mr Rajiv Shakhder, Sr. Advocate with Mr. Digvijay Rai, Advocate,  
Mr. Faizan A Ganie, Advocate; Mr. Vikas Malik, Advocate;  
Mr Mushtaq Ahmad Dar, Advocate

**Versus**

M/s Saptagiri Restaurant Private Limited through its Authorised Signatory Akash Kumar Raj age 35 years having its Registered office at L-332 Mahipalpur Extension New Delhi 110037

.....Respondent(s)

Through: Mr Danish Majid, Advocate

**CORAM:**

**HON'BLE MR JUSTICE VINOD CHATTERJI KOUL, JUDGE**

**JUDGEMENT**

1. Setting-aside of Order dated 8<sup>th</sup> April 2024 passed by Additional District Judge (Fast Track) Budgam ("*Trial Court*" hereinafter) in a civil suit titled *M/s Saptagiri Restaurant Private Limited v. Airport Authority of India and others*, allowing *ad interim* injunction application of respondent (plaintiff before the Trial Court), making threshold interim order dated 21<sup>st</sup> December 2023 absolute and keeping Order no.CL-11047/3/2020-COMMERCIAL/238 dated 20<sup>th</sup> December

2023 in abeyance till disposal of main suit. Setting-aside of Order dated 21<sup>st</sup> December 2023 passed by Trial Court is also being prayed for on the grounds made mention of in instant appeal.

2. I have heard learned counsel for parties and considered the matter.
3. A civil suit has been filed by *M/s Saptagiri Restaurant Private Limited* – respondent herein, against Airport Authority and its functionaries – appellant herein before Trial Court. In its suit it is stated by plaintiff/respondent that it is a registered company carrying on business of managing restaurants and other related services for past 23 years, having its registered office at L-332, Mahipalpur Extension, New Delhi and has been running various food and beverages outlets, restaurants, massage chair facility etc. in the airports all over the country for last two decades. Plaintiff has also stated in his plaint that it is aggrieved of Order no.CL-11047/3/2020-COMMERCIAL/238 dated 20<sup>th</sup> December 2023, issued by defendant no.2 (appellant no.2 herein), debarring plaintiff from participating in any future tenders floated by Airport Authority of India (AAI) for three years.
- 3.1. According to plaintiff/respondent, it participated in a tender process initiated by defendant no.1 (appellant no.1 herein) in Chennai and Amritsar, but defendant no.1 sought to debar plaintiff to participate in tender process at Chennai and Amritsar, ostensibly on the ground that an employee of plaintiff, namely, Karan Singh, Proprietor of M/s Syona Spa, had availed benefits, like ESI PF, etcetera and also an airport-employee-pass was issued to said Karan Singh by Bureau of Civil Aviation Security in the name of M/s Saptagiri Restaurants Private Limited. It was alleged that aforesaid Karan Singh had availed a loan

from plaintiff and hence there was a conflict of interest as per the RFP provisions contained in the notice inviting e-tenders and as a corollary whereof in terms of letter dated 30<sup>th</sup> November 2022 an explanation was called from plaintiff alleging therein that complaints were received against plaintiff and one M/s Syona Spa regarding participation in tender.

3.2. It is also the case of plaintiff/respondent before the Trial Court that plaintiff immediately tendered a reply dated 5<sup>th</sup> December 2022, contending that allegations were baseless and that upon taking into consideration reply filed by plaintiff and after being satisfied that allegations levelled in the complaint were baseless, defendant-AAI proceeded to award tender to plaintiff insofar as tender floated in respect of Amritsar was concerned. In the interregnum, defendant-AAI initiated proceedings against plaintiff insofar as tender pertaining to Chennai Airport is concerned and issued a show cause notice dated 5<sup>th</sup> June 2023 asking plaintiff to show cause as to why action should not be taken against plaintiff on the ground of conflict of interest and material misrepresentation.

3.3. It is further case of plaintiff before Trial Court that similar allegations were levelled against plaintiff in show cause notice as were levelled against it in Amritsar. Upon receipt of show cause notice dated 5<sup>th</sup> June 2023, plaintiff tendered its reply dated 14<sup>th</sup> June 2023 in which allegations were strongly refuted and controverted.

3.4. Plaintiff has also averred in his plaint that an illegal order of debarring it in participating in any tenders floated by defendant-AAI at Chennai Airport was issued. Aggrieved whereof, plaintiff filed Writ Petition

bearing no.23466 of 2023 before the High Court of Madras, assailing the action of defendant-AAI debarring plaintiff. Upon consideration of matter, the Madras High Court passed order dated 9<sup>th</sup> August 2023, directing defendant not to do anything in pursuance of the proceedings dated 26<sup>th</sup> July 2023 initiated by them and affect commercial activities of plaintiff in any way and stayed the order dated 26<sup>th</sup> July 2023, in terms whereof, plaintiff was debarred qua Chennai Airport.

3.5. Subsequently, defendant no.1 issued a show cause notice to plaintiff seeking reply with regard to issue of conflict of interest and plaintiff responded to show cause notice, but defendant no.1 issued order dated 8<sup>th</sup> August 2023, debarring plaintiff from participating in any tender floated by defendant no.1 at Amritsar Airport for three years, ostensibly, on the ground of conflict of interest and material misrepresentation. Aggrieved, plaintiff filed Civil Writ Petition no.17635 of 2023 before the High Court of Punjab and Haryana at Chandigarh. Plaintiff withdrew that petition with liberty to approach Dispute Redressal Committee (DRC). Plaintiff, accordingly, approached DRC.

3.6. It is also stated by plaintiff in his plaint that it upon acquaintance of the fact that defendants have also started to act prejudicial to its rights, debarring plaintiff to participate in Tender no.AAI/SXR/ COMML/ FnB /400/2023 titled “*Short Term License to operate Food and Beverages outlets (SHA F/F and Arrival at Srinagar International Airport, Srinagar*”, it approached court of 1<sup>st</sup> Additional District Judge, Budgam, with a Suit for Declaration, Perpetual and Mandatory Injunction, for declaring defendants’ action, debarring plaintiff from

participating in tender floated by defendant no.1 in Srinagar in terms of aforesaid tender notice, as illegal and arbitrary. The said Court vide *ad interim* order dated 22<sup>nd</sup> August 2023, directed defendants to allow plaintiff to participate in aforesaid tender and not to finalize the tender without further orders of the court. Application for vacation of *ad interim* order was filed by defendants. The said Court issued order dated 8<sup>th</sup> September 2023, directing defendant no.3 to open bids including that of plaintiff and proceed in terms of relevant provisions of law taking into consideration rules applicable and conclude process. Against that order, appeal preferred by defendants was dismissed by a Bench of this Court vide order dated 13<sup>th</sup> October 2023.

3.7. According to plaintiff, in the interregnum another show cause notice dated 8<sup>th</sup> June 2023 was issued by defendants, which was replied by him on 16<sup>th</sup> June 2023. However, defendants issued order dated 20<sup>th</sup> December 2023, imposing prohibition on plaintiff for three years, precluding plaintiff's participation in any forthcoming tenders including the ones in Srinagar, floated by AAI. Plaintiff in his plaint, sought quashing of order dated 20<sup>th</sup> December 2023, with a direction to defendants to restrain from debarring plaintiff from participating in any future tenders floated by AAI. Plaintiff also sought respondents to be directed to allow plaintiff to participate in all future tenders floated by AAI.

3.8. Trial Court vide its order dated 21<sup>st</sup> December 2023 kept in abeyance defendant no.2's order dated 20<sup>th</sup> December 2023.

4. Appellants/defendants submitted their written statement and objections.



- 4.1. In their written statement, it is averred by appellants that AAI is a statutory body constituted by an Act of Parliament viz. Airports Authority of India Act, 1994 and is enshrined with the responsibility of creating, upgrading, maintaining and managing civil aviation infrastructure in the country.
- 4.2. It is also stated by appellants in their written statement that the suit filed by respondent is liable to be dismissed as Trial Court lacks territorial jurisdiction on account of the fact that show cause notices were issued to plaintiff/respondent at its registered office at New Delhi. He replied to show cause notices from the same address and order of debarment was also served at its registered office at New Delhi. Besides, plaintiff/respondent has no office at Srinagar as he is operating his business from Delhi which is also reflected in the title of the case and has been debarred from participation in tenders at AAI Airports by way of debarment order falling outside the territorial jurisdiction of the Trial Court and cannot be allowed to institute the suit in absence of any specific cause of action against appellants at Srinagar.
- 4.3. Further submission of appellants in their written statement is that respondent while taking recourse of earlier orders passed by Trial Court in a pending suit which was upheld by the High Court on the pretext that debarment orders issued at Chennai Airport stands already stayed and same cannot be treated as debarment before the Trial Court, then one fails to understand as to why respondent has not challenged order dated 20<sup>th</sup> December 2023 before Madras High Court, where earlier writ petition is already pending either by way of fresh writ petition or initiating contempt proceedings against appellants and in spite of doing

so why and under what circumstances plaintiff has chosen to file the suit against debarment order before Trial Court that too without having any cause of action or knowing the fact that Trial Court is not vested with territorial jurisdiction.

4.4. It is also stated by appellants that debarment order has been passed in accordance with law after examining the issue properly while giving full opportunity of being heard to respondent. Respondent was debarred by authorities at Chennai and Amritsar and was not allowed to participate in tendering process floated by appellants at Srinagar International Airport. Respondent has been found to have connection with M/s Syona Spa and M/s Mahesh Enterprises Pvt. Ltd., having strong understanding between Shri Bikram Singh and Shri Karan Singh, which indicated that there is complete collusive bidding/bid rigging practices by both entities in AAI tenders.

4.5. It is also averred by appellants that contentions raised by respondent with respect to non-involvement of Shri Karan Singh in presence of his termination prior to issuance of debarment order will not principally be made basis for non-issuance of order as conflict of interest was found very much in all tenders, description of which is given in debarment order. All the procedures and norms have been followed.

4.6. The Trial Court has passed order dated 8<sup>th</sup> August 2024, which is impugned in this memo of appeal.

5. It is the case of appellants that Appellant -Airports Authority of India is a Statutory Body constituted by the Act of Parliament, viz. The Airports Authority of India Act, 1994.

5.1. It is also stated by appellants/defendants that respondent/plaintiff has been debarred by appellants from participating in future tenders/RFPs/ RFQs/NITs to be floated by AAI for a period of three years from the date of issuance of order dated 20<sup>th</sup> December 2023. What is mentioned in said order is worthwhile to be reproduced hereunder:

1. On perusal of the details of the participation of M/s Saptagiri Restaurant Pvt. Ltd (SRPL) in following e-tenders (NIETs) of AAI viz. (i) 2022\_AAI\_124765\_1 at Raipur Airport (ii) 2022\_AAI\_127866\_1 at Amritsar Airport (iii) 2022\_AAI\_127867\_1 at Amritsar Airport (iv) 2022\_AAI\_131566\_1 at Chennai Airport (v) 2022\_AAI\_131571\_1 at Chennai Airport (vi) 2022\_AAI\_122611\_1 at Ranchi Airport and (vii) 2022\_AAI\_128964\_1 at Pune Airports, the bidding pattern indicated in the show-cause notice, examination of replies submitted to the show cause Notice and personal hearing held on 30.11.2023 in the O/o Member (HR) thereof, the following has emerged:
  - a. During the personal hearing on 21.11.2023, M/s Syona Spa, represented by Shri Karan Singh, proprietor of M/s Syona Spa mentioned that he has worked with M/s Mahesh Sunny Enterprises Pvt. Ltd. for 18 to 19 years, and he does not know anyone in M/s SRPL. He also mentioned that after debarment of M/s Syona Spa by AAI, he is involved in Agriculture and Animal Husbandry activities at his native place around Gurgaon, Haryana.
  - b. From the contents of the letter of M/s Syona Spa dated 12.04.2023 addressed to the Airport Director, Chennai, it is perceived that Shri Karan Singh, the proprietor of M/s Syona Spa has indicated that he was also in the services of M/s SRPL from 2015 till July/August 2022 but for reasons best known to M/s SRPL, his services were dispensed with by M/s SRPL in August, 2022. It is also indicated in the letter that he was granted a personal loan by M/s SRPL. This letter also indicates that his services are being continued in M/s Mahesh Sunny Enterprises Pvt. Ltd. while he is still continuing as sole proprietor of M/s Syona Spa.
  - c. Further, it is observed from the records, that based on the request from M/s Saptagiri Restaurants Pvt. Ltd., Shri Karan Singh was issued Airport Entry Pass No.BOM20202044702 valid from 25.02.2020 to 16.08.2021 for entry into All Airports and All Terminals. It was also seen from the records that a letter dated 06.05.2016 was issued by Shri Bikram Singh, Director of M/s SRPL in which it was mentioned that M/s Syona Spa is a unit of M/s SRPL.
  - d. In view of the foregoing, it is deduced beyond any reasonable doubt that Shri Karan Singh was also working for M/s SRPL and that M/s Syona Spa is a unit of M/s SRPL.
  - e. During the personal hearing on 30.11.2023, M/s Saptagiri Restaurants Pvt. Ltd (M/s SRPL) represented by Shri Bikram Singh intimated that he has multiple businesses in the name of M/s SRPL, M/s Mahesh Sunny Enterprises Pvt. Ltd., M/s Lovelin Enterprises, M/s Roma Henay Security Services and M/s Roma Enterprises. He added that his elder son Shri Satvik Gothwal and Shri Mohinder Singh (maternal uncle of Shri Bikram Singh) are Directors of M/s Mahesh Sunny Enterprises Pvt. Ltd and he along with his younger son Shri Dhruv Gothwal are Directors of M/s SRPL which is currently working at 16 AAI Airports as Master Concessionaires and Standalone outlets. Further, when he was asked about the



employment of Shri Karan Singh, he mentioned that Shri Karan Singh was on the pay roll of M/s Mahesh Sunny Enterprises Pvt. Ltd but his services are also utilized in M/s SRPL. He also added that he had given a personal loan to Shri Karan Singh of M/s Syona Spa and till date he has not received back the loan and Shri Karan Singh has defaulted on the loan.

- f. Shri Bikram Singh, Director, M/s SRPL in his letter dated 25.02.2023 (vide para 2) addressed to the Airport Director, Chennai has mentioned that Shri Karan Singh was working as Sr. Manager with his Company. The letter was signed by Shri Bikram Singh on the letter head of M/s SRPL. Further, vide para 2 of the same letter Shri Bikram Singh has mentioned that a personal loan was extended to Shri Karan Singh in 2016 and that the same is still unpaid.
  - g. It was also seen that in the letter dated 06.05.2016 which was issued by Shri Bikram Singh, Director of M/s SRPL it was mentioned that M/s Syona Spa is a unit of M/s SRPL. This letter was issued on the letter head of M/s SRPL and addressed to 'To whom it may concern'. Further, it could be seen that the registered address of Syona Spa (as per letter head as seen vide letter dated 19.06.2023) is L 73 / L 322, 1<sup>st</sup> Floor, Saptagiri Hotel, Mahipalpur Extension, NH-8, New Delhi – 110 037 and the registered address of M/s SRPL (as per letter head as seen vide letter dated 16.06.2023) is L-322, Mahipalpur Extension, New Delhi – 110 037 which indicates a strong connect between both the Agencies.
  - h. From the above, it can be seen that there is a strong connection between M/s SRPL, M/s Syona Spa and M/s Mahesh sunny Enterprises Pvt. Ltd. and thereby strong understanding between Shri Bikram Singh and Shri Karan Singh, as prudence says:  
\* \* \* \* \*
  - i. As can be seen from table above that, while above tenders were called by AAI from July, 2022 to October, 2022, M/s Syona Spa was submitting their bids without any proper documents on the last day of bid extended period; despite being a regular participant in AAI tenders and well aware of the requirements in the tender process.
  - j. When M/s Syona Spa was asked about the reason for such unsuccessful participation, the Agency replied that it could not mobilize sufficient funds due to the non-cooperation of his Financiers in time. This argument is very difficult to accept as the tender process was spread across four months and seen tenders involved.
2. In view of the forgoing, it can be comprehended that there is a long history of association between M/s Syona Spa and M/s Saptagiri Restaurant Pvt. Ltd that puts both the entities in position to have access/influence over each other. Therefore, said indicated pattern above leads to Collusive bidding/bid rigging practices by both entities in the above AAI tenders.
  3. Therefore, it is to inform that, M/s Saptagiri Restaurant Pvt. Ltd. has violated Clause 9 (a) (vi) of General Information and Guidelines of e-Tender document / NIT.
  4. Thus, as per clause 9(b) of the General Information and Guidelines of e-Tender document / NIT, M/s Saptagiri Restaurant Pvt. Ltd, with registered address L 322, Mahipalpur Extension, New Delhi – 110037, is hereby debarred from Participating in future tenders/RFPs/RFQs/NITs floated by AAI along-with forfeiture of EMD and performance security in the said tenders, for a period of (03) (Three) years from the date of issuance of this letter.
  5. This is issued without prejudice to any other rights or remedies that may be available to Airports Authority of India as per NIET / Tender document or any other law for the time being in force.

6. Competent Authority of AAI has decided to restrain the agency “M/s Saptagiri Restaurant Pt. Ltd. L 322, Mahipalpur Extension, New Delhi – 110037” from participating in any future tenders for any work in AAI in any name and style for three (03) years from the date of issuance of this letter.
7. It is further notified that the above decision of AAI applied to all allied firms / partners / subsidiaries / JV (if any) of M/s Saptagiri Restaurant Pt. Ltd.....

5.2. It is contention of appellants that issuance of debarment order had been felt only when appellants found that respondent had indulged in collusive bidding for tenders invited at Amritsar, Rajpur, Ranchi, Chennai and Pune Airports inasmuch as respondent falls under Clause 9(a)(vi) of General Information and Guidelines of E-tender by taking recourse of Clause 9(b) thereof. It has also been found by appellants that there existed a long history of association between respondent and M/s Sayona Spa which puts both entities in a position to have access/influence over each other, leading to collusive bidding/bid rigging practice in tenders invited by AAI.

5.3. According to appellants, the suit filed by respondent before the Trial Court is not maintainable against a Statutory action taken/initiated by a Statutory body and on a challenge under writ jurisdiction is available, more particularly when there is presence of an Alternate Dispute Mechanism Clause in the form of Mediation and Arbitration under the Manual of Contract 2019, the civil suit could not be entertained.

5.4. Appellants' next contention is that respondent cannot avail multiple/parallel remedies qua the same subject-matter before the Madras High Court, Dispute Resolution Committee (DRC) at Amritsar, and Declaration Suit before Trial Court and that statutory proceeding cannot be challenged in a suit as remedy under Statute is to be availed. When a consent was given by respondent before the High Court of

Punjab and Haryana to appear before DRC qua its all grievances on the subject-matter, any other proceedings before different forums became infructuous and ought to be have withdrawn or dismissed.

6. Earlier, AAI through its Airport Director, Chennai Airport, issued Debarment Order dated 26<sup>th</sup> July 2023, against respondent debarring it for a period of three years. This Order of Debarment, challenged by respondent in a writ petition, was stayed by the Madras High Court, vide order dated 9<sup>th</sup> August 2023.
- 6.1. Respondent had also preferred a writ petition before Punjab and Haryana High Court against order dated 8<sup>th</sup> August 2023. There it was on consensus that respondent withdrew its writ petition so as to approach DRC at Amritsar Airport for redressal of its grievances.

If that being the position, respondent has opted a choice to approach a particular forum for redressal of its grievances and as a consequence of which all other proceedings become infructuous.

7. It is AAI's Main Office at Delhi, i.e., Corporate Headquarters, which by virtue of order dated 20<sup>th</sup> December 2023, has debarred respondent from participating in any future tenders with respect of any works in AAI, in any name and style for a period of 03 years from 20<sup>th</sup> December 2023.
- 7.1. Against Debarment Order dated 20<sup>th</sup> December 2023, respondent preferred to approach the Trial Court with a civil suit. The Trial Court vide its order dated 21<sup>st</sup> December 2023, stayed Debarment Order.
- 7.2. Against Trial Court *ad interim* order dated 21<sup>st</sup> December 2023, appellants had preferred an appeal, being FAO no.38/2023. A Bench of this Court, however, without expressing any opinion on merits of the

case, directed them to file objections to interim application with a further direction to Trial Court to consider application/objections/ written statement, if any, to be filed by appellants and decide the application/objections and pass appropriate orders in the interim application after hearing both the parties.

7.3. The Trial Court by impugned order has made its ad interim order dated 21<sup>st</sup> December 2023 absolute. The result thereof is that Debarment Order dated 20<sup>th</sup> December 2023 has been kept in abeyance by the Trial Court till final disposal of main suit.

8. Learned counsel for appellants would contend that suit filed by respondent before Trial Court is not maintainable against statutory action taken by statutory body inasmuch as challenge thereto can be thrown under writ jurisdiction. He has placed reliance on Ghulam Abbas and other v. State of U.P. and others (1982) 1 SCC 71, in which it was observed that a suit cannot be filed against orders which are passed by statutory authorities under different Statutes and that if orders of statutory authorities passed under respective Statutes have to be challenged, then these can be only challenged under Article 227 and/or under Article 226 of the Constitution of India and not by way of a civil suit.

8.1. He further contends that in presence of an Alternate Dispute Mechanism Clause in form of Mediation and Arbitration under the Manual of Contract 2019, civil suit could not have been entertained by Trial Court. In addition to that, existence of a provision of appeal specifically mentioned qua subject matter, i.e., order of debarment under Manual of Contract 2019, civil suit could not have been

entertained. Respondent could not avail multiple parallel remedies on same subject matter before Madras High Court, DRC at Amritsar and Declaration suit before Trial Court. Once consent was given by respondent before the Punjab and Haryana High Court to appear before DRC, all other proceedings initiated by appellant before other fora become infructuous and ought to have been withdrawn or dismissed.

8.2. It is being also averred that the Trial Court has erred to appreciate that debarment of respondent was done in exercise of procedure laid down in Clause 8.12.4 of Commercial Manual 2019 (Manual of Contract), which provide for “steps to be taken for debarring an agency”. And that Trial Court also erred to appreciate that in paragraph 26, respondent mentioned that procedure under Manual of Contract 2019 was followed by appellants before debarring respondent-agency. Trial Court also did not consider the fact that Manual of Contract is a self-contained manual, which prescribed procedure of dispute mechanism.

8.3. It is being vehemently stated that Trial Court has not appreciated the fact that respondent has approached it with unclean hands owing to the fact that on an Identical Debarment Letter, issued in Chennai and Amritsar, respondent had approached the High Courts under Article 226 of the Constitution, by stating therein that no appeal or revision lies against action of respondents and therefore respondent was left with no other alternative remedy except to invoke writ jurisdiction, whereas in the present case, he has approached the Civil Court.

8.4. It is being stoutly argued that respondents, by taking three separate recourses at the same time for identical and combining orders, has attempted to pollute stream of justice and it is a well settled principle



of law in Dalip Singh v. UP and others that litigants who attempt to pollute the stream of justice are not entitled to any relief, interim or final. Pursuing of parallel remedies in respect of same subject-matter has been deprecated by the Supreme Court in *Jai Singh v. Union of India (1977) 1 SCC 1 : AIR 1977 SC 898*.

- 8.5. Another resolute assertion made by learned counsel for appellants is that Trial Court has not appreciated the fact that it lacks pecuniary, territorial and subject-matter jurisdiction because of the fact that cause of action to file suit before it emanated from Debarment Order passed by AAI, Head Office at Delhi and respondent had no immediate consequence herein at Srinagar. Reference in this regard is being made to Section 20 of the Code of Civil Procedure, 1908, which prescribed suits to be instituted where defendants reside or cause of action arises.
- 8.6. According to learned counsel, Trial Court has not considered the fact that Section 33 of the Airports Authority of India Act, 1994, bars any suit, prosecution or other legal proceedings against AAI. Besides, Manual of Contract 2019 provides arbitration mechanism and in such situation, respondent could have availed remedy under Arbitration and Conciliation Act, 1996. That apart, Trial Court has failed to appreciate that even otherwise the scheme of Specific Relief Act has not been designed to prohibit public officer/authorities from performing its functions under the Statutes.
- 8.7. Learned counsel has also stated that there is a conflict of interest inasmuch as there is modus of respondent – M/s Saptagiri Restaurant Private Limited and M/s Syona Spa that when any one of the regional airports across the country invites bids for tender, respondent-SRPL

first submits its bid and where there is only a single participant in the bid, the last date for submission is extended, as a pattern, it is observed that on the last date of the extended bid submission, M/s Syona Spa submits its bid with incomplete documents and as a consequence of which there is no further extension and respondent-SRPL is declared as a successful bidder. Reference in this regard has been made by them to the Table given in Debarment Order dated 20<sup>th</sup> December 2023, which has already been reproduced herein above.

- 8.8. He would say that respondent and M/s Syona Spa, in a similar case, in which Debarment Letters/Orders dated 26<sup>th</sup> July 2023 and 4<sup>th</sup> August 2023, issued by AAI with respect to Chennai Airport, filed writ petitions, viz. WP Nos. 23446 & 26896 of 2023 titled as *M/s Saptagiri Restaurant and M/s Syona Spa v. the Chairman Airport Authority of India and another*, before the High Court of Judicature at Madras, which were dismissed vide judgement dated 30<sup>th</sup> September 2024.
- 8.9. Learned counsel for petitioners has invited attention of this Court to a writ petition, viz. CWP No.11390 of 2024 (O&M) titled as *M/s Saptagiri Restaurant Private Limited v. Airports Authority of India and others*, [2024:PHHC:171044-DB], in which respondent herein had thrown to challenge orders dated 8<sup>th</sup> August 2023, by which respondent was debarred from participating in future tenders/RFPs floated by Airports Authority of India for a period of three years and licence awarded to it for Wellness Centre/ Spa and Massage Chair Facility was terminated. Besides, order dated 2<sup>nd</sup> May 2024, passed by DRC was also assailed by respondent. The Division Bench of Punjab and Haryana High Court has dismissed the said writ petition.

9. *Per contra*, it is stated by counsel for respondent that impugned order does not call for any interference as it has been passed by Trial Court after considering rival contentions of both the parties. He would also aver that instant appeal is not maintainable as it challenges two distinct orders of the Trial Court. Appellants are stated to have raised certain grounds for the first time in the appeal, which they did not plead in their written statement before the Trial Court, which is impermissible under law as parties are required to present all their grounds and defences at the earliest stage of the proceedings and failure to do so precludes appellants from introducing new grounds at appellate stage. According to him, Debarment Order does not derive its authority from Airports Authority of India Act, 1994, rather it is an administrative order issued by appellant no.2, which infringes upon legal and legitimate rights of respondent. The provisions of Manual of Contract 2019 cannot override the provisions of the Code of Civil Procedure and Specific Relief Act. In addition to this, provision in Manual of Contract, 2019, regarding appeal against debarment is directory in nature.
- 9.1. It is being also stated that respondent is entitled to seek redress before either Civil Court or before this Court and that allegation about parallel proceedings is baseless as it was malicious actions of appellants which necessitated respondent to take recourse to different forums across Madras, Amritsar and Srinagar. Respondent's approach to various courts was in response to separate orders issued by appellants, blacklisting respondent.
- 9.2. He also avers that Trial Court while passing order dated 8<sup>th</sup> April 2024 was satisfied that three cardinal principles for granting interim relief

were in favour of respondent. Respondent demonstrated a strong prima facie case indicating that action taken by appellant no.2 was legally untenable and that balance of convenience clearly favoured respondent as blacklisting and debarment would cause significant and irreparable harm to its business and reputation. Respondent has established that it would suffer irreparable harm if interim relief was not granted as debarment order would prevent respondent from participating in future tenders.

10. It is well settled principle of law that interim relief can always be granted in aid of and as ancillary to the main relief available to a party on final determination of his rights in a suit or any other proceeding. Therefore, a court undoubtedly possesses the power to grant interim relief during the pendency of the suit. Temporary injunctions are thus injunctions issued during the pendency of proceedings. Order XXXIX Rule 1 CPC provides that where in any suit it is proved by affidavit or otherwise:

- a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or
- b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors, the Court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit as the Court thinks fit, until the disposal of the suit or until further orders.

- c) That the defendant threatens to dispossess the plaintiff or otherwise causes injury to the plaintiff in relation to any property in dispute in the suit:

Provided that the Court before granting any injunction shall invariably call upon the applicant to satisfy it by an affidavit or otherwise that no suit of similar nature is pending in or has already been decided by any court of competent jurisdiction.

- 10.1. In order to grant an order of injunction, the party who seeks for grant of such injunction has to prove that he has made out a prima facie case to go for trial, the balance of convenience is also in his favour and he will suffer irreparable loss and injury if injunction is not granted. But it is equally well-settled that when a party fails to prove prima facie case to go for trial, question of considering the balance of convenience or irreparable loss and injury to the party concerned would not be material at all, that is to say, if that party fails to prove prima facie case to go for trial, it is not open to the court to grant injunction in his favour even if he has made out a case of balance of convenience being in his favour and would suffer irreparable loss and injury if no injunction is granted.
- 10.2. The Supreme Court in *Dalpat Kumar v. Prahlad Singh*, AIR 1993 SC 276, emphasized the three essential conditions for the grant of a temporary injunction: a prima facie case, balance of convenience, and irreparable injury. The court held that these conditions must be satisfied conjunctively.
- 10.3. In *Morgan Stanley v. Kartic Das*, (1994) 4 SCC 225, the Supreme Court indicated the factors which should weigh with the court in grant of *ex parte* injunction:
- (i) whether irreparable or serious mischief will ensue to the plaintiff,



- (ii) whether the refusal of ex parte injunction would involve greater injustice than the grant of it would involve.
- (iii) the Court will also consider the time at which the plaintiff first had notice of the act complained so that the making of improper order against a party in his absence is prevented.
- (iv) that the Court will consider whether the plaintiff had acquiesced for sometime and in such circumstances it will not grant ex parte injunction.
- (v) the Court would expect a party applying for ex parte injunction to show utmost good faith in making the application.
- (vi) even if granted, the ex parte injunction would be for a limited period of time.
- (vii) general principles like prima facie case, balance of convenience and irreparable loss would also be considered by the Court. The purpose of Rule 3, Order XXXIX is to enable the opposite party to show cause against issuance of such injunction and if injunction issued without notice, to enable the opposite party to file objections thereto and by this to prevent the petitioner to retain undue advantage of the situation and abuse of the process of law.

10.4. In *Gujarat Bottling Co. Ltd. v. Coca Cola Co.*, AIR 1995 SC 2372, the Supreme Court recapitulated that the object of granting an interim injunction is to protect plaintiff against injury by violation of his right for which he could not be adequately compensated in damages. The court also stressed the importance of maintaining the status quo until the final disposal of the case.

10.5. The Supreme Court in *Seema Arshad Zaheer v. Municipal Corporation of Greater Mumbai*, (2006) 5 SCC 282, has discussed the principles governing the grant of temporary injunctions and highlighted that the

power to grant injunction is a discretionary power and must be exercised judiciously.

10.6. In the case of *Zenit Mataplast P. Ltd. v. State of Maharashtra, (2009) 10 SCC 388*, temporary injunction was sought against State of Maharashtra to restrain them from taking coercive action. The Supreme Court of India held that temporary injunctions should not be granted if there is an adequate alternative remedy available to the plaintiff. The court reinforced that all three prerequisites – prima facie case, irreparable injury, and balance of convenience – must be satisfied.

10.7. In *M. Gurudas v. Rasaranjan, AIR 2006 SC 3275*, the Supreme Court reiterated the principles for granting temporary injunctions and emphasized the importance of maintaining the status quo. The court also clarified that the grant of a temporary injunction is a discretionary power that must be exercised judiciously.

10.8. The Supreme Court in the case of *Best Sellers Retail (India) Pvt. Ltd. v. Aditya Birla Nuvo Ltd., (2012) 6 SCC 792*, discussed the principles of balance of convenience and irreparable harm in depth. The Supreme Court held that a temporary injunction should not be granted merely because a prima facie case is established. The plaintiff must also demonstrate that the balance of convenience is in their favour and that they would suffer irreparable harm if the injunction is not granted.

11. One more important aspect of the matter is worthwhile to be deliberated upon here. In addition to the present case, plaintiff/ respondent has filed as many as five Civil Suits.

12. In its First Suit filed by respondent on 22<sup>nd</sup> August 2023, it sought Declaration and Injunction before the Trial Court (Additional District

Judge, Budgam) for processing the tender and considering the bid submitted by respondent. In that case plaintiff's agency had been disqualified in technical bid of short-term tender due to debarment by Chennai and Amritsar Airports for a period of three years. In the said suit, the Trial Court passed an order dated 22<sup>nd</sup> August 2023, directing not to finalise tender without orders of the Trial Court. On 8<sup>th</sup> September 2023, Trial Court directed to process the tender and also to consider the bid submitted by respondent.

12.1. Second suit was filed by respondent/plaintiff on 29<sup>th</sup> August 2023, before the Trial Court for Declaration, seeking protection from vacation from F&B Sites located at City Side of Terminal Building at Srinagar Airport. In this suit, Trial Court vide order dated 29<sup>th</sup> August 2023, stayed the vacation order, which was issued on expiry of contract for SHA/Arrival.

12.2. Third suit was filed on 4<sup>th</sup> September 2023 before the Trial Court by plaintiff/respondent. In the said suit as well, vacation notice was issued on expiry of contract for cityside. In the said suit, respondent sought protection from vacation from sites at SHA & Arrival of the Terminal Building at Srinagar Airport. In this case as well, the Trial Court vide its order dated 4<sup>th</sup> September 2023 stayed vacation order subject to enhanced licence fee.

12.3. Fourth suit was filed by respondent on 8<sup>th</sup> September 2023, again before the Trial Court seeking participation and consideration of bids for Short Term Tender for F&B Outlets in SHA and Arrival of the Terminal Building at Srinagar Airport. The Trial Court again vide its Order dated 8<sup>th</sup> September 2023 directed to open bids including that of respondent

12.4. Fifth suit was also filed by respondent on 9<sup>th</sup> December 2023, before the Trial Court in which he sought declaration and perpetual injunction, in which appellant was directed to allow respondent to continue to occupy space allotted to it in terms of award letter dated 17<sup>th</sup> October 2022.

12.5. Sixth suit was filed by respondent before the Trial Court, in which Trial Court vide Order dated 24<sup>th</sup> February 2024 kept in abeyance communication dated 5<sup>th</sup> January 2024 and schedule C of E-Tender dated 28<sup>th</sup> October 2023 at serial no.1&2.

13.As noticed above, two writ petitions had been filed by respondent: one before Madras High Court; and another before Punjab & Haryana High Court. In both petitions as well, subject-matter of dispute is same and similar as is in the case in hand. Thus, it would be apt to reproduce certain portions of the judgements hereinafter as they squarely also cover the instant case:

13.1. Excerpts of Judgement dated 30<sup>th</sup> September 2024, passed by Madras High Court are as under:

“54. This Court gave its careful consideration to the submissions advanced by the learned senior counsel appearing on either side and perused the materials available on record as also the decisions relied on by the parties in support of their respective contentions.

.....

57. Two allegations have been levelled by the respondents against the petitioner, viz., one pertaining to conflict of interest and the other pertaining to material misrepresentation, which has led to the issuance of the impugned orders.

.....

61. It transpires that between 2015 and August, 2022, Karan Singh, the Proprietor of Syona Spa was employed with SRPL and during the said period of time, the said Karan Singh had received financial aid/loan from SRPL. The said fact is neither disputed by SRPL nor by Karan Singh, the proprietor of Syona Spa. It is the case of SRPL that there was no subsisting loan to be repaid by Karan Singh when the bid was submitted as, as early as during March, 2022, the loan stood repaid, whereas the bid was submitted much later in point of time.

.....



63.... In the case on hand, there existed a relationship of employer-employee between SRPL and Karan Singh, the Proprietor of Syona Spa, which is admitted by the parties, which was between 2015 and August, 2022. Further, the said Karan Singh himself has admitted, in his writ petition, to have been working with Mahesh Sunny Enterprises prior to 2014. It is the specific case of the respondent that one of the Director of SRPL is a shareholder with Mahesh Sunny Enterprises, which is not disputed by SRPL, but it is only submitted that the shareholding was less than 10%. However, the nexus of the Director of SRPL with Mahesh Sunny Enterprises as a shareholder clearly attracts clause 10 (vi) which clearly shows that there is a common third party, who is linked between SRPL and Karan Singh. In fact, the said individual cannot be brought within the ambit of third party, but stands on a more advantageous position, which will have a bearing on the tender process, as the said individual is in a controlling position. Therefore, clause 10 (vi) would also stand squarely attracted.

64. When clauses 10 (iv) and 10 (vi) is squarely attracted and the same having not disclosed in the bid submitted either by SRPL or by Syona Spa, the allegation of conflict of interest, alleged by the respondents cannot be said to be bereft of any material and, therefore, the respondents were within their right to call for explanation by issuing show cause notice and act on the same.

.....

67. There could be no quarrel with the said fact that anterior in point of time to the submission of the bid, a bidder would not be aware of the persons, who would partake in the bid process and, therefore, non-mentioning of the names of persons, who were associated with the bidder may not arise. However, the present case stands on a totally different footing as projected by the respondents while dealing with the explanation submitted to the show cause notice issued by them.

68. There is no quarrel with the fact that SRPL had employed Karan Singh on its rolls as its employee between 2015 and August, 2022. It is the claim of SRPL that the bid was submitted six months after the ouster of Karan Singh from the rolls of SRPL. However, it is the stand of Syona Spa that its Proprietor Karan Singh was operating Syona Spa even prior to his joining SRPL, as even when he was an employee under Mahesh Sunny Enterprises, the said Karan Singh had stated that he was running Syona Spa. It should not be lost sight of that the shareholder of Mahesh Sunny Enterprises is a Director in SRPL.

69. In the aforesaid backdrop, this Court has to consider the case holistically to see whether the allegations are made out. One of the Director of SRPL was a shareholder in Mahesh Sunny Enterprises during the point of time when Karan Singh of Syona Spa was working under Mahesh Sunny Enterprises. The said Karan Singh, even during the said point of time, was running Syona Spa, which is admitted by the said Karan Singh in the affidavit. Even thereafter on his relieving from Mahesh Sunny Enterprises, the said Karan Singh was operating Syona Spa. Therefore, SRPL cannot feign ignorance about the avocation of Karan Singh apart from his employment, as one of its Director is a shareholder in Mahesh Sunny Enterprises. Thereafter, from 2015 to August, 2022, the said Karan Singh was employed in SRPL even during which time, it is admitted, that the said Karan Singh was running Syona Spa. ....

.....

71. To find out the veracity of the said allegation, this Court ventured to look into the materials placed before it, which reveals the following: -

- i) The address of SRPL is L-322, Mahipalpur Extension, New Delhi 110 037, while that of Syona Spa is L-73/L322, 1st Floor, Mahipalpur Extension, HI-8, New Delhi 110 037, which is in the very same area.
- ii) Karan Singh, the Proprietor of Syona Spa was the erstwhile employee of SRPL, who ceased to be an employee since August, 2022.



iii) However, the said Karan Singh, the Proprietor of Syona Spa was running the said Syona Spa even while he was employed in Mahesh Sunny Enterprises and also continued to operate it even after his employment with SRPL.

iv) The said Karan Singh had taken loan from SRPL, while he was an employee with SRPL, which was alleged to have been repaid by him before he left the services of SRPL.

v) One of the Director of SRPL was also a shareholder in Mahesh Sunny Enterprises.

.....

74. Though it is the claim of SRPL that the stand of the respondents that there is material discrepancy in the date on which the loan was settled between Karan Singh and SRPL the said discrepancy would not be of any consequence as by the time during which explanation was initially offered and the explanation which was given to the show cause notice Karan Singh had paid the loan and, therefore, the discrepancy is there, however, the said stand is immaterial considering clause 10 (iv), which clearly spells out that even any previous loan or existing loan given to any bidder or affiliate by another bidder would constitute conflict of interest and in that backdrop, the receipt of loan by Karan Singh even anterior in point of time to the bid, not being spelt out in the bid, would definitely attract clause 9(a) (iv) and invoking the same, if the respondents had rejected the bid of both the petitioners, the same cannot be found fault with.

75. Further, it is to be pointed out that when the tender inviting authority had properly appreciated the terms of the tender and the guidelines and had come to the clear finding that there exists conflict of interest between SRPL and Syona Spa, which stands fortified by the materials available on record, the mere fact that on the day when the bid was submitted there was no relationship between SRPL and Syona Spa and, therefore, SRPL would not be aware of the persons, who had submitted the bid and had not given the necessary details in the bid cannot be a ground to interfere with the order passed by the 2<sup>nd</sup> respondent, when it is the specific case of the 2<sup>nd</sup> respondent that not only there is infraction of clauses 9 (a)(i) and (v) and 10 (iv) and (vi), but there exists a modus between SRPL and Syone Spa through Karan Singh in the bidding process, leading to rigging the bid and the modus having been carried out in other tenders relating to other Airports, the stand of SRPL that it would not be aware of the persons, who have submitted their bids pales into insignificance.

76. Further, it is also to be pointed out that it is the specific case of the respondents that for passing the impugned order of debarment and cancellation of tender, that there exists a modus operandi between SRPL and Syona Spa and that SRPL and Syona Spa, in a cartel formation, had worked hand in glove with its clandestine operation by duping the respondents and had secured may bids, which stand of the respondents cannot also be totally negated as the discussion made above reveals a sinister operation having been carried on by SRPL and Syona Spa and further the complaint not being an anonymous complaint, but is a complaint, which has been written by an individual, who is closely associated with the higher echelons in the management of SRPL, which has even been admitted by SRPL, the stand of SRPL that the said debarment is wholly arbitrary, capricious, perverse and illegal does not merit acceptance.

79. Insofar as the stand of Syona Spa that it cannot be termed to be a bidder as their bid was not even accepted and, therefore, their debarment would not arise, is wholly misconceived. The floating of e-Tender is an invitation to submit a bid by an entity, and Syona Spa having submitted its bid, would fall within the ambit of bidder even in the literal sense of the word. Merely because certain conditions prescribed therein had not been fulfilled would not be a ground to hold that Syona Spa is not a bidder. The prescription of additional conditions is only for the purpose of accepting the bid and mere non-acceptance of the bid for other reasons would not deem the person, who

had submitted the bid to be not a bidder. Giving any such restricted meaning, as canvassed by the petitioner, would be wholly impermissible and against the literal meaning of the term “bidder” and mere non-fulfilment of the terms of the notice inviting e-Tender cannot take the bid submitted by Syona Spa outside the realm of bid and the person, who had submitted the bid from the realm of bidder, which would be an erroneous interpretation of the term ‘bidder’.

80. Further, as pointed out by the learned senior counsel for the respondents, the term “bidder: is not defined in the notice inviting tender. Therefore, referencing the term from Blacks’ Law Dictionary 4th Edition, where “bidder” is defined as “one who makes a bid”, Syona having submitted its bid, though it has come to be rejected for non-submission of certain documents and monetary materials, would have to be construed as a bidder and, therefore, Syona would have to be treated as a bidder for all purposes. Therefore, the contention of Syona Spa that it is not a bidder in the absence of payment of license fee is misconceived and the same deserves to be dismissed.

81. Though decisions have been placed before this Court on behalf of the petitioners to substantiate their contentions, the said decisions would not be applicable to the facts of the present case, as they stand on a totally different footing and the same cannot be pressed into service for adjudicating the present issued.

82. For the reasons aforesaid, this Court does not find any infirmity with the orders passed by the 2nd respondent and there being no merits in the present writ petitions, the same are dismissed....”

13.2. Relevant portions of judgement dated 19<sup>th</sup> December 2024 is reproduced as under: -

“37. It was held by the DRC that the debarment and annulment orders passed by the Airport Director, Amritsar had been passed after taking approval from the competent authority and, therefore, the same would be considered as orders passed by the Airports Authority of India. The submissions as regards the share holding in M/s Mahesh Sunny Enterprises Private Limited was also noticed;

“Considering the above facts, the Committee (DRC) is of the view that the debarment and annulment order passed by the Airport Director, Amritsar Airport has been passed after taking approval from the competent authority and thus the orders dated 08.06.2023 would be considered as orders passed Airports Authority of India, therefore, the judgments quoted by M/s SRPL are different.

The other submission made by M/s SRPL is that its share- holding in M/s Mahesh Sunny Enterprises Pvt. Ltd. was less than the cut off as per the tender document. M/s SRPL has placed certain documents on the file along-with its written submissions. The tender was issued on 05.09.2022 and the last date for submission was 03.10.2022. It has been observed that such documents regarding change in shareholding pattern, gift deeds were not submitted by the party at the time of show cause notice issued by AAI, Amritsar on 05.06.2023.”

38. As regards the issue of Karan Singh being an employee of the petitioner and M/s Mahesh Sunny Enterprises Private Limited as also the involvement of M/s Syona Spa, respondent No.3 held as under:-

“OBSERVATIONS OF DRC:

1) The above submissions of Sh. Karan Singh read with his earlier submission made on 12.04.2023 shows that he was an employee of M/s Saptagiri Restaurant Pvt. Ltd. as well as M/s Mahesh Sunny Enterprises Pvt. Ltd. and his services were dispensed with M/s

SRPL in August, 2022 and was continuing with M/s Mahesh Sunny Pvt. Ltd. but later on, the submissions were revised/changed by Sh. Karan Singh in his letter dated 16.06.2023 stating that when he resumed his office recently, came to know that his services have also been discontinued by M/s Mahesh Sunny Enterprises Pvt. Ltd. prior to August, 2022.

**2) The above, submissions shows that Sh. Karan Singh was misleading AAI by changing his submissions from time to time.**

3) If the bid is visible in CPP e-tenders government portal, this means the bidder has submitted both technical and financial bids as mere submission of technical bid only will not close the bid process. This means the party M/s Syona Spa has completed the entire bid process on CPP portal only then the bid is visible to bid manager after technical opening.

4) Funds equivalent to six months license fees along with 01 month advance license fees are only required if the party comes as H1 i.e. after award of license. The party has shown same intention for above 07 tenders (02 of instant tenders of Amritsar airport). Moreover, there is an option to withdraw the bid in CPP portal and as per tender conditions also which has not been exercised by M/s Syona Spa **depicting malafide/corrupt intentions of the party in the tender processes. The beneficiary of such conduct of M/s Syona Spa is M/s SRPL.**

**5) The fact that the services of Sh. Karan Singh were discontinued by M/s SRPL and M/s Mahesh Sunny Enterprises Pvt. Ltd. but M/s Syona Spa participated in all the tenders wherein M/s SRPL was also one of the bidder during the period Mid July to October end (2022) infers that both the bidders were having access to each other information and reply to show causes are just an after thoughts.**

39. As regards the share holding of Bikram Singh, etc. and the conflict of interest issue, it was held as under:-

“OBSERVATIONS OF DRC:

1) No documentary evidence on shareholding of Sh. Bikram Singh in M/s Mahesh Sunny Enterprises Pvt. Ltd. was submitted on the date of reply of show cause was provided.

As per documents submitted by the party in the DRC process, it can be seen that there has been major change in the distribution of shares in M/s Mahesh Sunny Enterprises Pvt. Ltd. in respect of shares of Sh. Bikram Singh. It is the responsibility of party /Director Sh. Bikram Singh to have presented the documents related to Gift deed at the time of show- cause notice. Mere submission of statement that “it is a matter of record” cannot be taken into consideration as per records submitted at later stage the party had a major change in shareholding pattern in the months of May to July 2022.

2) Considering the fact that a mistake was done by official of M/s Mahesh Sunny Enterprises Pvt. Ltd. in depositing EPF and ESI of Sh. Karan Singh for near about 10 months i.e. from the month of termination of services prior to August 2022 till the month of June 2023 cannot be considered a mere mistake but a pre-conceived after-thought to come out of the grounds of conflict of interest.

.....

4) Also, only after submitting of tender fees, EMD, documents of technical bid and financial bid BOQ (rate quote), the bid gets completed and the system accepts the bids and then the further process is carried out.

**5) DRC has also observed that M/s Syona Spa has opted for similar process in tenders for Raipur and Pune wherein M/s SRPL was also one of the bidder. As the information regarding bidders become visible on CPP portal instantly after opening of technical bids by bid managers, the reason that M/s SRPL has not highlighted to AAI the**



malafide intentions of M/s Syona Spa to affect the bidding process can be considered as the fact that both the bidders were working closely in the bid processes having the access of each other's information in respect to the bid submission.

The DRC has also observed that the address of all the three firms in question is same i.e. L-322 MAHIPALPUR EXTENS, NEW DELHI 110037. It has also come to light that the address of M/s Syona SPA (L-73/L-322, Mahipalpur Extension, New Delhi) and M/s Saptagiri Restaurant Pvt. Ltd. (L-322, Mahipalpur Extension, New Delhi) are in the same premises. In this regard, the reference has been taken into the account from the letter dated 06.05.2016 issued by M/s SRPL confirming the address L-73 and L-322, Ist Floor, Hotel Saptagiri, Mahipalpur Extn. National Highway No.08, New Delhi-110034 (unit of Satpagiri Restaurant Pvt. Ltd.)."

40. Finally it was concluded by respondent No.3-DRC as under:-

"Thus in the light of facts discussed above, it can be reasonably inferred that M/s SRPL (one bidder) has relationship with M/s Syona Spa (Sh. Karan Singh- Prop.) (another bidder) directly or indirectly or through M/s Mahesh Sunny Enterprises Pvt. Ltd. (a common third party) that puts either or both of tghem in a position to have access to each other's information, or to influence the bid of either or each other which means conflict of interest as per tender conditions.

DRC is of the view that the documents submitted by the party were created after participation in the tender and were presented before this forum for the purpose of misleading and to obtain a favourable order.

Thus, DRC comes to the conclusion that the orders dated 08.08.2023 passed by Airport Director, Amritsar Airport by which M/s SRPL was debarred and license was annulled, would remain valid."

41. It is, therefore, clear that respondent No.3 examined the matter from all angles after giving due opportunity of hearing to all stake holders and thereafter passed the order under challenge." (emphasis supplied)

13.3. Perusal of aforesaid judgement speaks volumes and, therefore, need not be reiterated or elaborated here because this Court at this moment deals with *ad interim* injunction given by the Trial Court.

14. As has been said by the Supreme Court in *S.G.Jaisinghani v. Union of India and others*, AIR 1967 SC 1427; and *Haji T.M.Hassan Rawther v. Keral Financial Corporation*, AIR 1988 SC 157, that every action of the State or its instrumentalities should not only be fair, legitimate and aboveboard but should be without any affection or aversion. It should neither be suggestive of discrimination nor even apparently give an impression of bias, favouritism and nepotism. The decision should be made by the application of known principle and rules and in general

such decision should be predictable and the citizen should know where he is, but if a decision is taken without any principle or without any rule, it is unpredictable and such a decision is antithesis to the decision taken in accordance with the rule of law

14.1. In essence and core, the action/order of the State or State instrumentality would stand vitiated if it lacks bona fide as it would only be a case of colourable exercise of power. The Rule of Law is the foundation of a democratic society.

14.2. The Supreme Court in the case of *I.R. Coelho (dead) by LRs v. State of Tamil Nadu*, AIR 2007 SC 861, held as under:-

“The State is to deny no one equality before the law ..... Economic growth and social equity are the two pillars of our Constitution which are linked to the right of an individual (right to equal opportunity), rather than in the abstract.....Equality, rule of law, judicial review and separation of powers form parts of the basic structure of the Constitution. Each of these concepts are intimately connected. There can be no rule of law, if there is no equality before the law. These would be meaningless if the violation was not subject to the judicial review.”

14.3. In *Zenit Mataplast P. Ltd.* (supra) it has been observed by the Supreme Court that when a person approaches the court complaining against the Statutory Authority alleging arbitrariness, bias or favouritism, the court, being custodian of law, must examine the averments made in the application to form a tentative opinion as to whether there is any substance in those allegations. Such a course is also required to be followed while deciding the application for interim relief. It was also held by the Supreme Court that interim injunction should be granted by the Court after considering all the pros and cons of the case in a given set of facts involved therein on the risk and responsibility of the party or, in case he loses the case, he cannot take any advantage of the same.



14.4. In the case of *Fertiliser Corporation Kamgar Union (Regd. Sindri and others v. Union of India and others (1981) 1 SCC 568*, the Supreme Court observed that if the Government acted fairly, though faltered in wisdom, the court should not interfere. The Supreme Court observed:

“A pragmatic approach to social justice compels us to interpret constitutional provisions, .... with a view to see that effective policing of the corridors of power is carried out by the court until other ombudsman arrangement..... emerges..... The court cannot usurp or abdicate, and the parameters of judicial review must be clearly defined and never exceeded. If the Directorate of a Government company has acted fairly, even if it has faltered in its wisdom, the court cannot, as a super auditor, take the Board of Directors to task. This function is limited to testing whether the administrative action has been fair and free from the taint of unreasonableness and has substantially complied with norms of procedure set for it by rules of public administration.”

14.5. Dealing with the interim orders, the Supreme Court observed in *Assistant Collector of Central Excise, Chandan Nagar, West Bengal v. Dunlop India Ltd and others (1985) 2 SCR 190*, that an interim order should not be granted without considering balance of convenience, the public interest involved and the financial impact of an interim order.

14.6. Similarly, in *Ramniklal N. Bhutto and Anr: v. State of Maharashtra and Ors., [1997] 1 SCC 134*, the Supreme Court said that while granting a stay the court should arrive at a proper balancing of competing interests and grant a stay only when there is an overwhelming public interest in granting it, as against the public detriment which may be caused by granting a stay. Therefore, in granting an injunction or stay order against the award of a contract by the Government or a Government agency, the court has to satisfy itself that the public interest in holding up the project far out-weighs the public interest in carrying it out within a reasonable time. The court must also take into account the cost

involved in staying the project and whether the public would stand to benefit by incurring such cost.

14.7. In *Colgate Palmolive (India) Ltd v. Hindustan Level Ltd. AIR 1999 SC 3105*, The Supreme Court observed that the other considerations which ought to weigh with the Court hearing the application or petition for the grant of injunctions are as below :

- (i) Extent of damages being an adequate remedy;
- (ii) Protect the plaintiff's interest for violation of his rights though however having regard to the injury that may be suffered by the defendants by reason therefor ;
- (iii) The court while dealing with the matter ought not to ignore the factum of strength of one party's case being stronger than the others;
- (iv) No fixed rules or notions ought to be had in the matter of grant of injunction but on the facts and circumstances of each case- the relief being kept flexible;
- (v) The issue is to be looked from the point of view as to whether on refusal of the injunction the plaintiff would suffer irreparable loss and injury keeping in view the strength of the parties' case;
- (vi) Balance of convenience or inconvenience ought to be considered as an important requirement even if there is a serious question or prima facie case in support of the grant;
- (vii) Whether the grant or refusal of injunction will adversely affect the interest of general public which can or cannot be compensated otherwise.

14.8. The case of *Raunaq International Ltd. v. I.V.R. Contraction Ltd. and others (1999) 1 SCC 492*, deals with various aspects of the matter which relate to the instant case as well, including courts to adopt restraint in granting interim orders, where public interest is involved. It was said that even when the State or a public body enters into a commercial transaction, considerations which would prevail in its decision to award the contract to a given party would be the same. However, because the State or a public body or an agency of the State enters into such a contract, there could be, in a given case, an element of public law or public interest involved even in such a commercial transaction. The Supreme Court proceeded to say that what are the elements of public interest that public money would be expended for the purposes of the

contract; that the goods or services which are being commissioned could be for a public purpose, such as, construction of roads, public buildings, power plants or other public utilities; that the public would be directly interested in the timely fulfilment of the contract so that the services become available to the public expeditiously; that the public would also be interested in the quality of the work undertaken or goods supplied by the tenderer; that the poor quality of work or goods can lead to tremendous public hardship and substantial financial outlay either in correcting mistakes or in rectifying defects or even at times in redoing the entire work, thus involving larger outlays or public money and delaying the availability of services, facilities or goods. Hence before entertaining a petition and passing any interim orders in such petitions, the court must carefully weigh conflicting public interests. Only when it comes to a conclusion that there is an overwhelming public interest in entertaining the petition, the court should intervene. The same considerations must weigh with the court when interim orders are passed in such petitions. The party at whose instance interim orders are obtained has to be made accountable for the consequences of interim order as interim order could delay the project, jettison finely worked financial arrangements and escalate costs. Hence applicant asking for interim orders, in appropriate cases should be asked to provide security for any increase in cost as a result of such delay, or any damages suffered by the opposite party in consequence of an interim order. Otherwise, public detriment may outweigh public benefit in granting such interim orders. Stay order or injunction order, if issued, must be moulded to provide for restitution. The Supreme Court went to say that

it was unfortunate that despite repeated observations made by it in a number of cases, such petitions are being readily entertained by the court without weighing the consequences. Therefore, when such a stay order is obtained at the instance of a private party or even at the instance of a body litigating in public interest, any interim order which stops the project from proceeding further, must provide for reimbursement of costs to public in case ultimately litigation started by such an individual or body fails. The public must be compensated both for the delay in implementation of the project and the cost escalation resulting from such delay. Unless an adequate provision is made for this in the interim order, the interim order may prove counterproductive.

15. Now advertent to case in hand. Appellants first issued show cause notice on 21<sup>st</sup> February 2023 upon respondent asking that one, Mr Karan Singh, proprietor of Syona Spa was an employee of respondent-firm and also availed all benefits as an employee, like ESI, PF etc and also an Airport Entry Pass was issued, which amounted to conflict of interest as per RFP provisions in tender for Licence to operate Wellness Centre/Spa and Massage Chair facility at Chennai Airport by the Airport Director, Chennai Airport.

15.1. Another show cause notice dated 5<sup>th</sup> June was issued by Airport Director, Chennai Airport, to respondent asserting conflict of interest by stating that respondent-firm, which is owned by Mr. Bikram Singh, who is also a shareholder of M/s Mahesh Sunny Enterprises Private Limited and reiterated the contents of show cause notice dated 21<sup>st</sup> February 2023.

- 15.2. Show cause notice was also issued by Airport Director, Amritsar Airports on 5<sup>th</sup> June 2023, upon respondent contending conflict of interest and that respondent-firm was owned by Mr. Bikram Singh, who was also shareholder of M/s Mahesh sunny Enterprises Private Limited.
- 15.3. Show cause notice dated 8<sup>th</sup> June 2023 was also issued by ED (Comm) averring therein collusive bidding/bid rigging by respondent-firm with reference to tender issued at Amritsar, Raipur, Ranchi and Chennai Airports.
- 15.4. It was on 26<sup>th</sup> July 2023 that Airport Director, Chennai, debarred respondent-firm for having conflict of interest with another bidder, i.e., Syona Spa, as the conduct of respondent-firm was violative of clause 9(a)(ii) and 9(a)Iv) and Clause (b).
- 15.5. On 3<sup>rd</sup> August 2023, AAI issued NIET for short-term licence to operate food and beverages outlets (SHA) F/F and arrival at Srinagar International Airport, Srinagar.
- 15.6. On 8<sup>th</sup> August 2023, Airport Director, Amritsar Airport, debarred respondent-firm for having conflict of interest with another bidder, i.e., Syona Spna, as the conduct of respondent-firm was violative of Clause 9(a) 9(b) and 9(c) of NIT for licence for Wellness Centre and Spa and Massage Chair Facility inside Domestic SHA, Amritsar, Airport. As a consequence of which, respondent preferred a number of writ petitions.
- 15.7. On 11<sup>th</sup> August 2023, AAI informed respondent that its bid with respect to NIET dated 3<sup>rd</sup> August 2023 had been rejected due to debarment action taken against it at Chennai and Amritsar Airports. Respondent challenged debarment order dated 8<sup>th</sup> August 2023 before Punjab and Haryana High Court which was, however, withdrawn by it seeking



liberty to approach DRC under clause 29 of General Terms and Conditions.

15.8. A civil suit that has been filed by respondent before the Trial court, an order was granted therein holding respondent eligible for participation in tendering process and also directing AAI to open the bids with respect to short-term licence to operate food and beverages outlets (SHA) F/F and Arrival at Srinagar International Airport. By virtue of order dated 8<sup>th</sup> September 2023, the Trial Court allowed interim application of respondent and dismissed the application filed by AAI under Order 39 Rule 4 CPC. An appeal, being FAO no.24/2023 preferred by AAI was dismissed vide judgement dated 13<sup>th</sup> October 2023, against which SLP (C) no.3376/2024 was filed before the Supreme Court. Since respondent did not participate in the subsequent tenders issued by AAI, as such, the said SLP was withdrawn and the question of law was specifically kept open by the Supreme Court.

15.9. In another suit, being no.24/2023, by virtue of an *ad interim* order dated 1<sup>st</sup> November 2023, AAI was restrained from evicting respondent from the allotted premises and allowing respondent to operate F&B outlets at the airport.

15.10. In one more suit, bearing no.08/2023, vide order dated 1<sup>st</sup> November 2023, an interim order was granted and vacation of premises ordered by AAI vide communication dated 25<sup>th</sup> August was stayed.

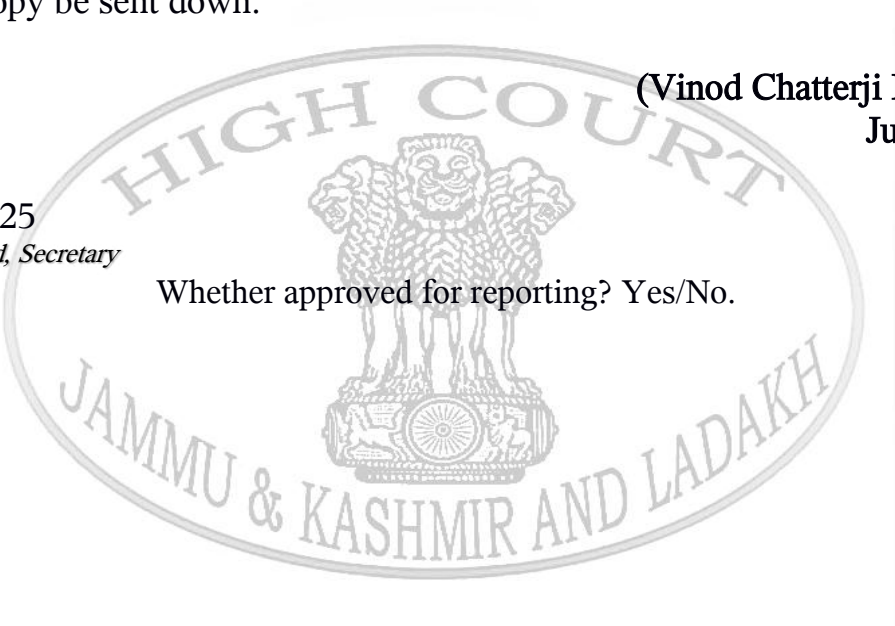
15.11. In another suit, bearing no.09/2023, the Trial Court vide order dated 9<sup>th</sup> December 2023, directed appellant-AAI to allow respondent to continue to occupy the space allotted to it in terms of award letter dated 17<sup>th</sup> August 2022.

- 15.12.ED (Comm) CHQ, New Delhi, issued a debarment order dated 20<sup>th</sup> December 2023, after taking notice of association between respondent and M/s Syona Spa. Respondent challenged debarment order before Trial Court. *Ad interim* order dated 21<sup>st</sup> December 2023 was granted in favour of respondent, keeping in abeyance debarment order.
- 15.13.On 27<sup>th</sup> January 2024, DRC upheld debarment order dated 8<sup>th</sup> August 2023, issued by Airport Director, Amritsar Airport.
- 15.14.On 8<sup>th</sup> April 2024, Trial Court has issued order impugned.
- 15.15.Respondent challenged DRC Order dated 27<sup>th</sup> January 2024 before Punjab and Haryana High Court in WP(C) no.3041/2024, which was disposed of directing DRC to pass a reasoned order.
- 15.16.DRC on 2<sup>nd</sup> May 2024 vide its Final Order upheld debarment order.
- 15.17.Against impugned order of Trial Court, the instant appeal was disposed of by this Court on 22<sup>nd</sup> July 2024. However, review thereof was sought, which was allowed by this Court vide order dated 11<sup>th</sup> October 2024 and appeal was restored to its original number.
- 15.18.LPA no.316/2024 was directed by respondent against revival order dated 11<sup>th</sup> October 2024, which, however, was disposed of vide order dated 23<sup>rd</sup> December 2024, with an observation by the Division Bench of this Court that it did not find any reason to show any indulgence.
- 15.19.Against Debarment Orders, passed by Airports of Chennai and Amritsar as also against Dispute Resolution Committee's (DRC) order, writ petitions preferred by respondents have been dismissed by the High Court of Punjab & Haryana, and High Court of Madras.
- 16.As has been made it clear herein above, that the object of *ad interim* injunction is to protect plaintiff against injury by violation of his right

for which he could not be adequately compensated in damages if the case were resolved in his favour at the trial. The need for such protection has, however, to be weighed against the corresponding need of defendant to be protected against injury resulting from his having been prevented from exercising his own legal rights for which he could not be adequately compensated. The court must weigh one need against another and determine where the balance of convenience lies. *Gujarat Bottling Co. Ltd. v. Coca Cola Co (1995) 5 SCC 545.*

17. In the context of above settled position, impugned orders of Trial Court warrant interference and are liable to be set-aside. Accordingly, both the impugned orders are **set-aside**.
18. **Disposed of.**
19. Copy be sent down.

Srinagar  
11.03.2025  
Ajaz Ahmad, Secretary



(Vinod Chatterji Koul)  
Judge

Whether approved for reporting? Yes/No.