

Debarment Orders Exercising Independent Administrative Powers Are Not Arbitrable: Delhi High Court

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Introduction

In *NCC Limited v. Airport Authority of India*¹, the Delhi High Court considered whether a contractor could invoke Section 9 of the Arbitration and Conciliation Act, 1996 (the "**Arbitration Act**") to seek a stay of an order debarring it from participating in future tenders issued by a statutory authority. The Court held that the decisive consideration is not whether the allegations underlying the debarment arose during contractual performance, but the source and juridical character of the power exercised. Since the Airports Authority of India had issued the debarment order under an independent statutory and administrative framework, rather than as a contractual remedy, the challenge was held to be non-arbitrable. The petition under Section 9 was consequently dismissed as not maintainable, while the legality, validity, and proportionality of the debarment were expressly left open for determination before an appropriate forum.

Facts

The dispute arose from a contract dated 9 November 2018 between NCC Limited ("**NCC**") and the Airports Authority of India ("**AAI**") for the construction of a new domestic terminal building and allied structures at Patna Airport. AAI had issued the Notice Inviting Tender on 16 March 2018 and awarded the works to NCC by a Letter of Award dated 5 October 2018.

The project was to be completed within forty-eight months, with 13 October 2022 as the scheduled completion date. During execution, however, the project encountered delays. NCC attributed those delays to restricted work fronts, the disruption caused by the COVID-19 pandemic, and delays in approvals by AAI. AAI disputed these explanations and maintained that the delays were attributable to NCC.

During a progress review meeting held on 15 June 2023, AAI directed that the originally approved granite flooring be substituted with vitrified tiles. The completion period was extended from time to time and ultimately stood extended until 15 December 2025 without the levy of liquidated damages.

The terminal building was inaugurated and partially commissioned on 3 June 2025. AAI thereafter issued a Provisional Completion Certificate on 9 December 2025, certifying physical completion of the works but identifying certain defects and unfinished items requiring attention during the Defect Liability Period.

Disputes subsequently arose regarding alleged water seepage, concrete strength, deterioration of the vitrified flooring, and the rectification of defects. NCC denied the allegations and maintained that the works had been executed in accordance with the contractual specifications. It further contended that

the deterioration of the flooring occurred after the terminal had been commissioned.

AAI alleged that, despite repeated communications in January 2026, NCC failed to furnish an acceptable programme for rectification. On 12 January 2026, AAI invoked the risk-and-cost mechanism and issued a tender for replacement of the floor tiles at an estimated cost of INR 3,18,50,400. NCC disputed the legality of this action and asserted that the rectification works were already in progress.

AAI thereafter issued a show cause notice dated 30 January 2026 proposing to debar NCC on the grounds of delay, failure to rectify defects, and deficiencies in execution. NCC submitted a detailed reply on 2 February 2026. Upon considering the reply, AAI issued a debarment letter dated 23 March 2026, excluding NCC from participation in future tenders floated by AAI for a period of two years.

Proceedings Before the Delhi High Court

NCC approached the Delhi High Court under Section 9 of the Arbitration Act seeking a stay of the operation and effect of the debarment letter. It also sought a direction requiring AAI to remove the debarment notice from its website and other public platforms. The petition was filed before the commencement of arbitral proceedings under Clause 25 of the contract.

AAI raised a preliminary objection to the maintainability of the petition. It contended that the debarment was not an action taken under the contract, but an independent administrative measure issued in exercise of statutory and executive authority. AAI relied upon Section 20 of the Airports Authority of India Act, 1994, Clause 35.12 of the Airports Authority of India Works Manual, 2017, and related administrative instructions as the source of its power.

According to AAI, a challenge to debarment is governed by public law standards such as legality, proportionality, fairness, and compliance with the principles of natural justice. Such questions, it argued, are amenable to judicial review by a constitutional court and cannot be decided through private adjudication by an arbitral tribunal.

NCC, on the other hand, contended that the debarment was inseparably connected with disputes arising from the contract. It emphasised that the impugned action was founded upon allegations concerning delay, quality of work, defective performance, and failure to rectify defects. Since Clause 25 extended to all disputes arising out of or relating to the contract, NCC submitted that the challenge was arbitrable and could be protected through interim measures under Section 9.

NCC further argued that the allegations supporting the debarment remained seriously disputed and had not been adjudicated by any competent forum. It submitted that the two-year exclusion would cause substantial reputational and commercial prejudice which could not be adequately compensated through damages, thereby justifying immediate interim protection.

Issue Before the Court

The principal issue before the Delhi High Court was whether the debarment letter constituted a contractual dispute falling within the scope of the arbitration agreement, or an independent administrative action arising from AAI's public law powers. The answer to this question was determinative of whether the Court could exercise jurisdiction under Section 9 of the Arbitration Act.

Court's Findings and Reasoning

Section 9 Jurisdiction Is Ancillary to an Arbitrable Dispute:

The Court began by observing that jurisdiction under Section 9 cannot be exercised in abstraction from the arbitration agreement. The power to grant interim measures is ancillary, preservative, and protective. A party must therefore establish, at least on a prima facie basis, not only the existence of a valid arbitration agreement, but also that the dispute sought to be protected falls within its scope and is legally capable of arbitral adjudication.

Relying upon *Kuber Mart Global Hub (P) Ltd. v. Kuber Mart Industries (P) Ltd.*², the Court noted that scrutiny under Section 9 is materially different from the limited examination undertaken at the referral stage under Section 11. Since interim relief may have significant civil and commercial consequences, a Section 9 court must examine the jurisdictional foundation of the proposed arbitration and cannot proceed merely because the parties' contract contains an arbitration clause.

The existence of contractual disputes concerning delay, quality, and rectification did not, by itself, answer the threshold question. The Court was required to determine whether the specific grievance presented in the petition, namely the validity of the debarment, was itself governed by the arbitration agreement.

The Source of the Power Determines the Character of the Action:

The Court held that the true nature of the impugned action had to be identified by examining the legal source of the power exercised, rather than merely the facts which prompted its exercise. The debarment letter did not invoke termination, risk-and-cost recovery, encashment of securities, recovery of contractual dues, or any other remedy operating within the four corners of the contract.

Instead, the order operated prospectively by rendering NCC ineligible to participate in AAI's future tenders for two years. Its consequences therefore extended beyond the existing contractual relationship. The Court distinguished between the factual genesis of an action and its juridical source. Events occurring during contractual performance may furnish the occasion for administrative action, but they do not convert that action into a contractual remedy.

The Court observed that accepting NCC's submission would impermissibly enlarge the arbitration agreement. It would bring within arbitral adjudication any administrative measure triggered by contractual events, even where the parties had never agreed to submit the legality of such public law action to arbitration.

Debarment Regulates Future Dealings and Is Distinct from Contractual Remedies:

The Court relied upon the Supreme Court's decision in *Patel Engineering Ltd. v. Union of India*³, which recognises blacklisting as an incident of the State's executive authority to decide with whom it will enter into future contractual relations. Although such authority is subject to Article 14 and must be exercised fairly, rationally, and for a legitimate purpose, it does not depend upon an express contractual grant.

The Court also relied upon *A.K.G. Construction and Developers Pvt. Ltd. v. State of Jharkhand*⁴, which distinguishes termination from blacklisting. Termination operates upon the existing or subsisting contract, whereas blacklisting governs future eligibility and carries wider civil and commercial consequences. The two actions therefore operate in distinct legal spheres and cannot be treated as interchangeable merely because both may arise from the same factual circumstances.

In the present case, the contract had substantially worked itself out. The terminal had been commissioned and a Provisional Completion Certificate had been issued, subject to defect rectification. The debarment neither terminated the contract nor determined any subsisting contractual right. It concerned only NCC's eligibility to participate in future procurement processes of AAI.

AAI's Power Was Traceable to an Independent Statutory and Administrative Framework:

The Court found that AAI had identified an independent source for the impugned action. Sections 12 and 20 of the Airports Authority of India Act, 1994 authorise AAI to discharge its statutory functions and enter into contracts for that purpose. The statutory authority to contract necessarily carries a corresponding discretion to determine the persons with whom AAI may engage in future, subject to constitutional and administrative law limitations.

Clause 35.12 of the Airports Authority of India Works Manual separately provides for action against contractors for unsatisfactory performance. It authorises blacklisting or debarment where, among other grounds, a contractor's performance has been reported as unsatisfactory during or upon completion of the work. The Manual also prescribes a distinct procedure for exercising that power.

Significantly, NCC could not identify any provision of the contract which authorised or reserved a power of debarment in favour of AAI. The Court therefore held that the source of the impugned power lay in AAI's statutory

and administrative framework, not in the contractual terms agreed between the parties.

The wording of the debarment letter reinforced this conclusion. It referred to public interest, quality standards, public infrastructure, and the integrity of public procurement, and expressly stated that the action was without prejudice to AAI's contractual rights and remedies. The order thus treated debarment as separate from any consequence available under the contract.

Public Law Review Cannot Be Converted into Private Adjudication:

The Court observed that challenges to blacklisting and debarment are ordinarily tested against public law standards, including legality, reasonableness, proportionality, non-arbitrariness, fairness, and compliance with the principles of natural justice. Those standards scrutinise the validity of the exercise of public power rather than the enforcement of reciprocal contractual obligations.

An arbitral tribunal is a creature of contract and derives jurisdiction solely from the agreement between the parties. It is principally concerned with disputes arising from contractual rights and obligations. In the absence of a contractual provision conferring jurisdiction over the debarment power, an arbitral tribunal could not be treated as the forum for reviewing the legality of an independent administrative order.

The Court therefore rejected the proposition that the broad expressions "arising out of" and "relating to" in the arbitration clause were sufficient to cover the challenge. While such expressions receive a liberal construction, the reach of arbitration remains subject to the principles of arbitrability recognised in *Vidya Drolia v. Durga Trading Corporation*⁵. Disputes involving the exercise of statutory or public law powers may remain outside private adjudication despite having a contractual backdrop.

Decisions Relied Upon by NCC Were Factually Distinguishable:

NCC relied upon earlier decisions in which challenges to blacklisting or debarment had been treated as capable of arbitral consideration. The Court held that those authorities did not establish a universal rule that every debarment founded upon contractual allegations is arbitrable.

In some of those cases, the debarment was expressly founded upon contractual clauses. In others, the grounds of blacklisting were already the subject of pending arbitral proceedings, or the parties had themselves taken the issue through the contractual dispute resolution mechanism. Those circumstances were absent in the present case.

The Court held that arbitrability in each case must depend upon the source of the power, the nature of the impugned action, and the relief sought. Since AAI's debarment power was independent of the contract and regulated future dealings, the authorities relied upon by NCC were distinguishable both on facts and principle.

Conclusion

The Delhi High Court sustained AAI's preliminary objection and dismissed the Section 9 petition as not maintainable. It held that the debarment letter was an administrative order issued under AAI's independent statutory and administrative powers, rather than an order passed in exercise of the contractual conditions governing the parties. Any relief against the debarment therefore fell outside the scope of the arbitration agreement.

Having decided the threshold issue of arbitrability, the Court declined to examine the merits of the debarment. It expressly clarified that it had expressed no opinion on the legality, validity, proportionality, or factual foundation of the order. All such contentions were left open for consideration in appropriate proceedings before a competent forum. The petition and pending applications were disposed of without an order as to costs.

Comment

The judgment provides a clear analytical framework for determining whether a challenge to blacklisting or debarment may be pursued through arbitration. The decisive question is not whether the alleged misconduct occurred during contractual performance. Rather, courts must identify the source of the power exercised and determine whether the impugned action enforces an existing contractual right or independently regulates future dealings.

The decision also clarifies that debarment is not invariably non-arbitrable. Where the power is expressly incorporated into the contract, invoked as a contractual remedy, or treated by the parties as part of the agreed dispute resolution process, a different conclusion may follow. The ruling is therefore source-specific and does not create a blanket exclusion for every dispute involving blacklisting.

For contractors dealing with public authorities, the judgment highlights the importance of selecting the correct forum. Contractual disputes regarding delay, payment, quality, defects, and risk-and-cost consequences may proceed to arbitration, while a challenge to an independent administrative debarment order may require recourse to judicial review. Attempting to preserve such a public law challenge through Section 9 will fail where the proposed arbitral tribunal would itself lack jurisdiction over the underlying relief.

Endnotes

1. *NCC Limited v. Airport Authority of India*, O.M.P. (I) (COMM.) 140 of 2026 (Delhi High Court), decided on 1 July 2026.
2. *Kuber Mart Global Hub (P) Ltd. v. Kuber Mart Industries (P) Ltd.*, 2026 SCC OnLine Del 3254.
3. *Patel Engineering Ltd. v. Union of India*, (2012) 11 SCC 257.
4. *A.K.G. Construction and Developers Pvt. Ltd. v. State of Jharkhand*, 2026 SCC OnLine SC 520.
5. *Vidya Drolia v. Durga Trading Corporation*, (2021) 2 SCC 1.

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