

The State Trading Corporation of India Limited

Revised Policy for Banning of Business Dealings

1. Introduction

STC deals with a number of buyers, suppliers, vendors, contractors, consultants, service providers and other parties in the course of its day to day operations. It is essential that both STC as well as the parties with whom it deals adopt the highest standards of ethics, integrity, transparency, commitment and sincerity in all business dealings. It may prove harmful to STC's interest to deal with any party who has earlier committed deception, fraud or resorted to malpractice or misconduct of any nature in the tendering process and/or execution of assigned order / contract either with STC or any other public sector / Govt. organization.

It is therefore essential that no business dealings are undertaken by any Division(s)/Branch/R.O. of the Corporation with any party not having a clean track record. At the same time, such a decision has wide ramifications for the party in terms of its eligibility for tenders/award/contracts or any further orders from STC or other Govt. organizations. The decision to suspend / ban business dealings with any party is therefore required to be taken after due consideration of all relevant issues and after providing adequate opportunity of hearing to the party and considering the explanation, if tendered, before passing any order in this regard.

This Policy aims to lay down grounds and procedures for such actions. The words Blacklisting, Holiday Listing, Debarring and Banning shall be considered to have one and the same meaning and the term Banning of Business Dealings and Banned Parties used in this Policy shall include Blacklisting / Holiday Listing / Debarring / Suspension etc.

2. Scope

- 2.1 STC reserves its right to ban business dealings with any party, if it is found to have committed misconduct or resorted to malpractice or if any of its action(s) falling under any such categories or as laid down in this Policy.
- 2.2 This Policy shall come into force with effect from the date of its issuance after Board approval.
- 2.3 The procedure as contained in this Policy shall be followed for all cases to ban business dealings with Parties by STC for future

Contracts / Agreements / Tenders etc. entered into/issued subsequent to the approval of these guidelines by the Board.

- 2.4 This policy will not be applicable upon any past decision of black listing of an associate/party. Any decision for banning of business dealings with any Party imposed prior to this Policy coming into effect shall continue to be in force.
- 2.5 This policy shall be published on STC website and all tenders shall have a clause expressly stating that the Policy for banning of business dealings as adopted by STC and available on STC website shall be applicable in the context of all tenders floated and all consequent orders / contracts / purchase orders placed by STC.
- 2.6 This policy will remain in existence till any revision that may be required based on the guidelines issued by the GOI and the new revised policy is approved by the Board".

3. Definitions:

In these Guidelines, unless the context otherwise requires:

- 3.1 "**Corporation**" or "**STC**" shall mean The State Trading Corporation of India Limited with its Registered Office at Jawahar Vyapar Bhawan, Tolstoy Marg, New Delhi - 110001.
- 3.2 "**Ministry**" shall mean Ministry of Commerce and Industry, Government of India.
- 3.3 "**Party or Firm**" shall mean any Supplier / Buyer / Associate / Bidder/ Contractor / Sub-contractor / Agency on whom order has been placed for any goods, services or works or with whom an agreement/contract has been entered into for certain business transaction. It shall include, but not be limited to, a public limited company or a private limited company, a firm whether registered or not, a limited liability partnership firm, any individual, a cooperative society or an association or a group of persons, or constituents of an unincorporated Joint Venture Company.
- 3.4 "**Allied Firm**": All concerns which come within the sphere of effective influence of the debarred firm shall be treated as allied firms. In determining this, the following factors may be taken into consideration:
- a) Whether the management is common,



- b) Majority interest in the management is held by the partners or directors of banned/suspended firm.
- c) Substantial or majority shares are owned by the banned/suspended firm and by virtue of this it has a controlling voice.
- d) Directly or indirectly controls, or is controlled by or is under common control with another bidder.
- e) All successor firms will also be considered as allied firms.

3.4 **"Competent Authority"** shall mean Director of concerned functional area. If the position of Functional Director is vacant, the Senior most Official of the concerned division shall be the "Competent Authority".

3.5 **"Appellate Authority"** shall mean Chairman & Managing Director (CMD) of STC.

3.6 **"Malpractice"** shall inter-alia include the following:

- a. Offering, giving, receiving or soliciting, directly or indirectly, anything of value to influence the actions of STC's official(s) in selection process or in contract execution.
- b. All acts of commission and omission on the part of a Party or with its connivance or by its agent(s) / sub-contractors with the intent of misrepresenting / submitting false documents and / or providing false information or concealing the fact(s) or deceiving in order to influence a selection process to obtain an order or to obtain a financial benefit or to avoid an obligation.
- c. Making or attempting to make along with other bidders or prospective bidders (prior to or after bid submission) a scheme or arrangement designed to establish bid prices at artificial non-competitive levels and to deprive the Corporation of the benefits of free and open competition or being part of any cartels or anti-competitive agreements as defined under the Competition Act 2002.
- d. Impairing or harming or threatening to impair or harm directly or indirectly, STC or any Party appointed by it or its property to influence the legitimate actions of the STC or its agency.
- e. Obstructing any investigation or auditing of a procurement process or of performance of any agreement or contract entered into with STC.
- f. Deliberately violating or circumventing the provisions of labour laws / regulations / rules, safety norms, environmental norms or any other statutory requirements.



- 3.7 **"Mis-conduct"** shall mean any act of commission or omission by the Party, which harm or may have the potential to harm STC's interest and will inter-alia include the following:
- a. Submission of fake, false or forged documents / certificates.
 - b. Non-deployment of the technical staff or equipment considered necessary as per the terms & conditions of contract / award.
 - c. Non-supply/deficit supply of ordered goods or services or supply of inferior quality goods or services with reference to specifications under the Contract.
 - d. Executing poor quality work below the acceptable limits stipulated in the Contract.
 - e. Misbehavior or physical manhandling by the Party or its representative or any person acting on its behalf with any official of STC.
 - f. Substituting the materials supplied by STC or not returning or unauthorizedly disposing off materials / documents / drawings / tools or plants or equipments supplied by STC.
 - g. Deliberately indulging in defective works or supply of defective materials.
 - h. Committing breach of contract or that of any of the terms and conditions of the contract including but not restricted to material alterations, refusing to perform the contract or creating unauthorized sub-agency contract.
 - i. If the party indulges in repeated and / or deliberate use of delay tactics in complying with contractual stipulations.
 - j. Pilferage/unauthorized lifting of STC stocks being charged to it or under the possession of it without specific written orders of STC.
 - k. If the party continuously refuses to return/ refund the dues of STC without showing adequate reason and this is not due to any reasonable dispute which would attract proceedings in arbitration or Court of Law.
 - l. Not honoring the award / contract / purchase order after the same is issued by STC.
 - m. Parting with, leaking or providing confidential / proprietary information of STC to any third party without the prior consent of STC or breaching any of the terms and conditions stipulated under the integrity pact.



- 3.8 “**Nodal Division**” shall mean the Management Services Division to perform the role of overseeing the process of the banning of business dealings and to ensure adherence to Policy, maintaining, updating and publishing the list of banned Parties, etc.

4. Grounds for Banning of Business Dealings

Business dealings with a Party may be banned on account of the reasons, which shall include, but shall not be limited to the following:

- (i) If the Party is found to be in breach of terms & conditions of the Contract.
- (ii) If the Party, in the context of its dealings with the Corporation has indulged in any Malpractice or is involved in any act of Commission or Omission which falls under Misconduct.

The following additional grounds may also lead to banning of business dealings with a Party:

- a. If a communication is received from the Ministry / CBI / other Govt. departments or other CPSEs under the control of the Ministry to ban future business dealings with the Party;
- b. If the Party has become bankrupt, OR is being dissolved OR has resolved to be wound up OR any other action taken by or against such party under insolvency and bankruptcy code 2016 and the appropriate order for dissolving the corporate entity has been passed by the appropriate authority or any of the ensuing act has been taken and completed in terms of the said code leading completion of any of the process pertaining to insolvency and Bankruptcy;
- c. Any other ground like giving wrong/incorrect/false information/declaration, including transgression of Integrity Pact, which, in the opinion of the Corporation, makes it undesirable to deal with the Party; In the case of transgression of Integrity Pact, the same should be substantiated by the verdict of the Independent External Monitor.

5. Classification of Banning/Debarment:

The Firm/Party under this policy shall be banned / debarred under following two categories:

- (i) **Debarment by Single Ministry/Department:**

In cases debarment is proposed to be limited to a single Ministry/Department, the appropriate Orders shall be issued by

concerned division of STC, thereby banning all its business dealings with the debarred firm/party. The Debarment Order shall also be sent to Department of Commerce (DOC) and among PSUs under the Department of Commerce, Ministry of Commerce.

(ii) **Debarment by all central Ministries/Departments**

In case debarment is proposed to extend beyond the jurisdiction of the particular Ministry/Department i.e. covering to all central Ministries/Departments, the requisite Orders shall be issued by Department of Expenditure (DoE), Ministry of Finance (MoF).

A proposal for debarment by all Ministries/Department shall be sent by concerned division of STC to the Department of Commerce for taking up the matter suitably with the Department of Expenditure (DOE) for banning the firm/party. The firm will remain in suspension mode (i.e. debarred) during the interim period till the final decision is taken by DoE.

6. Procedure for Banning of Business Dealings

- 6.1. Proceedings for banning of business dealings shall be initiated against a Party as and when any fact or information disclosing or sustaining any of the above mentioned grounds comes to the knowledge of STC. However, before taking a decision, STC shall provide a fair opportunity of defense to the Party.
- 6.2. If a party fails to make payment/lift the material before the end of the agreed period or indulges in any malpractice or involves in any act falling under misconduct, a grace period of one month shall be given to the party depending upon the nature/value/problem in the transaction, to clear the dues/resolve the issue. The concerned division shall regularly take up the matter of non-payment/non-lifting with the party and persuade the party to perform as per contractual provision. However, by the end of the grace period, if the party fails to offer any justifiable grounds or fails to fulfill the commitment with regard to payment/lifting of material, the Division shall initiate the process of banning of business dealings with the party with the approval of the Competent Authority. The Division shall continue to avail all legal and commercial options to recover the pending amounts.
- 6.3. The proceedings shall start with a proposal by the Concerned Division for initiating action against the Party.



- 6.4. The proposal shall state a brief background of the case, the action proposed and all supporting documents, including a note highlighting reasons for the proposed action. A draft show cause notice will also be attached to the proposal.
- 6.5. The show cause notice drafted by the concerned Division and duly vetted by Legal Division shall indicate clearly and precisely the charges/misconduct which shall be based on facts as can be proved as distinct from mere allegations. Statement containing the imputation of misconduct or misbehavior or malpractice or any other ground for banning of business dealing as provided in this policy shall be appended to the show-cause notice.
- 6.6. Based on the proposal, Competent Authority will take a view on whether to go ahead with issuing of Show Cause Notice or to drop the proposal. In case it is decided to go ahead with the proposal, the Show Cause Notice will be approved by the Competent Authority.
- 6.7. Thereupon the Show Cause Notice, as approved, will be issued by the concerned Division. The Party shall be asked to submit a written statement in its defense within 15 days of the receipt of show cause notice. Before issuing the Show Cause Notice, concerned Division should give intimation to the Nodal Division regarding the proposed action against the Party, along with a copy of the Show Cause notice for record. The Nodal Division shall in turn convey this information to all Divisions across the Corporation.
- 6.8. On receipt of the explanation from the Party, the concerned Division will put up a speaking proposal for banning of business dealings with the party or otherwise, to the Competent Authority. This proposal would consist of a background of the case, copy of initiation of proposal earlier approved by the Competent Authority, copy of the Show Cause Notice issued and Party's reply received along with comments of the Division on the same. The period for which banning is recommended shall also be clearly mentioned in the proposal. All relevant supporting documents shall also be attached. In case no explanation is received from the Party within the stipulated time, the case shall be proceeded ex-parte.
- 6.9. The proposal along with the reply from the Party would be evaluated by the Competent Authority, who may decide to:
- Approve the proposal for banning the business dealings as such or otherwise.

- Approve the proposal for banning the business dealings for a period higher/lower than the period that was recommended by the Division.
 - Reject the proposal, in case, based on explanation furnished by the Party, the Competent Authority is of the opinion that the alleged misconduct / malpractice was either not substantiated or has happened on account of circumstances on which Party had no control.
- 6.10. The decision of the Competent Authority regarding banning of business dealings or otherwise shall be communicated to the Party concerned by the concerned Division. In case of debarment, the Order of debarment shall indicate the reason(s) in brief that lead to debarment of the firm. A copy will also be provided to Nodal Division & Competent Authority. The Nodal Division shall in turn convey this information to all Divisions across the Corporation.
- 6.11 Ordinarily, the ban on the business dealings with a Party shall not be less than 6 months and shall not be more than 2 years. The period for which the business dealings would be banned will be based on the facts and circumstances under which the banning decision is taken.
- 6.12. In cases where banning of business dealings is proposed based on advice from the Ministry / CBI / other Govt. departments or other CPSEs under the control of the Ministry, no show cause notice will be issued and no formal decision by Competent Authority will be required. The Nodal Division will directly intimate the Party that they have been placed in banned list by STC based on such advice. The Nodal Division will also inform all concerned Divisions of STC. The period of ban in such cases shall be the same as indicated by the Ministry/ Advising department.

7. Provision for Appeal

- 7.1. A Party aggrieved with the STC's decision of banning of business dealings shall have the option of filing an appeal against the decision to the Appellate Authority within 15 days from the date of receipt of intimation of banning of business dealings failing which the decision of the Competent Authority shall be treated as final.
- 7.2. No request for condoning of delay in filing the appeal shall be entertained.



- 7.3. On receipt of the Appeal from the Party, the Appellate Authority, if it so desires, may call for comments from the Competent Authority who had taken the decision for banning of business dealings.
- 7.4. The Appellate Authority, if it so desires, may give an opportunity of personal hearing to the authorized representatives of the Party by asking them to appear before it to clarify the Party's stand by giving a minimum 5 days notice.
- 7.5. After examining the facts of the case and documents available on record and considering the submissions of the Party, the Appellate Authority shall pass an appropriate order and thereby:

Uphold the decision of Competent authority with or without any variation (such as lesser period of banning the business dealings);

OR

Annul the order of the Competent Authority.

- 7.6. Appellate Authority shall ordinarily pass its order within 45 days from the date of receipt of appeal.
- 7.7. Order of the Appellate Authority, shall be communicated to the Party by the Concerned Division.
- 7.8. Concerned Division shall give intimation to the Nodal Division regarding any change in the decision of banning of business dealings as a result of consideration by the Appellate Authority. A copy of the order shall also be given to the Competent Authority and to the Nodal Division. The Nodal Division shall in turn convey this information across the Corporation and shall also publish this information on STC website for information and reference. The Nodal Division shall also notify the change in the decision of banning of business dealings to the Ministry and to all public sector trading enterprises under the Ministry.
- Information to Ministry of Corporate Affairs/ROC etc. as applicable, shall be forwarded/submitted by the Company Secretary after due cognizance of the decision regarding banning of business dealings with the party.
- 7.9. No Appeal shall be permitted in case business dealings with a Party are banned based on the advice of Ministry / CBI / other Govt. departments or other CPSEs under the control of the Ministry.



8. Effect of Banning of Business Dealings

- 8.1. No enquiry, bid, tender, etc. shall be entertained from the Party as long as business dealings with it remain banned. Also, no further transaction of any kind will be entered into with such an entity during ban period.
- 8.2. The banning/debarment shall be automatically extended to all its allied firms. In case of joint venture/consortium is debarred all partners will also stand debarred for the period specified in Debarment Order.
- 8.3. If the business dealings with a Party are banned during the process of tendering/bidding and the party/firm is L-1, the bids received from the party shall be ignored and the Bank Guarantee/Earnest Money Deposit if any submitted by the party shall be returned. Further, the next lowest party/firm shall be considered as L-1.
- 8.4. Ban on business dealings will apply only to the contracts/orders to be awarded after the ban has come into place.
- 8.4. In case of shortage of suppliers in a particular group, such debarments may also hurt the interest of procuring entities. In such cases, endeavor should be a pragmatically analyze the circumstances, try to reform the supplier and may get a written commitment from the supplier that its performance will improve.

9. Revocation of Banning of Business Dealings:

- 9.1. An order of banning of business dealings once passed for a certain specified period can be revoked only as under:
 - a. An order of banning of business dealings passed shall be deemed to have been automatically revoked on the expiry of that specified period and it will not be necessary to issue a specific format order of revocation.
 - b. An order of banning of business dealings, on a review during its currency of operation, may be revoked on recommendation of the concerned Division and approval of the Competent Authority i.e. Senior Most Official of the Division or Director of concerned functional area depending upon facts and circumstances.
 - c. Concerned Division shall give intimation to the Nodal Division and also communicate to party regarding any change in the

decision of banning of business dealings. The Nodal Division shall in turn convey this information across the Corporation and shall also publish this information on STC website for information and reference. The Nodal Division shall also notify the change in the decision of banning of business dealings to the Ministry and to all public sector trading enterprises under the Ministry.

Information to Ministry of Corporate Affairs/ROC etc. as applicable, shall be forwarded/submitted by the Company Secretary after due cognizance of the decision regarding banning of business dealings with the party.

10. Publishing of Names of Parties with whom Business Dealings have been Banned on STC Web-site

The names of the Agencies with whom Business Dealings have been banned shall be published on STC website.

