

**NMDC POLICY
ON
BANNING
OF
BUSINESS DEALINGS**

(Revised w.e.f. 11.11.2021)

A handwritten signature in black ink, located at the bottom right of the page. The signature is stylized and appears to be a name followed by a flourish.

INDEX

<u>Cl.no.</u>	<u>Particulars</u>	<u>Page No.</u>
1.	INTRODUCTION	1
2.	SCOPE	2
3.	DEFINATIONS	3
4.	GROUND FOR BANNING BUSINESS DEALINGS	7
5.	BANNING PERIOD	9
6.	BANNING COMMITTEE	9
7.	PROCEDURE	10
8.	ENABLING POWERS OF THE COMPETENT AUTHORITY	15
9.	APPEAL	16
10.	EFFECTIVE DATE OF BAN	17
11.	CONSEQUENTIAL EFFECT ON THE CONTRACT	17
12.	DELEGATION OF POWERS	17



NMDC POLICY ON BANNING OF BUSINESS DEALINGS

1. INTRODUCTION

- 1.1 NMDC is a Central Public Sector Enterprise under the Ministry of Steel, Government of India. NMDC, therefore, comes under the definition of 'State' within the meaning of Article 12 of the Constitution of India.
- 1.2 NMDC's core activity has been mining. In addition to mining of iron ore and diamonds, it is now expanding into other minerals like coal etc. On diversification front, NMDC is now putting up an integrated steel plant at Nagarnar in the State of Chhattisgarh.
- 1.3 NMDC has adopted the mode of contracting for setting up the infrastructural needs of its projects. The sales of its products are also through contracts, viz., long-term contracts, short-term contracts, e-sales, etc.
- 1.4 NMDC considers it essential to adopt as its objective, in the interest of safeguarding its commercial interests, that it deals with Agencies who have a very high degree of integrity, commitments and sincerity, on the one hand; and, on the other, protect itself against fraud and transgressions on the part of the Agencies. This may call for banning of business dealings with Agencies whose transgression may run counter to the objective.
- 1.5 At the same time, banning of Business Dealings has civil consequences upon the Agency involved.

1.6 NMDC has, in this context, signed a Memorandum of Understanding with the Transparency International, and has introduced the Integrity Pact as part of its major contracts.

1.7 Besides, in furtherance of the objective as envisaged at para 1.4 above, and considering that the Agency banned for Business Dealings is likely to suffer civil consequences, NMDC regards it as an equitable requirement that a Policy is put in place for suspension and banning business dealings with the Agency that commits fraud and/or transgressions in the dealings with NMDC.

2 SCOPE

2.1 This Policy, known as 'NMDC Policy on Banning of Business Dealings with Agencies', covers both suspension and banning of business dealings with the Agency that commits fraud and/or transgression in the dealings with NMDC. It also includes:

2.1.1 Banning of an Agency who has been Banned by Government Departments and/or other CPSUs; and

2.1.2 Banning of an Agency for poor performance in the Business Dealing with NMDC.

2.2 The Policy provides for the procedure for NMDC to Suspend or Ban business dealings with an Agency. The procedure includes, as a measure of affording natural justice to the affected, provisions such as notice to the Agency, opportunity for the Agency to be heard, reasoned decision on Suspension and/or

Ban, communication of the decision to Suspend or Ban Business Dealings or otherwise, and appeal against the Ban.

3 DEFINITIONS

- 3.1 'Agency' means and includes party, bidder, tenderer, contractor, supplier, purchaser, customer, consultant, member concerned of a consortium (not other members of the consortium).

The policy also includes agencies who have issued false certificates / documents thereby connived with the bidders in submitting false documents / certificates with an intention to qualify in the tender / secure the contract.

Explanation: 'Agency' and 'Inter-connected Agency', wherever they are independent legal entities, are to be treated as separate entities; similarly members of a consortium are to be treated as separate entities. The process and impact of the policy will be primarily on the entity concerned who has committed transgression formally the ground for Banning of Business Dealings under Clause No. 4 of the policy, unless complicity of other entities can be linked to any or all other members of the consortium in the committing of transgression.

- 3.2 'Appeal' means the Appeal to the Appellate Authority that an Agency may file against the decision of the Competent Authority.



- 3.3 'Appellate Authority' means the Board of Directors of NMDC (Board, for short) {in case Board delegates, it can be "Empowered Committee of Directors" (ECoD, for short) in place of Board}.
- 3.4 'Ban' means prohibition or cessation of Business Dealings with the Agency, in terms of the Policy, for a specified period mentioned therein, including removal of the Agency from the List of Approved Agencies. It is clarified that Ban is in respect of Business Dealings as defined in the Policy, not for concluded contracts. It is also clarified that Ban does not include termination of a concluded contract, but can include disqualification of an agency in the tender before its acceptance, i.e., issue of Letter of Intent, Work Order, Acceptance of Tender, Signing of the Agreement, as the case may be. It is further clarified that a Concluded Contract can be terminated only in accordance with the conditions of the relevant contract, not in terms of the Policy.
- 3.5 'Banning Committee' or 'the Committee' means the Committee constituted by the CMD, NMDC, under the provisions of the Policy.
- 3.6 'Business dealings', for the purpose of the Policy, means and include dealings of NMDC with the Agency in relation to tender, contract, sale, purchase, work, etc, before the conclusion of a contract, i.e., before issue of work order, letter of acceptance of contract, signing of an agreement or any other instrument that signifies acceptance of a contract by NMDC.
- 3.7 'Case' means an instance of Fraud or Transgression or Poor Performance as the case may be, by an Agency that has come to

the notice of NMDC official(s) and taken note as such in terms of the Policy.

- 3.8 'Competent Authority' means the Chairman-cum-Managing Director of NMDC (CMD, for short).
- 3.9 'Fraud' means a willful act committed by an Agency – such as deception, suppression, cheating, and other illegal acts in relation to dealings with NMDC – with the intent to obtain wrongful gain(s) to the Agency or any other individual(s) and thereby to cause wrongful loss to NMDC.
- 3.10 'Inter-connected Agency' means two or more companies having any of the following features:
- 3.10.1 If one is a subsidiary of the other;
- 3.10.2 If the Director(s), Partner(s), Manager(s) or Representative(s) are common;
- 3.10.3 If management is common;
- 3.10.4 If one owns or controls the other in any manner.
- 3.11 'Investigation' means the inquiry that may be conducted into the alleged Case in order to ascertain the facts of the case and decide whether there is a prima facie Case for formulation of a self-contained Case. The Investigation can be done by an authorised official or committee.
- 3.12 'Jurisdiction' means the areas over which the functional Director has control in relation to the works, duties, etc, assigned to him from time to time.
- 3.13 'List of Approved Agencies' means the list of parties, bidders, tenderers, contractors, suppliers, purchasers, customers, as

approved by NMDC from time to time and maintained by the Department concerned.

- 3.14 'Poor performance' means the act(s) of the Agency which directly results in abandoning the work, not completing the work even within the extended period of completion, not meeting the agreed conditions in the contract agreement, etc.
- 3.15 'Suspension' means 'Suspension of Business Dealing' or 'Suspension of Contract'.
- 3.16 'Suspension of Business Dealing' means a temporary stoppage of Business Dealing of NMDC with the Agency concerned before a Ban is enforced on the Agency in terms of the Policy for such specific period as the Competent Authority may consider it reasonable but not more than six months while investigation is going on against the Agency or while the process to ban the agency has been initiated.
- 3.17 'Suspension of Contract' means a temporary stoppage of the concluded contract, between NMDC and the Agency concerned, before a Ban is enforced on the Agency in terms of the Policy for such specific period as the Competent Authority may consider it reasonable but not more than six months while investigation is going on against the Agency or while the process to ban the agency has been initiated. It is clarified that if a Concluded Contract is to be suspended under the Policy, under extreme circumstances, it has to be done in accordance with the terms of the contract.
- 3.18 'Transgression' means and includes such acts by the Agency/Inter-connected Agency/ member of a consortium or

by someone or an entity on its behalf, as may lead to or form the basis for the grounds for Banning of Business Dealings as per Clause 4.

4 GROUNDS FOR BANNING BUSINESS DEALINGS

For the sake of clarity, the grounds on which banning of business dealings can be considered are given below:

- 4.1 Security considerations, including questions of loyalty of the Agency to the State.
- 4.2 Conviction of the Director/owner/proprietor/partner of the Agency by a Court of Law for offences involving moral turpitude in relation to its business dealings with the Government or NMDC or any other public sector enterprises during the last five years.
- 4.3 Evidence/strong justification for believing that the Director/owner/ proprietor/partner of the Agency has/have been guilty of malpractices such as bribery, corruption, fraud, substitution of tenders, interpolation in tenders, etc.
- 4.4 The Agency's repeated refusal to return/refund the dues to NMDC without showing adequate reason and this is not due to any reasonable dispute which would attract proceedings in arbitration or Court of Law.
- 4.5 The Agency employs an employee who was dismissed / removed by NMDC for an offence involving corruption or abetment of such an offence.

- 4.6 The banning of business dealings with the Agency by the Government or any other public sector enterprise.
- 4.7 The Agency resorted to corrupt or fraudulent practices that may include misrepresentation of facts and/or fudging/forging/tampering of documents.
- {Note: Cases where mistakes do not have implication on the eligibility of the bidder in terms of PQC, i.e. an ineligible bidder does not become eligible or vice versa, such cases shall not fall within the ambit of the Banning policy}.
- 4.8 The Agency used intimidation/threatening or brings undue outside pressure on NMDC/its officials in relation to a Business Dealing.
- 4.9 The Agency resorts to repeated and/or deliberate use of delay tactics in complying with contractual stipulations.
- 4.10 Willful act of the Agency to supply sub-standard material irrespective of whether pre-despatch inspection was carried out by NMDC or not.
- 4.11 The findings of CVO/CBI/Police about the Agency's involvement in fraud and/or transgressions in relation to the Business Dealings with NMDC.
- 4.12 Established litigant nature of the Agency to derive undue benefit.
- 4.13 Continued poor performance of the Agency in at least three preceding contracts with NMDC.
- 4.14 The Agency misuses the premises or facilities of NMDC and/or forcefully occupies, tampers or damages NMDC's properties including land, water resources, forests/trees, etc.

- 4.15 False allegation on NMDC officials by the Agency if found proved by an Investigation or by the Independent External Monitor including any Government agency like CVC / CVO/ CBI/ Police etc.
- 4.16 These are only illustrative, not exhaustive. The Competent Authority may decide to ban Business Dealings with an Agency for any good and sufficient reason.

5 BANNING PERIOD

- 5.1 The Banning Period may range from six months to three years depending on the gravity of the case as decided by the Competent Authority. While deciding the Banning Period, the Suspension Period, if any, shall also be taken into account.

6 BANNING COMMITTEE

- 6.1 CMD may constitute a Banning Committee (the Committee, for short) for consideration of the Case as per the Policy.
- 6.2 The Committee shall consist of one Chairman and two members chosen out of Officers of the rank of Executive Director / Chief General Manager / General Manager.



7. PROCEDURE

- 7.1 Upon noticing an instance of fraud or transgression on the part of the Agency, the official concerned is to report it to the Head of the Department (HoD) concerned.
- 7.2 The HoD will verify the facts and send a report to the Head of the Project/Unit (HoP/U) along with all relevant facts and evidence. In the case of Head Office, the Head of the section concerned (HoS) will verify the facts and send a report to the HoD along with all relevant facts and evidence.
- 7.3 The HoP/U or the HoD, as the case may be, if not satisfied by the report, may order an Investigation into the Case or pass the order to close the Case as deemed fit. If satisfied that a prima facie case has been made out in the report, the HoP/U or the HoD, as the case may be, will have a Show Cause Notice issued to the Agency. The notice shall contain a brief narration of the case, with due references to evidence, and the charge(s) that is/are framed against the Agency as per the Policy, giving one week's time (or such other time as the HoD or the HoP/U may consider it reasonable in the circumstances of the case) for the Agency to submit its reply. If the Agency requests for inspection of any of the relevant document(s) in possession of NMDC, the Department concerned may, at its discretion, facilitate it or give copies of such documents. In case the reply from the agency is satisfactory the HoP / HoD may close the case.



- 7.4 Upon receipt of the Agency's response, or if there is no response from the Agency within the given time or any other time reasonably granted, the HoP/U, or the HoD, as the case may be, will prepare a self-contained Case (along with copies of all relevant documentary evidence and/or oral evidence) and send it to the Competent Authority for consideration. The Case should also contain a specific recommendation of the HoP/U, or the HoD, as the case may be, whether the case demands immediate suspension of the Agency or not.
- 7.5 The Competent Authority may take appropriate decisions in two stages:
- 7.5.1 Stage-I: The Competent Authority, if satisfied that the Case demands immediate suspension of the Agency, may pass the order accordingly and intimate the HoP/U or the HoD, as the case may be for implementation.
- 7.5.2 Stage-II: The Competent Authority may refer the Case to the Banning Committee for appropriate examination and making its report.
- 7.6 The Committee will examine the Case as per the guidelines given below:
- 7.6.1 Preliminary meeting: The Committee will examine the case and record its findings on the following in the form of minutes of the meeting:
- a. Whether the Case has been made out in terms of the Policy;

- b. Whether the charge(s) framed is/are as per the Policy. If any charge(s) is/are framed on grounds other than those given in the Policy, whether the approval therefor has been obtained from CMD as per clause 4.16 of the Policy;
- c. Whether the facts stated in the Case and the evidence attached therefor are relevant;
- d. Whether the Agency's reply, if any, brings out any mismatch or discrepancy in (c) above; and whether the Agency's reply, if any, has brought out any points/evidence that go against the contentions made by the Department in the Case;
- e. Any other relevant points.

If required, the Committee may, considering the nature of the case, co-opt any NMDC official to be on the committee. It may also call any NMDC official(s) who, in the opinion of the committee, can help the committee examine the Case. The official(s) may include the Head of the Department, or any official (s) of NMDC.

7.6.2 Issue of Notice: The Committee will issue notice to the Agency and the HoP or the HoD, as the case may be, to appear before the Committee in person or through authorized representative at such place, date and time as may be mentioned in the Notice, along with (i) relevant original documents they possess; and (ii) authorization from authorities concerned. It is clarified that the authorised representative can be only officials of the agency / NMDC, not legal practitioners.



7.6.3 Final Hearing :

- a. Copies of documents as received from both the Parties may be verified with the original documents in the presence of both the Parties; and decisions taken on inconsistencies, if any, and intimated to the Parties.
- b. The HoP or the HoD, as the case may be, or their authorized representatives, may be asked to present the case, including explanation/clarification on the Agency's reply. Explanation/clarification may be sought by the committee on the findings that have arisen out of the examination of the case as per para 7.6.1.
- c. The Agency or its authorized representative may be asked to present the case. Explanation/clarification may be sought by the committee on the findings that have arisen out of the examination of the case as per para 7.6.1.
- d. The proceedings of the meeting may be recorded in the form of minutes and shall contain the details of what took place in the meeting, including the explanation/clarification given by the Parties on the findings of the Committee as per para 7.6.1 and any additional points. The minutes shall be signed by all concerned. Any non-compliance shall be recorded appropriately in the minutes.

7.6.4 Report of the Committee: The Committee shall consider submissions made by both the Parties and arrive at its final findings/conclusions and prepare its Report, containing -

- a. Narration of the Case and the Charge(s);
- b. Submissions/explanations/clarifications given by the HoD/Head of the Section;
- c. Submissions/explanations/clarifications given by the Agency;
- d. Analysis to reach the findings of the Committee as to the veracity of the documents / evidence and acceptability or otherwise of the submissions.
- e. Conclusion as to whether the Charge(s) is/are proved, beyond doubt or partly; or is/are not proved.

7.6.5 The Committee shall submit its report to the Competent Authority.

7.6.6 The Competent Authority, after carefully considering the report of the Committee, shall pass an order rejecting or accepting the report.

7.6.7 If the report is rejected, the Competent Authority may, giving reasons therefor, pass the order closing the Case, which may include–

- a. that the Agency is exonerated of the Charge(s),
- b. that the Case is closed.
- c. that the Head of Department may communicate the order to the Agency and all concerned.



7.6.8 If the report is accepted, either fully or partly, the Competent Authority, may, giving reasons therefor, pass the order, which may include –

- a. the decision to Ban the Agency;
- b. the period for which the Ban should be effective, including the period of suspension, if any;
- c. the direction for the HoD, or the Section-in-Charge, as the case may be, to convey the order to the Agency and all concerned.

7.6.9 Upon receipt of the orders of the Competent Authority, the HoD or the Section-in-Charge, as the case may be, may take appropriate action as per the orders, including getting the order hosted on the NMDC website.

8. ENABLING POWERS OF THE COMPETENT AUTHORITY

8.1 All enabling powers vest with the Competent Authority to decide on any matter that is not specifically provided for in this Policy but is necessary for effective implementation of this Policy.



9. APPEAL

- 9.1 The Agency, if not satisfied with the order of the Competent Authority, may submit, within two weeks, its Appeal in writing directly to the Appellate Authority against the final orders of the Competent Authority.
- 9.2 The Appellate Authority may give the Applicant an opportunity of being heard.
- 9.3 The Appellate Authority may thereafter carefully consider the appeal and pass such Order as he considers it just and reasonable, giving reasons therefor, which may include –
- 9.3.1 confirm the order of the Competent Authority, or
 - 9.3.2 modify the order of the Competent Authority, or
 - 9.3.3 exonerate the Agency, or
 - 9.3.4 the direction for the HoD, or the Section-in-charge as the case may be, to convey the order to the agency and all concerned.
- 9.4 The Head of the Department will convey the final orders of the Appellate Authority to the Agency and all concerned.
- 9.5 Upon receipt of the order of the Appellate Authority, the HoD or the Section-in-charge, as the case may be, may take appropriate action as per the orders, including getting the orders hosted on the NMDC website.



10. EFFECTIVE DATE OF THE BAN

- 10.1 The Ban comes into effect from the date of the letter by which the Competent Authority's final order of Ban is communicated to the Agency and will remain in force for the period mentioned therein subject to the order of the Appellate Authority, if any.

11. CONSEQUENTIAL EFFECT ON THE CONTRACT

- 11.1 The Policy is for internal use of NMDC. No Agency derives any right whatsoever from the Policy or the actions taken by NMDC under the Policy. Any claim by the Agency on NMDC in relation to the concluded contract will be governed only by the terms and conditions of the contract.
- 11.2 The Suspension of the Agency and/or Ban of Business Dealings with the Agency, as the case may be, may have impact on the performance of the contract by the Agency. All concerned shall take due care at all stages. Suitable clauses may be incorporated in the contract documents.

12.DELEGATION OF POWERS

- 12.1 The proceedings of the Banning of Business Dealings being quasi judicial in nature, CMD may delegate necessary powers to the Competent Authority for the effective implementation of the Policy.

