



PROCEDURE
FOR
SUSPENSION / BANNING
OF
BUSINESS DEALINGS
(Applicable with effect from 12th May, 2016)



Abbreviations:

Admn.	Administration	LIT	Letter Inviting Tender
AGM	Assistant General Manager	LSTK	Lumpsum Turnkey
BG	Bank Guarantee	MCL	Master Contractor's List
CBI	Central Bureau of Investigation	Mgr.	Manager
CCEC	Construction Contractor's Evaluation Committee	MR	Management Representative
CCEG	Construction Contractor's Evaluation Group	MoPNG	Ministry of Petroleum and Natural Gas
CMD	Chairman and Managing Director	MC	Management Committee
Cont.	Contracts	NCR	Non Conformance Report
CQA	Corporate Quality Assurance	NIT	Notice Inviting Tender
CVC	Chief Vigilance Commission	OCEMS	Online Contractor Enlistment Management System
D (C)	Director (Commercial)	PDD	Procurement Development Department
DDC	Document Drafting Committee	PSE	Public Sector Enterprises
DGM	Deputy General Manager	PSU	Public Sector Undertaking
DOP	Delegation of Power	QA Manager	Quality Assurance Manager
D(P)	Director (Project)	QA System	Quality Assurance System
D(T)	Director (Technical)	QMS	Quality Management System
DRC	Document Review Committee	RCM	Resident Construction Manager
ED (C)	Executive Director (Construction)	RO	Regional Office
EIL	Engineers India Limited	RPO	Regional Procurement Office
Engg.	Engineering	Sr. Mgr.	Senior Manager
EPCC	Engineering, Procurement, Construction & Commissioning	SEC	Supplier Evaluation Committee
EMD	Earnest Money Deposit		
HO	Head Office		
HOD	Head of Department		
HUF	Hindu Undivided Family		



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1. PURPOSE

Various Agencies like Contractors/ Suppliers/ Service providers are expected to adopt ethics of highest standard and a very high degree of integrity, commitment and sincerity towards the work undertaken. The purpose of this document is to formulate a procedure for banning & suspension of business dealings with Agencies where they are found to have performed poorly or committed misconduct or fraud or anything unethical not expected from an agency.

2. SCOPE

This document is applicable to Procurement Development Department (PDD) for imposition/revoking of banning and suspension of agencies for various reasons enumerated in this document.

3. REFERENCES

- i. Vigilance note dated 26.03.2015 regarding Draft Policy for blacklisting of companies by Oil PSUs
- ii. Procedure for SEC functions No 5-1844-0008
- iii. Procedure for contractor enlistment No.5-1844-0011
- iv. Procedure for Enlistment / Enhancement / Revalidation of supplier for Indigenous / Foreign No.5-1844-0001 & 0002
- v. Procedure for Monitoring Supplier's Performance No.5-1844-0003
- vi. Note for MC approval dtd 12.04.2016

4. DEFINITIONS:

Agency: "Party/ Contractor/ Supplier/ Consultant/ Bidder/ Licensor/ Service Provider/ Agency" shall mean and include a public limited company, private limited company, Public Sector Enterprise (Central Govt. or State Govt. owned), joint venture, consortium, HUF, a firm whether registered or not, an individual, co-operative society or an association or a group of persons engaged in any commerce, trade, industry etc. "Party/ Contractor/ Supplier/ Consultant/ Bidder/ Licensor/Service Provider/ Agency" is referred in this document as "Agency".

Appellate Authority: Shall mean the committee of D(T) and D(P) of EIL in case of suppliers and D(T) & D(C) of EIL in case of contractors. Appellate Authority may co-opt D(F) and/or D(HR), if needed.

Competent Authority: Shall mean the Chairman of SEC/CCEC as the case may be, who is competent to take final decision for imposition/revoking of banning and suspension / reinstatement of Agencies. Competent Authority shall be of the level of at least Executive Director.

Initiating Authority: Shall mean the person(s) designated to act for and on behalf of EIL for the discharge of his duties in execution of the Work/Project/Job/Role, and shall include but not be limited to the following:



- i. Project Managers / All HODs / RPO Heads / RO Heads / RCMs .
- ii. External Agencies like Clients, Investigation bodies (CBI or other such bodies) etc.

Nodal Department : PDD will act as Nodal Department for proceedings.

Moral Turpitude: An act or behavior that gravely violates the moral sentiment or accepted moral standards of the community and is considered contrary to community standards of justice, honesty, modesty and good morals.

Suspension: Business dealings with an agency may be suspended if it is considered not desirable to continue the business with the agency. Suspension shall be for a period upto six months from the date of approval of decision of suspension. The Competent Authority may extend the period of suspension by another three months pending completion of investigation.

Banning: Business dealings with an agency may be banned if it is considered not desirable to continue the business with the agency. Banning shall be for a period exceeding six months from the date of approval of decision of banning and upto three years or more.

Supplier Evaluation Committee (SEC) is the authorized body constituted by Director (Commercial) to take decisions regarding suppliers' enlistment / enhancement / revalidation/ banning / suspension and any other such decision related to suppliers. SEC shall comprise of senior executives from Engineering, Contracts & Purchase, Inspection, Projects as members and HOD (PDD) as the convener. Director (Commercial) or any other official nominated by Director (Commercial), not below the level of Executive Director, shall be the chairman of SEC. The committee will act in a quasi-judicial capacity and will work independently.

SEC Sub-Committee: Sub-Committee for SEC shall comprise of SEC members from PDD, Projects and Inspection (one from each department).

Construction Contractors Evaluation Committee (CCEC) is the authorized body constituted by Director (Projects) to take decisions regarding Contractors' enlistment / enhancement / revalidation/ banning / suspension and any other such decision related to contractors. CCEC shall comprise of senior executives from Engineering, Contracts & Purchase, Construction, Projects as members and HOD (PDD) as the convener. Director (Projects) or any other official nominated by Director (Projects), not below the level of Executive Director, shall be the chairman of CCEC. The committee will act in a quasi-judicial capacity and will work independently.

CCEC Sub-Committee: Sub-Committee for CCEC shall comprise of CCEC members from PDD, Projects and Construction (one from each department).



5. METHODOLOGY AND CONTROLS

5.1. Initiation of Suspension/Banning

If and when, it is discovered /detected that one or more of the grounds, stipulated in attached Annexure I, have occurred, Initiating Authority being satisfied that prima-facie the case is fit for Suspension or Banning, shall submit the case along with all relevant papers and documents to the Nodal Department to initiate Suspension or Banning proceedings.

5.2. Suspension or Banning of Business Dealings – methodology

- 5.2.1. PDD will act as Nodal Department for proceedings.
- 5.2.2. Nodal Department shall put up the case to SEC Sub-committee or CCEC Sub-committee, as the case may be, for review and issuance of Show cause notice. After approval of the Sub-Committee, show cause notice as approved would be served upon the agency.
- 5.2.3. It is necessary to give a show-cause notice to the Agency before issuing the order of suspension or banning unless it is not expedient in the public interest to do so or is not applicable to the specific case (Refer Annexure I).
- 5.2.4. The show cause notice shall indicate clearly and precisely the charges/misconduct which should be based on facts (which can be proved) as distinct from mere allegations. Statement containing the imputation of misconduct or misbehavior may be appended to the show-cause notice and the “Agency” should be asked to submit, within 10 calendar days, a written statement in its defence. A Draft of show cause notice is attached at Annexure II.
- 5.2.5. If the Agency requests for a hearing, the same shall be granted by Sub Committee.
- 5.2.6. Competent Authority has to take a decision within 30 calendar days of receipt of reply or hearing, whichever is later.
- 5.2.7. The Competent Authority will pass an appropriate order after examining the materials on record. If no reply to show cause notice is received from the Agency within the specified period, the decision shall be taken ex-parte.
- 5.2.8. If it is decided to suspend or ban business dealings, the period for which the ban would be operative shall be mentioned in the order. The decision regarding suspension or banning of business dealings shall also be communicated to the Agency concerned. A draft for intimation of Suspension/Banning order to the agency is attached at Annexure-III.
- 5.2.9. Moreover, if the suspension or banning process was initiated by an external agency, the decision regarding suspension or banning shall also be communicated to the external agency.



- 5.2.10. The order of suspension or banning shall be communicated to relevant Department Heads of EIL and also displayed on EIL PDD Intranet along with the name, address and other details like items/works handled by the Agency. During the period of suspension or banning, no new business dealing shall be undertaken with the Agency.
- 5.2.11. The Suspension or Banning process shall be completed within a period of 6 months from initiation of case by concerned Initiating Authority.

5.3. Grounds and corresponding duration of Suspension / Banning:

Different grounds and corresponding duration of Suspension/Banning shall be as specified in Annexure I.

5.4. Effect of suspension/Banning

- 5.4.1. No enquiry/bidding document/tender shall be issued to an agency whose name appears in the Suspension or Banning List.
- 5.4.1.1. If an “Agency” is put on Suspension or Banning List after issue of the enquiry/Bidding document/ tender but before opening unpriced bids, the unpriced bid submitted by the Agency shall not be opened and BG/EMD submitted by the Agency shall be returned to the Agency.
- 5.4.1.2. If an Agency is put on Suspension or Banning list after opening the unpriced bid but before opening the priced bid, the Agency’s priced bid shall not be opened. BG/EMD submitted by the Agency shall be returned to the Agency.
- 5.4.1.3. In case an Agency is put on suspension or banning list after opening the priced bid, the bid submitted by the Agency shall not be considered any further. The Agency will not be considered for issue of an order even if the Agency is lowest (L1). BG/EMD submitted by the Agency shall be returned to the Agency. In such a situation, the tender shall be refloated.
- 5.4.2. The Suspension/Banning shall be with prospective effect, i.e., future business dealings from the date of approval by Competent Authority.
- 5.4.3. The existing contract(s) with the Agency shall continue unless the “Competent Authority” having regard to the circumstances of the case, decides otherwise with appropriate justification.
- 5.4.4. Suspension/Banning by one PSE shall not automatically extend to another PSE unless MoPNG advises for the same after due diligence and process.

5.5. Appeal against the decision of the Competent Authority

- 5.5.1. The Agency may file an appeal against the order suspending or banning business dealings. The appeal shall be filed to “Appellate Authority”. Such an appeal shall be preferred within 30 calendar days from the date of receipt of the order suspending / banning business dealings.



- 5.5.2. Appellate Authority would consider the appeal and pass appropriate order which shall be communicated to the Agency as well as the Competent Authority.
- 5.5.3. Appeal process may be completed within 45 calendar days of filing of appeal with the Appellate Authority.
- 5.5.4. Even if an appeal is filed against the decision of Competent Authority, the Banning/ Suspension order passed by Competent Authority shall remain effective till Appellate Authority takes a final decision in the matter.

5.6. Revocation

An order for suspension or banning passed for a certain specified period 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 formal order of revocation, except that an order of suspension or banning passed on account of doubtful loyalty or security consideration, poor performance, quality failure etc., where suspension/banning shall continue to remain in force until it is specifically revoked.

In Suspension or Banning cases, where the proprietor of the firm, it's employee, partner or representative is convicted by a court of law of offences involving moral turpitude in relations to business dealings, may be revoked if, in respect of the same facts, accused has been wholly exonerated by court of law.

6. DOCUMENTATION AND RECORDS

- Show cause notice & supporting papers(Initiating Authority Feedback, Supplier/contractor Response etc.)
- SEC & Competent Authority Decisions.
- Suspension/Banning order



Annexure 1

GROUNDS FOR SUSPENSION / BANNING

Suspension of Business with an agency may be ordered by the Competent Authority pending full investigation, if it is considered not desirable to continue business with the Agency.

Grounds	Suspension or Banning and Period	Revocation	Show Cause Notice Applicability
i) If prima-facie case is made out that the firm is guilty of criminal negligence or an offence involving moral turpitude in relation to business dealings, which if established, may result in business dealing with it being banned.	Suspension Six months	On review	Required
ii) If there are security considerations, including questions of loyalty of the Agency to the State.	Banning Three years	On review	Required
iii) If the agency is bankrupt or insolvent or being dissolved or has resolved to be wound up or proceedings for winding up or dissolution have been instituted.	Banning one year or till situation improves whichever is later	On review	Required



iv)	If there is strong justification for believing that the Directors, Proprietors, Partners, employee(s), representative(s) or owner of the Agency have been either jointly or severally guilty of malpractices such as bribery, corruption, fraud including submission of fake, false or forged documents/certificates, Duplication of Inspection Stamps , pilferage, substitution of tenders, bid rigging/price rigging, interpolations, substitution of materials in lieu of materials supplied by EIL or its client and other violations including misrepresentation of facts.	Banning three years	On review	Required
v)	If the Agency has deliberately violated and circumvented the provisions of Labour Law/regulations/rules, safety norms or other statutory requirements.	Banning one year	On Review	Required
vi)	If the agency has parted with, leaked or provided confidential proprietary information of EIL or its client given to the agency only for its use (in discharge of his obligations against an order) to any third party without prior consent of EIL.	Banning three year	On Review	Required
vii)	If the Agency uses intimidation/threatening or brings undue outside pressure on EIL or its officials in acceptance / performance of the job under the contract.	Banning three years	On Review	Required



viii)	Based on the findings of the investigation report of any investigative agency, Government Audit, any law enforcement agency or government regulator against the Agency for malafide / unlawful acts or improper conduct on its part in matters relating to EIL.	Banning three years	On Review	Required
ix)	Withdrawal of Bids after unpriced opening.	Suspension for Six Months	Automatic	Not Required
x)	Withdrawal of bid after price opening /refusal to accept order.	Suspension for Six Months	Automatic	Not Required
xi)	Overloading of works/large no of concurrent contracts indicating likely delay in future.	Suspension for Six Months	On review	Required
xii)	Labour unrest, Lockout stoppage of production or construction affecting schedule.	Suspension three months or till situation improves	On review	Not Applicable
xiii)	Negative Networth or Financial problems affecting execution of order or work	Banning for one year or till situation improves	On Review	Not applicable
xiv)	Not recommended in shop survey/ document review for serious reasons in case of revalidation.	Banning for one year or till situation improves whichever is later.	On review	Not Applicable



xv)	Poor performance of the Agency 1. Contractor : Poor Performance of agency in minimum 2 contracts of different project locations both under EIL's construction supervision or poor performance in one contract under EIL's construction supervision (if the agency is executing only one contract under EIL's construction supervision) 2. Supplier: Poor Performance in any one order.	Banning for one year or till situation improves whichever is later.	On Review	Required
xvi)	If the Agency violates the conditions of purchase order / contract or vitiates the tendering process	Banning One year	On Review	Required
xvii)	Transgression of Integrity Pact.	Banning One year	On Review	Required
xviii)	Serious issues related to supply of substandard material not complying with requirement, Repeated failure at shop floor / Repeated site problems or refusal to attend site problems	Banning One year	On Review	Required
xix)	Not honoring enlistment terms	Suspension for Six Months	On Review	Required
xx)	Any kind of dispute among partners in a partnership firm which affects business	Suspension for Six Months	On Review	Required
xxi)	When culpability of an agency is detected during the course of a Vigilance investigation or otherwise and there is adequate ground to believe that the continuance of business dealings with the agency is not in the best interest of EIL.	Banning Three year	On Review	Required
xxii)	If a communication has been received from MoPNG / CBI / CVC to suspend or ban the Agency from dealing with EIL.	Banning as per Communication	On Review	Required



xxiii) If performance of Supplier / Contractor is reported poor by Client at a particular site and Client recommends not to consider the Agency for future Business dealings for that client.	Suspension as per client communication.	On review	Required
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- Note: 1. “On Review” means that SEC/CCEC, in a meeting, review the supplier’s / contractor’s status respectively with respect to corrective action/ system improvement/ infrastructure enhancement undertaken by the agency corresponding to the ground for being banned/suspended and assessed through a visit by EIL team and/or perusal of documents submitted by the Agency in support of his application for revocation of banning / suspension. The banning / suspension shall be revoked if SEC/CCEC are satisfied that sufficient grounds exists for revocation.
2. “Automatic” means that SEC/CCEC, in the first meeting, after expiry of the period of banning / suspension, shall revoke the banning / suspension.



Annexure – 2

(Draft of show cause notice)

No.

Date

To
M/s

Attn :

Sub : Show Cause Notice

Ref;

Dear Sir,

You are hereby required to show cause in writing within 10 calendar days from the date hereof why there should not be a banning of Business dealings with you and you be debarred from entering into any contracts with ---- for the following reasons:

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Your reply (if any) should be supported by documents and documentary evidence which you wish to rely in support of your reply.

Should you fail to reply to this Show Cause Notice within the time and manner aforesaid, it will be presumed that you have nothing to say and we shall proceed suitably.

Your reply, if any, and the documents/documentary evidence given in support shall, be taken into consideration prior to arriving at a decision

Yours faithfully,

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Annexure – 3

(Draft for intimation of Banning Order to the Party)

No.

Date

To
M/s

Attn :

Sub : Intimation of Banning of Business dealings

Ref;

Dear Sir,

WHEREAS, our Show Cause Notice served to you dated ----

WHEREAS, In spite of the opportunity given to you, you have failed to show cause as required*/your reply to the Show Cause Notice * (and documents and documentary evidence submitted in support of your reply) has /have been duly considered.

(Speaking Order: either to agree or rebut the reply furnished by agency allegation wise)

After considering the allegations made in the Show Cause Notice / your reply to the Show Cause Notice * (and documents and documentary evidence furnished in support thereof) as cited above, it has been decided that business dealings with you and * you will be debarred from entering into any contracts with – corporation /* for --- years effective from the date hereof.

Yours faithfully,

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Annexure – 4

APPELLATE PROCESS IN APPEALS ARISING FROM ORDERS OF BANNING & SUSPENSION OF BUSINESS DEALINGS

1. PURPOSE

The purpose of this document is to formulate a procedure for dealing with Appeals against an order for banning and suspension of business activities with Contractors, Suppliers and Service Providers ('Agency'). These guidelines have to be read in continuation with the Procedure for Banning and Suspension of Business Dealings.

2. DEFINITIONS

Agency: As defined in Clause 3 of the Procedure for Banning and Suspension of Business Dealings.

Appellate Authority: As defined in Clause 3 of the Procedure for Banning and Suspension of Business Dealings.

Competent Authority: As defined in Clause 3 of the Procedure for Banning and Suspension of Business Dealings.

3. TIME LINES

- (i) The Agency may file an Appeal against the Competent Authority's order suspending or banning business dealings to the Appellate Authority within 30 calendar days from the date of the receipt of the order suspending/ banning business dealings. In its Appeal, the Agency will produce all evidence which was before the Competent Authority and which it wishes to rely upon in support of its case. The Appeal shall be complete in itself.
- (ii) The Appellate Authority will endeavour to complete the entire Appeal process within 45 calendar days of filing the Appeal. Provided that the time limit specified shall not apply to cases having a vigilance angle.
- (iii) The banning/ suspension order passed by the Competent Authority shall remain effective till the Appellate Authority takes a final decision in the matter. The Appellate Authority cannot temporarily suspend the operation of any order passed by the Competent Authority during the process of hearing the Appeal and before its final disposal.

4. PROCEDURE TO BE FOLLOWED BY THE APPELLATE AUTHORITY WHILE HEARING AND DISPOSING OFF THE APPEAL.

- (i) After receiving the copy of the Appeal from the Agency, the Appellate Authority will call for the complete records relied upon by the Competent Authority. The Appellate Authority will also by the same order fix a day for oral hearing and inform the Agency of the same. The order calling for records and fixing a date of hearing will be intimated in writing to the Agency at the address and email ID of the Agency mentioned in the Appeal.
- (ii) In the event the Agency informs the Appellate Authority that it wants rescheduling of the hearing, the Appellate Authority will reschedule the hearing to a convenient time and day not exceeding 5 days from the original scheduled date. The rescheduled date of hearing will be intimated in writing to the



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- Agency at its email ID mentioned in the Appeal. No subsequent requests for rescheduling of hearing by the Agency will be permitted.
- (iii) In the event that the Agency is not represented on the scheduled or rescheduled date, as the case may be, in spite of prior intimation of the hearing to the Agency, the proceedings will continue ex-parte by placing reliance upon the contents of the Appeal filed by the Agency as well as the complete records relied upon by the Competent Authority.
 - (iv) The hearing may continue for more than a day if so deemed fit by the Appellate Authority. In such an event, the Agency will be intimated of the continuation or further hearing, either at the time of the ongoing hearing or by way of a separate written intimation sent to the Agency at its email ID mentioned in the Appeal.
 - (v) The Agency will also in its Appeal inform the name of the authorised representative who shall be present for the personal hearing. The Agency may not engage a legal practitioner for the purpose, unless the Appellate Authority having regard to the circumstances of the case, so permits.
 - (vi) The Appellate Authority after hearing the Agency and after going through the materials placed before it, will make an endeavour to dispose off the Appeal, within the time prescribed, by a written order.
 - (vii) While hearing and disposing off the Appeal before it, the Appellate Authority would have the power to alter the decision of the Competent Authority as it thinks appropriate but neither the Competent Authority nor the Appellate Authority would have the power to reduce or increase the suspension/ banning period prescribed under Annexure I of the Procedure for Banning and Suspension of Business Dealings.
 - (viii) In the event the Agency files any additional document, evidence or submits a new fact or statement before the Appellate Authority which was not filed/ made before the Competent Authority, the same shall be made by way of an affidavit which is duly attested before the oath commissioner. The affidavit shall also in addition provide reasons as to why the said document, evidence or fact was not produced/ made before the Competent Authority and the relevance of considering the same in the issue for consideration.
 - (ix) The Appellate Authority shall have the power to consult any external consultant or seek any expert advice or opinion as it deems necessary on any legal, commercial, contractual, financial or technical issues while deciding the Appeal.
 - (x) If the Appellate Authority is of the opinion that the matter in dispute in the Appeal needs fresh re-appreciation of the evidence, or the Agency has filed new or additional evidence or makes a statement by way of an affidavit before the Appellate Authority, which requires fresh consideration, the Appellate Authority shall remand the matter back to the Competent Authority to consider the matter afresh and give a fresh finding. After the matter is remanded back to the Competent Authority by the Appellate Authority for fresh consideration any decision taken by the Competent Authority on the matter, should be intimated to the Agency by the Competent Authority.
 - (xi) No Appeal shall lie to the Appellate Authority against the final order of the Competent Authority made pursuant to the written consent of the parties.
 - (xii) The order of the Appellate Authority is final and binding.
 - (xiii) Any error or defect in the procedure followed in arriving at a finding may be disregarded by the Appellate Authority if such authority considers, for reasons
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- to be recorded in writing, that error or defect was not material and has neither caused injustice to the Agency nor affected the decision of the case.
- (xiv) The order of the Appellate Authority must be a speaking order and should clearly mention the following:
 - (xv) The materials considered for arriving at the decision.
 - (xvi) The submissions made by both the sides.
 - (xvii) Sufficient reasons should be given, which disclose proper appreciation of the issue and the processes by which the conclusion is reached for either upholding the order of the Competent Authority or setting aside and remanding back the proceedings to the Competent Authority for a fresh consideration on merits.
 - (xviii) The Appellate Authority should communicate its written order to the Agency at the Agency's address and email ID mentioned in the Appeal.

5. GROUNDS FOR CONSIDERATION BY THE APPELLATE AUTHORITY

The Appellate Authority shall review the decision of the Competent Authority, which has been challenged, based on the following parameters:

- (i) A show-cause notice with the timelines clearly mentioning that the concerns/ issues/ queries was conveyed to the Agency.
- (ii) The Agency was given clear 10 working days to file its response in writing.
- (iii) In case further queries/ documents were sought by the Competent Authority after receiving the Agency's response, whether time was provided to the Agency to file the same.
- (iv) In case the Agency requested in writing for an oral hearing, whether the same was provided.
- (v) If there is evidence on record or reason to believe that the decision of the Competent Authority suffers from malafides, dishonesty or corrupt practice.
- (vi) If the banning/ suspension order by the Competent Authority is in the larger public interest.
- (vii) The order of banning/ suspension should be within the range of courses of action which would have been reasonably followed and should be in conformity with the punishment/ penalty stipulated in Annexure I of the Procedure for Banning and Suspension of Business Dealings.
- (viii) If the Competent Authority has given a detailed order in writing
- (ix) The decision by the Competent Authority should contain the following particulars:
 - a. The submissions made in the Show cause and Agency's response to the same;
 - b. The documents, materials and evidence considered, for arriving at the decision;
 - c. The reasons for the decision.
- (x) If the written order was communicated to the Agency at its address mentioned in its communications/ reply to show cause, within 3 days of the decision.