

**IN THE HIGH COURT AT CALCUTTA
(Constitutional Writ Jurisdiction)
APPELLATE SIDE**

Present:

The Hon'ble Justice Krishna Rao

W.P.A. No. 24149 of 2025

Surya Alloy Industries Limited & Anr.

Vs.

Union of India & Ors.

Mr. Soumya Majumdar, Sr. Adv.

Mr. Farhan Ghaffar

Mr. Kallol Saha

Mr. Akash Ghosh

Ms. Nabanita Chakraborty

....For the petitioners.

Mr. Sanajit Kumar Ghosh

Ms. Sayani Roy Choudhury

Ms. Biswadeepa Mandal

....For the U.O.I.

Hearing Concluded On : 23.06.2026

Judgment Delivered On : 07.07.2026

Judgment Uploaded On : 07.07.2026

Krishna Rao, J.:

1. The petitioners have filed this present writ petition challenging the delisting order dated 9th October, 2025, wherein and where under the petitioner firm is being temporarily delisted from the item 'Elastic Rail Clips'.
2. The East Coast Railway floated tender for manufacture and supply of Elastic Rail Clips-MK-V (T-5919) conforming to T-31 of the IRS specification. The petitioners have participated in the said tender process and was found L-1 bidder for manufacture and supply of the said materials. The respondent no.4 has issued purchase order dated 3rd October, 2024 for supply of the said materials. The supplies were to be made in terms of the delivery schedule and the materials were required to be inspected prior to its dispatch by M/s. RITES Limited.
3. Mr. Soumya Mazumdar, Learned Senior Advocate, representing the petitioners submits that the petitioners manufactured the said materials and were inspected by the M/s. RITES prior to dispatch to the respondent no. 4. He submits that the samples were inspected for both raw materials and finish materials/ products in terms of the contract. The supplies were checked and accepted by the respondent no.4 and the petitioners have submitted its invoices which were duly accepted and made payments.

- 4.** Mr. Mazumdar submits that on 20th August, 2025, the petitioners has received the show cause notice from the respondent no.2 on the allegation of failure of a sample of the materials supplied by the petitioners to the respondent no.4. In the show cause notice, it was alleged that a joint sampling of the materials supplied by the petitioners was done on 12th May, 2025 by the RDSO and the Track Depot officials of the East Coast Railway. The show cause notice also indicated that the samples have been tested and test result have been found as not confirming to IRS T- 31-2021.
- 5.** The petitioners have challenged the said show cause notice in the writ proceeding being WPA No. 21634 of 2025. The writ petition was disposed of on 19th September, 2025, recording that the time period to submit reply to the show cause notice has not expired and it will be open to the petitioners to respond to the said show cause notice and directed the respondents to consider the response of the petitioners to the show cause notice in accordance with the legal statutory conditions.
- 6.** The petitioners have submitted reply to the show cause notice on 19th September, 2025, stating that the alleged testing of the sample has been done in violation of the Clauses 15.1 to 15.8 of the IRS Specification for ERC T-31-2021 corrigendum No.2 of October 2023. Mr. Mazumdar submits that in terms of the provisions of Clause 1502 of IRS Conditions of Contract RDSO has no authority to test or to reject the materials beyond the period of 90 days of supply. Mr. Mazumdar

submits that inspite of receipt of reply submitted by the petitioners, the respondents have issued the impugned order dated 9th October, 2025 by temporarily delisting the petitioner firm for item 'Elastic Rail Clip'.

- 7.** Mr. Mazumdar submits that the petitioners have submitted reply to the show cause notice but in the impugned order, it is mentioned that the petitioners have not submitted reply to the show cause notice. He submits that the impugned order is issued in violation of the principle of natural justice as neither the respondents have considered the reply submitted by the petitioners, nor personal hearing was provided to the petitioners.
- 8.** Mr. Sanajit Kumar Ghosh, Learned Advocate representing the respondents submits that the main depot of East Coast Railway received materials from the petitioners on 8th March, 2025. The Assistant Divisional Engineer of the East Coast Railway (Consignee) communicated to the Senior Divisional Engineer, East Coast Railway that during inspection at PQRS depot at KBM, the ERC MK-V was found breaking while fixing into the sleeper during making PQRS panels. The Senior Divisional Engineer of the East Coast Railway communicated the same to the Chief Track Engineer and accordingly show cause notice was issued to the petitioners on 20th August, 2025.
- 9.** Mr. Ghosh submits that prescribed time of 30 days for giving reply to the show cause notice expired on 18th September, 2025 but the reply from the petitioners was received on 1st October, 2025, thus the

respondent authorities have not considered the reply submitted by the petitioners and accordingly on 9th October, 2025, the penalty order was issued against the petitioners.

10. Mr. Ghosh submits that in the order of penalty, it was categorically mentioned that if the petitioners are aggrieved with the order of delisting, the petitioners have an opportunity to file an appeal but the petitioners instead of filing an appeal, have filed the present writ petition.
11. In the show cause notice, it is mentioned that joint sampling was done on 12th May, 2025 but in the affidavit-in-opposition it is mentioned that one technical representative from the firm of the petitioners arrived KBM and visited the site along with SSE (P. Way)/ CHE on 1st May, 2025 and found 300 nos ERCs were in broken condition. It is also mentioned that the firm representatives had not done joint inspection with Railways. Thus, it is clear that the sampling was not done in the presence of the petitioner firm.
12. In the show cause notice, it is the allegation that the samples were tested and test results are not found conforming to IRS: T-31-2021. Clause 15 of the IRS Specification for ECR T-31-2021, Corrigendum No. 2 of October' 2023 specifies as follows:

“15.1-Consignee End Inspection of ERCs – The Purchaser/Consignee or its nominated representative shall pick up and seal 02 sample sets per lot in the presence of firm’s representative within 01 month after receipt the

material (ERC) at the consignee depot which shall be preserved in the consignee depot or nominated location for a period of one year from the date of receipt of material. One sample set shall comprise of **30 nos. ERCs picked randomly**.

15.2. If the firm's representative does not turn up within one month after receipt of material (ERC) at the consignee end for joint sampling by Purchaser/Consignee, the sampling shall be done by Purchaser/Consignee solely.

15.3. The sealed sample set can be got tested by the Purchaser/Consignee, from RDSO or NABL accredited labs within 12 months from the date of receipt of material with the approval of an officer not below the level of JAG of the concerned Zonal Railway or equivalent as per the observation during field inspections/ specific nature of complaint regarding performance of ERC. 14 nos. ERCs from the first sample set shall be tested for conformity as per following scheme:

Test to be conducted for conformity
14 nos-Dimension
6 nos-Hardness, depth of decarburization and freedom from surface defects
8 nos-Toe-load, flat bearing area, application & deflection test

15.4. After decision for testing of samples, the supplier shall be informed to witness the test of first sample set. Second sample shall be kept as standby as per the provisions of ISO Apex documents.

15.5. If the first sample set passes the tests, no further action will be needed. In case the first sample set fails as per acceptance/rejection criteria, the corresponding lot shall be rejected. The supplier/firm shall remove the rejected lot from the consignee depot at their own cost, but only after the supplier/firm has reimbursed payments already made if any by Purchaser/Consignee or an equivalent amount has been recovered for this purpose. However, the Purchaser/Consignee shall

not be liable to return the material that is already put into track and the supplier/firm shall have no claim for compensation.

15.6. *The rejected lot shall be removed by the supplier/firm within 03 months of date of rejection advice, failing which the Purchaser/Consignee shall not be liable to return the rejected lot and the supplier/firm shall have no claim for compensation for such material. The rejected clips shall be cut into two pieces by the supplier/firm using oxy-acetylene flame at their own cost before removing the rejected clips from purchaser/consignee depot.*

15.7. *Financial recovery and Penal action shall be taken as per the provisions of ISO Apex documents and Railway Board's extant policy.*

We say that clause 15.1 to 15.8 specifically provide the manner in which the samples are required to be picked up and tested and the subsequent action which are required to be taken if the samples are found not to be in conformity.”

As per Clauses 15.1 and 15.4, purchaser/ consignee has to inform the supplier to remain present during pickup of the samples and to witness the test samples but admittedly the same was not followed in the present case.

- 13.** As per guidelines for testing of the materials, firm's representative should be present at the time of testing. Before testing of such materials, a notice has to be served upon the firm and inform them to be present at the time of testing of such materials. The said procedure has not followed in the present case before issuance of the show cause notice and the impugned order.

14. It is also the case of the respondents that the petitioners have not submitted reply to the show cause notice within 30 days. Initially on receipt of show cause notice, the petitioners have challenged the show cause notice in a writ proceeding. This Court by an order dated 19th September, 2025, disposed of the said writ application given liberty to the petitioners to respond to the show cause notice and the authority shall consider the response of the petitioners to the show cause notice in accordance with law.

15. The petitioners have submitted reply to the show cause notice on 19th September, 2025 and the same was received by the respondents on 29th September, 2025. The impugned order of temporary delisting was passed on 9th October, 2025. It is admitted by the respondents in paragraph 4 of the affidavit-in-opposition that *“the prescribed period of 30 days was to expire on 18th September, 2025. The petitioners firm neither sought any extension of time nor approached this office prior to 18th September, 2025.*

Thus the reply dated 19th September, 2025 from the petitioners firm received in RDSO on 1st October, 2025 was not considered”

16. This Court disposed of the earlier writ petition on 19th September, 2025 and on the same day the petitioners have submitted reply to the show cause notice. Admittedly, the respondents have received reply on 1st October, 2025 and the impugned order of temporary delisting was issued on 9th October, 2025 i.e. after the period of nine days. The

respondents ought to have considered the reply of the petitioners but fail to consider the same.

17. Temporary Delisting is provided in Clause 4.2.2 which reads as follows:

“4.2.2 TEMPORARY DELISTING

Temporary delisting of vendors can be restored to under the following conditions:

- a) *Cases where repeated failures are noticed in the items supplied*
- b) *Direction from law enforcing agencies*

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<i>Prepared By</i>	<i>Checked By</i>	<i>Issued By</i>	<i>Page 6 of 14</i>
<i>ISO9001:2015</i>	<i>Document No: QO-D-8. 1-11</i>	<i>Version No: 3.5</i>	<i>Date Effective: 23.07.2025</i>
<i>Document Title: Vendor – Changes in approved status</i>			

- c) *If quality audit is refused by the firm or RDSO is not allowed by the firm to perform quality audit, the firm shall be temporarily delisted and shall be removed from the vendor list in next updation, till such time quality audit is performed.*
- d) *Expiry of ISO 9001 certificate.*
- e) *Deficiencies/non-functioning of major machinery & plants affecting the quality.*
- f) *During a course of time, if the specification is amended and the vendor is not upgrading the additional requirements within a specified timeframe.*

g) Major deficiencies found during quality audit/process audit and their non-compliance.

h) The entire factory or part of it is reported closed/shut down/lock out.

Note: In case of closure/ lockout, the firm may be temporarily delisted and status restored on resumption after verification of facilities and audit of the production process, as decided by the Concerned Vendor Approving Authority.

i) If change in the name, address, work place and ownership not initiated to RDSO within one month.

j) If sample picked up by an investigating agency (CBI/Vigilance) (as per prescribed procedure of sampling) fails in testing.

k) If the vendor does not participate in any of the Railway tender between two consecutive quality audits or in last five years, whichever is earlier.

l) Any other serious reason.”

The show cause notice as well as the impugned notice is not covered under any of the clauses for temporary delisting.

18. As regard to the maintainability of the writ petition and not filing of appeal by the petitioners, this Court finds that the petitioners have challenged the impugned order on the ground of violation of natural justice as the respondents have not provided any opportunity of hearing to the petitioners. This Court already held that sampling was not done in accordance with law and not in presence of the petitioners. The respondents though received reply to the show cause after the

period of 30 days but before issuance of the impugned order dated 9th October, 2025, ought to have consider the same but without considering the reply submitted by the petitioners, the respondent authorities have passed the impugned order. Thus the writ petition is maintainable.

19. Considering the above, the show cause notice dated 20th August, 2025 and the impugned order dated 9th October, 2025, of temporary delisting of the petitioner firm is set aside and quashed.
20. The respondent authorities are at liberty to take samples of the materials supplied by the petitioners in presence of the representatives of the petitioners and after testing of the materials, if the respondents finds that the materials supplied by the petitioners is not conformity with IRS: T-31-2021, the respondents are at liberty to take appropriate action in accordance with law.
21. **WPA No. 24149 of 2025** is **allowed**. Accordingly, all connected applications are disposed of.

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

(Krishna Rao, J.)