



2026:DHC:1977-DB



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**IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment Reserved on: 28.01.2026

Judgment delivered on: 10.03.2026

Judgment uploaded on: *As per Digital Signature~*

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**W.P.(C) 18934/2025 & CM APPL. 78836/2025 CM APPL. 1350/2026****MADRAS SECURITY PRINTERS PRIVATE LIMITED**

.....Petitioner

Versus

**NATIONAL INSTITUTE FOR SMART GOVERNMENT.**

.....Respondents

**Advocates who appeared in this case**

- For the Petitioner : Mr. Amit Sibal, Sr. Adv, Mr. Daksh Pandit, Mr. Darpan Sachdeva & Mr. Rajat Bector, Advs.
- For the Respondent : Mr. Sandeep Prabhakar, Senior Adv., Mr. Vikas Mehta, Ms. Mansi Jain, Mr. Parth Tanwar, Advs. for R-1  
Ms Arunima Dwivedi, CGSC; Mr Akash Gupta, GP; Mr Rajat Sharma, Ms Himanshi Singh, Ms Monalisha Pradhan, Ms Priya Khurana Advs. for R-2

**CORAM:****HON'BLE MR. JUSTICE V. KAMESWAR RAO****HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA****JUDGMENT****MANMEET PRITAM SINGH ARORA, J.**

1. The present writ petition has been filed under Article 226 read with



Article 227 of the Constitution of India, seeking appropriate directions to the Respondent No. 1 to consider the Petitioner's bid, submitted pursuant to IFB No. NISG/SLUDI-2025, which has not been accepted by the Respondent No. 1, without furnishing any reasons.

1.1. The Petitioner has been excluded from the bidding process at the pre-qualification stage and, therefore, its bid has not proceeded even for technical evaluation.

1.2. It is the Petitioner's contention that its bid is complete in all respects and complies with the eligibility criteria set out in the Tender document.

2. The relevant facts for the disposal of the present writ petition are as follows:

2.1. Respondent no. 1, the National Institute for Smart Government (NISG), a not-for-profit company which is headed by Secretary, Ministry of Electronics and Information Technology (MeitY) as its Chairman has been appointed by the Ministry of External Affairs (MEA), Government of India as the Project Management Consultant ('PMC') for the project titled 'Sri Lanka Unique Digital Identity (SL-UDI) ('the Project'). The end procurer for the Project is the Government of Sri Lanka.

2.2. It is stated that the Project has its genesis in bilateral Governmental engagements between the Government(s) of India and Sri Lanka.

2.3. Respondent No. 1/NISG on behalf of the Government of Sri Lanka has invited bids vide tender bearing IFB No. NISG/SLUDI-2025 ('the Tender') for the appointment of a Master System Integrator (MSI) for the development, implementation, and maintenance of the Project.

2.4. In response to the aforesaid Tender, the Petitioner herein along with five (5) other bidders participated in the bid process. Thus, total six (6)



bidders have participated in the bid process.

2.5. The bidders were required to furnish information and documents enlisted in Clause 3.2 of Section III (Evaluation and Qualification criteria) and Clause 4.1 of Section IV (Bid Submission Forms- Pre-Qualification and Technical Bids) of the Tender, *first* for pre-qualification, and if qualified, *then* for technical evaluation.

2.6. It is a matter of record that out of the six (6) bidders, except the Petitioner remaining five (5) bidders have proceeded to the stage of technical evaluation. It is the exclusion of the Petitioner at the pre-qualification stage which is the subject matter of challenge in these proceedings.

2.7. The relevant Tender clauses for adjudicating the present controversy are as follows:

2.7.1. Clause 13.2, read with Clause 24.2 of Section I-Instructions to Bidders ('ITB') of the Tender, envisage a two-stage method for selection of the final/eligible bidder. The said clauses read as follows:

**“13.2 The bidding process followed is the Two stage method. The First Stage comprises only the pre-qualification. The documents comprising the pre-qualification bid have been enlisted in Section 4.1. Table 4.1.1. The Second Stage of the Bid shall comprise two envelopes submitted simultaneously, one called the Technical Bid containing the documents listed in Section 4.1. Table 4.1.2 [Bidder's Response Format – Technical Bid] and the other the Price Bid containing the documents listed in Table 4.12 (Bid Submission Form-Price Bid of Section IV (Bidding Forms)), both envelopes enclosed together in an outer single envelope.”**

**“24.2 The bidding process followed is the Two stage method. The First Stage comprises only the pre-qualification. Firstly, the pre-qualification bid shall be submitted in a sealed envelope on or before the date and time mentioned in BDS marking it as “Pre-**



Qualification Bid”. A soft copy (on a pen drive, etc.) of the pre-qualification documents in a single PDF document (which should be searchable) should be submitted. Once the pre-qualification evaluation is completed, the qualified bidders at this stage will be notified and may be invited for a field visit to the project site at Sri Lanka. The qualified bidders shall be required to sign a non-disclosure agreement (4.3.11 Non-Disclosure Agreement) and an Integrity Pact (4.3.12 Integrity Pact) with the GoSL during the field visit.”

(Emphasis supplied)

2.7.2. Clause 33.1 of the ITB/Section I of the Tender provides that Respondent No. 1 shall determine the responsiveness of a bid strictly on the basis of the contents of the bid as submitted, as defined in Clause 13 of ITB; which clause as noted above again relies and refers to Clause 4.1, Table 4.1.1 of Section IV of the Tender for evaluating the pre-qualification.

2.7.3. Clause 33.4 of the ITB/Section I of the Tender stipulates that bids which are found to be not substantially responsive shall be rejected. The said Clause 33 of the ITB/Section I reads as under:

### **“33. Responsiveness to Bid**

33.1 NISG determination of a Bid’s responsiveness is to be based on the **contents** of the Bid itself, as defined in ITB 13.

33.2. A substantially responsive Bid meets the requirements of the Bidding Document without material deviation, reservation or omission. A material deviation, reservation or omission is one that-

33.2.1 if accepted, would:

a. Affect, in any substantial way the scope, quality or performance of the IT products and Services specified in the Contract, or



b. limit in any substantial way inconsistent with the Bidding Document, the Employer's rights or the Bidder's obligations under the proposed Contract; or, if rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive Bids.

... ..

33.4. If a Bid is not substantially responsive to the requirements of the Bidding Document, it shall be rejected. It may not subsequently be made responsive by correcting the material deviation, reservation or omission.”

(Emphasis supplied)

2.7.4. In the facts of this case, it is not disputed that the Petitioner's bid was responsive.

2.7.5. Clause 37 of ITB/Section I of the Tender envisages the evaluation of the eligibility and qualification of the bidder. The said clause reads as follows:

**“37. Eligibility and Qualification of the Bidder**

37.1 NISG shall determine its satisfaction during the evaluation of the Bids whether a Bidder meets the eligibility and qualifying criteria specified in Section III (Evaluation and Qualification Criteria).

37.2 **The determination shall be based upon examining the documentary evidence of the Bidder's qualifications submitted by the Bidder.**

37.3 An affirmative determination shall be a prerequisite for the opening and evaluating of a Bidder's Price Bid. An adverse determination shall result in the disqualification of the Bid, in which event the NISG shall return the unopened Price Bid to the



Bidder.

37.4 The capabilities of the manufacturers and subcontractors proposed in the bid to be used by the bidder will also be evaluated for acceptability by Section III (Evaluation and Qualification Criteria). The parties should confirm their participation with a letter of intent as needed.”

(Emphasis supplied)

2.7.6. Section III of the Tender sets out the employer’s criteria for evaluating the eligibility of the bidders for their qualification and pre-qualification. It stipulates that the bidders shall provide all information requested in the Forms included in Section IV for this purpose. Clause 3.1.1 and Clause 3.1.2 of Section III *expressly* states that the evaluation of bids shall be based on the documents that the bidder submits.

Clause 3.1.1 and Clause 3.1.2 of Section III reads as follows:

“

### **SECTION III- EVALUATION AND QUALIFICATION CRITERIA**

This section contains the Employer’s criteria for evaluating and qualifying bidders. The bidder shall provide all the information requested in the forms included in Section IV-Bidding Forms.

#### **3.1 Evaluation**

##### **3.1.1 Evaluation Method**

The evaluation of bids shall be based on the documents that the bidder will submit with its Bid. Therefore, the Bidder is requested to submit all the necessary information and documentation. Failure to provide the required information may result in rejecting the Bid.

The NISG will open and review all Bids submitted to determine whether the Bidder is eligible and qualified (as per the Bidder’s Pre-Qualification Criteria specified in Section III) and whether each Bid is responsive using the following criteria under ITB Clause 33.



- (a) The Bidder meets the Pre-Qualification Requirements outlined in Bidder's Qualification Criteria specified in this Section III – clause 3.2: Pre-Qualifications of the Bidder.
- (b) The Bid is substantially complete in that it provides the information outlined in the Bidder Response Format Section IV – Bidding Forms (Employer assessment)
- (c) All Bids that satisfy the above criteria in items (a) and (b) will be considered for the detailed technical evaluation.
- (d) The evaluation of the bid will be based on the “Quality Cum Cost - Based Selection” (QCBS) methodology. In this method, 70% of the weightage would be for the Technical Bid and 30% of the weightage would be given to the Price bid.
- (e) Bid evaluation shall be undertaken in **three phases**. The first phase will be the Evaluation of Pre-Qualification of the Bidders. The qualifying bidders in this stage will be allowed a site visit to Sri Lanka for validation and assessment of the existing system at their expense. The second phase will be the evaluation of technical bids, which will be done by applying the technical evaluation criteria, sub-criteria and scoring system specified below. The maximum technical score is 1000 points and the passing score for the bidder qualification is 700. Bids less than 700 shall be summarily rejected.
- (f) The price bids of only the bidders who qualified the technical evaluation shall be opened in the presence of the qualified bidders/representatives.
- (g) The third phase will evaluate the price bids. The final ranking will be determined by combining the Technical and Price scores.

### 3.1.2 Technical Evaluation

The Employer will evaluate the Technical Bids under ITB Clause 37 using the following criteria:

- (a) To evaluate the quality aspects of the Technical Bid, the Bidder must state comprehensively and with sufficient details how their Bid meets the Technical Requirements specified in Volume 2



Section VI (Schedule of Requirements). Acceptable documentary evidence shall be provided where applicable.

(b) Bidder must use the Technical Responsive Checklist in Volume 2 Section VI (Schedule of Requirements) of the Bidding document to state how the proposed system responds to each technical requirement.

(c) Bidder’s Technical bid must meet all the requirements stipulated in Chapter 9, Volume 2/Section VI (Schedule of Requirements) of this Bidding Document. All the requirements specified in the Technical Responsive Checklist are mandatory.”

(Emphasis supplied)

2.7.7. Clause 3.2 of Section III of the Tender states that the bidder shall demonstrate that they are qualified to bid by completing the formalities set out in the table(s) provided in Section IV. The relevant portion of Clause 3.2 reads as follows:

**“3.2 Pre-Qualification of the Bidder**

Bidders shall demonstrate that they are qualified to Bid as part of the Bidding process and complete the forms set out under the Bid Submission Form and Qualification of the Bidder. The detailed forms are found in Section IV, Bidding Forms. Bidders must provide additional information/documents to substantiate the eligibility criteria wherever required.

... ..”

(Emphasis supplied)

2.7.8. There are twelve (12) criteria listed in Clause 3.2 above; however, since the criteria of ‘Non-Performance’, ‘General Experience’ and ‘Relevant Experience’ have emerged as the relevant issues in the pleadings and arguments, only the said criteria stipulated under Clause 3.2 of Section III are reproduced herein:

Criteria	SE	JV/Consortium			Subcontracting		Document(s)
		NP/LP	APC	EP	LB	S	
Non-Performance –	✓	-	Must meet	✓	✓	✓	Form 4.3.2 with



Non performance of a Contract did not occur within the last Five (5) years before the deadline for Bid submission. Non-performance must be based on fully settled disputes or litigation. The Dispute Resolution Mechanism has resolved a fully settled dispute or litigation under the respective Contract and where all appeal instances available to the Bidder have been exhausted.			requirements by itself or as a partner to past or existing JVCA				attachments if required
<p><b>General Experience</b></p> <p>– The bidder should have experience in IT projects in the last ten (10) financial years, including:</p> <ul style="list-style-type: none"> <li>• System integration and</li> <li>• Software application development, customization and maintenance</li> </ul> <p>The project(s) should meet the following requirements:</p> <p>At least one (1) such project of INR 110 crore or more.</p> <p>OR</p> <p>At least two (2) such projects, each of INR 70 Crore or more value.</p>	✓	✓	-	-	✓	-	<ul style="list-style-type: none"> <li>• Form 4.3.7 plus</li> <li>• Work Order/ Contract plus</li> <li>• Certificate of Completion from Client/ Self-certificate of completion issued by the Company Secretary or Statutory Auditor/ Phase completion certificate from the Client for ongoing project</li> </ul>
<p><b>Relevant Experience</b></p> <p>– During the last ten (10) years, the bidder must have completed at least one (01) system integration project with a value of 50 crores in the field of identity including</p>	✓	✓	-	-	✓	-	<ul style="list-style-type: none"> <li>• Form 4.3.8 plus</li> <li>• Work Order/ Contract plus</li> <li>• Certificate of Completion from Client/ Self-certificate of completion issued by the Company Secretary or</li> </ul>



domains like passport, driving license, CRVS, election card etc. and supporting application software of similar scope.									Statutory Auditor/ Phase completion certificate from the Client for ongoing project
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2.7.9. Clause 4.1, Table 4.1.1 of Section IV of the Tender prescribes the Bidder’s Response Form (“BRF”), which is required to be submitted by the bidder for the purposes of evaluation of pre-qualification in first phase and technical evaluation in the second phase.

2.8. It is a matter of record that in pursuance to the Tender notice, the Petitioner duly submitted its bid on 22.08.2025, which was complete and responsive as stipulated in Clause 33 of the ITB Section I. The Petitioner’s bid enclosed all requisite information and documents as prescribed under Sections III and IV of the Tender document. The Respondent No. 1 issued an e-mail on 27.08.2025 seeking clarifications from the Petitioner, with regard to the manpower and the contact details of the authorised signatory, which were duly provided by the Petitioner on 29.08.2025.

2.9. It is stated that however, Respondent No. 1 issued a notice dated 31.10.2025 (“impugned notice”) publishing the list of five (5) bidders who were declared pre-qualified for consideration in the second stage of the bidding process<sup>1</sup>, namely the Techno-Commercial Bidding stage. The said list of pre-qualified bidders included: (i) M/s Infosys Ltd., (ii) M/s Tata Consultancy Services Ltd., (iii) M/s Protean e-Gov Technologies Ltd., (iv) M/s RailTel Corporation of India Ltd., and (v) M/s Bharat Electronics Ltd. However, the name of the Petitioner was conspicuously absent from the said

<sup>1</sup> (re: Clauses 13.2 and 24.2 of ITB/Section I and Clause 3.1.1 of Section III)



list and it was the only bidder, who was excluded.

2.10. No separate communication or intimation was ever issued to the Petitioner informing it the reasons of his alleged exclusion/non-qualification.

2.11. Petitioner vide letter dated 06.11.2025 followed up to inquire the reasons for opining that its bid fails to meet the pre-qualification criteria; however, the Respondent No. 1 failed to reply to the said email. The Petitioner issued another letter dated 10.11.2025 seeking grounds for non-consideration of the petitioner's bid, to which the Respondent No. 1 replied vide email dated 10.11.2025 and informed the Petitioner that it has forwarded the Petitioner's letter to the [Evaluation] Committee that has taken the decision, and the same will be updated to the Petitioner.

However, no communication, order or notice, was issued to the Petitioner for informing the reasons or grounds for non-consideration of its bid. The Petitioner addressed subsequent emails dated 11.11.2025, and 19.11.2025, seeking disclosure of reasons and the minutes of the decision-making process; however, no such reasons or records were furnished.

3. Aggrieved by the non-consideration of its bid for the Second Stage i.e., technical evaluation without disclosure of reasons, the Petitioner has approached this Court by way of the present writ petition on the plea the decision-making process adopted by the Respondent No. 1 is vitiated by procedural impropriety, lack of transparency and arbitrariness.

4. When the matter was first listed before the Court on 15.12.2025, in the aforesaid facts, the Petitioner contended that it had meticulously prepared its bid in compliance with the terms and conditions of the Tender document and submitted all the necessary documents/clarifications to the Respondent No. 1 for the bid evaluation. The Petitioner believed that the



disqualification of the Petitioner at the pre-qualification stage was arbitrary and whimsical, as no formal reasons were provided to the Petitioner for its ouster.

5. The Respondent No. 1 has filed its counter-affidavit and submitted that, in view of the sensitive and sovereign nature of the Project, verification was requested by Respondent No. 1 from the clients whose references were provided by all the bidders (including Petitioner) under the 'General Experience' and 'Relevant Experience' criteria under Clause 3.2<sup>2</sup> of Section III.

5.1. It is stated that one of the responses received from the Petitioner's client contained adverse inputs in respect of the Petitioner, which is relevant to institutional risk and suitability. It is stated that on the basis of the adverse input received during the due diligence, the Petitioner was not found suitable by the Evaluation Committee.

5.2. It was stated that an Evaluation Committee has been duly constituted, comprising the Senior Officials from the NISG. All due diligence inputs, background verification material and references pertaining to all the bidders including the Petitioner were placed before the said Committee for its consideration. It is stated that in strict conformity with the Tender conditions, the MeitY Guidelines and applicable Governmental Procurement Framework, the Committee arrived at its recommendation.

5.3. The Respondent No. 1 in its counter-affidavit has relied upon Clause 29.1 of the ITB/Section I of the Tender to contend that the information pertaining to the evaluation of the bids and decision-making of the Evaluation Committee is confidential. The relevant Clause 29.1 reads as

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<sup>2</sup> The criteria of General Experience and Relevant Experience as provided under clause 3.2 of Section III have been reproduced hereinabove.



under:

### “29. Confidentiality

29.1 Information relating to the evaluation of Bids and recommendation of the Contract award shall not be disclosed to Bidders or any other persons not officially concerned with such process until the publication of the Contract award.”

5.4. Respondent no. 1 has justified the pre-qualification verification from the clients of the bidders (including the Petitioner) by relying upon a clause of the Model RFP of MeitY. The relevant clause of the Model RFP relied upon by Respondent No. 1 reads as follows:

#### “Step 4: Pre-qualification/Eligibility evaluation

**Based** on the pre-qualification criterion mentioned in the RFP document, the documents/proofs submitted by the bidder should be verified to establish the eligibility of the Bidder. The subsequent process for evaluation of the bids would be carried out only if the bidder qualifies through the pre-qualification requirement.”

(Emphasis supplied)

5.5. The Respondent No. 1 contends that the rejection of the Petitioner’s bid at the pre-qualification stage, based on an adverse input received from one of the Petitioner’s clients during the course of due diligence, neither amounts to arbitrariness nor does it violate Article 14 of the Constitution of India.

6. The Respondent No. 1 produced the adverse input of the client received by it against the Petitioner, in a *sealed cover* before this Court, which forms the basis of the opinion of the Evaluation Committee. The *sealed cover* also included the decisions of the Evaluation Committee for each bidder at the pre-qualification stage.

7. In rejoinder, the Petitioner has assailed the procedure adopted by the



Respondent No. 1 for evaluating the pre-qualification of the bidders contending that the same does not satisfy the requirement of transparency, fairness and is also not in accordance with the procedure prescribed under the Tender document.

7.1. It is contended that none of the clients, whose references were furnished along with the bid documents under Sections III and IV, have ever issued any notice or communication expressing dissatisfaction with the services rendered by the Petitioner and/or its performance.

The client certificates provided by the Petitioner along with the bid documents under the criteria ‘General experience’ and ‘Relevant Experience’ are as under:

Criteria	SE	JV/Consortium			Subcontracting		Document(s)	Proposed Documents
		NP/ LP	APC	EP	LB	S		
<p><b>General Experience</b> – The bidder should have experience in IT projects in the last ten (10) financial years, including:</p> <ul style="list-style-type: none"> <li>• System integration and</li> <li>• Software application development, customization and maintenance</li> </ul> <p>The project(s) should meet the following requirements:</p> <p>At least one (1) such project of INR 110 crore or more. OR At least two (2) such projects, each of INR 70 Crore or more value.</p>	✓	✓	-	-	✓	-	<input type="checkbox"/> Form 4.3.7 plus <input type="checkbox"/> Work Order/ Contract plus <input type="checkbox"/> Certificate of Completion from Client/ Self- certificate of completion issued by the Company Secretary or Statutory Auditor/ Phase completion certificate from the Client for ongoing project	Documents Enclosed *Form 4.3.7 *Philippine Statistics Authority, Philippine Contract agreement, Reference letter *Srilanka Excise _Contract agreement, Reference letter *Karnal Smart City _Contract agreement, Reference letter *Chennai Safe City _Contract agreement, Reference letter *Bangladesh DL _Contract agreement, Auditor Certificate
<p><b>Relevant Experience</b> - During the last ten (10) years, the bidder must have completed at least one (01) system integration project with a value of 50 crores in the field of identity including domains like passport, driving license, CRVS, election card etc. and supporting application software of similar scope.</p>	✓	✓	-	-	✓	-	<input type="checkbox"/> Form 4.3.8 plus <input type="checkbox"/> Work Order/ Contract plus <input type="checkbox"/> Certificate of Completion from Client/ Self- certificate of completion issued by the Company Secretary or Statutory Auditor/ Phase completion certificate from the Client for ongoing project	Documents Enclosed *Form 4.3.8 *Philippine Statistics Authority, Philippine Contract agreement, Reference letter *Malawi E Passport _Contract agreement, Reference letter *Bangladesh DL _Contract agreement, Auditor Certificate *CMCHS Reference Certificate

7.2. The Petitioner has also placed on record along with an additional affidavit dated 23.01.2026, the documents evidencing its continuing engagement with certain clients to rebut the stand of adverse input taken by the Respondent No. 1.



7.3. It is contended that, in light of its ongoing contractual relationships and certificate of satisfactory performances issued by the clients, the alleged adverse input has come as a complete surprise to the Petitioner.

7.4. The Petitioner contends that not only is the procedure followed by the Respondent No. 1 non-transparent but it is also violative of the principle of natural justice.

7.5. The Petitioner has vehemently opposed the *sealed cover* practice adopted by the Respondent No. 1 in the Court process to justify the rejection of the Petitioner's bid by contending that the same is impermissible in law and is antithetical to judicial review.

### **COURT'S ANALYSIS and FINDINGS**

8. In the aforesaid facts, the questions that arise for consideration before this Court are:

- I. Whether the procedure adopted by the Respondent No. 1 for carrying out evaluation of the pre-qualification of the bidder(s) is in accordance with the criteria set out in the subject Tender document?
- II. Whether the procedure adopted by Respondent No. 1 for evaluating pre-qualification of the bidder(s) is fair, transparent and free from arbitrariness?
- III. Whether the exclusion of the Petitioner at the pre-qualification stage without issuance of any formal communication and disclosure of reasons is violative of principle of transparency?
- IV. Whether Clause 29 of ITB/Section I the Tender document can justify non-communication of the decision of disqualification and non-disclosure of reasons of disqualification to the bidder by the Tender



issuing authority *or* whether such a clause overrides the constitutional mandate of fairness and non-arbitrariness in public procurement?

**Question no. I**

9. Clause 33.1 of the ITB/Section I of the Tender states that the Respondent no. 1/ NISG will determine the responsiveness of the bids based on the contents of the bid itself.

10. Clause 37.1 and Clause 37.2 of the ITB/Section I of the Tender similarly stipulates that the evaluation of the bids to determine whether the bidder meets the eligibility and qualification criteria specified in Section III of the Tender document will be determined by Respondent No. 1 based upon the documentary evidence of the bidder's qualification *submitted* by the bidder *itself*.

11. Clause 3.1.1 in Section III of the Tender document reiterates that the evaluation of the bids shall be based on the documents that the bidder will submit with the bid.

12. Similarly, Clause 3.1.2 of Section III of the Tender document states that Respondent No. 1 will evaluate the technical bids on the criteria enlisted therein. Clause 3.1.2 (a) stipulates that to facilitate evaluation of the quality aspects of the technical bids, acceptable documentary evidence should be provided by the bidder.

13. Clause 3.2 of Section III of the Tender document categorically deals with the pre-qualification process of the bidder. The said clause also reiterates that it is the bidder, who shall demonstrate that they are qualified to bid as a part of the bidding process and for the said purpose bidders are required to submit all necessary documents enlisted therein and in Section IV of the Tender documents.



14. Also, clause 3.2 of Section III of the Tender document sets out a Table which stipulates the 12 criteria of evaluation and mandates that the Petitioner must provide all documents/information as per the prescribed Forms stipulated therein to establish its pre-qualification.

15. These<sup>3</sup> are the relevant clauses of the Tender document to which our attention was drawn during arguments.

16. Upon perusal of the said clauses of the Tender document in Section I and III, it is indisputable that Respondent No. 1/NISG has unequivocally and repeatedly represented to the bidders that it shall evaluate the pre-qualification of the bid (solely) on the basis of the documents filed with the bid.

The bidders as per Clause 3.2 of Section III for the criteria of General Experience and Relevant Experience respectively were permitted to place on record the certificates of performance issued by the clients.

The Tender document does not disclose or indicate or stipulate that Respondent No. 1 will undertake verification of the said experience certificates of the clients filed by the bidders at the pre-qualification stage.

17. The Respondent No. 1, in its counter affidavit at paragraph 5.11<sup>4</sup>, has relied upon Step 4- Pre-qualification/Eligibility Evaluation provided in MeitY Model RFP to justify the exercise undertaken by it for verifying the experience certificates submitted by the bidders from the respective client. However, the said clause of the Model RFP, which stipulates verification of the documents submitted by the bidder at the pre-qualification criteria, is concededly not present in the current Tender document.

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<sup>3</sup> Clause 33.1, 37.1 and 37.2 of ITB/Section I. Clause 3.1.1, 3.1.2 and 3.2 of Section III. Forms prescribed in Section IV

<sup>4</sup> At internal page 14



To the contrary, verification of the information, client certificates submitted by the bidder as per Clause 3.2 of Section III is expressly stipulated at a post-qualification stage in the Tender document. Clause 3.1.6 of Section III of the Tender document, which contemplates verification of the client certificates at post-qualification stage, reads as follows:

**“3.1.6 Post Qualification (Due Diligence)**

Under ITB 37, the Employer may, at its own expense and to the satisfaction of the Employer, require the Bidder with the Best Evaluated Bid to provide further information on the request to substantiate claims and information included in its Bid. This information may be subject to audit and review by the Employer. It may involve site visits/inspections, interviews with the bidder’s clients referenced in the bid and any other measures to verify whether the bidder can perform the contract.”

(Emphasis supplied)

18. In view of the aforementioned clauses, we are, therefore, of the considered opinion that the procedure adopted by the Respondent No. 1/NISG’s Evaluation Committee for seeking verification from the clients of the bidder(s) at the pre-qualification stage is neither contemplated nor intended under the Tender document. The present Tender document contemplates that pre-evaluation of the bid will be carried out solely on the basis of documents filed by the bidder in terms of Section III and IV of the Tender. The inputs sought from the clients of the bidders at this pre-qualification stage is therefore contrary to the terms of the bid as this verification is specifically contemplated at post qualification stage.

19. The Transparency Principle<sup>5</sup> which governs public procurement

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<sup>5</sup> As documented in the Manual for Procurement of Goods, Second Edition 2024, which reads as under: -  
**‘1.8. Fundamental Principles of Public Procurement**

General Financial Rules, 2017 (Rule 144) lay down the Fundamental Principles of Public Procurement. These principles and other additional obligations of procuring authorities in



mandates that the process adopted by the Tender issuing authority for awarding the Tender should be in conformity with the process pre-declared in the Tender documents and not adopt a process contrary thereto.

20. Therefore, the procedure adopted by the Respondent No. 1 for carrying out evaluation of the pre-qualification of the bidder by seeking inputs from the clients, who have issued experience certificate is not a procedure contemplated under the Tender document.

21. Also, the adverse input of the client on which the Respondent No. 1/Evaluation Committee has placed reliance fails to meet the test/threshold of Non-Performance stipulated in the Tender document at Clause 3.2 of Section. As per the Tender document, the findings Of Non-Performance (reproduced hereinabove at paragraph no. 2.7.8) of the earlier contract of the bidder must be settled through a final finding in the litigation process. Admittedly in the case in hand, the client continues to avail the services of the Petitioner and there is no litigation between the parties. In these facts, reliance placed on the adverse input of the client with respect to alleged

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public Procurement can be organised into five fundamental principles of public Procurement, which all procuring authorities must abide by and be accountable for:

**1.8.1 Transparency Principle:**

All procuring authorities are responsible and accountable for ensuring transparency, fairness, equality, competition, and appeal rights. This involves simultaneous, symmetric, and unrestricted dissemination of information to all likely bidders, sufficient for them to know and understand the availability of bidding opportunities and actual means, processes and time-limits prescribed for completion of registration of bidders, bidding, evaluation, grievance redressal, award, and management of contracts. It implies that such officers must ensure that there is consistency (absence of subjectivity), predictability (absence of arbitrariness), clarity, openness (absence of secretiveness), and equal opportunities (absence of discrimination) in processes. In essence, the Transparency Principle also enjoins upon the Procuring Authorities to do only that which they professed to do as pre-declared in the relevant published documents and not to do anything that had not been so declared. As part of this principle, all procuring entities should ensure that offers are invited following a fair and transparent procedure and ensure publication of all relevant information on the Government e-Marketplace (GeM) and GeM-Central Public Procurement Portal (CPPP)



dissatisfactory performance is also contrary to the express conditions of Clause 3.2 of Section III of the Tender.

22. The Question No. I is decided in favour of Petitioner.

### **Question No. II**

23. In the facts of this case, the adoption of this process of verification of the experience certificates issued by the client at pre-qualification stage has not only led to violation of the Transparency Principle, referred above, but also resulted in the adopted procedure becoming unfair qua the bidder/Petitioner herein.

24. The Respondent No.1 has contended that it has followed this procedure of verification of experience certificates issued by the client for each of the bidder(s) and, therefore, there has been no violation of Article 14 of the Constitution of India. The Respondent No. 1 has also, in the *sealed cover*, placed before us the minutes of the meeting of the Evaluation Committee, evidencing that this process was indeed valid for each of the bidders.

25. The minutes of the Evaluation Committee placed before us by Respondent No. 1 in a *sealed cover* indeed show that verification of the client certificates was carried out for all six (6) bidding entities. Though, as a matter of fact, the Petitioner herein is the only entity that has been disqualified at the pre-qualification stage based on adverse input from *one* of its clients.

26. However, a perusal of the record shows that the very client (of the Petitioner) whose adverse input has been relied upon by the Evaluation Committee for disqualifying the Petitioner continues to avail the services of the Petitioner. It is also not in dispute that the said client has neither issued



any show cause notice alleging deficient performance nor communicated any dissatisfaction regarding the services rendered by the Petitioner. The experience certificates issued by the said client, as annexed with the bid document as per Section III and IV do not contain any rider or adverse remarks against the Petitioner. The genuineness and validity of the experience certificates issued by the client, in favour of the Petitioner and filed with the bid is also not in dispute. These facts show that the client, who has offered an adverse input to Respondent No. 1, has however never communicated the said input to the Petitioner herein.

27. In these circumstances, in our considered opinion, the reliance placed by the Respondent No. 1/NISG on a (secretive) adverse input received from the same client, who also issued certificates of performance has given rise to irreconcilable inconsistency in the documents (issued by the same client) on the record. It shows that this procedure of verification has led to absurdity and anomaly as opposed to an accurate or appropriate outcome.

28. In the considered opinion of this Court, adverse input of a client, who continues to engage the Petitioner's services without protest cannot, in the absence of any contemporaneous complaint or adverse communication to the Petitioner, form the sole basis for disqualification of the bid.

The procedure adopted by Respondent No. 1 has thus resulted in a manifest anomaly, inasmuch as the Evaluation Committee has chosen to ignore the genuine experience certificates issued by same client as placed on record by the bidder as per Section III and IV and, instead, the committee has relied upon a (secretive) adverse input of deficient performance, which has never been communicated to the Petitioner by the client.

The Evaluation Committee has acted upon an adverse input that was



never disclosed to the Petitioner and was obtained secretly, without affording any opportunity of explanation to the bidder. Such reliance of the Evaluation Committee on undisclosed material, particularly when it is inconsistent with the proven conduct of the same client in continuing the contractual engagement with the bidder/Petitioner, is not only contrary to the Tender conditions but has rendered the decision-making process opaque and procedurally arbitrary.

29. The Petitioner has placed on record with its bid documentary material evidencing the services rendered to its clients, and it remains an undisputed position that none of the said clients have either disqualified or blacklisted the Petitioner at any point in time.

30. Pertinently, it is also not the case of the Respondent No. 1 herein that there is any disqualification suffered by the Petitioner as contemplated in the Tender document i.e., black listing, etc.

31. In the facts of the present case, thus the procedure adopted by the Respondent No. 1 for evaluation of the qualification cannot be regarded as fair, just or reasonable, particularly when the alleged adverse input of the employer stands in direct contradiction to the duly verified experience certificates issued by the very same employer, who admittedly continues to avail the services of the Petitioner without any demur or protest.

32. We are of the considered view that the procedure adopted by the Respondent No. 1 in determining bid pre-qualification, by undertaking a behind-the-scene verification from the bidder's clients, the contents of which are neither disclosed to the bidder nor put to the bidder for explanation, appears manifestly arbitrary. Such a process effectively denies the bidder any opportunity to be informed of the material relied upon or to



present its explanation, thereby offending the principles of fairness and transparency.

33. The anomaly of the procedure adopted by the Respondent No. 1 is evident from the fact that the Petitioner herein, who has submitted its experience certificate(s) as per Clause 3.2 of Section III and Section IV of the Tender document are all found genuine. Thus, as a matter of fact the same client has issued experience certificates in favour of the Petitioner, which are genuine; however, in a behind-the-scenes (secretive) input, the response submitted by the client is adverse. No reliance can be placed on such an input, which contradicts the validly issued experience certificates in favour of the Petitioner, by the same client.

34. We, therefore, hold that the procedure adopted by the Respondent No. 1 in verifying the experience certificates, in the facts and circumstances of the present case, is neither as per the Tender conditions, nor capable of ensuring accurate outcome and is thus vitiated by arbitrariness.

35. Since, the only basis for excluding the Petitioner from the bidding process is the adverse input received from one of the petitioner's client and no other reason has been placed before this Court, and since, this Court has concluded that this adverse input alone cannot be the basis of exclusion of the Petitioner, considering the several experience certificates issued by the same client, who also continues to avail the services of the Petitioner, makes the exclusion of the Petitioner from the pre-qualification stage arbitrary.

36. The Respondent No. 1 has relied upon the judgment of the Supreme Court in **N Ramachandra Reddy v. State of Telangana and Others**<sup>6</sup> to contend that the procedure of verification of the experience from the clients

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<sup>6</sup> (2020) 16 SCC 478 at paragraph nos. 34 and 40.



of the bidders at the pre-qualification stage is reasonable, fair and just. The judgment of the Supreme Court and its findings turn on the facts of the said case. The Supreme Court held that, in the facts of the said case, the procedure adopted by the Chief Engineer of seeking a report from the Superintendent Engineer was fair. As the Court concluded, the Superintending Engineer, who had given the report, was competent. However, in the facts of this case we find that the client, who gave (secretive) adverse input against the Petitioner herein, has acted inconsistently as it has admittedly issued satisfaction certificates in favour of the Petitioner and continues to avail services of the Petitioner without any demur of protest. In these facts we find that the reliance placed on the adverse input of the said client is arbitrary and could not have formed a reasonable basis for the exclusion of the bid.

37. Question No. II is answered in favour of the Petitioner.

**Question no. III and IV**

38. The opacity of the procedure adopted by the Respondent No. 1 is evident by the fact that the Petitioner has, *to date*, not been formally communicated/informed of its alleged exclusion/disqualification at the pre-qualification stage. The question of communicating reasons is therefore a step away.

39. The Respondent No. 1 has taken a stand that the adverse input received from the client of the Petitioner, which forms the basis of the decision taken by the Evaluation Committee for concluding that the Petitioner has not pre-qualified, can neither be shared with nor disclosed to the Petitioner and refuge has been taken under Clause 29 of ITB/Section I. It is also contended that the exclusion of the Petitioner at the pre-qualification



stage is not stigmatic and there is no requirement to disclose the reasons for the said exclusion.

40. We are unable to accept this submission of the Respondent No. 1 since, as is evident from the record, this stance of the Respondent No. 1 has resulted in the procedure of evaluation for pre-qualification and rejection of the bid of the Petitioner becoming opaque, unfair and arbitrary, which is contrary to the judicial pronouncements which mandate that statutory authorities must adopt a fair procedure which ensures transparency, in all tendering processes.

41. The procedure of pre-qualification evaluation adopted by Respondent No. 1 and its Evaluation Committee, in addition to being contrary to the Tender document, has made the evaluation during pre-qualification process opaque. The right of the Petitioner to know the reasons for the exclusion/disqualification of its bid is an essential requirement of all tender processes undertaken by statutory authorities and cannot be denied by the statutory authority.

42. In our considered opinion, this procedure adopted by the Respondent No. 1 of directly obtaining (secretive) inputs regarding performance from the clients of the bidders, even though they are contrary to the experience certificates issued by the same client, relying upon the (secretive) inputs to evaluate the pre-qualification of the bid and deciding against the bidder/Petitioner, without putting the said relevant material to the bidder and without communicating this reason to the bidder as a basis of exclusion from the bidding process, is neither justified as per the Tender conditions nor in law as it leads to lack of transparency in the process for award of Tender.

43. The reliance placed by the Petitioner on the judgment of the



Coordinate Bench of this Court in **Jbmd Enterprises v. Sr. Dy. CGDA AN and Ors.**<sup>7</sup> at paragraphs 7 and 8 is apposite in this regard and the same read as under:

“7.

.....

The Petitioner having participated in the impugned tender process is entitled to know the reasons for the disqualification of its bid and not providing these answers is contrary to the requirement of transparency. This is also essential, so as to enable the Petitioner, to resolve the deficiencies in its documents to participate in the future tenders.

8. We, accordingly, direct both Respondent No. 5 i.e., GeM Portal and Respondent Nos. 1 to 4 to communicate to the Petitioner the reasons for posting the remark ‘Not Evaluated’ against its bid. The Respondents are directed to pass a speaking order and communicate the same to the Petitioner within two weeks.”

(Emphasis supplied)

44. The requirement of the statutory authorities in a tender process to provide reasons to the bidder for its exclusion is also stipulated in GFR Rules, 2017 which reads as under:

**“Rule 173: Transparency, competition, fairness and elimination of arbitrariness in the procurement process:** All government purchases should be made in a transparent, competitive and fair manner, to secure best value for money. This will also enable the prospective bidders to formulate and send their competitive bids with confidence. Some of the measures for ensuring the above are as follows:-

... ..

(iv) Suitable provision should be kept in the bidding document to enable a bidder to question the bidding conditions, bidding

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<sup>7</sup> 2024 SCC OnLine Del 4281



process and/ or rejection of its bid. The reasons for rejecting a tender or non-issuing a tender document to a prospective bidder must be disclosed where enquiries are made by the bidder.”

45. We therefore hold that the Petitioner having participated in the Tender process is entitled to know the reasons for disqualification of its bid and Respondent No. 1 has no legal basis for withholding the same.

46. The continued silence of the Respondent No. 1 in neither communicating its decision nor the reasons for the Petitioner’s exclusion demonstrates a clear lack of transparency in the process. The Respondent No. 1 cannot rely upon Clause 29 to not communicate the reasons forming basis of the exclusion to the bidder.

47. In these proceedings, the Respondent No. 1 has relied upon and placed before us the adverse input that it has received from one of the clients of the Petitioner in a *sealed cover*, with a plea that the same cannot be shared with the Petitioner. The Petitioner has opposed this *sealed cover* process adopted by Respondent No. 1 and contended that the same is antithetical to Petitioner’s right to seek a judicial review and the Petitioner’s right to know reasons.

48. In this regard, the reliance placed by the Petitioner on the judgment of the Hon’ble Supreme Court in **Madhyam Broadcasting Ltd. v. Union of India**<sup>8</sup> is apposite in the facts of the present case. In the said decision, the Supreme Court deprecated the procedure adopted by the High Court therein in accepting the justification tendered by the statutory authority in a *sealed cover*. It was observed that placing reliance on material furnished in a *sealed cover*, without disclosing the same to the affected party, cannot form a

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<sup>8</sup> Civil Appeal no. 8129 of 2022



reasonable basis to deny relief to a petitioner invoking the writ jurisdiction of the High Court under Article 226 of the Constitution of India. The relevant paragraphs 58, 59 and 159 of the said judgment reads as under:

“58. MHA disclosed the material forming the opinion for denying of security clearance solely to the High Court. The High Court instead of deciding if any other less restrictive but equally effective means could have been employed, straight away received the material in a sealed cover without any application of mind. It is now an established principle of natural justice that relevant material must be disclosed to the affected party. This rule ensures that the affected party is able to effectively exercise their right to appeal. When the state government claims non-disclosure on the ground of public interest under Section 124 of the Evidence Act, the material is removed from the trial itself. As opposed to this method, when relevant material is disclosed in a sealed cover, there are two injuries that are perpetuated. First, the documents are not available to the affected party. Second, the documents are relied upon by the opposite party (which is most often the state) in the course of the arguments, and the court arrives at a finding by relying on the material. In such a case, the affected party does not have any recourse to legal remedies because it would be unable to (dis)prove any inferences from the material before the adjudicating authority.

59. This form of adjudication perpetuates a culture of secrecy and opaqueness, and places the judgment beyond the reach of challenge. The affected party would be unable to “contradict errors, identify omissions, challenge the credibility of informants or refute false allegations”.<sup>51</sup> The right to seek judicial review which has now been read into Articles 14 and 21 is restricted. A corresponding effect of the sealed cover procedure is a non-reasoned order. ....

... ..

... ..

159. In view of the observations above, we are of the opinion that the respondents by not providing a reasoned order denying the renewal of license, not disclosing the relevant material, and by



disclosing the material only to the court in a sealed cover have violated the appellant's right to a fair hearing protected under Article 21 of the Constitution. The respondents were unable to prove that the restrictions on the appellants' right to a fair hearing were reasonable. Therefore, the order of MIB dated 31 January 2022 denying permission for renewal of the license and the judgment of the Division Bench of the High Court dated 2 March 2022 must be set aside on the ground of the infringement of procedural guarantees."

(Emphasis supplied)

49. We may also refer to the judgment of the Supreme Court in **Commander Amit Kumar Sharma v. Union of India**<sup>9</sup> wherein the Supreme Court once again deprecated the emerging practice of statutory authorities seeking to justify their decisions through material filed in *sealed covers* and cautioned the Courts against accepting such stances by the authorities, emphasizing that they undermine transparency and accountability in administrative decision-making. The relevant paragraphs read as follows:

“25. The elementary principle of law is that all material which is relied upon by either party in the course of a judicial proceeding must be disclosed. Even if the adjudicating authority does not rely on the material while arriving at a finding, information that is relevant to the dispute, which would with “reasonable probability” influence the decision of the authority must be disclosed. A one-sided submission of material which forms the subject-matter of adjudication to the exclusion of the other party causes a serious violation of natural justice. In the present case, this has resulted in grave prejudice to officers whose careers are directly affected as a consequence.

26. The non-disclosure of relevant material to the affected party and its disclosure in a sealed cover to the adjudicating authority (in this case AFT) sets a dangerous precedent. The disclosure of

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<sup>9</sup> (2022) SCC OnLine SC 1570



**relevant material to the adjudicating authority in a sealed cover makes the process of adjudication vague and opaque.** The disclosure in a sealed cover perpetuates two problems. Firstly, it denies the aggrieved party their legal right to effectively challenge an order since the adjudication of issues has proceeded on the basis of unshared material provided in a sealed cover. The adjudicating authority while relying on material furnished in the sealed cover arrives at a finding which is then effectively placed beyond the reach of challenge. Secondly, it perpetuates a culture of opaqueness and secrecy. It bestows absolute power in the hands of the adjudicating authority. It also tilts the balance of power in a litigation in favour of a dominant party which has control over information. Most often than not this is the state. A judicial order accompanied by reasons is the hallmark of the justice system. It espouses the rule of law. However, the sealed cover practice places the process by which the decision is arrived beyond scrutiny. **The sealed cover procedure affects the functioning of the justice delivery system both at an individual case-to-case level and at an institutional level.”**

(Emphasis supplied)

50. In our considered view, the stance of Respondent No. 1 is legally untenable, as no cogent or justifiable reason has been shown for resorting to a *sealed cover* procedure in respect of the alleged adverse input received during the tender evaluation. The pleadings in the counter-affidavit, as well as the submissions advanced by the Respondent No. 1 before this Court, fails to furnish any satisfactory explanation for adopting a secretive verification mechanism or for withholding the material relied upon by the Evaluation Committee.

51. In fact, if we were to accept this submission of the Respondent No. 1, this Court would itself be committing an error by endorsing a course of action that promotes opacity, an approach fundamentally antithetical to the principles of fairness, transparency and accountability.



52. We have already concluded that the exclusion of the Petitioner from the bidding process is illegal and contrary to the terms of the Tender conditions. We have also concluded hereinabove that Respondent No. 1 is obliged to communicate the reasons of the exclusion of the bidder. We find no justification for the *sealed cover* process adopted by the Respondent No. 1 in this Tender process and are of the opinion that it is illegal as it makes the Tender process opaque.

53. Question No. III and IV are answered in favour of the Petitioner.

54. The contention of Respondent No. 1 that it is not a “State” and hence not amenable to writ jurisdiction is wholly without merit. A perusal of the counter-affidavit reveals that Respondent No. 1 is chaired by the Secretary of the Ministry of Electronics and Information Technology (MeitY) and is engaged in discharging functions of sovereign character on behalf of the Government of India in relation to the Government of Sri Lanka. We may also note that this plea though raised in the counter affidavit was not pressed during arguments.

### Relief

55. The Respondent No. 1 has relied upon the judgment of the Supreme Court in **Galaxy Transport Agencies, Contractors, Traders, Transports and Suppliers v. New JK Roadways, Fleet Owners and Transport Contractors and Others**<sup>10</sup>. In the said judgment, the Supreme Court was satisfied that the procedure adopted by the tendering authority was neither arbitrary nor mala fide and, therefore, the Court deemed it appropriate to not interfere with the technical evaluation. Further, the Respondent No. 1 has relied upon the judgment of the Supreme Court in **Jagdish Mandal v. State**

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<sup>10</sup> (2021) 16 SCC 808



of Orissa & Ors.<sup>11</sup> to contend that the scope of the judicial review is limited in matters relating to public tenders.

56. On the other hand, the Petitioner has relied upon the judgment of the Supreme Court in **Bansidhar Constructions Pvt. Ltd. v. Bharat Coking Coal Limited & Others**<sup>12</sup> wherein the Supreme Court set aside the decision of the statutory authority on the finding that the disqualification of the bidder therein was arbitrary, illegal, discriminatory and violative of Article 14 of the Constitution of India. The Petitioner has placed reliance upon the judgment of the Supreme Court in **Tata Cellular v Union of India**<sup>13</sup>, wherein it was authoritatively held that while the scope of judicial review in tender matters is limited, the Court is empowered to interfere where the decision-making process is found to be arbitrary, irrational, or in violation of the principles of fairness and transparency.

57. Since we have, as a matter of fact, found that the procedure for pre-qualification adopted by the Respondent No. 1 is arbitrary and in violation of the Transparency Principle the exclusion/disqualification of the Petitioner is liable to set aside and its bid is liable to proceed to the second stage for technical evaluation.

58. It has been brought to our notice that the pre-qualified five (5) bidders have been allowed to undertake a visit to Sri Lanka as per Clause 24.2 of Section I of ITB, after which the Second Stage i.e. the technical bids are to be evaluated.

59. In these circumstances, the writ petition is allowed and the exclusion of the Petitioner from the bidding process is hereby set aside. The

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<sup>11</sup> (2007) 14 SCC 517 at paragraph nos. 21 and 21.3

<sup>12</sup> 2024 INSC 757, CIVIL APPEAL NO. 11005 OF 2024 at para no. 20, 21 and 29.

<sup>13</sup> (1994) 6 SCC 651 at paragraph nos. 74, 75 and 77



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Respondent No. 1 is directed to proceed with the petitioner's bid to the Step 2 process along with the other qualified bidders.

60. The Petition is allowed. Pending applications are disposed of.

**MANMEET PRITAM SINGH ARORA, J**

**V. KAMESWAR RAO, J**

**MARCH 10, 2026/msh/AJ**