



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

% Judgment reserved on: 25.04.2025
Judgment delivered on: 06.05.2025

+ W.P.(C) 1542/2025, CM APPL. 7585/2025 & CM APPL. 18031/2025

M/S NF INFRATECH SERVICES PRIVATE LIMITEDPetitioners

versus

NATIONAL SMALL INDUSTRIES CORPORATION & ORS.

.....Respondents

Advocates who appeared in this case:

For the Petitioners : Mr. Sandeep Sethi, Senior Advocate with Ms. Saumya Dwivedi and Ms. Sonal Maht, Advocates.

For the Respondents : Mr. Chetan Sharma, ASG, Mr. Sanat Kumar, Senior Advocate, Mr. Anurag Ahluwalia, Senior Advocate, Mr. Vikram Jetly, CGSC, Mr. Nishant Gautam, CGSC, Ms. Rukmini Bobde, CGSC with Mr. Amit Gupta, Mr. Saurabh Tripathi, Ms. Shreya Jetly, Mr. Tushar Jain, Mr. Vinayak Aren and Ms. Kanika Gupta, Advocates along with Mr. Rudra Paliwal and Mr. Amit Acharya, GP for NSIC/UoI.

Mr. Ashish Dholakia, Senior Advocate with Mr. Rohan Chawla and Mr. Subhoday Banerjee, Advocates for R-3 & 4.

Mr. Shashank Manish, Ms. Nidhi Sahay and Ms. Chahana Charles, Advocates for R-5.

Ms. Shweta Bharti, Ms. Sukriti Verma and Ms. Sonali Khanna, Advocates for R-6.

Mr. Milind Ramteka, Director, PM Vishwakarna, Ministry of MSMEs, GOI.

Mr Kartikeya Tanton, Director, Planning and Marketing, NSIC. Mr. Rajesh Jain, Chief General Manager, NSIC.



**CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA**

J U D G M E N T

TUSHAR RAO GEDELA, J.

1. Present petition has been filed under Article 226 of the Constitution of India seeking directions to respondent to quash the technical result dated 26.01.2025 to the extent it declares the bidders (respondent no.4/Vindhya Telelinks Limited and respondent no.5/ITI Limited) who offered the toolkit of Wybor as technically qualified in Bid Number: GEM/2024/B/5238319, dated 03.08.2024, issued by the National Small Industries Corporation and declare such bidders as technically unresponsive. The petition further seeks direction to respondent to quash the financial evaluation dated 31.01.2025 to the extent it declares Vindhya Telelinks Limited, ITI Limited as L1 and L2. The petition also seeks a prayer to issue a direction declaring L3 bidder (petitioner herein) as L1 bidder.

2. The basic background facts, without going into the minute details, briefly, are as under:

- a) Request for Proposal bearing No. NSIC/PMV/2023-24/WASHERMAN /07/(R3) dated 03.08.2024 (hereinafter referred to as “*the RFP*”) was issued by the respondent no.1/National Small Industries Corporation (hereinafter referred to as “*the Corporation*”) for procuring 75,000 washing machines for washermen under the Pradhan Mantri Vishwakarma Yojana.



- b) The petitioner claims to be a company incorporated in 2010, with over 14 years experience in doing business with various Central/State Governments and PSUs.
- c) The respondent declared the technical results on 26.01.2025, wherein the petitioner was found to be technically qualified.
- d) Pursuant to the financial evaluation conducted on 31.01.2025, respondent no.4/Vindhya Telelinks Limited, and respondent no.5/ITI Limited, both resellers of respondent no.3/OEM, were declared as L1 and L2 bidders respectively, thereby emerging as the successful bidders, who are entitled to supply the washing machines in the ratio of 70:30, post award of the contract. Although the petitioner was declared as the L3 bidder, he remained unsuccessful.
- e) The petitioner has filed the underlying writ petition against (i) the successful bidders for non-compliance with certain prerequisite technical conditions that were required to be fulfilled before submitting the bid and (ii) the corporation for erroneously qualifying the non-compliant respondent no.4 and respondent no. 5 as the L1 and L2 bidders.

CONTENTIONS OF THE PETITIONER:-

3. Mr. Sandeep Sethi, learned senior counsel at the outset submits that the petitioner lays challenge to the bid in respect of procurement of washing machines to be supplied to the Washermen under the Pradhan Mantri Vishwakarma Yojana. He submitted that though the petitioner was technically qualified, however the bid/quote was not found to be the lowest two (2) and was declared as L-3. He submitted that the declaration of respondent no.4 as L-1 and respondent no.5 as L-



2 is not only violative of the conditions of the RFP but also contrary to the intent and import of its conditions. Essentially, learned senior counsel attacks such declaration of L-1 and L-2 status on three grounds, namely:

- (i) sub para (b) of para 4.3 of RFP respecting Financial Criteria mandated that net worth of the bidder should not be negative on the last date of the Financial Year and also that it should not have eroded by more than 30% (thirty percent) in the last three (3) years as per the audited annual report of the relevant period, duly authenticated by a Chartered Accountant which condition remained non compliant by respondent no.5;
- (ii) the Corrigendum No.4 dated 05.12.2024, issued by the Corporation under Sl. No.3 amending para 7(i) of the Terms & Conditions respecting Warranty and Guarantee, mandated that the *“OEM should have at least one Customer Support No. operable with human interface and video chat support during working hours”*, yet remained non compliant by respondent no.4 and respondent no.5, as their offer did not contain this mandatory facility and as such they could not have been technically qualified muchless declared as L-1 and L-2; and
- (iii) the Corrigendum No.4 dated 05.12.2024, issued by the Corporation under Serial. No.2 amending to para 4.6 of ITB (Instructions to Bidders) respecting Compliance with Make in India requirement mandated that, *“All the tools/items supplied in the tool kits mentioned in the RFP must be complying with the Make in India requirement for atleast Class – I local suppliers i.e. product has local content more than 50% for each of the tools/items in this regard, bidder shall submit confirmation as per Annexure – VI and Annexure – VII”*, which can be construed to be non



compliant by respondent no.4 and respondent no.5 as the supporting documents (brochure/catalogue etc.,) at the time of uploading documents on the GeM portal at the preliminary stage and submission of the Chartered Accountant Certificate (hereinafter referred to as “CA Certificate”) at the subsequent stage were full of variations and discrepancies rendering the said document and CA certificate ineffective and suspect and thus, respondent no.4 and respondent no.5 could not have been technically qualified, muchless declared as L-1 and L-2 being mandatory condition.

4. Mr. Sethi, learned senior counsel seeks to address arguments *qua* ground (ii) noted above regarding non compliance with mandatory facility of providing “*atleast one Customer Support No. operable with human interface and video chat support during working hours*”. In order to support the aforesaid challenge he drew our attention to the Corrigendum No.4 dated 05.12.2024 which carried out certain amendments to certain paragraphs of the RFP, particularly, Serial No.3. He stated that in the Warranty and Guarantee conditions, a very crucial amendment was carried out, the significance whereof could not be undermined by the Corporation. In that, the amendment insisted that the bidder should ensure that the OEM of the product washing machine is capable of providing at least one Customer Support Number operable with human interface and video chat support during working hours. This, according to him was a significant departure from the unamended condition in para 7(i) of the essential Terms and Conditions, in that, the unamended condition did not require any such customer support number with human interface and video chat support except for a Help Desk to the Facilitator. He submitted that in order to test the veracity of the claim of respondent no.3,



respondent no.4 and respondent no.5, a decoy call was made to the customer support division of respondent no.3 and a transcript of the said call placed on record to demonstrate that respondent no.3 does not have the mandatory facility of video chat support. He urged that the customer support division of respondent no.3 categorically denied having any such facility. Moreover, he forcefully argued that the Chart furnished in support of the stand of respondent no.3 also vindicates the grounds of challenge. By referring to the said chart, learned senior counsel demonstrates that once a call is made by a customer, the complaints division would note the same and pass on the same to another individual/technician, who would make a call or alleged video call to the customer to address the grievances. However, he sought to establish from the transcript that the customer complaint division of respondent no.3 only noted the grievance and insisted that it would send its engineer to attend to the complaint. This, according to him, is non compliant of the mandatory term.

5. He dilates the aforesaid argument with a demonstration of a successful redressal of a complaint with the said video chat facility at the spot directly with the customer instead of re-routing such grievance as an example by the petitioner, which is a well established brand manufacturing such products in question for decades with a highly successful and interactive customer support division. In support thereof, he refers to and relies upon the transcript of a chat of the customer complaints division of the petitioner with a customer wherein the customer has been engaged and the grievance resolved through an interactive human interface on video chat successfully. Thus, he vehemently contended that not only is the petitioner fully competent and compliant with the said amendment, but at the same time, in contradistinction, respondent no.3, respondent no.4 and respondent no.5



have miserably failed to be compliant at all to such amended condition. Predicated thereon, he contended that holding respondent no.4 and respondent no.5 not only as technically successful but also declaring both as L-1 and L-2 respectively, is gross violation of para 7(i) as amended.

6. Learned senior counsel also referred to para 7(i) of the RFP to urge the mandatory character of the term by emphasizing that the word “*shall*” has been used for the purpose of supply of toolkits coupled with the mandatory nature of provision of Help Desk with the amended version directing for providing a customer complaint no. with human interface and video chat. To the same effect, he also referred to sub-para (ii) of para 7.

7. With respect to ground (i) regarding sub-para (b) of para 4.3 respecting “Financial Eligibility Criteria” which mandated that net worth of the bidder should not be negative on the last date of the Financial Year and also should not have eroded by more than 30% (thirty percent) in the last three (3) years as per the audited annual report of the relevant period, duly authenticated by a Chartered Accountant, learned senior counsel stoutly contended that this mandatory condition remained non compliant by respondent no.5 and thus, the Corporation could not have declared it technically qualified, muchless declare it as L-2. By inviting attention to the table at page 7 of the writ petition, he sought to demonstrate that from the Financial Year 2021-22 through till Financial Year 2023-24, according to the calculations reckoned by the petitioner, respondent no.5 had eroded its networth by about (-) 32.35% which is more than the 30% cap set by the RFP. Learned senior counsel was at great pains to demonstrate as to how the networth of respondent no.5 had deteriorated in the last three (3) years. Learned senior counsel also referred to the CA’s Certificate of respondent no.5 which tendered the



Financial figures of the years 2020-21, 2021-22, 2022-23 and 2023-24 to submit that the erosion has been wrongly or incorrectly reckoned. According to him, it is the last three years ending 31st March 2024 which has to be reckoned with effect from the year 2021-22. And if so reckoned, the erosion would be (-) 32.35% and not (-) 27.34 %. Thus, according to him, since the erosion is beyond 30% in the last three years ending 31.03.2024, the respondent no.5 could not have been held as responsive in the technical bid stage on account of the essential Financial Criteria being non compliant. Predicated thereon, he vociferously contended that the declaration of respondent no.5 as L-2 is not only violative of the terms but also stark contrary to the RFP.

8. Mr. Sethi, learned senior counsel next took up the ground (iii) and submitted that the Corrigendum No.4 dated 05.12.2024, issued by the Corporation under Serial. No.2 in amendment to para 4.6 of ITB (Instructions to Bidders) respecting Compliance with Make in India requirement, mandated that, *“All the tools/items supplied in the tool kits mentioned in the RFP must be complying with the Make in India requirement for atleast Class – I local suppliers i.e. product has local content more than 50% for each of the tools/items in this regard, bidder shall submit confirmation as per Annexure – VI and Annexure – VII”*. In order to justify this challenge, learned senior counsel drew our attention to the brochure of the OEM uploaded on the GeM portal by respondent no.4 and respondent no.5 which gives misleading figures regarding the local content. In that, under the heading “Product Details” at page 531 the Local Content is described as 85% of the washing machine of the OEM/ respondent no.3, whereas in the certificate with Unique Document Identification Number (hereinafter referred to as “UDIN”) issued by the CA Sh.Mukesh Kumar Aggarwal for the respondent no.3/OEM, the



Local Content is shown as 76% and in the same breath the CA Certificate dated 22.11.2024 issued by the same CA certified that the Local Content of the product of respondent no.3/OEM is more than or equal to 60%. Learned senior counsel vehemently attacked the CA certificate and pointed out the irreconcilable discrepancies to submit that the same is unreliable and could not have been relied upon by the respondents to declare respondent no.4 or respondent no.5 as technically responsive muchless declare them L-1 and L-2 respectively, being violative of the Eligibility condition. Additionally, learned senior counsel also submitted that the CA Certificate of the respondent no.3/OEM submitted by both respondent no.4 and respondent no.5 are not in the correct Format as stipulated in Appendix –II to Chapter 9 of “*Guidance Note on Local Content in Manufacturing*” issued by the Institute of Cost Accountants.

9. According to learned senior counsel, apart from the aforesaid violation of the eligibility condition, even the Bureau of Energy Efficiency star rating (herein after referred to as “*BEE star rating*”) condition stipulating BEE Rating at 5 has been blatantly violated. He stated that the Technical Specifications as per the RFP at page 80 of the paperbook, the BEE Star Rating has been mandated at 5 whereas, the brochure of the respondent no.3/OEM clearly indicates BEE Star Rating at 3 which is clear non compliance of the mandatory term. In order to support his contention, he drew attention of this Court to page 538 of the paperbook which is part of the OEM brochure and under the heading “Power Supply” the BEE Star Rating is specified as 3. According to him, admittedly, the BEE star rating specification having not been met, respondent no.4 and respondent no.5 could not be held to be responsive and resultantly ought to be technically disqualified. He was at pains to contend that the product being non compliant with the RFP



eligibility condition on technical specifications, respondent no.4 and respondent no.5 ought to be disqualified and petitioner be placed as L-1.

CONTENTIONS OF RESPONDENT NO.1/CORPORATION:-

10. Mr. Anurag Ahluwalia, learned senior counsel appearing for the Corporation at the outset submitted that following four dates are very relevant to be borne in mind before examining the controversy in the present writ petition. They are:

- 03.08.2024: The RFP was notified.
- 20.12.2024: Last date for submission of Bid.
- 26.01.2025: Opening of Technical Bid.
- 31.01.2025: Opening of Financial Bid.

11. Learned senior counsel also submitted that M/s Wybor is the common OEM to respondent no.4 Vindhya Telelinks and respondent no.5 ITI Limited. And the award is to be granted in the ratio of 70:30 between respondent no.4 and respondent no.5 being L-1 and L-2 respectively. In that background he stated that the response would be addressed ground wise as argued by Mr. Sethi learned senior counsel for the petitioner.

12. With respect to ground (ii) learned senior counsel first referred to the Eligibility Criteria in para 4 of the RFP in respect of Instructions to Bidders, to contend that the provisions are silent about requirement of a video chat or human interface facility to the bidders. In other words he contended that at the stage of submission of the bid document, this was not the mandatory requirement at all. In contradistinction to this, he referred to the Terms and Conditions for a Toolkit Vendor, particularly, para 7 respecting Warranty and Guarantee where by



amendment dated 05.12.2024, *vide* the Corrigendum No.4, sub para (i) of para 7 above was amended to add “*OEM should have atleast one Customer Support No. operable with human interface and video chat support during working hours*”.

13. By referring to the Corrigendum above, learned senior counsel points out that the amendment carried out in Serial.No.3 therein pertains to the Terms and Conditions specified for a Vendor and not bidders. In other words, the facility of atleast one customer support number with human interface and video chat support is for the successful bidder who will henceforth be the Vendor. He thus emphasized that the amendment was carried out for a situation which would be applicable post award of the tender and for the purposes of after sales service etc. He vehemently contended that the submission of the petitioner therefore, is premised on a wrong and incorrect interpretation of the RFP document itself. The argument of the petitioner as if the condition mandates the bidder to comply with this requirement is fallacious according to learned senior counsel representing the respondent/corporation. According to him, this is not a mandatory requirement at the technical bid stage and is to be actually fulfilled post sanction of the award of contract. Thus, the consideration of both respondent no.4 and respondent no.5 as technically responsive and declaration as L-1 and L-2 respectively is within the terms and conditions of the RFP.

14. In respect of the submission of the petitioner regarding ground (i) respecting the networth and the erosion to be within 30% for the last three financial years ending 31.03.24, Mr. Ahluwalia contended that the same is untenable in law and on facts. In order to support the stand he read through para 4.3 (a) related to Turnover and para 4.3 (b) related to Net Worth, to submit that in both cases, the bidder was provided the opportunity to opt either for “*4 years audited financial*



figures of FY 2019-20, 2020-21, 2021-22 and 2022-23” OR “*Audited financial figures of FY 2019-20, 2021-22, and 2022-23 and provisional figure of FY 2023-24*”. According to him, both the petitioner and respondent no.5 opted for the second option and reckoned the erosion accordingly and submitted the CA’s Certificate in support thereof. Drawing attention to the counter affidavit of the Corporation particularly paras 26, 27 and 28, he contended that the argument of the petitioner is fallacious. In that, the petitioner has reckoned three years but has missed the vital aspect of reckoning the Base Year in context whereof the erosion has to be worked out/calculated. Worked out in that view, the Base Year reckoned by the Corporation is 2020-21 and calculating thereon, the erosion in three years ending 31.03.2024 works out to (-) 27.34%. He justified the same by referring to the table in para 28 of the counter affidavit and asserted that the table reflects the correct calculation. Based on the above, he categorically contended that the Certificate issued by the Chartered Accountant and submitted by respondent no.5 demonstrates the correct financial status with which the Corporation is satisfied. Additionally, he also asserted that this formula was applied across board for all tenders and all bidders without any discrimination and therefore, the petitioner cannot urge discrimination even otherwise.

15. Regarding ground (iii) stipulating the condition of local content being more than 50% as per the “*Make In India*” policy of the Central Government, learned senior counsel vehemently refuted the submissions of the petitioner. To explain better, he drew attention of this Court to the Corrigendum No.4 dated 05.12.2024, particularly the amendment at Serial.No.2 to submit that by way of the said amendment the local content in the product sought to be procured was increased from “*more than 20%*” to “*more than 50%*”. In support of the stand taken by the



Corporation, learned senior counsel invited attention to page 445 of the paperbook which is the Certificate dated 22.11.2024 issued by the CA of respondent no.3/OEM. He stated that the said Certificate clearly indicated that the product i.e., the washing machine offered by respondent no.5 had local content of “*more than or equal to 60%*”. That apart, he also referred to the Vendor Assessment Report issued by an independent authorized agency, namely Rail India Technical and Economic Service (hereinafter referred to as “*the RITES*”) based on the inspection carried out by it on 10.01.2025, 11.01.2025 and 23.01.2025 to submit that it too certified the local content of more than 60% in the product offered by respondent no.5. He vociferously contended that once an independent and authorized government agency has certified after due inspection, there is hardly any reason why the Corporation would find fault in the CA Certificate. In fact, according to him, the inspection and certificate of RITES vindicates the contents of the bid document submitted by respondent no.5.

ANALYSIS AND CONCLUSION:

16. We have heard Mr. Sethi learned senior counsel for the petitioner, Mr Anurag Ahluwalia learned senior counsel for the Corporation, Mr. Ashish Dholakia for respondent nos. 3 & 4 and minutely examined the terms and conditions of the RFP dated 03.08.2024 and other documents submitted along with their respective bids. We propose to analyse and render our opinion issue wise as argued by the parties.

In re: Ground (ii):

17. We find from the RFP that the Terms and Conditions for a Toolkit Vendor, particularly para 7, respecting “*Warranty and Guarantee*” an amendment was



carried out *vide* the Corrigendum No.4 dated 05.12.2024, whereby in sub-para (i) of para 7 above, the following criteria was added, namely, “*OEM should have atleast one Customer Support No. operable with human interface and video chat support during working hours*”.

18. Both parties had strongly argued their respective points interpreting the purport and import of the aforesaid amendment and its effect. A plain reading of the amendment brings to fore that this facility is a necessary concomitant to the item to be supplied by the Vendor as an obligation and to that extent it appears to be mandatory. What is to be considered is whether this condition is mandatory for the purposes of evaluation of the technical bid and if so, to whom it applies. In this context, the arguments of Mr. Ahluwalia, learned senior counsel commends to us.

19. A close examination of the Corrigendum No.4 makes it manifest that this amendment is in respect of the Terms and Conditions applicable to the selected Vendor. It is also pertinent to note that it relates to the Term “*Warranty and Guarantee*” which clearly postulates an action or a requirement post award of the contract and at the stage when the procurement and delivery of the product is complete. Moreover, it refers to the “*selected vendor*” which term itself substantiates post contractual obligation on the part of the “*selected vendor*”. That apart, sub-para (ii) of para 7 contains a *non obstante* clause and postulates a situation where, if the products are found defective or not conforming to the requisite description or not performing satisfactorily, the consequences thereof are also provided. Those include rectification or replacement of the product or parts which are found defective by the beneficiaries. Read together as a whole and harmoniously, sub-para (i) and (ii) leave no manner of doubt that they are applicable post award of the contract and not at the stage of consideration of



Technical Bid. This is not to say that the condition is completely waived or not to be shown at the stage of Technical Bid. There has to be, to the satisfaction of the tender issuing authority, a clarity to that effect. We find from the counter affidavit of the respondent no.3/OEM that this facility was available as on 10.01.2025, i.e., on the date of inspection by the RITES. The submission of Mr. Sethi, learned senior counsel that the facility is not available with respondent no.3/OEM or that it's a process of re-routing etc., are not the domain of this Court to look into as that stage is yet to be reached and it is clearly within the domain of the tender issuing authority. No penal action or termination or rescindment of the contract is envisaged and all that is postulated is the corrective course of action in case of any breach of the conditions stipulated in para 7. From this factor too, it cannot be said with conviction that these are mandatory provisions to be considered as essential eligibility conditions for the evaluation of bids at the technical evaluation stage, though it otherwise appears to be a relevant condition. Thus the arguments of the petitioner on this ground (ii) are unsustainable.

In re: Ground (i):

20. Ground (i) relates to the Net Worth not being negative on the last date of the Financial Year and also that it should not have eroded by more than 30% in the last three financial years as per the audited annual report of the relevant period, duly authenticated by a Chartered Accountant. In this context both parties referred to and relied upon para 4.3 of the Financial Eligibility Criteria particularly, sub-para (b); the financial documents required in support thereof and the Note appended thereto regarding furnishing of an undertaking to that effect.

21. Mr. Sethi, learned senior counsel for the petitioner submitted that the table at page 7 of the writ petition clearly explains the financial status of the respondent



no.5 as on 31.03.24, in terms of para 4.3 and according to him, undeniably the respondent no.5's financial position has eroded by (-) 32.35% in the last three (3) years commencing the Financial Year 2021-22. According to him, these are undeniable figures admittedly provided by the respondent no.5 itself. Whereas, Mr. Ahluwalia, learned senior counsel for the Corporation contended that both the petitioner as well as the respondent no.5 had opted for the second set of documents as required in sub-para (b) of para 4.3 and Corporation had calculated and reckoned both their financial status accordingly using the same formula. He had also stated that the Corporation had reckoned the base year as 2020-21 to calculate the erosion.

22. The submission of the Corporation appeals to us for two reasons, viz., (i) if there are two or more ways or formulae of arriving at the figure for reckoning financial erosion of an entity and the tender issuing authority chooses one of the either, it is not for the Courts exercising powers under Article 226 of the Constitution to interdict or interfere with the same as the Court is not a subject matter expert; and (ii) the submission of the petitioner is fallacious as it does not take into account the base year in context whereof, the three year period ending 31.03.24 is to be reckoned. Considered from that point of view, it is apparent that the base year has to be Financial Year 2020-21 which has been correctly applied by the Corporation. The aforesaid analysis would be clearer if we compare the tables provided by the petitioner and the Corporation. The same are as under:

The table provided by the petitioner as annexed in para 7 of the writ petition:-

FY	Net Worth	Erosion in net worth in the last 3FYs	Total Erosion
----	-----------	---------------------------------------	---------------



(i) 2023-24	1,749.46	836.52	-32.35%
(ii) 2022-23	2,339.60		
(iii) 2021-22	2,585.98		

The table provided by the respondent no.5, as certified by its Chartered Accountant:-

FY	Net Worth	Erosion in net worth in the last 3FYs	Total Erosion
(i) 2023-24	1,749.46	658.54	-27.34%
(ii) 2022-23	2,339.60		
(iii) 2021-22	2,573.48		
(iv) 2020-21	2,408.00		

A perusal of the two tables above clearly demonstrates the distinction between the two, and the fallacy and error in the argument of the petitioner. In order to calculate the erosion of the last three years ending 31.03.24, the base year has to be reckoned with effect from the Financial Year 2020-21 which has to be compared with the audited report of each year to calculate the erosion. Applying this method, the calculation of erosion by the Corporation appears to be plausible. Moreover, the Corporation has asserted that it has applied the same methodology across board for all tenders under the RFP and thus we find the submissions of the petitioner regarding ground (i) unmerited. Moreover, no technical literature demonstrating the standard or universally acceptable methodology or formula has been placed on record for us to appreciate the said issue. Having regard thereto, we



are unable to accede to the submissions of learned counsel for the petitioner.

In re: Ground (iii):

23. Ground (iii) relates to the condition in para 4.6 of the Instructions to Bidders (ITB) respecting “*Compliance with Make in India Requirement*” stipulating local content in the product offered for procurement being more than 50%. The original para 4.6 stipulated local content of more than 20%, however by way of an amendment *vide* the Corrigendum No.4 dated 05.12.2024, in Serial No.2, the tool kits sought were mandatorily required to have local content of more than 50% from at least Class – I local suppliers.

24. Mr. Sandeep Sethi, learned senior counsel took great pains to take us through amended para 4.6 of the ITB as contained in the Corrigendum No.4; the brochure of the respondent no.3/OEM uploaded by the respondent no.4 and respondent no.5 on the GeM Portal; the CA Certificate dated 22.11.2024 of the respondent no.3/OEM furnished by the respondent no.4 as well as respondent no.5 in support of their bids to establish local content of more than 50% in the offered product to point out the inherent discrepancies and inconsistencies, essentially to impress upon us, that the CA Certificate is unreliable and has to be eschewed from consideration at the technical bid stage. According to learned senior counsel, if the certificate is found to be unreliable or furnishing wrong or incorrect information, both the respondent no.4 and respondent no.5 ought to be considered as non responsive at the technical bid stage itself and their bids ought to be rejected. As against this, Mr. Ahluwalia, learned senior counsel for the corporation had simply relied upon the CA Certificate to contend that the information of the product offered having more than or equal to 60% would suffice as the amended para 4.6 of ITB stipulates local content of more than 50%. Additionally, he relied upon the



Vendor Assessment Report of RITES in respect of both the respondent nos.4 & 5, to substantiate that an independent government agency too had inspected the product offered by both respondent nos.4 & 5 on three different dates and found both to have local content more than 60%. In such circumstances, he asserted that the Corporation need not have doubted the credibility of the CA Certificate merely because it did not specify local content of more than 50% and instead mentioned 60%.

25. Mr. Sethi, learned senior counsel for the petitioner has demonstrated certain variance in the figures contained in the brochure of the respondent no.3/OEM where the local content was advertised as 85%, whereas the CA Certificate dated 22.11.2024 mentioned local content of more than or equal to 60% and the break up of the specifications appended to the said Certificate reflected local content to the extent of 76%.

26. To further examine and analyse this Ground (iii) it would be apposite to extract the amended para 4.6 of the ITB which reads thus:

“4.6 Compliance with Make in India Requirement:

*All the tools/items supplied in the tool kits mentioned in the RFP must be complying with the Make in India requirement for at least **class I** local suppliers i.e. product has local content more than 50% for each of the tools/items. In this regard, bidder shall submit confirmation as per Annexure-VI & Annexure-VII.”*

Reading para 4.6 manifests its mandatory character prescribing local content of more than 50% in the offered product of at least Class – I local suppliers. Surely, if the offered product is found to be containing less than 50% of local content, the bidder would be disqualified technically.

27. Thus, in view of the above, the question to be considered is as to what happens in case the offered product during inspection while evaluating it, is found to have more than 50% of local content. That too, when the documents in support



thereof appear to be containing certain discrepancies. In order to appreciate the said question, it would be relevant to examine the CA Certificate dated 22.11.2024, the brochure of the respondent no.3/OEM as uploaded on GeM portal and the breakup of the specifications of the offered product, appended to the CA Certificate. The three documents read thus:

Extract of CA Certificate dated 22.11.2024:-

“To,
D.G.M. (C & P),
NSIC Limited., NSIC Bhawan,
Okhla Industrial Estate,
New Delhi-110020,
REF: NSIC/PMV /2023-24/ WASHHERMAN /07/(R3), GEM BID NO. is
GEM/2024/B/5238319
Sir,
With reference to subject BID we hereby confirm that M/s Wybor Tech Pvt. Ltd.
(CIN:U31908UP2014PTC067558) having registered office at 354-355, Udyog
Kendra-11, Greater Noida, U.P-201306. (Bidder) is the Class-1 Local Supplier and
meeting the requirement of minimum local content (make in India) of more than or
equal to 60% (Sixty Percent) in its Product Wybor "Washing Machine" the content
wise sheet duly certified enclosed herewith. The above Certificate has been issued on
the basis documents/information and detail provided to us.
For M. K. A & Co.
Chartered Accountants
Sd/-
(Mukesh K. Aggarwal)
Partner
M. No. 090441
UDIN – 24090441BKDHOW8666
Place: New Delhi
Date 22.11.2024”

Catalogue of the respondent no.3/OEM:-

Product Details	
Price For:	1 pieces
MRP/Unit:	Rs.31,500.00



2025:DHC:3324-DB



Offer Price/Unit	Rs.17,464.00
Availability	1 in stock
Min. Qty. Per Consignee:	1
Product id:	5116877-42164311417
Country of Origin	India
Local Content (MII):	85%
*Please Note: Local Content Value is as declared by reseller since OEM is not registered on GeM	

Unique Document Identification Number (UDIN) Report dated 16.02.2025 of the respondent no.3/OEM:-

DOCUMENT DETAILS	
Verification Date/Time:	17-02-2025 06:56:49
UDIN Generation Date/Time:	22.11.2024 16:47:27
UDIN:	24090441BKDHOW8666
Member Details:	MUKESH KUMAR AGGARWAL(090441)
Firm Details:	011928N
Document Type:	Certificates
Type of Certificate:	Others
Date of signing of Document:	22-11-2024



Figures/Particulars:	1.REQUIREMENT OF LOCAL CONTENT: 76% 2. IMPORT CONTENT: 24%
Document Description:	WYBOR TECH PVT. LTD.
Status:	Active

A perusal and examination of the aforesaid documents do reveal that there is certain variance in respect of the percentage of local content present in the offered product, however, what is to be considered is whether such variance is fatal to the extent it would disqualify respondent no.4 and respondent no.5 and render their bids as non responsive. In our considered opinion, the answer would be in the negative. This is for the reason that finally the CA Certificate after examining the specifications of the offered product does certify that such product has more than or equal to 60% local content. *Ex facie*, it is more than 50% as mandated in amended para 4.6 of the ITB.

28. That apart, the Vendor Assessment Report issued by an independent agency, namely RITES, certified after inspections of the offered product carried out on 10.01.2025, 11.01.2025 and 23.01.2025 that the local content is more than 60% as certified by the CA. It would be relevant to reproduce the Vendor Assessment Report of respondent no.4 issued by RITES which reads thus:

**“CAPACITY CUM CAPABILITY FOR PM VISHWAKARMA SCHEME
VENDOR ASSESSMENT REPORT**

Part-A

1. NSIC Reference Letter and Date: NSIC/PMV/2023-24/WASHERMAN/07/(R3)
2. Item under Assessment: Washing Machine, model No. WSM1112AJ, Wybor
3. Trade Group: Washerman (Dhobi)
4. Case Number: N25010040 (Dated 06-01-2025 at Sr. No. 64)
5. Email Dated for Confirmation of visit: 06/01/2025



6. Name of Firm/ OEM's: Wybor Tech Pvt. Ltd. , 354-355, UDYOG KENDRA, ECOTECH-111, G. NOIDA - 201306, U.P.
7. Name of Bidder: M/s Vindhya Telelinks Limited, Udyog Vihar, P.O-Chorhata, Rewa
486006, MP and Office at Club 125, 6th Floor, Tower 'A', Plot No.- 3, 4 & 5, Sector Noida 201301, UP
8. Address of firm which is assessed: 354-355, UDYOG KENDRA, ECOTECH-111, G. NOIDA - 201306, U.P.
9. Inspecting Engineers Name: Deepak Singh
10. Date of Visit: 10/01/2025 & 11/01/2025 & 23/01/2025....

Part-B

C Capability-Manufacturing/Supply Facility

(Scope of the company activity/business model/manufacturing model)

	Item for Assessment	Tender Clause No.	Observation
2	Make in India for Class II local supplier. (20%)	Clause 4.6: Compliance with Make in India Requirement: All the tools/items supplied in the RFP must be complying with the Make in India requirement for class II local suppliers i.e. product shall be of Indian origin and local content shall be more than 20% for each of the tools/items. In this regard, OEM shall submit certificate	Make in India CA Certificate of more than 60% is enclosed.

It may not be within the domain of the petitioner to doubt the Vendor Assessment Report of RITES, muchless the domain of this Court in writ



jurisdiction to question the credibility of such Report as the Report is based on enquiry conducted by experts. The credibility, veracity and authenticity of such Report may have to be taken on the face value. In any case, neither the brochure of respondent no.3/OEM nor the specifications appended to the CA Certificate or the CA Certificate itself mentions local content less than 50% in order for the bid of respondent no.4 and respondent no.5 to be non responsive and declaring their technical bid as disqualified.

29. Thus, Ground (iii) also is answered in favour of the Corporation and respondent no.4 and respondent no.5 and the contrary arguments of petitioner are unpersuasive and unmerited.

30. Another argument raised by Mr. Sethi, learned senior counsel for the petitioner was with respect to the BEE Star Rating not being complied with by respondent no.4 and respondent no.5 inasmuch as, the RFP mandated Star Rating at 5 whereas the brochure of respondent no.3 of the product indicated Star Rating at 3. Thus, this being the admitted position, the technical bid of both respondent no.4 and respondent no.5 ought to be considered as non responsive and they be held to be technically disqualified. To that, Mr. Ashish Dholakia, learned senior counsel appearing for respondent no.3 and respondent no.4 submitted that though the brochure of respondent no.3/OEM uploaded on the GeM portal did indeed indicate star rating at 3, the GeM portal itself in the technical specifications - requirement against star rating indicated “NA, 1, 2, 3, 4 ,5 Or higher”. Subsequently as per the requirement of the RFP, the same was revised and the revised certification was submitted alongwith the technical Compliance Sheet as per Annexure VIII of the RFP clearly indicating BEE Star Rating at 5. He also relied upon the Vendor Assessment Report of the RITES to demonstrate that it was



only after the independent agency had inspected the offered product that such a positive report was generated. In the interest of brevity, we have not elaborated on every submission advanced by Mr. Dholakia, learned senior counsel for respondent no.3 and respondent no.4, although each has been duly considered.

31. At the first blush the contention raised by Mr. Sethi did appear to have some force in it, however, after perusing the material on record, the same is found unmerited. The initial technical specifications available on the GeM portal makes it clear that at that stage no specific star rating was called for. Subsequently, as the RFP requirement of 5 BEE Star Rating, respondent no.4 and respondent no.5 had submitted a revised Technical Compliance Sheet in Form Annexure VIII as per the RFP. The said technical Compliance Sheet handed over the bench by Mr. Dholakia, has been taken on record, which clearly demonstrates that the offered product was indeed having BEE Star Rating at 5, which is fully compliant of the terms of RFP. Since the document submitted by respondent no.4 and respondent no.5 in Annexure VIII clearly indicates the required star rating, we need not dilate further on the Vendor Assessment Report issued by RITES which too has reported the offered products to have BEE Star Rating at 5. Thus, this argument too is unpersuasive and untenable and holds no water.

32. As a last submission, Mr. Sethi, learned senior counsel for the petitioner also contended that the CA Certificate furnished by respondent no.4 and respondent no.5 as required in para 4.6 of the RFP is not valid since the same is not in the Format prescribed for furnishing CA Certificate for "Make in India" local content. He relied upon Chapter 9 of the Guidance Note of Local Content in Manufacturing issued by Cost Accountants in support of his contentions. We are not impressed by this contention. The RFP does not prescribe any formal format prescribing the



2025:DHC:3324-DB



manner in which the CA Certificate regarding local content in the offered product is to be furnished. In such circumstances, unless it is shown or demonstrated that the RFP or any of its condition incorporates or refers to such Guidance Note, the certificates cannot be treated to be invalid for the mere reason of not being in a particular format. Thus, this submission too, is untenable and unmerited.

33. From the above analysis it is clear that the issues framed above are to be held in favour of the respondents and thus, we find no substance in the arguments of the petitioner.

34. In view of the above, there is no merit in the writ petition and the same is dismissed along with pending applications, if any.

TUSHAR RAO GEDELA, J

DEVENDRA KUMAR UPADHYAYA, CJ

MAY 6, 2025/rl