



2025:DHC:3330-DB



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

% Judgment reserved on: 25.04.2025  
Judgment delivered on: 06.05.2025

+ W.P.(C) 3816/2025, CM APPLS. 17777-17778/2025

ATTAL PLASTICS .....Petitioners  
versus  
UNION OF INDIA& ORS. ....Respondent

**Advocates who appeared in this case:**

For the Petitioner: Mr. Avi Singh, Sr. Adv. with Mr. Shiven Verma and Mr. Shikhar Garg, Advocates

For the Respondent: Mr. Chetan Sharma, ASG, Mr. Sanat Kumar, Sr. Adv, Mr. Anurag Ahluwalia, Sr. Adv, Mr. Vikram Jetly, CGSC, Mr. Nishant Gautam, CGSC, Ms. Rukmini Bobde, CGSC with Mr. Amit Gupta, Mr. Saurabh Tripathi, Ms. Shreya Jetly, Tushar Jain, Mr. Vinayak Aren, Ms. Kanika Gupta, Mr. Vardhman Kaushik, Mr. Mayank Sharma and Mr. Vipul Verma, Advs with Mr. Rudra Paliwal and Mr. Amit Acharya, GP for UoI/NSICL. Mr. Milind Ramteka, Director, PM Vishwakarna, Ministry of MSMEs, GOI. Mr Kartikeya Tanton, Director, Planning and Marketing, NSICL. Mr. Rajesh Jain, Chief General Manager, NSICL.  
Ms. Nidhi Mohan Parashar, Advocate with Ms. Meghna Jandu, Mr. Amar Bajpayee, Mr. Shubham Ranakoti & Mr. Bharat, Advocates for Respondent No.3.

**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 writ petition has been filed under Article 226 of the Constitution of India, 1950, seeking quashing of the notice dated 26.01.2025, whereby the petitioner was disqualified from the Technical Bid as also the subsequent notice dated 31.01.2025, whereby the Representation letter dated 26.01.2025 of the petitioner was rejected. The petitioner further seeks quashing of the notice dated 26.01.2025, whereby the respondent no.3/Pragyawan Technologies Private Limited (hereinafter referred as “*respondent no.3*”) was held to be technically qualified. A further prayer has been made to debar/blacklist respondent no.3 for committing fraud by submitting fraudulent documents to participate in the tender issued by respondent no.2/National Small Industries Corporation Limited (hereinafter referred as “*Corporation*”) and to reconsider and re-evaluate the Technical Bid of the petitioner.

2. The facts germane to the issue at hand and culled out from the present petition are as under:-

(i) The petitioner claims to be a proprietorship firm, duly registered under the Micro, Small and Medium Enterprises Development Act, 2006, having its registered office at 3-4-468, Ground Floor, Opp. Reddy Women’s College, Barkatpura, Hyderabad- 500027, and stated to be engaged in the manufacturing and sale of non-woven bags, school bags, duffle bags, laptop cases, luggage and trolley bags, delivery bags, recycled cotton bags, school belts and kits.

(ii) Respondent no.1 is the Union of India through the Ministry of Micro, Small and Medium Enterprises (MSME). The Corporation is an ISO 9001:2015 certified Government of India Enterprise under



respondent no.1. Its objective is to promote, aid, and foster the growth of micro, small, and medium enterprises in the country, and it operates through a countrywide network of offices and Technical Centres.

(iii) Respondent no.3 is stated to be a private limited company, incorporated on 18.07.2011, registered in the category of “small-enterprises”, and as per the Udyam Certificate, has declared its major activity as “manufacturing”.

(iv) On 03.08.2024, the Corporation issued a Request for Proposal (RFP) (on behalf of the Ministry of MSME) bearing Reference No. NSIC/PMV/2023-24/WASHERMAN/07/(R3) for Selection of Vendor for supplying Tool Kits for Washerman (Dhobi) under Prime Minister Vishwakarma Scheme. The Corporation subsequently issued 3 Corrigendum amending/correcting certain clauses of the RFP.

(v) It is the case of the petitioner that on 19.12.2024, both the petitioner and respondent no.3 had participated in the subject tender and had submitted its online bid as per the terms and conditions of RFP. However, when the Technical Bid was opened on 26.01.2025, the petitioner was disqualified *vide* notice dated 26.01.2025 on the alleged ground that the invoices submitted by the petitioner reflect supply to one vendor only, which is not valid as per “retail experience”.

(vi) Aggrieved thereof, the petitioner submitted a representation to the Corporation *vide* letter dated 26.01.2025 for re-evaluation of its technical bid. However, considering the objections so raised regarding the invoices submitted not fulfilling the retail experience criteria, the petitioner re-submitted the documents under “*Private/Institutional Sales*” and requested the Corporation to re-evaluate the Technical Bid



in terms of the re-filed documents.

(vii) However, the representation of the petitioner was rejected by the Corporation *vide* notice dated 31.01.2025 simply on the ground that “*new documents submitted with representation are not acceptable*”.

(viii) It is the petitioner’s case that despite the clear provisions against the corrupt and fraudulent practices, the respondent no.3 was able to continue in the said tender because the Corporation failed to verify the documents/information submitted by the respondent no.3.

(ix) Aggrieved by the aforesaid, the petitioner had also submitted a representation dated 10.03.2025 with the Corporation requesting it to take strict action as per the terms of the tender. It is the petitioner’s case that since no action has been taken so far by the Corporation, the petitioner has approached this Court by way of the present petition.

### **CONTENTIONS OF THE PETITIONER:-**

3. Mr. Avi Singh, learned Senior Counsel briefly referred to the background facts and events leading to the filing of the present writ petition. He submitted that the original RFP did not explicitly define the term “*Retail sales*”, as requiring multiple vendors. He submitted that after being technically disqualified, the petitioner had made a representation to the Corporation, explaining that the sale, distribution or delivery of a commodity even to an individual vendor can be termed as “Retail sale” as per Rule 2(1) of the Legal Metrology (Packaged Commodity) Rules, 2011. To submit further, he stated that “Retail sales” as per definition include sales to individuals or groups for consumption, irrespective of the number of vendors. That, based on the said definition, the petitioner had submitted



documents and invoices under the retail sales experience criteria.

4. Mr. Singh further contended that despite the explanation provided by the petitioner in its representation, considering the objections so raised, the petitioner re-filed some additional documents to substantiate its experience in “Private/Institutional Sales” as per the tender requirement and requested the Corporation to re-evaluate the Technical Bid of the petitioner. Learned counsel submitted that the Corporation rejected the representation of the petitioner on the flimsy pretext that “*new documents submitted with the representation are not acceptable*” without considering the validity of such documents. He also forcefully submitted that though he may have filed the documents under the wrong head, i.e., Retail Sales, however, the RFP was absolutely silent about the substantial difference between “Retail sales” and Private/Institutional sales”, nor were those phrases defined anywhere. His contention also was that the qualifying eligibility criteria was the number of items/units of the offered product sold e.g., in this case the qualifying criteria was 22500 number of items/units which was fully satisfied by the figure of 54909 units sold by the petitioner during the relevant year. This was neither denied nor did the Corporation clarify that the sale criteria had not been satisfied by the petitioner.

5. Learned senior counsel stoutly contended that the Corporation is under an obligation to respond with detailed reasons as to why the fresh documents, which, according to him, accord with the “Private/Institutional sales” requirement, were overlooked. He further drew our attention to Clause 7.3.5 of the Manual for Procurement of Goods, 2017, issued by the Government of India, which also provides that in case of any shortfall in documents with respect to the eligibility criteria, the same can be asked for and considered.



6. Dilating his argument on the submission with respect to the two CA certificates, learned senior counsel vociferously contended that the Corporation had assumed that the two CA certificates were forged, merely on the basis of them having been issued on the same date. However, it had failed to consider that a CA can issue two certificates on the same day. He referred to the 2 CA certificates dated 03.09.2024, one placed at page 144 and the other at 300 of the paperbook in support of his contention. He further submitted that the question whether there is a forgery committed or not, could have easily been ascertained by the Unique Document Identification Number (hereinafter referred as “UDIN”) ascribed to such certificates and proof of their validity, being a mandatory requirement for all practicing Chartered Accountants (hereinafter referred as “CA”). In the instant case, he submitted that both the certificates have a valid UDIN, which lists both the certificates, and the same could have been easily clarified by the Petitioner, if an opportunity to be heard had been provided to it before rejecting its Technical Bid and subsequent representation.

7. Learned senior counsel further submitted that the respondent no.3’s bid for RFP dated 03.08.2024 was accepted without verifying its document, while in the past, respondent no.3 had participated in many of the RFPs issued by Corporation by submitting fraudulent documents.

8. To illustrate the alleged fraud committed by respondent no.3, learned senior counsel submitted that though in its Udyam Certificate, respondent no.3 has stated its major activity as that of ‘*manufacturing*’, none of the units mentioned in the Udyam certificate of the respondent no.3 are manufacturing units, and a few of them do not even belong to the respondent no.3. In support thereof, learned senior counsel drew our attention to the photographs annexed to the writ petition.



9. Another contention learned senior counsel made was with respect to the non grant of exemption from furnishing EMD on the basis that the petitioner is also a small-scale industry under the MSME Guidelines. He submitted that the Petitioner *vide* email dated 08.01.2025 informed the Corporation that it fulfils all the criteria for exemption from furnishing the earnest amount in the form of EMD and such exemption should also be extended to it, however, the Corporation has remained non responsive even till date.

10. He further submitted that Clause 4.5 of the RFP requires that the bidder has to be either a manufacturer or a supplier. He relied upon Clause 10 of the Public Procurement Policy for Medium and Small Enterprises Order, 2012 dated 23.03.2012 which provides for exemption to MSE from payment of EMD. He submitted that the instant tender and requirement of EMD therein is governed by the General Terms and Conditions dated 17.07.2024, which under part (m) sub-clause (xiii) of Clause 4 lays down two conditions that are to be read conjointly for a Micro and Small Enterprises (MSEs) in order to seek exemption from furnishing Bid Security viz., **(i)** MSEs which have valid Udyam Registration; and **(ii)** MSEs which are manufacturer of the offered Product or Service. He submitted that being a manufacturer is an essential requirement for exemption from depositing EMD.

11. Furthermore, as per the latest Udyam registration certificate of the respondent no.3, the total number of employees is shown as 16 persons, further evidencing that the operations of the respondent no.3 could not be related to manufacturing, which is usually a labour-intensive activity. Therefore, respondent No.3 has fraudulently, not only participated in the tenders but also sought an exemption from depositing earnest money.



12. Learned senior counsel submitted that the Corporation in its counter affidavit stated that respondent no.3 is exempt as per the Udyam Certificate, however, respondent no.3 itself submitted they were exempt as per the certificate issued by the Corporation. However, the claim that respondent no.3 is a manufacturer with its factory at Noida has been successfully falsified by the petitioner. He also contended that in the Major Activity referred in the Udyam Certificate, respondent no.3 has entered “manufacturing” which is self serving declaration that has not been verified by anyone.

13. Mr. Singh, learned senior counsel thus submitted that keeping in view the aforementioned undeniable facts the petitioner’s Technical Bid ought to be evaluated taking into consideration the fresh documents filed by it along with the representation and simultaneously enquire into the forged and fabricated documents furnished by respondent no.3 in the RFP.

**CONTENTIONS OF THE CORPORATION:-**

14. Mr. Anurag Ahluwalia, learned senior counsel submitted at the outset that the petitioner has deliberately not impleaded the successful bidder as a party respondent in the present writ petition in stark violation of the settled law that in contractual matters, all parties who may or would get adversely impacted ought to be impleaded. In fact, the petitioner has, curiously, arrayed respondent no.3, who is L-6 and an unsuccessful bidder, as party respondent no.3. It appears that the error is not innocent but motivated. He urged that an adverse inference against the petitioner be drawn on that count.

15. Learned senior counsel referred to Clause 4.4 of the RFP to submit that the requirements for establishing experience and past performance of



the bidder are clearly specified and there is neither any ambiguity nor any confusion as has been sought to be projected by the petitioner. The second part of sub-clause (a) of Clause 4.4 mandates that the bidder or OEM should have sold atleast 22,500 number of tools/items, which MAF is required, to Private/Institutional or Retail or any other institution in any one of the last five financial years. He submitted that to substantiate the experience and past performance in order to evaluate the technical eligibility, part (ii) of sub-clause (b) of Clause 4.4 stipulates the documents required to demonstrate eligibility by way of sales to Private/Institutions and CA certificate as per Annexure V-(B) duly filled in details of work orders/contract agreements/purchase orders/LOAs/LOIs etc. Under the Retail Sales head, in part (iii) of the said sub-clause, the documents required to demonstrate eligibility, is the CA certificate as per Annexure V-(B) and duly filled in details of Bill/Voucher No. and date, quantity, unit, amount etc. Thus, according to learned senior counsel, there was no confusion as to the nature of documents that were required to be submitted under the head of either Private/Institutional Sale or Retail Sale.

16. Further, he submitted that the petitioner had furnished, along with its bid, the Work Experience Certificate showing Retail Sale of the FY 2022-23, which indicated a sale made for a quantity of 54,909 items, the same was to only one single entity, whereas the requirement under the head of Retail Sales obviously indicates sales to more than one entity. Thus, the CA Certificate indicating experience to a single entity under the head of Retail Sales was found to be unacceptable, and resulted in the petitioner being technically disqualified on the ground that *“In Annexure V(B) – Under Retail experience submitted by Bidder, all invoices reflect supply to one vendor only which is not valid as retail experience. Further, no supporting*



*documents are submitted for private/institutional sale*”. Learned senior counsel stated that the petitioner in Annexure-V(B) under the retail experience had incorporated the institutional experience, as all invoices reflect supply to one vendor only which is invalid as “retail experience” and further no supporting documents were submitted for Private/Institutional Sales. Further, to the above, he contended that the petitioner, without any context of the definition of “retail sales” used in the Legal Metrology (Packaged Commodity) Rules, 2011, has tried to draw a direct inference with the retail sale requirement under the present RFP. He stoutly contended that the said definition provided under the said rules can have no application in the present situation.

17. So far as the fresh CA Certificate furnished by the petitioner along with its representation dated 27.01.2025 is concerned, learned senior counsel submits that though the said certificate referred to Private/Institutional Sale of the same quantity of products, however since it was furnished after being technically disqualified, the same was rejected *vide* reply dated 31.01.2025 clearly specifying that “*New documents submitted with representation are not acceptable*”. He also stoutly contended that no such document could have been entertained by the Corporation not only on the ground that the petitioner stood technically disqualified as on 26.01.2025, but also that the Corporation was not under any obligation to consider any such documents after such disqualification. Additionally, he stated that it would not only be unfair to other similarly situated bidders who may have been declared technically disqualified, but would also jeopardise the RFP/Bid Process.

18. So far as the two CA certificates furnished by the petitioner are concerned, learned senior counsel submitted that the said Annexure-V(B)



was required to be issued by the CA of the petitioner, which was submitted as per the Annexure-V(B) in the name of *H. Arora & Associates* dated 03.09.2024. However, the Annexure-V(B), which was submitted by the petitioner post its disqualification on 26.01.2025, was an amended one issued by the same CA, namely, *H. Arora & Associates*, which reflects that the date of issuance of the same was also 03.09.2024. He contended that for a CA who has issued a particular certificate on 03.09.2024 enlisting a product under "Retail Sales", it would be well nigh impossible and possibly illegal, to list the same product under "Private/Institutional Sales" on the same day. The 2<sup>nd</sup> Certificate dated 03.09.2024, which was furnished alongwith the representation dated 26.01.2025, casts grave doubt and suspicion about the genuineness and authenticity of the Certificate. Thus, the conclusion that the same may be forged and fabricated was rightly reached by the Corporation.

19. Choosing to compare the CA Certificate in respect of details under the head of Retail Sales for FY 2022-23, learned senior counsel submitted that the sale indicated therein was made to a single entity namely, Daenyx International Pvt. Ltd for a total quantity of 54,909 units. He argued that on a close observation, under the head "*Product Description*", model name of the washing machine is "*Daenyx 6.5 Glory*" which establishes that the OEM i.e., Sun Home Appliances Pvt. Ltd., and the Client i.e., Daenyx International Pvt. Ltd are run by the same persons in different names. He contended that an online search clearly established that both the aforesaid Companies had only two Directors, namely, Ms. Gurmeet Kaur Kalra and Mr. Jasraj Singh Kalra, who are common to both. Premised on the aforesaid, learned senior counsel submitted that this would violate part (iv) sub-clause (b) of Clause 4.4 of the RFP which categorically bars a



“transfer” to be considered as sales for the purpose of meeting the technical criteria. Learned senior counsel was at great pains to explain that this transaction, if the veil is lifted, would establish that this is not a sale but a pure case of inter-company transfer. Thus, not fulfilling the technical criteria entailing disqualification of the Technical Bid of the petitioner.

20. Further, to the submission of the petitioner regarding the respondent no.3 neither being the manufacturer nor the supplier, learned senior counsel countered this by stating that the said aspect also applies to the petitioner since even the petitioner is neither the manufacturer nor supplier of Tool Kits, however, the bid of the petitioner was not disqualified for this reason. Additionally, he placed reliance on Clause 5.4 of the RFP, which required that the bidder could be the direct manufacturer of the tool kit or could also bid as a supplier, subject to providing a valid MAF from its OEM. He vehemently contended that since the respondent no.3 had furnished a valid MAF from its OEM, it was declared technically qualified and thus, the allegation made by the petitioner is completely baseless.

21. He further submitted that in Clause 3(f) of the Instructions to Bidders (ITB) of the RFP, it is categorically provided that bidders shall be exempted from submission of EMD as defined in Public Procurement Policy, 2012 issued by the Ministry of MSME. Further, Clause 10 of the said policy provides that Micro and Small enterprises are eligible for exemption from submission of the earnest money. Regarding the same, learned senior counsel submitted that the respondent no.3 had furnished the Udyam Certificate issued by the Ministry of MSME as per Annexure-II(B), which reflects that respondent no.3 falls under the category of “Small industry” and thus, was exempted from submitting EMD. Moreover, he stated that the Corporation has no reason to disbelieve the Udyam



Certificate furnished by the respondent no.3.

22. Mr. Ahluwalia, learned senior counsel also contended that the scope of the writ petition does not extend to settling personal rivalry between the private parties and thus, this petition deserves to be dismissed solely on this ground. He also emphasised that about, 147877 artisans have already registered themselves under the scheme to avail benefits which are to be conferred or granted to them and this type of frivolous litigations are delaying and protracting welfare measures sought to be extended by the Corporation.

**CONTENTIONS OF THE RESPONDENT NO.3/PRAGYAWAN TECHNOLOGIES PRIVATE LIMITED:-**

23. At the outset, Ms. Nidhi Parashar, learned counsel for the respondent no.3 stated that the petitioner had deliberately not arraigned M/s Vindhya Telelinks Ltd., and M/s ITI Ltd., who were declared as L1 and L2 bidders. She submitted that the non-impleadment of the said entities constitutes a material defect, which merits outright dismissal of the instant writ petition. She also vehemently contended that respondent no.3 is placed at L-6 in the list of successful bidders and cannot be granted any award since it is restricted only to L-1 and L-2, thus, respondent no.3 is not required to be made a party in the instant petition.

24. Learned counsel submitted that the Udyam Certificate placed on record by the petitioner is sufficient for respondent no.3 to be granted exemption from furnishing EMD apart from being entitled under part (m)(viii) of sub-clause (xiii) of Clause 4 of the GeM GTC for exemption from EMD. Thus, according to her, the petitioner cannot make any grievance out of it. Moreover, she contends that the petitioner is itself a violator inasmuch as, even before the present writ was filed, the petitioner



had withdrawn its EMD, meaning thereby it has no locus to level false and frivolous allegations against respondent no.3. This also shows that the petitioner had accepted its disqualification without any demur.

25. Moreover, learned counsel also contended that this Court in writ jurisdiction would not appreciate disputed questions of facts and thus the entire thrust of the petitioner being predicated thereon, the petition deserves to be dismissed.

**ANALYSIS AND CONCLUSION:-**

26. Having heard the learned Senior Counsel for the parties and meticulously perusing the documents on record, we are not inclined to interfere in the present writ for the following reasons.

27. Before we examine the contours of this case, it is relevant to consider the importance of certain dates. The RFP was notified on 03.08.2024; the last date for submission of bid was 20.12.2024; the technical bids were opened on 26.01.2025 and the financial bids were opened on 31.01.2025. It is to be noted that petitioner's technical bid was declared to be disqualified keeping in view the assertion by the Corporation that the CA certificate regarding MAF issued by the OEM regarding retail sales to one entity did not fall within the eligibility criteria stipulated in part (iii) sub-clause (b) of Clause 4.4 of the RFP. Subsequently, on 31.01.2025, not only were the financial bids opened, even the list of successful bidders who were declared as L-1 and L-2 was also notified. Yet, the petitioner did not approach this court till almost two months elapsed and then filed the present writ petition on 21.03.2025. It is also significant to note that in the meanwhile, the petitioner had already withdrawn the EMD furnished to the Corporation. As a *sequitor*, it can be inferred that the petitioner has unequivocally accepted his technical disqualification without a protest or



demur. In such circumstances, it is not required for this Court to entertain the writ petition. However, since the matter has been heard at length along with other similar matters, we proceed to render our opinion on the arguments addressed.

28. A bare perusal of Clauses 7.3.4 and 7.3.5 of the Manual for Procurement of Goods, 2017 appears to indicate that if there are any minor error/discrepancies or non-submission of copies of certain documents, the tender issuing authority may, if it so desires, seek clarification from the bidders who would have a right to furnish clarification or if need be the requisite documents in order to satisfy the tender issuing authority. For clarification para 7.3.4 and 7.3.5 of the Manual for Procurement of Goods, 2017 read thus:

***“7.3.4 Minor Infirmary/Irregularity/Non-conformity***

*During the preliminary examination, some minor infirmity and/or irregularity and/or nonconformity may also be found in some tenders. Such minor issues could be a missing pages/attachment or illegibility in a submitted document; non-submission of requisite number of copies of a document. There have been also cases where the bidder submitted the amendment Bank Guarantee, but omitted to submit the main portion of Bid Document. The court ruled that this is a minor irregularity. Such minor issues may be waived provided they do not constitute any material deviation (please refer to Para 7.4.1 (iv)) and financial impact and, also, do not prejudice or affect the ranking order of the tenderers. Wherever necessary, observations on such ‘minor’ issues (as mentioned above) may be conveyed to the tenderer by registered letter/speed post, and so on, asking him to respond by a specified date also mentioning therein that, if the tenderer does not conform Procuring Entity’s view or respond by that specified date, his tender will be liable to be rejected. Depending on the outcome, such tenders are to be ignored or considered further.*

***7.3.5 Clarification of Bids/Shortfall Documents***

*During evaluation and comparison of bids, the purchaser may, at his discretion, ask the bidder for clarifications on the bid. The request for clarification shall be given in writing by registered/speed post, asking the tenderer to respond by a specified date, and also mentioning therein that, if the tenderer does not comply or respond by the date, his tender will be liable to be rejected. Depending on the outcome, such tenders are to be ignored or considered further. No change in prices or*



*substance of the bid shall be sought, offered or permitted. No postbid clarification at the initiative of the bidder shall be entertained. The shortfall information/documents should be sought only in case of historical documents which pre-existed at the time of the tender opening and which have not undergone change since then. These should be called only on basis of the recommendations of the TC. (Example: if the Permanent Account Number, registration with sales tax/VAT has been asked to be submitted and the tenderer has not provided them, these documents may be asked for with a target date as above). So far as the submission of documents is concerned with regard to qualification criteria, after submission of the tender, only related shortfall documents should be asked for and considered. For example, if the bidder has submitted a supply order without its completion/performance certificate, the certificate can be asked for and considered. However, no new supply order should be asked for so as to qualify the bidder.”*

Nothing in either of the clauses of the Manual for Procurement of Goods, 2017 appear to indicate that a bidder whose document has been found to be lacking in merit/substance, can be permitted subsequently to, by way of clarification, replace such document which was essential as per the eligibility criteria and not furnished initially in accordance with the requirements of the RFP. Essentially, such clauses clearly appear to come to the rescue of the genuine bidders who may have made inadvertent minor errors of the nature specified therein, to rectify or clarify only such minor discrepancies. Simultaneously, the said clauses would surely not aid a bidder whose document, furnished in respect of an essential eligibility criteria, itself is found to be lacking in substance.

29. Applying this to the facts of the present case, it is observed that the CA Certificate dated 03.09.2024 furnished by the petitioner along with its bid, under the Retail Sales head did not fulfill the criteria specified in sub-clause (b) of Clause 4.4 predicated whereon, the petitioner was declared technically disqualified. Subsequently, post such disqualification, by way of a representation dated 26.01.2025, the petitioner enclosed therewith a fresh CA Certificate showing sales under the Private/Institutional Sales



head, attempting to shift the category itself under which it applied. These are two different certificates indicating two separate categories, which cannot be said to be a minor mistake or a discrepancy which could be subsequently rectified or clarified. No doubt, had the representation been submitted at the preliminary inquiry stage, possibly, the petitioner's submission would have some force in it. That having not been done in time, the said submission relying upon Clauses 7.3.4 and 7.3.5 of the Manual for Procurement of Goods, 2017 is unmerited.

30. Apart from the above, we have also perused the CA Certificate dated 03.09.2024 furnished by the petitioner alongwith its bid indicating Retail Sales for the FY 2022-23. It clearly indicates sale only to one entity comprising 54909 units of the offered product. The interpretation of the Corporation that the Retail Sale would take within its ambit sale transactions to multiple customer/consumers or even multiple entities not restricted only to a single entity, appeals to us in view of the requirement specified under the Retail Sales head. The Retail Sales as mentioned in part (iii) sub-clause (b) of Clause 4.4 of the RFP regarding experience and past performance required the bidders to provide a CA Certificate as per Annexure V(B) duly filled with details of Bill/Voucher No. and date, quantity, unit, amount etc. This, when compared with the requirements of documents in support of private/institutional sales, clearly shows the distinction. In part (ii) sub-clause (b) of Clause 4.4 regarding Private/Institutional Sales what is required is a CA Certificate as per Annexure V(B), duly filled with details of work orders/contract agreements/purchase orders/LOAs/LOIs, along with a certificate for successful completion/execution. If one were to compare part (ii) with part (iii) it would bring to fore that retail sales would take within its ambit



transactions/sales to multiple customers or even multiple entities unlike private or institutional sales which could or may be only to a single entity and yet would fulfill the eligibility criteria. The reason is not far to see. In a private/institutional sale, the ultimate object could be twofold, one for internal or home consumption and two, for further retail sales. Whereas the retail sale could be to either multiple customers or to multiple entities. This appears to be the most plausible reason to draw distinction between private institutional sales and retail sales. Otherwise, there would be no distinction, and it would be otiose to have two separate and distinct heads for the same experience and past performance. The Black's Law Dictionary defines "Retail" as under:-

*"The sales of goods or commodities to ultimate consumers, as opposed to the sale for further distribution or processing."*

The petitioner relied upon the definition of "Retail Sale" contained in Rule 2 (1) of the Legal Metrology (Package Commodity) Rules, 2011, which reads thus:

*"2.Definitions*

*(1) "retail sale", in relation to a commodity, means the sale, distribution, or delivery of such commodity through retail sales shops, agencies, or other instrumentalities for consumption by an individual or group of individuals or any other consumer."*

Rather than finding any distinction as has been attempted to be projected by the learned senior counsel for the petitioner, we find the definition of "Retail" as contained in the Black's Law Dictionary not distinctive from the one contained in Rule 2(1) of the Legal Metrology (Package Commodity) Rules, 2011. In fact, the said Rules also clearly refer to retail sales through shops, agencies, or other instrumentalities for consumption by an individual or group of individuals or any other consumer. Meaning thereby, it refers to sales to more than one individual



or entity. Thus, the submission of learned senior counsel for the petitioner on the aforesaid is found to be unpersuasive and unmerited.

31. Yet another submission by the learned counsel for the Corporation was that the sale transaction between the “Sun Home Appliances private Limited” and “Daenyx International Private Limited” was not an actual sale but an inter-company transfer/stock transfer premised on the basis that 2 directors of the aforesaid entities are common. In law, there is no quarrel with the proposition that companies are recognized as juristic entities and even if two companies have common Directors, they would ordinarily be treated as two separate and independent juristic entities. The Corporation has not placed on record any document to substantiate that the transaction would amount to transfer leading to disqualification under Clause 4.4 providing for eligibility criteria for participating in the RFP. In the absence of any such document, we are not inclined to accept the arguments addressed on behalf of the Corporation which appears to be based on inferential reasoning. However, that said, having regard to the analysis and conclusion reached by us on merits hereinabove, we do not think that this issue would have any bearing on the merits of the matter nor does it propel us to have any different opinion. Thus, whether the transaction referred to above, is “actual sale” or “transfer”, would be irrelevant to render an opinion on, given the facts and circumstances of the case.

32. Mr. Singh, learned senior counsel contended that the grant of exemption from furnishing EMD to the respondent no.3 and non grant of the same facility to the petitioner despite being registered as a Small Scale Industry, is violative of the right of the petitioner as also abuse of such authority to grant that benefit to respondent no.3 whose documents are suspicious and not valid. We are not impressed with the said argument for



the reason that the genuineness and authenticity of the Udyam Certificate issued by the Corporation in favour of respondent no.3 cannot be doubted by this Court as it was for the Corporation to check and verify the genuineness of documents and once accepted as genuine, this court under Article 226 of the Constitution of India, surely cannot wade into the territory of deciding disputed questions of facts, if at all. So far as the submission of the petitioner as to whether there does or does not exist a factory in the premises as mentioned in the Udyam Certificate is concerned, the said issue too is a disputed question of fact and for the aforesaid reason cannot be appreciated by this Court, particularly when the Corporation had itself issued and accepted the said certificate as valid. In fact, the photographs placed on record further affirm the issue to be one falling within disputed questions which cannot be decided by us. Thus, we are not persuaded by the said submission and find the same unmerited and reject it.

33. So far as the contention regarding non grant of exemption from furnishing EMD despite falling within the definition of MSE as a small scale industry is concerned, we find from the record that the petitioner had in fact furnished the requisite EMD and also that post disqualification the said EMD has already been withdrawn by it. Having regard to the fact that the petitioner had voluntarily furnished the EMD without any protest or demur and had also withdrawn it post disqualification, the argument seems to be proceeding only for academic purposes. Thus, the question of grant or non-grant of exemption from furnishing EMD being a pure academic exercise having no consequences whatsoever as on date and in view of the aforesaid fact, we are not inclined to traverse this controversy.

34. It is intriguing to note that the petitioner has arrayed respondent no.3 who, though was technically qualified, yet, after the financial bids were



opened was declared as L-6 in the list of successful bidders and not the L-1 and L-2. We note that according to the RFP only L-1 and L-2 were to be awarded the contract in the ratio of 70:30 between L-1 and L-2, in that order. In our considered opinion, respondent no.3 who was declared as L-6 is not a party which is either proper or necessary to be arrayed in the present writ petition and it appears that it has been made party-respondent with an oblique motive. It is trite that in a dispute pertaining to tenders relating to public procurement by the government, the successful parties are mandatorily required to be arrayed as parties to the petition, lest the outcome of the said petition prejudices an unsuspecting and innocent party. Thus, whether the respondent no.3 was granted exemption from furnishing EMD overlooking false or fabricated documents or not, could not form the subject matter of the present petition. We are therefore, of the considered opinion that this submission in the context of respondent no.3 does not require any opinion or observation by us and stands rejected.

35. In view of the above, we find no reasons to interfere or interdict with the action taken by the Corporation in technically disqualifying the petitioner and find no merit in the writ petition, which is dismissed, along with the pending applications, if any.

**TUSHAR RAO GEDELA, J**

**DEVENDRA KUMAR UPADHYAYA, CJ**

**May 6, 2025/ms/rl**