



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

% Judgment reserved on: 25.09.2025  
Judgment delivered on: 08.10.2025

+ W.P.(C) 7074/2025 & CM APPL No.31979/2025

LOMASH SLURRY TECH PRIVATE LIMITED .....Petitioner

versus

UNION OF INDIA & ORS. ....Respondents

**Advocates who appeared in this case:**

For the Petitioner: Mr. Shubham Gupta and Ms. Anushka Dagar,  
Advocates

For the Respondents: Mr. Vikram Jetly, CGSC with Ms. Shreya Jetly,  
Advocate for R-1/UOI.  
Mr. Santosh Kumar, Standing Counsel with Mr.  
Devansh Malhotra and Mr. Adithya Ramani,  
Advocates for R-2/NHAI.

**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. The present petition is filed under Article 226 of the Constitution of India, 1950, seeking quashing of the rejection of the petitioner's bid by respondent no.3/National Highways Authority of India (hereinafter referred to as "NHAI") at the technical evaluation stage, communicated *vide* letter no. NHAI/RO/CHD/11011/PD-AMB/PAN-JAL/NH-1/RFP/1002/732 dated 16.05.2025, being violative of Articles 14 and 19(1)(g) of the Constitution of India. The petitioner further seeks directions to NHAI to conduct the technical evaluation of all bids afresh, including the petitioner's bid, strictly in



accordance with the tender conditions. The petitioner also prays for a direction to NHAI to duly consider its Work Experience Certificates in terms of the tender documents.

2. The petitioner states that it was incorporated in the year 2004 under the provisions of the Companies Act, 1956, and is engaged in the business of providing advanced road construction and maintenance technology services. Its specialization includes micro-surfacing, full-depth reclamation, and soil stabilization, aimed at enhancing the durability and service life of roads.

3. NHAI issued a Notice Inviting Tender (NIT) dated 12.03.2025, calling for bids from prospective vendors for the project titled *“Six-laning of Panipat-Khanna section of NH-1 from km. 96.000 to km. 272.000 in the States of Haryana and Punjab Undertaking rectification works through BC overlay and microsurfacing at various locations along the project highway.”*

4. The petitioner submitted its bid on 01.04.2025 in due compliance with the terms and conditions of the Request for Proposal (RFP). On 30.04.2025, NHAI issued a communication seeking certain clarifications regarding the Work Experience Certificate (WEC) submitted by the petitioner, which had been issued by a private entity instead of the *“Prime Employer.”* In response, the petitioner submitted a clarification letter dated 07.05.2025.

5. However, *vide* letter dated 16.05.2025, NHAI rejected the petitioner’s bid at the technical evaluation stage, *inter alia*, on the ground that the WECs issued by Jaypee Infrastructure Limited for the petitioner’s work on the Yamuna Expressway Project were not issued by an *“Authority”* or *“Prime Employer.”* NHAI further held that the WEC submitted was not in conformity with clause 1.3.1(b) of section IX of the RFP. Aggrieved by the said rejection, the petitioner has filed the present writ petition.

6. Mr. Shubham Gupta, learned counsel for the petitioner submits that as



per the eligibility condition of the subject tender, the experience and turnover was specified in clause 1.3. Inviting attention to clause 1.3.1, he submits that the bidder was to provide documentary evidence of having been actively engaged in the civil construction works business during the last five years in the role of Prime Contractor, partner in joint venture or sub-contractor. According to him, clause 1.3.1 required only a document of the nature as specified. He submits that in pursuance thereto, the petitioner had placed on record a number of documents including those issued by M/s. AFCONS Infrastructure Limited as well as M/s. Jay Pee Infratech. Referring to the document dated 30.03.2021 issued by M/s. AFCONS, he submits that it has been clearly specified in the said contract document that the petitioner is a sub-contractor while AFCONS is the main contractor for the employer – Uttar Pradesh Expressway Industrial Development Authority. He forcefully contended that when this document is available on record before the NHAI, the disqualification of the technical bid is impermissible. Similarly, he also invited the attention of this Court to the certificate issued by M/s. Jay Pee Infratech dated 02.05.2025, wherein it has been categorically mentioned that the petitioner has executed the relevant works as Prime Contractor. He vehemently contended that when both documents clearly pointed out that the petitioner has executed the stipulated works both as a sub-contractor as also the Prime Contractor, the NHAI could not have disqualified the bid of the petitioner.

7. Predicated on the aforesaid clear documents and the recitals contained therein, learned counsel submits that the impugned order disqualifying the petitioner's bid may be quashed and set-aside, and the bid of the petitioner should also be considered for evaluation by the NHAI and for further participation in the financial bid.



8. Mr. Santosh Kumar, learned counsel appearing for the NHAI submitted that the petitioner has clearly not understood the requirement as specified in the tender conditions. According to the learned counsel, the bidder, to be qualified in the technical evaluation, should be a nominated or approved sub-contractor or, in other case, a Prime Contractor. According to him, none of the documents placed on record support the stand taken by the petitioner and, as such, the documents relied upon are of no consequence. Having regard to the documents not being evidence of the petitioner being either a Prime Contractor or a partner in a joint venture or even a sub-contractor, learned counsel contended that NHAI has rightly disqualified the petitioner's bid.

9. We have heard learned counsel for the petitioner as also Mr. Santosh Kumar, learned counsel for NHAI and perused the records of the case.

10. In our considered opinion, in the present controversy, we need to understand the purport of the words "*Prime Contractor or Partner in joint venture or sub-contractor*" occurring in clause 1.3.1 of the tender document. It would be worthwhile to extract clause 1.3 hereunder:

*"1.3 Experience and Turnover*

*1.3.1. Experience*

**(a) *The Bidder shall provide documentary evidence that it has been actively engaged in the civil works construction business during the last five years in the role of prime contractor or partner in joint venture or sub-contractor.***

*(b) Particular Construction Experience*

*The Bidder shall provide evidence that it has successfully completed or substantially completed within the last five years (commencing from the year [2019-201..), either of the following;*

<i>S. No</i>	<i>Similar Work During last five years</i>	<i>Acceptance of Similar Work</i>
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i.	<i>one similar completed work costing not less than amount equals to 80% each of estimated cost or Rs. 807.14 lacs.</i>	<i>The Similar Work constitutes experience of highways wherein DBM/BC or PQC/ DLC work amount shall be minimum 60% of the estimated cost i.e. Rs. 605.35 lac.</i>
ii.	<i>two similar completed works costing not less than amount equals to 50% each of estimated cost or Rs. 504.46 lacs.</i>	<i>The Similar Work constitutes experience of highways wherein DBM/BC or PQC/ DLC work amount shall be minimum 30% of the estimated cost i.e. Rs. 302.67 lac.</i>
iii.	<i>three similar completed costing not less than amount equals to 40% each of estimated cost Rs. 403.57 lacs.</i>	<i>The Similar Work constitutes experience of highways wherein DBM/BC or PQC/ DLC work amount cost Rs. 403.57 lacs shall be minimum 20% of the estimated cost i.e. Rs. 201.78 lac.</i>

***The Works may have been executed by the Bidder as prime contractor or proportionately as member of Joint Venture or nominated/ approved sub-contractor.***

*Substantially completed works means those works which are at least 90% completed as on the date of submission (i.e. gross value of work done up to the last date of submission is 90% or more of the original contract price) and continuing satisfactorily. For these, a Certificate from the employer shall be submitted along with the application incorporating clearly the name of the work, Contract value, billing amount, date of commencement of works, satisfactory performance of the Contractor and any other relevant information.*

*In case a project has been executed as a JV by two or more firms, weightage towards experience in the project would be given to the JV partners in proportion to their participation in the Joint Venture.*

*The escalation factors as mentioned in para 1.2 shall be applied on the cost of completion.”*

**(emphasis supplied)**

Sub-clause (b) of clause 1.3.1 of the subject tender stipulated that, “*the works may have been executed by the bidder as prime contractor or proportionately as member of joint venture or nominated/approved sub-contractor*”. From the words as implied, the intention of the NHAI appears to



be that the bidder ought to be the Prime Contractor directly to the Tender Issuing Authority and not a Prime Contractor to another main contractor.

11. When we examine the certificate dated 02.05.2025 issued by M/s. Jay Pee Infratech, it is clear that the said organisation was executing work related to Yamuna Expressway Project for the Yamuna Expressway Authority, in relation where to, M/s. Jay Pee Infratech issued this letter/certificate naming the petitioner as Prime Contractor. It is thus manifest that the main contractor to the Yamuna Expressway Authority is M/s. Jay Pee Infratech and the petitioner, even though named as Prime Contractor, would otherwise, be a sub-contractor. It is not the case of the petitioner that it is the nominated or approved sub-contractor of Yamuna Expressway Authority. Thus, this certificate dated 02.05.2025 would not enure to the benefit of the petitioner. Accordingly, the said contention is unmerited.

12. So far as the document dated 30.03.2021 issued by M/s. AFCONS is concerned, the petitioner claims to have executed the said works as a sub-contractor. In this context, it is relevant to consider the nature of documents that were required to be submitted along with the bid document by the bidders. At page 261 of the Paper Book, the format prescribing the qualification information is specified in Form-3A. The Note at the bottom of the format stipulates that, *“a certificate of completion from the Principal Employer/Engineer must be enclosed”*.

13. A perusal of the document dated 30.03.2021 of M/s. AFCONS reveals that while M/s. AFCONS was the main contractor to the Employer i.e. Uttar Pradesh Expressway Industrial Development Authority, the petitioner was its sub-contractor. Though at the first blush, the contention of the petitioner based on the said document appeared to be attractive, yet, on a closer scrutiny, the same is found unpersuasive. This is for the reason that though the



petitioner claimed to be the sub-contractor, no document worth its salt has been produced by the petitioner to satisfy the Note as specified in Form-3A. In other words, a completion certificate from the Principal Employer or the Engineer which was necessary to be enclosed, was not furnished.

14. Even before us, learned counsel for the petitioner fairly admitted that no document nominating or approving the position of the petitioner as sub-contractor by the Principal Employer i.e. Uttar Pradesh Expressway Industrial Development Authority has either been furnished to the NHAI or placed on record of this Court. We are of the opinion that when the tender document employs the words “*Nominated/Approved sub-contractor*”, in the context in which the tender has been issued, the nomination or approval of the Principal Employer (Uttar Pradesh Expressway Industrial Development Authority) ought to have been enclosed with the bid documents for the purposes of eligibility. In the absence whereof, in our considered opinion, the document dated 30.03.2021 issued by M/s. AFCONS, would not suffice the eligibility criteria mentioned in clause 1.3.1 of the tender documents. Thus, even this submission based on the documents issued by M/s. AFCONS, is untenable and unmerited.

15. Ergo, we do not find any reason much less any cogent reasons to interfere with the impugned letter/order dated 16.05.2025 issued by the NHAI disqualifying the bid of the petitioner. Accordingly, the writ petition is dismissed alongwith pending applications without any order as to costs.

**TUSHAR RAO GEDELA, J**

**DEVENDER KUMAR UPADHYAY, CJ**

**OCTOBER 08, 2025/rl/kct**