



2026:DHC:1357-DB



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

% Judgment reserved on: 23.12.2025
Judgment delivered on: 17.02.2026

+ W.P.(C) 15035/2025, CM APPL Nos.61930/2025, 69414/2025 &
73155/2025

DIGITECH CALL SYSTEM PVT. LTDPetitioner

versus

INDIA POST PAYMENTS BANK LTD &ORS.Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Zoheb Hossain, Mr. Sanjeev Menon, Mr. Kartik Sabharwal, Mr. Pranjal Tripathi and Mr. Satyam, Advocates.

For the Respondents : Mr. Kirtiman Singh, Senior Advocate with Mr. Anm Kumar Shukla, Ms. Taha Yasin, Mr. Yasharth Shukla and Mr. A.Khandelwal, Advocates for R-1.

Ms. Shweta Bharti, Ms. Tejaswini Chandrasekhar and Ms. Nikita Sharma, Advocates for R-2.

Mr. Tushar Jain, Mr. Pradul Singhal and Ms.Kanika Gupta, Advocates for R-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 petition has been filed under Article 226 of the Constitution of India, 1950, *inter alia*, seeking the following reliefs:-



“a) Issue a writ, order, direction in the nature of certiorari, quashing and setting aside the following clauses of the RFP dated 04.09.2025 floated by the Respondent No. 1, through the GeM portal by way of Bid Document bearing Bid No. GEM/2025/B/6646167, for the selection of Service Provider for Contact Centre/Call Centre Operations:-

i. Sl. No. 1 of Section B of the Table at Annexure 3 of Clause 3.2 of the RFP which provides that the bidder should have a minimum average turnover of Rs. 50 Crores during the last three FYs, insofar as the same applies to Start-ups and MSEs;

ii. Sl No. 1 of Section C of the Table at Annexure 3 of Clause 3.2 of the RFP which provides that the bidder should be operating with an aggregate of at least 3000 agents for its Contact Centre Voice Operations based in India catering to domestic clients during the last FY, insofar as it applies to Start-ups and MSEs;

iii. Sl. No. 2 of Section C of the Table at Annexure 3 of Clause 3.2 of the RFP which provides that the bidder should have provided the inbound/outbound contact centre services in atleast two Schedule Commercial bank during three FYs totalling to minimum of 1000 agents, insofar as it applies to Start-ups and MSEs;

iv. Clause 3.15 of the RFP which allocates 50 out the total 110 marks to the past experience of the bidder;”

2. Brief facts shorn of unnecessary details are as follows:-

- a. Petitioner claims to be a duly incorporated company engaged in providing manpower and infrastructure services, including call centre services, for various projects. Petitioner is a registered Micro and Small Enterprise (hereinafter referred to as “MSE”) and is also registered with the Department for Promotion of Industry and Internal Trade (hereinafter referred to as “DPIIT”), Government of India, as a “Start-Up”.
- b. It is the case of the petitioner that respondent no.1/the tendering authority floated the impugned Request for Proposal (hereinafter referred to as



“RFP”) dated 04.09.2025, for selection of service provider for contact centre operations. The petitioner submitted pre-bid queries bringing the attention of the respondent no.1/the tendering authority to the relevant Rules and Guidelines of the Government of India with regard to granting exemption from minimum turnover and prior experience requirements for MSMEs/ Start-ups.

- c. The petitioner states that on 11.09.2025, the respondent no.1/the tendering authority published responses to the pre-bid queries stating that *“as IPPB is a completely digital bank, the operations involve handling of sensitive financial data and customer privacy, where uninterrupted service and proven large-scale experience are paramount. Considering the scale, sensitivity and public interest involved, exemptions or relaxations under the MSME/Startup category have not been provided in this tender. The eligibility criteria are, therefore, uniformly applicable to all prospective bidders.”*
- d. Aggrieved by the stance taken by the respondent no.1/the tendering authority, the petitioner submitted its representation dated 12.09.2025.
- e. The petitioner submits that on 16.09.2025, a bid was duly submitted alongwith relevant documents showing the MSE and Start-ups status of the petitioner.
- f. Aggrieved by the absence of exemption on turnover and prior experience related requirements in the impugned RFP as well as finding no response to its representation dated 12.09.2025, the petitioner approached this Court by way of the present petition.
- g. By way of order dated 26.09.2025, this Court issued notice in the present



petition and directed that further proceedings pursuant to the subject tender shall abide by the orders to be passed in this petition.

- h. It is the case of the petitioner on 26.09.2025, respondent no.1 proceeded to publish the results of the technical evaluation. Out of 5 bidders, 4 bidders, including the petitioner were disqualified. It is the further case of the petitioner, that it was disqualified on the basis of the same clauses of the RFP dated 04.09.2025 which have been challenged by way of the present petition.
- i. It is the case of the petitioner that on 04.10.2025, the respondent no.1 awarded the contract to M/s Digitide Solutions Private Ltd. (respondent no.3).
- j. The petitioner states that on 15.10.2025, the petitioner filed an application bearing CM APPL No.65971/2025 seeking amendment of the writ petition to include the challenge to the rejection of its bid and award of the contract to the respondent no.3 as well. The petitioner also sought impleadment of respondent no.3 as a party respondent in the present case.
- k. *Vide* order dated 17.10.2025, this Court allowed the amendment sought to the writ petition and also impleaded respondent no.3 as a party respondent.

CONTENTIONS OF THE PETITIONER:-

3. Mr. Zoheb Hossain, learned counsel appearing for the petitioner stated that the challenges raised in the present petition are to the following clauses of the RFP dated 04.09.2025:

- a. Sl. No. 1 of Section B of the Table at Annexure 3 of Clause 3.2 of the RFP which provides that the bidder should have a minimum average turnover of Rs.50 Crores during the last three Financial



Years (hereafter referred to as “FY”), insofar as the same applies to Startups and MSEs;

- b. Sl. No. 1 of Section C of the Table at Annexure 3 of Clause 3.2 of the RFP which provides that the bidder should be operating with an aggregate of at least 3000 agents for its Contact Centre Voice Operations based in India catering to domestic clients during the last FY, insofar as it applies to Start-ups and MSEs;
- c. Sl. No. 2 of Section C of the Table at Annexure 3 of Clause 3.2 of the RFP which provides that the bidder should have provided the inbound/outbound contact centre services in atleast two Scheduled Commercial banks during three FYs totalling to minimum of 1000 agents, insofar as it applies to Start-ups and MSEs
- d. Clause 3.15 of the RFP which allocates 40 out the total 100 marks to the past experience of the bidder.

4. He would submit that the challenge is also laid to the rejection of the bid of the petitioner by the respondent no.1 while relying on the aforesaid clauses under challenge and also assails the award of contract to respondent no.3.

5. Learned counsel submitted that the petitioner, by virtue of being a start-up, is entitled to relaxation both from minimum turnover and prior experience in the procurement process as per the rules and guidelines of the Central Government which has been denied on account of the unfair conditions forming part of the RFP and challenged herein. He submits that while the RFP on one hand provides for a purchase preference for MSEs, however on the other stipulates or requires an MSE to submit its turnover requirement, which, according to him, is impossible for an MSE to achieve. He elaborated the said submission further by



pointing out to the requirement of turnover in the RFP which stipulated that an eligible bidder is required to have a minimum average turnover of Rs.50 Crores in FYs 2021-22, 2022-23 and 2023-24. Equally, an MSE to be eligible also, necessarily required a turnover not exceeding Rs.50 crores in those FYs. He stated that it was only on 21.03.2025 that the maximum turnover cap for a micro enterprise was increased to Rs.100 crores. Emphasizing on the incongruity, he would contend that the conditions so posited, clearly made it impossible for an MSE to become eligible under the subject RFP. Thereby rendering the condition for purchase preference for an MSE, otiose. He elaborated that the justification provided by the respondent no.1 in the context of the aforesaid anomaly by referring to hypothetical examples of entities that may have been medium enterprises in previous three FYs and may have become Micro or Small in the present FY is misplaced. According to him, the test of fairness and legality of an eligibility condition has to be determined against an ordinary application and not *qua* stray or extreme cases.

6. He emphatically argued that the application of eligibility conditions relating to turnover and prior experience to start-ups and MSEs would be contrary to the policies and guidelines of the Government of India including (i) Rule 173 of the GFR, 2017; (ii) Cl.1.9.1(x) of the Procurement Manual for Services; (iii) OM of Dept. of Expenditure dated 25.07.2016; (iv) OM of Dept. of Expenditure dated 20.09.2016 and (v) Policy Circular dated 10.03.2016 issued by the Ministry of MSME. He would contend that OM dated 20.09.2016 is the governing document binding on all the government departments to be implemented in letter and spirit. According to him, the implementation of the said OM is mandatory and there is no discretion with the departments to carve



out any exception from the mandate. He would also contend that the only exception which is limited in its operation for denying relaxations are those where the procurement of items relate to public safety, health, critical security operation and equipment etc. He submitted that in the present case, none of the aforesaid exceptions for exempting the relaxations are at all made out. In other words, the RFP is not in respect of public safety, health or critical security operation and equipment at all. Learned counsel attempted to make good the aforesaid argument by referring to the pre-bid queries as also the counter affidavit of respondent no.1, whereby the respondent no.1 has attempted to fit the present procurement into the exceptions provided under the said OM.

7. Relying on the judgments in the case of *RD Shetty vs International Airport Authority: (1979) 3 SCC 489*; *Subodh Kumar Singh Rathour vs. Chief Executive Officer & Ors.: (2024) SCC OnLine SC 1682*; *Manpower CNC Machines Ltd., vs Union of India: (2020) SCC OnLine Del 1801* and *Xcellance Medical Technologies Pvt. Ltd. vs. HLL Infra Tech Services Ltd.: (2021) SCC OnLine Del 465*, learned counsel emphatically submitted that a constitutional Court is not limited in its power to interfere with an arbitrary state action and can always direct that such action which is in ignorance or violative of or contrary to any OM issued by the nodal ministry, can always be interfered with and struck down. He would contend that, in the present case, while giving a colour as if the RFP conforms to the relaxations which are to be provided to the MSEs in any public procurement RFP, actually neither conforms to nor in compliance and is actually violative of OM dated 20.09.2016.

8. Another ground of attack on the conditions of the RFP is the subsequent introduction of “criticality” to the procurement in question under the subject



RFP. He vehemently contends that this introduction of criticality by respondent no.1 is without any substance and introduced as an afterthought only to justify the non-conformity to the OM dated 20.09.2016. He would contend that every public project *ipso facto*, would involve an element of public interest and that by itself cannot be a ground to deprive a start-up/MSE of the relaxations which are mandated under the OM. He also would contend that even on facts, the criticality which is now sought to be introduced subsequently is a hollow concept without any merits.

9. He further contended that the work envisaged in the subject RFP is in regard to financial data of individual customers which is saved in respondent no.1's own server and is proposed to be accessed for the purpose of verification during customer care operations using third-party software. In such circumstances, he would contend that there cannot possibly be any nexus between the non-grant of relaxation and alleged handling of sensitive financial data. That apart, the justification tendered by respondent no.1 is itself contrary to the fact that relaxation for start-up/MSEs in its previous RFP dated 27.07.2022 were indeed granted without the subject work designated as "critical". He dilates further by contending that the scope of work under the RFP dated 27.07.2022, wherein MSEs were offered relaxations and the work in the subject RFP dated 04.09.2025 are identical, thus the bogey of "criticality" cannot be hoisted in order to non-grant of relaxation as per OM dated 20.09.2016. In fact, learned counsel forcefully submitted that the RFP dated 27.07.2022 being almost identical in the scope of its work, was actually awarded to the petitioner who successfully executed the said project. In that context, learned counsel submitted that it is inconceivable as to how and in what manner could the petitioner be



entitled to relaxations as an MSE for RFP dated 27.07.2022 for the identical scope of work and, yet, become ineligible for grant of relaxations for the same scope of work in the subject RFP dated 04.09.2025. He would stoutly contend that the respondent no.1 being State cannot approbate or reprobate or be found to be in non-compliance or non-conformity with its own OM dated 04.09.2025.

10. In order to clarify the aforesaid submissions, learned counsel also referred to a sample SBI tender annexed with the rejoinder wherein start-up/MSEs have been provided with full relaxation as envisaged in OM dated 20.09.2016. He stated that the explanation now tendered that the subject RFP concerns itself with maintenance and running operations in the context of a digital bank while in the case of public sector banks like SBI, the maintenance of all the operations are digital as well as physical/manual, is really of no relevance. He submits that since the petitioner has already executed the previous project under the RFP dated 27.07.2022, this explanation is absolutely unfounded and is unsubstantiated. He further emphasized that once the petitioner has proved its mettle in satisfactorily executing the same project in the previous RFP, this explanation or clarification would not stand against the petitioner.

11. He also relied upon the Order dated 12.08.2025 passed by this Court in W.P. (C) 11694/2025, wherein the petitioner had challenged the RFP dated 09.07.2025 which after certain modifications post the directions of this Court, is the subject matter RFP dated 04.09.2025 under challenge. He relied upon the following paragraphs:

“2. It has been contended by learned counsel representing the petitioner that in terms of the policy decision of the Government of India, which is embodied in the office memorandum dated 25.07.2016 issued by the Ministry of Finance, the start up



companies and MSMEs have been exempted from the eligibility criteria of turnover and experience as is reflected from the terms of the tender available at page 110 of the writ petition. It has further been argued that on the one hand, the exemption to MSMEs/start ups has been made available, however, on the other hand, the tendering authority has prescribed marks, both for past experience and unit domain experience (banking) in terms of the valuation criteria available at page 136 of the writ petition, which has resulted in negating the benefit made available otherwise to MSMEs/start ups of exemption from experience and turnover. It has been stated by learned counsel representing the tendering authority that in view of the Office Memorandum dated 10.03.2016 issued by the Ministry of Micro, Small and Medium Enterprises as also the Office Memorandum dated 25.07.2016 issued by the Ministry of Finance, the exemption to start ups/MSMEs is not fully provided mandatorily. Learned counsel representing the respondents has cited a Division Bench judgment of this Court rendered on 12.07.2022 in W.P.(C) 9508/2022 to impress upon the Court that it is not mandatory to provide such exemption to MSME/start-ups.

3. So far as the judgment of this Court in W.P.(C) no. 9508/2022 is concerned, there cannot be any quarrel with this proposition, however, what distinguishes the present case with the case in W.P.(C) no.9508/2022 is that in the instant case, one of the tender conditions specifically provides for exemption whereas in W.P.(C) no.9508/2022, no such exemption was provided and as a matter of fact, by filing the writ petition, such exemption was claimed.

4. It is thus, very difficult to reconcile the exemption provided to the start ups/MSMEs at one hand and on the other hand, the said benefit is being taken by providing the norms for marking which includes marks for past experience and relevant domain experience (banking).”

Predicated on the aforesaid observations of this Court in order dated 12.08.2025, learned counsel submits that though certain cosmetic changes have been made to the RFP dated 09.07.2025, yet, the lacuna of not providing full exemption in terms of OM dated 20.09.2016 has still not been granted in the subject RFP.



12. On the aforesaid basis, he would submit that the subject RFP, to the extent assailed, be directed to be modified and the relaxations mandated in the OM, be provided to the MSEs/start-ups.

CONTENTIONS OF THE RESPONDENT NO.1:-

13. Appearing for the respondent no.1, Mr. Kirtiman Singh, learned senior counsel, submitted that the challenge in the writ petition is clearly not tenable for the reason that the petitioner seems to have misunderstood and misconstrued not only the provisions under challenge but the other provisions of the subject RFP as well. That apart, he would also submit that so far as public procurement tenders are concerned the Constitutional Courts would be loathe in exercising the powers of the judicial review under Article 226 of the Constitution and rarely in cases where the conscience of the Court is shocked or there is an apparent arbitrariness or non-conformity to the provisions contained in the RFP. He would submit that in the present case none of these principles are attracted and thus, the writ petition ought to be dismissed. He would submit that this is notwithstanding the settled principle of law that the provisions in granting or not extending any exemption, is not only the prerogative of the Government or the tendering Authority, but also would form subject matter of policy decisions of the Government, which cannot be lightly interfered with by the Courts.

14. Mr. Singh, learned senior counsel would stoutly contend that the subject RFP dated 04.09.2025 was floated as an open and transparent tender and clearly no exemption was granted to any MSME except purchase preference bearing in mind the critical and sensitive nature of the operations, forming the subject matter of the tender.

15. Explaining further, learned senior counsel submitted that respondent no.1



is a 100 per cent digital scheduled bank which functions without any physical branch network and caters to more than 13 crore customers across the country. He would point out that in the absence of physical branches, the contact centre constitutes the sole and primary interface between the bank and its customers for day to day banking services, grievance redressal and reporting of financial frauds and unauthorised transactions. He emphasized that having regard to the nature of criticality of operations, the contact centre is to operate round the clock, 24 hours in a day and 365 days in a year. He would emphatically urge that not only the data by itself is highly sensitive and essentially confidential, the operations surrounding the entire ecosystem relating to digital banking are critical to public financial safety. It was emphasised that any disruption, inadequacy or failure in the contact centre operations would have a direct and adverse bearing on continuity of essential banking services, confidentiality of sensitive customer data, and overall public trust in the digital banking system. He emphasised that keeping in view the growing number of digital frauds whereby innocent ordinary citizens are being duped of their finances, the nature of the critical operations contained in the scope of work of the subject RFP, has to be underscored.

16. Learned senior counsel submitted that the tender proceeds on a CAPEX outsourcing model, requiring the successful bidder to make substantial investments in IT infrastructure, telephony platform disaster redundancy mechanism, and data security architecture while handling sensitive financial and personal data of crores of customers. It was emphasised that the eligibility criteria prescribed are directly and intrinsically linked to the financial capacity, operational resilience, and proven experience of the bidder. In that context, learned senior counsel would contend that the criticality of the nature of



operations coupled with the CAPEX outsourcing model envisaged in the subject RFP have to be viewed together to appreciate the nature of critical operations of the sensitive data and other operations relatable to digital banking systems.

17. So far as the reliance of the petitioner on OM dated 20.09.2016 is concerned, learned senior counsel would contend that the critical word employed in the said OM is “may” and not “shall”. In contradistinction to what was submitted by the petitioner, learned senior counsel would contend that had the intent behind the OM dated 20.09.2016 been mandatory, an exception of application to such tenders where public procurement in respect of public safety, health, the critical security operations and equipment would not have been carved out. He contended that it needs no emphasis that the language employed in an OM has to be read as it is without adding or deleting either a word or the intent. In this context, he relied upon a judgment of a Coordinate Bench of this Court in *Triveni Healthcare (P) Limited vs. GNCTD; 2022 SCC Online DEL 2016* particularly paragraphs 27, 31, 32 and 35.

18. Apart from the above, learned senior counsel emphasised that the eligibility conditions under clause 3.2 of the subject RFP which included minimum turnover, manpower strength and prior experience in scheduled commercial banks, have been uniformly applied to all bidders. This condition was clearly engrafted in view of the critical nature of the operations and also to ensure that bidders with sound and robust financial health submit their bids. Learned senior counsel also emphasised that the petitioner seems to have misunderstood the reason behind stipulating purchase preference to the MSEs. He submits that all those MSEs who would become eligible in terms of the requirement of turnover of Rs. 50 crores in the last three FYs would get a



purchase preference with a view to promote them and clearly with no relaxation in other terms. He contended that whether to offer or provide any relaxations in terms of turnover or past experience, is the pure priority and prerogative of the tender issuing authority or the Government. The petitioner as a bidder, as is settled law, cannot dictate as to what the terms and conditions of a tender ought to be. He would also emphasise that even Courts have held that a challenge to the provisions of NIT/RFT cannot be interfered with by a Constitutional Court so as to overwrite or re-write the terms of a particular tender. As a consequence, he would contend that whether relaxations ought or ought not to be given or as to whether a particular condition ought or ought not to form part to the particular RFP, can neither be re-written nor be obliterated by any Court. He also would submit that while the issue of relaxations/exemptions operate at the eligibility stage, the application of whether a MSE is entitled to purchase preference would apply at the post qualification stage; and thus, the two operate in separate fields without overlapping each other.

19. So far as the contention of the petitioner that the issue of “Criticality” of operations has been raised as a bogey by the respondent no.1, he would contend that the petitioner appears to have ignored the provisions which were contained both in the present subject RFP as also the previous RFPs. In that context he invited attention to page 68 of the RFP dated 04.09.2025, which is extracted hereunder:-

“1 PART – A – GENERAL TERMS AND CONDITIONS

1. Introduction

India Post Payments Bank Limited (“IPPB”) is a company incorporated and registered under Companies Act, 2013 and a Payments banking company registered under section 22 (1) of the Banking Regulation Act, 1949 duly licensed by Reserve Bank of



India. IPPB is engaged in conducting banking and payments business providing services to retail and corporate customers. IPPB has its Registered Corporate Office at Speed Post Center, Bhai Veer Singh Marg, New Delhi – 110 001.

The bank has pan-India presence with around 650 regional branches / banking outlets which are connected to approx. 1.55 lakh Post offices which will act as access points for the bank and its customers. Around 1.5 lakh micro ATMs are distributed to Postal staff for carrying out business of IPPB. The Bank has also been at the forefront of technology adoption to enable best-in-class customer service to its customers. All branches and access points including the Micro ATMs with all the GDS/Postman are under Core Banking Solution (CBS).

The Bank's contact centre operations play a pivotal role in its business correspondent led business model. The customers of the bank are largely dependent on the contact centre for day to day queries, requests, complaints and other account specific support. Thus stability, quality of services and continuity of the contact centre operations is critical. The contact centre also supports the customers on 24x7x365 days basis in distress situations on account of financial frauds. The procurement directly affects public financial safety including but not limited to the confidentiality of customer's sensitive information and ensuring financial security of the customer's account...

(emphasis supplied)

20. In view of the above, learned senior counsel would contend that the issue of criticality of the nature of the works having been made clear in no uncertain terms in the RFP itself, the contention of the petitioner on that count ought to be rejected by this Court. In any case, he contended that since the petitioner did not even cross the threshold of the technical qualification he cannot be permitted to raise challenges to the conditions of the tender document after having willingly and with open eyes, and with full knowledge of the terms and conditions specified in the said RFP, participated and failed. On the aforesaid basis, learned



senior counsel submitted that the present petition be dismissed.

CONTENTIONS OF RESPONDENT NO.3 :

21. Mr. Tushar Jain, learned counsel for respondent no.3, the successful bidder submitted that respondent no.1 has already issued the Purchase Order on 04.10.2025 pursuant where to, respondent no.3 has already undertaken the works and has gone live with effect from 17.11.2025.

22. He would contend that the contention of the petitioner that tender conditions have been manipulated in a manner to suit respondent no.3, by permitting it to use the credentials of the demerged Company - Quess Corp Ltd, is baseless and unfounded. He argued that even the RFP dated 09.07.2025 too permitted the bidder to use credentials of the demerged entity or the parent company in terms of clause 3.3 of Annexure 3 - Eligibility Criteria Compliance Sr.A.1. The clause 3.3 referred to is extracted hereunder:

“A. GENERAL & LEGAL:-

- 1. The bidder should be registered as a company in India as per Company Act 1956 & 2013 or LLP/ Partnership firm and should be incorporated in India and have been in Operation for a period of at-least 5 years in India as on date of the RFP. The company should not be under liquidation / NCLT.*

No two entity joint venture (JVs) specific to this project will be considered.

Even in case the due date of bid submission is extended, the original due date of bid submission will be considered as reference date for the purpose of this experience criteria.

In case the bidder is the result of a demerger, at least one of the demerged company or Parent company should have been in operation for at least 5 years as on the date of submission of bid.”



Learned counsel insists that the same clause, in material particulars, forms part of the RFP dated 04.09.2025.

23. That apart, learned counsel also submitted that *vide* OM dated 12.10.2023, the Ministry of Finance had permitted such clauses. For the sake of convenience, the relevant portion of OM dated 12.10.2023 is extracted hereunder:

“...2. In this regard, it is stated that procuring entities may in suitable cases consider the credentials based on the merit and circumstances of the cases like type of procurement, nature of demerger, numbers of eligible bidders available etc. Tender documents must clearly mention if the credentials of the de-merged entity will be considered or not in the specific tender, and may give the conditions under which de-merged entities may become eligible...”

24. Learned counsel would thus contend that the allegations of the petitioner are not only baseless and unfounded, but also that there is no infirmity either in the clauses of the RFP or their applicability. He too relied on the judgement in the case of *Triveni Healthcare Private Ltd vs. Govt of NCT of Delhi & Anr (supra)*.

ANALYSIS AND CONCLUSION :

25. We have heard learned counsel for the parties and examined the documents on record and considered the judgements relied upon by the parties.

26. The petitioner is relying upon the OMs dated 23.12.2012 and 10.03.2016 issued by the Ministry of Micro, Small and Medium Enterprises and OM dated 20.09. 2016 issued by the Ministry of Finance to underscore that respondent no.1 ought to have factored in the exemptions/relaxations for MSMEs in the true spirit of the policy and not just grant purchase preference. According to the petitioner, merely providing purchase preference is irrelevant unless the



concomitant relaxations both in terms of turnover and work experience are simultaneously granted.

27. In the above context it would be relevant to consider the judgement of the Hon'ble Supreme Court in *Lifecare Innovations Pvt. Ltd & Anr vs. Union of India & Ors.: 2025 SCC OnLine SC 436*. The Supreme Court in the aforesaid judgement considered the Public Procurement Policy for Micro and Small Enterprises Order 2012 (hereafter referred to as the “*Procurement Order 2012*”) and held the same to be having the force of law and to be enforceable while holding at the same time that the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as “*MSMED Act*”) read with the Procurement Order 2012 do not create an ‘enforceable right’ for an individual MSE. The Court went on to frame two crucial issues which arose in the said writ petition. Having examined the scheme underlying the MSMED Act, so far as the first issue is concerned, the Hon'ble Supreme Court in paragraphs 20 and 21 held as under:

“20. The existing legal regime of public procurement from micro and small enterprises can now be identified as mandating;

(a) Initially setting annual goals of procurement for a period of 3 years (Clause 3) and thereafter mandating yearly procurement of a minimum of 25 percent of procurement by the ministries, departments, and public sector undertakings (Clause 3(3)).

(b) 358 items appended to the Procurement Preference Policy 2012 are reserved for exclusive procurement from MSEs.

(c) Requiring the ministries, departments and public sector undertakings to prepare an Annual Procurement Plan (Clause 8) for purchase and to upload the same on their official website. This is to subserve the purpose of the MSEs



to get advanced information about the requirements of procuring agencies.

(d) The requirement of Annual Reporting (Clause 5) of government procurement is necessary for the collection of data, necessary for assessment and strengthening the policy. For this purpose, ministries, departments and public sector undertakings are mandated to report achievement of goals set with respect to procurement prescribed in their respective annual plans.

(e) The policy recognises a pre-existing committee constituted by Order No. 21(1)/2007-MA dated 21.06.2010 as the Review Committee under Clause 12. This Review Committee is mandated to consider the requests of the ministries, departments or public sector undertakings for exemption from the 25 per cent target on a case-to-case basis. The Review Committee is also tasked with the duty of monitoring achievements under the policy.

(f) Yet another important feature of the policy is the constitution of the Grievance Cell under clause 13. The grievance cell, inter alia, will take up the issues raised by the MSEs with respect to government procurement. Clause 13 specifically provides that the mandate of the grievance cell shall include redressal of “imposition of unreasonable conditions in tenders floated by the Government Departments or agencies that put Micro and Small Enterprises at a disadvantage”.

21. Having considered the provisions of the Act and the MSE Procurement Preference Policy, 2012, we are of the opinion that there is no mandatory minimum procurement ‘right’ of an individual MSE. However, there is certainly a statutory foundation for the Procurement Preference Policy, 2012, having force of law as it ‘encapsulates a mandate and discloses a specific purpose’. Clause 3 of the policy mandating procurement of 25 per cent of supply from MSEs is simply the statutory duty of the bodies constituted under the Act and the Policy. The significance of creation and establishment of these statutory and administrative bodies is not difficult to conceive. If these institutions and bodies work effectively and efficiently, it is but natural that the purpose



and object of the legislation will be achieved in a substantial measure. It is, therefore, necessary to ensure that in the functioning of these bodies, there is efficiency in administration, expertise through composition, integrity through human resources, transparency and accountability, and response-ability through regular review, audits and assessments.”

28. So far as the second issue is concerned, while examining whether the NITs prescribing mandatory minimum turnover clause would be violative of Article 14 and 19 of the Constitution read with provisions of MSMED Act and the Procurement Order 2012, the Hon’ble Supreme Court held as under:

31. On the broader issue as to whether ‘minimum turnover clauses’ could be violative of Articles 14 and 19 of the Constitution, it is to be seen that the two most relevant criteria for framing suitable conditions in NIT relate to the ‘capacity’ and ‘capability’ of the bidder. In Association of Registration Plates v. Union of India, this Court had an occasion to examine a tender clause which read, “The tenderers/bidders of the joint-venture partners together must have had a minimum annual turnover equivalent to INR 30 crores in the immediately preceding last year. At least 25% of this turnover must be from the licence plate business. Certificate confirming and the certification of this minimum 25% turnover being from licence plate business will have to be provided duly attested by a chartered accountant/any bank to be attached in support of fulfilment of this condition”. Rejecting the submission that the said clause violated articles 14 and 19 of the Constitution, the Court thus observed:

“35...The insistence of the State to search for an experienced manufacturer with sound financial and technical capacity cannot be misunderstood. The relevant terms and conditions quoted above are so formulated to enable the State to adjudge the capability of a particular tenderer who can provide a fail-safe and sustainable delivery capacity.

38...Unless the action of tendering authority is found to be malicious and a misuse of its statutory powers, tender conditions are unassailable. On intensive examination of tender conditions, we do not find that they violate the equality clause under Article 14 or encroach on fundamental rights of the class of intending tenderers



under Article 19 of the Constitution.

43. ...Article 14 of the Constitution prohibits the Government from arbitrarily choosing a contractor at its will and pleasure. It has to act reasonably, fairly and in public interest in awarding contract. At the same time, no person can claim a fundamental right to carry on business with the Government. All that he can claim is that in competing for the contract, he should not be unfairly treated and discriminated, to the detriment of public interest.”

(emphasis supplied)

32. Courts approach is also based on the idea that the executive should have greater latitude in selecting contractors and prescribing eligibility requirements.

33. However, the law as applicable for procurement through MSEs stands on a different footing. This is for the reason that there is a statutory prescription for notifying a procurement preference policy (Section 11), and in furtherance of such a statutory prescription, the Preference Policy 2012 has been notified mandating procurement of a minimum of 25 per cent from the Micro and Small enterprises. Although it is generally permissible for the government, and its instrumentalities to provide minimum turnover criteria wherever “public safety, health, critical security equipment, etc.”, are involved, it must be ensured that such prescriptions do not defeat the Procurement Order, 2012. It is necessary to lay down clear guidelines for ministries, departments, and instrumentalities. In fact, it has not been the stand of the Government that the commercial freedom to prescribe minimum turnover clauses on the one hand and the policy to promote MSEs on the other are competing interests or that they have to balance these values. The Procurement Order, 2012 declares the procurement preference obligations of the State and therefore statutory and executive authorities are bound to implement the same. Minimum turnover clauses cannot undermine or override the Procurement Preference Policy 2012.

29. It is pertinent, in the context of the present case, to note that in para 33, the Hon’ble Supreme Court has observed that “*Although it is generally permissible to the government, and its instrumentalities to provide minimum turnover*



criteria wherever “public safety, health, critical security equipment, etc.”, are involved, it must be ensured that such prescriptions do not defeat the Procurement Order 2012.” Having observed as quoted above, the Apex Court further examined the effect of Clause 13 of the Procurement Order 2012 requiring the Ministry to set up the Grievance Cell coupled with its functioning as reported by the Comptroller and Auditor General of India, held in para 38 as under:

“38. In this view of the matter, apart from the earlier direction relating to mandatory procurement, we also direct the authorities under the Act, including the Review Committee and in particular the Grievance Cell, which is specifically entrusted with the obligation to redress “imposition of unreasonable conditions in tenders floated by Government Departments or agencies that put Micro and Small Enterprises at a disadvantage” to examine limits of minimum turnover clauses and issue necessary and appropriate policy guidelines.”

30. Having minutely examined and scrutinised the MSMED Act and the Procurement Order 2012, the Hon’ble Supreme Court in para 39 passed directions which read thus:

“39. Having considered the matter in detail, this writ petition is disposed of directing:

(a) the Public Procurement Policy for Micro and Small Enterprises (MSEs) Order, 2012 has force of law as it is formulated in exercise of power under Section 11 of the Act and also encapsulates the purpose and object of the Act;

(b) though there is no mandatory minimum procurement ‘right’ for an individual MSE there is certainly a statutorily recognized obligation on the authorities and the bodies under the Act and the Procurement Order, 2012 to implement the mandate which is subject to judicial review;

(c) the judicial review will primarily ensure proper constitution and effective functioning of the authorities, the National Board for MSMEs, the Advisory Committee, the Facilitation Council, the



Review Committee and the Grievance Cell and leave the policy and decision making to them.

(d) the respondents, and in particular, the Review Committee constituted under clause 12 of the Procurement Preference Policy 2012 to examine the issue of mandatory procurement of 25 per cent of goods and services by the Government, and its instrumentalities from MSEs under clause 3 of the Policy in the context of clause 11 providing for reservation of specific items for procurement and take such action as is necessary for effective implementation of the Policy within a period of 60 days from the date of our order; and

(e) the respondents, including the Review Committee and in particular the Grievance Cell, shall examine and declare limits of the minimum turnover clauses with respect to MSEs and issue appropriate policy guidelines within a period of 60 days from the date of our order.”

31. It has been given to understand that the Review Committee, the Grievance Cell and the Central Government, in general, have not yet implemented the directions in clauses (d) and (e) of paragraph 39 of the said judgement in ***Lifecare (supra)***. Having regard to the fact that this Court is exercising powers of judicial review as also the extraordinary jurisdiction conferred under Article 226 of the Constitution of India, it is deemed appropriate to direct the said Authorities mentioned in clauses (d) and (e) of paragraph 39 of the said judgement in ***Lifecare (supra)*** shall implement the directions within a further period of 60 days, failure whereof, may amount to contempt of the judgement of the Hon’ble Supreme Court in ***Lifecare (supra)*** as well this Court. We are constrained to pass these directions in view of the fact that the 60 days provided to the said Authorities by the Hon’ble Supreme Court expired way back in April, 2025 itself.

32. That said, with utmost humility and deep respect, we find that the Hon’ble Supreme Court had not given a firm opinion as to whether the exemption from



minimum turnover and experience is mandatorily to be engrafted in every NIT or RFP, as the case may be. It appears that such exercise was left to the Review Committee, the Grievance Cell as well as the government to “*examine and declare limits of the minimum turnover clauses with respect to MSEs and issue appropriate guidelines within a period of 60 days from the date of our order*”. That apart, the Hon’ble Supreme Court had cautioned that the prescription of exempting certain procurements like “*public safety, health, critical security equipment, etc*”, ought not to be used to defeat the Procurement Order 2012.

33. We find that the judgement in *Lifecare (supra)* did not proscribe the tendering authorities exempting certain categories of public procurement including “critical security and equipment” from relaxations in minimum turnover and experience, though with a cautionary note.

34. In the above background, we proceed to examine whether the subject RFP would fall within the exempted category which are exempted in OM dated 20.09.2016. To appreciate the stand of both parties, it would be apposite to extract the relevant portions/clauses of the subject RFP dated 04.09.2025 and the previous RFP dated 09.07.2025. The same read thus:

RFP dated 04.09.2025:-

“1 PART – A – GENERAL TERMS AND CONDITIONS

1. Introduction

India Post Payments Bank Limited (“IPPB”) is a company incorporated and registered under Companies Act, 2013 and a Payments banking company registered under section 22 (1) of the Banking Regulation Act, 1949 duly licensed by Reserve Bank of India. IPPB is engaged in conducting banking and payments business providing services to retail and corporate customers. IPPB has its Registered Corporate Office at Speed Post Center, Bhai Veer Singh Marg, New Delhi – 110 001.



The bank has pan-India presence with around 650 regional branches / banking outlets which are connected to approx. 1.55 lakh Post offices which will act as access points for the bank and its customers. Around 1.5 lakh micro ATMs are distributed to Postal staff for carrying out business of IPPB. The Bank has also been at the forefront of technology adoption to enable best-in-class customer service to its customers. All branches and access points including the Micro ATMs with all the GDS/Postman are under Core Banking Solution (CBS).

The Bank's contact centre operations play a pivotal role in its business correspondent led business model. The customers of the bank are largely dependent on the contact centre for day to day queries, requests, complaints and other account specific support. Thus stability, quality of services and continuity of the contact centre operations is critical. The contact centre also supports the customers on 24x7x365 days basis in distress situations on account of financial frauds. The procurement directly affects public financial safety including but not limited to the confidentiality of customer's sensitive information and ensuring financial security of the customer's account.

The bank is looking to select a bidder who can provide Contact centre services to IPPB as per the scope mentioned in PART – B – BID SPECIFIC CLAUSES of this document. Selection will be made based on the method as described in the following sections after meeting the eligibility criteria. Bid submission, queries and all other terms and conditions are detailed in the following sections of this document.

All communication with regards to this proposal needs to be directed to all the addresses mentioned above.”

(emphasis supplied)

The Clause 2.1.5 of the RFP dated 09.07.2025 reads thus:-

*“2.1.5 Scope of work – Voice Inbound
An Indicative (not exhaustive) list of functions/ activities to be covered under inbound calls is given below. Apart from the normal queue, facilitation of an L2 (Level 2) desk and a separate call queue for critical activities like debit card hotlisting, reporting of unauthorized transactions is also required for the process. The list*



of such activities may increase, basis any regulatory requirement or due to any banking activity deemed fit as and when required. L2 desk support is required in English and Hindi language only during 7 AM to 10 PM, while critical activity queue support is required 24x7x365 by aligning required number of agents on priority for these two queues. **The resources deployed to manage the critical activities on 24x7x365 days basis, must be capable and skilled enough to handle the customer interactions who may be at distress due to possibility of loss on account of fraudulent activities/loss of debit cards etc.** All efforts must be made to curtail the loss suffered by the customers/Bank. However, if volumes of any other regional language justify inclusion of an additional language, the same has to be done by service provider as per the instruction of the Bank within a period of 3 months.

Further insights:

1. **L2 desk and critical desk are different.**
2. Level 2 desk is a separate desk that will only manage the escalation calls i.e. calls wherein the caller wants to speak to the supervisor.
3. **Whereas a separate call queue for critical activities need to be provided by aligning required number of agents on priority for the queue.**
4. **The approximate volume for Critical queue is approx. 1,86,000 calls per month and for L2 desk is approx. 1200 calls per month**
5. Billing will not be done separately. Billing will be done for the total connect minutes for the call. For instance:

Agent 'A' handles the call for three minutes (including talk time, hold time and ACW) and then the call gets transferred to L2 desk managed by agent 'B'. Caller is put on waiting for one minute (for the time before call actually gets transferred to agent 'B'). Agent 'B' handles the call for five minutes..."

(emphasis supplied)

35. The plain reading of the relevant clause in PART - A - General Terms and Conditions of RFP dated 04.09.2025 and Clause 2.1.5 of RFP dated 09.07.2025 clearly indicates that the scope of work and the operations involved therein have been assessed by the tendering authority to be "critical" by its very nature.



Learned counsel for the petitioner had forcefully attacked this aspect and attempted to demonstrate that the scope of work was not critical in nature. We are unable to appreciate this argument. What type of works or operations, possibly could be of “critical” nature can best be determined only by the tender issuing authority. Whether a tender or RFP envisages or encompasses any project or work to be sensitive or in the nature of critical security operations should and ought to be left to the said Authority to decide. The Courts are incapable of such determination and neither have the necessary wherewithal to determine the nature, nor should they interpret or decipher the criticality of the nature of works sought to be procured. It is trite that the tender issuing authority knows its requirement, best.

36. That apart, learned senior counsel for respondent no.1 had significantly argued that respondent no.1 is a digital scheduled bank having no physical branch network and the operations are conducted through a business correspondent led model, wherein the contact centre constitutes the primary and critical interface between the bank and its customers. The customers are completely dependent upon the contact centre for day to day banking queries, service requests, grievance redressal and account specific assistance. The centre operates 24 x 7 x 365 days in a year including distress situations like financial frauds and thus the disruption would have a direct bearing on public financial safety, which may include confidential and sensitive customer information or personal financial details of their customers. The RFP envisages CAPEX outsource model whereby, the service provider is granted access to the Bank’s customer data and may include personal information and the data is processed, transmitted and stored on infrastructure created and maintained by the service



provider/contact centre which, cumulatively considered, are “critical”. Having regard thereto, we are not convinced by the arguments of the petitioner that such operations are not “critical” to the extent as to disentitle the petitioner, a MSE, from the benefits of relaxation in turnover and experience granted under OM dated 20.09.2016.

37. The contention of the learned counsel for the petitioner that the earlier RFP dated 22.07.2022, though having the same scope of work, yet did not declare the works involved to be of a “critical nature”, while the RFP dated 04.09.2025 deliberately, to oust the relations mandated under the OM dated 20.09.2016, introduced this phrase which does not appear from the context of the works required to be implemented, does not appeal to us. Firstly, the petitioner has not placed on record the RFP dated 22.07.2022 for this Court to ascertain the submission and secondly, as held above, there could be elements introduced or ascertained by the tender issuing authority to conclude or form an opinion that certain works or the whole of it is “critical” falling within the excepted categories within OM dated 20.09.2016. Thus, the said argument too does not impress us.

38. So far as the judgements relied upon by the petitioner are concerned, those are based on the general conditions of the contract or NITs and are not based on the OM dated 20.09.2016 and may not be applicable to this case. Moreover, the closest judgement relatable to the facts of the present case is the one in *Lifecare (supra)* which has been elaborately considered in the preceding paragraphs by us. We have also observed that no concrete directions which can be relied upon to grant any relief herein, have been passed in *Lifecare (supra)*.

39. In view of the above analysis, the criticality of the RFP being found to be



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made out, respondent no.1 has not violated or drafted the RFP so as to not comply with or conform to the OM dated 20.09.2016 or even the Procurement Order 2012. The other arguments are inconsequential and thus no separate analysis or findings are recorded by us.

40. Thus, the writ petition, devoid of merits, is dismissed except for the directions contained in para 31 above for the Review Committee, the Grievance Cell and the Central Government to comply with para 39 (d) and (e) of the judgement in *Lifecare (supra)* within the period stipulated.

**TUSHAR RAO GEDELA
(JUDGE)**

**DEVENDRA KUMAR UPADHYAYA
(CHIEF JUSTICE)**

FEBRUARY 17, 2026/rl