



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

% Judgment reserved on: 13.08.2025  
Judgment delivered on: 19.08.2025

+ W.P.(C) 11016/2025 & CM APPL.45377/2025

ROTOFFSET CORPORATION ...Petitioner

versus

SECURITY PRINTING AND MINING CORPORATION  
OF INDIA LTD. & ORS. ...Respondents

**Advocates who appeared in this case:**

For the Petitioner : Dr. G.V. Rao, Sr. Advocate with Mr. A.K. Upadhyay, Mr. G. Arudhra Rao and Mr. Mohit Phulera, Advocates.

For the Respondents : Ms. Rukmini Bobde, CGSC with Mr. Kapil Dev Yadav, G.P., Mr. Jatin, Mr. Vinayak Aren and Mr. Amlaan Kumar, Advocates for UOI/R-2.  
Mr. Anupam Lal Das, Sr. Advocate with Mr. Anirudh Singh, Advocate for R-3.  
Mr. Bijender Singh, Mr. Rakesh Kumar Gogia, Mr. Karan Malik and Mr. Deeksha Sharma, Advocates.

**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, seeking quashing of the Proprietary Article Certificates (PACs) issued in favour of respondent no.3 or any affiliated entity lacking



verifiable Original Equipment Manufacturer (OEM) succession or manufacturing credentials. The petitioner further seeks a stay on the proceedings and execution of tender nos.24/SY-15-13(07)/2025 and 23/SY-15-13(08)/2025, both dated 07.03.2025 or any procurement process favouring the said entity, during the pendency of the present proceedings. The petitioner also prays for directions to the Central Vigilance Commission (CVC), Comptroller and Auditor General (CAG), Central Bureau of Investigation (CBI) or any other investigating authority, to conduct a thorough investigation into procurement transaction involving ROTATEK-branded entities from 2012 onwards.

**BRIEF FACTS:-**

2. The petitioner is a proprietorship firm - Rotoffset Corporation, a Micro Small Medium Enterprise (hereinafter referred to as “MSME”) with over 30 years of expertise in printing technology. The petitioner states that in 2022 he was awarded a contract by respondent no.1 through a transparent bidding process, for the design and supply of a customized Excise Adhesive Label Printing Machine worth ₹17.5 crores. The petitioner submits that he began execution of the contract, complied with tender’s enhanced technical specifications, and substantially completed the machine by January 2025. The petitioner claims that despite respondent no.1 extending the delivery deadline to March 2025, the contract was abruptly cancelled in January 2025 citing non-performance, without granting a hearing or issuing a reasoned order.

3. The petitioner states that soon after the cancellation, respondent no.1



issued PAC-based tenders in favour of a newly incorporated foreign company (respondent No. 3) which lacked legitimate OEM credentials. The petitioner submits that respondent No.3 is a shell company with no manufacturing history, misleadingly projected as an OEM for servicing obsolete Rotatek machines. The petitioner claims that this procurement violates the General Financial Rules (hereinafter referred to as “GFR”), bypasses competitive bidding, excludes capable Indian MSMEs, and undermines the “*Make in India*” and “*Atmanirbhar Bharat*” policies.

4. The petitioner states that the cancellation and subsequent tenders were a colourable exercise of power to wrongfully favour respondent No. 3. The petitioner prays for quashing of the PAC-based tenders, a restraint on future procurement from respondent No. 3 without valid OEM credentials and an independent inquiry into the procurement irregularities. Hence, the present petition.

**CONTENTIONS OF THE PETITIONER:-**

5. Mr. G. V. Rao, learned senior counsel briefly adumbrated the background facts giving rise to the present *lis*.

6. The entire thrust of Mr. Rao was predicated on the claim that the respondent no.3, i.e., the bidder who has been held to be successful in the tender dated 07.03.2025, was not only ineligible but the declaration as L-1 by the respondent no.1 was actuated on fraud and fabricated documents furnished by respondent no.3. He submitted that though the petitioner was successfully executing the previous contract and had the opportunity of extension of time till March, 2025 for the very same work, yet, the



respondent no.1 unilaterally and arbitrarily cancelled the previous contract causing detriment to the interest of the petitioner. He also submitted that the said cancellation and its repercussions are now subject matter of arbitration. He also maintained that though the petitioner is in arbitration against the respondent no.1 *qua* the previous tender, yet has no locus to challenge the tender dated 07.03.2025 or the award of contract dated 07.03.2025 in favour of respondent no.3 in the arbitral proceedings, inasmuch as the petitioner is a third party to the subsequent tender process. Predicated thereon, he submits that the only recourse left to the petitioner for redressal of his grievances is the present writ petition.

7. Learned senior counsel submitted that by virtue of clause (xv) of the tender conditions dated 07.03.2025, the participation of the petitioner has been unduly and arbitrarily prohibited. Dilating further, he submitted that it is apparent that only to oust the petitioner from consideration of its bid *qua* the tender dated 07.03.2025, clause (xv) has been introduced. He submitted that the petitioner has filed the present writ petition to bring to the notice of this Court the fraud played by respondent no.3 in obtaining the award of contract in its favour by fabrication of documents and concealment of core and material facts which, if revealed, would result in disqualification of respondent no.3 and probable penal consequences. According to the learned senior counsel, the documents placed on record would, *prima facie*, and manifestly reveal the fabrication and forgery committed by respondent no.3 and the fraud played by it in obtaining the award of contract under the tender dated 07.03.2025.



8. He claimed that Rotatek S.A., the OEM, was liquidated on 22.06.2012 by the competent authority/Court in Barcelona, Spain. Referring to page 25 of the writ petition, learned senior counsel was at great pains to explain how the respondent no.3 falsely claims to represent the OEM, i.e. M/s. Rotatek S.A. which already stood liquidated in the year 2012. He emphasized that the name of the OEM was changed many times, ostensibly, by creation of Shell companies and lastly resulting in formation of a fraud company, i.e., respondent no.3. He stoutly contended that respondent no.3 neither possesses the expertise nor any knowledge, nor does it have any equipment manufactured by the OEM. He thus submits that respondent no.3 being fraudulent and a Shell company, cannot be eligible to be awarded the contract under the tender dated 07.03.2025. He submitted that records from Boletin Oficial del Registro Mercantil (hereinafter referred to as “*BORME*” and the European Union Intellectual Property Office (hereafter “*EUIPO*”) unequivocally confirm that no intellectual property, trade marks, patents or trade names of Rotatek S.A. were ever transferred to any of the entities mentioned at page 25 of the writ petition. Thus, the use of the word “Rotatek” post the liquidation, is without any lawful entitlement. According to learned senior counsel, the sequence of events reveals a deliberate and coordinated attempt to sideline compliant domestic manufacturers such as petitioner in favour of Shell companies built on PAC certification. As per the learned senior counsel, this practice constitutes gross violation of procurement norms under GFR, 2017.

9. Upon a specific query being put to the learned senior counsel as to



why the ratio laid down by the Hon'ble Supreme Court in *National Highways Authority of India vs. Gwalior-Jhansi Expressway Limited Through Director: (2018) 8 SCC 243*, would not apply to the petitioner, he submitted that though the general rule is that only a party who participates in an open, competitive tender is entitled to challenge the process or outcome, the said rule presupposes that meaningful participation is possible and that the grievance pertains to disappointment in an open field competition. In contrast, he contended that in the present case where the very structure of the tender precludes participation, as in PAC tenders which are by design restricted to a single, pre-selected "*proprietary*" entity, the ground for exclusion shifts fundamentally.

### **CONTENTIONS OF THE RESPONDENT NO.1**

10. Learned counsel appearing for respondent no.1 submitted that the tender is based on PAC and therefore, the petitioner cannot claim any grievance to that extent since the tendering authority has the competence and jurisdiction to decide as to how a tender is to be formulated. Additionally, he submitted that Rotatek is not a stranger to the tendering authority as purchases have been regularly made from Rotatek since the year 1999. He thus submitted that there is no reason as to why the respondent no.1 would suspect or doubt the integrity of respondent no.3.

11. That apart, in so far as the petitioner is concerned, learned counsel submitted that despite five extensions having been granted to the petitioner for completion of the project awarded to it *vide* the previous contract, the petitioner failed to comply with the terms of the tender and the contract in



time. It was on this basis that the contract awarded to the petitioner was cancelled given the importance of the project and the timelines stipulated therein. He contended that in any case, the petitioner has no locus to challenge the tender dated 07.03.2025 having not participated or challenged the terms therein within a reasonable period. He submitted that entertaining a writ petition by a party who has grievances in respect of the very same work which was previously granted to it may not be appropriate, writ jurisdiction being a discretionary jurisdiction. Learned counsel forcefully contended that all these allegations, now being levelled against respondent no.3, have been concocted after the petitioner's contract was terminated on 21.01.2025. He additionally submitted that the same is now subject matter of arbitration. Defending the tender dated 07.03.2025 and the further tender process proceeded with by respondent no.1, he stoutly submitted that the said decisions were taken by the Ministry of Finance at the level of the Secretary and had been well thought out before any such steps were undertaken by respondent no.3. He thus prayed that the petition be dismissed with costs.

### **CONTENTIONS OF THE RESPONDENT NO.3**

12. Mr. Anupam Lal Das learned senior counsel appearing for respondent no.3, at the outset submitted that the petitioner has a grouse against respondent no.1 and is inimically disposed against respondent no.3 and has not approached this Court with clean hands. He asserted that respondent no.3 has stepped into the shoes of Rotatek S.A. by virtue of proceedings before the competent authority/Court in Barcelona, Spain



equivalent in status of “*Successful Resolution Applicant*”, as understood in our country under the provisions of Insolvency and Bankruptcy Code, 2016. Based thereon, he asserted that being an entity replacing the original Rotatek S.A. in terms of the laws prevailing in Spain, respondent no.3 is a recognised entity and fully entitled to participate in the tender dated 07.03.2025. He stoutly submitted that the petitioner has not revealed all true facts; concealed relevant and material facts and attempted to mislead this Court. According to learned senior counsel, the petitioner is not entitled to any discretionary relief, rather, liable to pay compensatory damages for dragging respondent no.3 into mindless litigation.

**ANALYSIS & CONCLUSIONS:-**

13. We have given our thoughtful consideration to the arguments addressed by learned senior counsel for the parties, perused the material on record and are of the firm opinion that the present writ petition is not only unmerited but also that the petitioner lacks the locus to maintain it.

14. The law on the issue as to on what principles, the writ petitions at the behest of entities such as the petitioner, ought to be entertained, is no more *res integra*. We allude to the judgment of the Hon’ble Supreme Court in ***National Highways Authority of India vs. Gwalior-Jhansi Expressway Limited Through Director: (2018) 8 SCC 243***, particularly to para 20 which is reproduced hereunder:

*“20. While considering the relief claimed by the respondent (claimant), the same should have been tested on the touchstone of the principle governing the tender process, especially when the validity of the tender document has not been put in issue or challenged before any competent*



forum. Going by the terms and conditions in the tender documents, as already alluded to in para 10 above, there is no tittle of doubt that the right of the claimant (respondent) to match the bid of L-1 or to exercise ROFR would come into play only if the respondent was to participate in the tender process pursuant to the notice inviting tenders from the interested parties. The objective of tender process is not only to adhere to a transparent mechanism but to encourage competition and give equal opportunity to all tenderers with the end result of getting a fair offer or value for money. The plain wording of the eligibility clause in the tender documents and the incidental stipulations make it explicit that the respondent was required to participate in the tender process by submitting its sealed bid (technical and financial). The fact that a deeming clause has been provided in the tender document that if the respondent was to participate in the bidding process, it shall be deemed to fulfil all the requirements of the tender Clauses 3 to 6 of RFP, being the existing concessionaire of the project, does not exempt the respondent from participating in the tender process; rather the tenor of the terms of the documents made it obligatory for the respondent to participate in the tender process to be considered as a responsive bidder, along with others. **Having failed to participate in the tender process and, more so, despite the express terms in the tender documents, validity whereof has not been challenged, the respondent cannot be heard to contend that it had acquired any right whatsoever. Only the entities who participate in the tender process pursuant to a tender notice can be allowed to make grievances about the non-fulfilment or breach of any of the terms and conditions of the tender documents concerned. The respondent who chose to stay away from the tender process, cannot be heard to whittle down, in any manner, the rights of the eligible bidders who had participated in the tender process on the basis of the written and express terms and conditions. At the culmination of the tender process, if the respondent had not participated, in law, the offer submitted by the eligible bidders is required to be considered on the basis of the stated terms and conditions. Thus, if the claim of the respondent was to be strictly adjudged on the basis of the terms and conditions specified in the subject tender document, the respondent has no case whatsoever.**

(emphasis supplied)

15. The aforesaid judgment enunciated the law in respect of locus of entities such as the petitioner has also been followed by the Division Bench of this Court on more than one occasion. It would be worthwhile to also



refer to the relevant paragraphs of the judgment in *Primatel Fibcom Ltd. vs. Indian Oil Corporation Limited & Ors.: Neutral Citation 2024:dhC:4657:DB* and *Maisur Projects Pvt. Ltd. vs. State of NCT of Delhi & Ors.: W.P(C) 5133/2024* decided on 11.07.2025 rendered by the Division Bench of this Court relying upon *Gwalior-Jhansi (supra)*. The relevant paragraphs of *Primatel (supra)* are extracted hereunder:

*“8. The first question to be decided is whether the Petitioner herein can maintain independent proceedings against Respondent No. 1 for impugning the award of subject Tender in favour of Respondent No. 2. In our considered opinion, the answer to the question is in the negative and in this regard, we may refer to a judgment of the Supreme Court in NHAI v. Gwalior-Jhansi Expressway Limited. The relevant para 20 reads as under:*

*20. While considering the relief claimed by the respondent (claimant), the same should have been tested on the touchstone of the principle governing the tender process, especially when the validity of the tender document has not been put in issue or challenged before any competent forum. Going by the terms and conditions in the tender documents, as already alluded to in para 10 above, there is no tittle of doubt that the right of the claimant (respondent) to match the bid of L-1 or to exercise ROFR would come into play only if the respondent was to participate in the tender process pursuant to the notice inviting tenders from the interested parties. **The objective of tender process is not only to adhere to a transparent mechanism but to encourage competition and give equal opportunity to all tenderers with the end result of getting a fair offer or value for money.** The plain wording of the eligibility clause in the tender documents and the incidental stipulations make it explicit that the respondent was required to participate in the tender process by submitting its sealed bid (technical and financial). The fact that a deeming clause has been provided in the tender document that if the respondent was to participate in the bidding process, it shall be deemed to fulfil all the requirements of the tender Clauses 3 to 6 of RFP, being the existing concessionaire of the project, does not exempt the respondent from participating in the tender process; rather the tenor of the terms of the documents made it obligatory for the respondent to participate in the tender process to be considered*



as a responsive bidder, along with others. **Having failed to participate in the tender process and, more so, despite the express terms in the tender documents, validity whereof has not been challenged, the respondent cannot be heard to contend that it had acquired any right whatsoever. Only the entities who participate in the tender process pursuant to a tender notice can be allowed to make grievances about the non-fulfilment or breach of any of the terms and conditions of the tender documents concerned. The respondent who chose to stay away from the tender process, cannot be heard to whittle down, in any manner, the rights of the eligible bidders who had participated in the tender process on the basis of the written and express terms and conditions. At the culmination of the tender process, if the respondent had not participated, in law, the offer submitted by the eligible bidders is required to be considered on the basis of the stated terms and conditions. Thus, if the claim of the respondent was to be strictly adjudged on the basis of the terms and conditions specified in the subject tender document, the respondent has no case whatsoever.**

*(Emphasis supplied)*

9. The Petitioner herein admittedly did not participate in the bidding process and elected to remain outside the said process. The fact that Petitioner was the intended supplier of SDH equipment of Respondent No. 4 would not give any locus to the Petitioner to challenge the tender process and maintain these proceedings. The issuance of a Commitment Letter dated 02nd June, 2023 by the Petitioner to Respondent No. 4 does not make it a 'bidder' in the tender process. In view of the aforesaid judgment of the Supreme Court, it is clear that a party which has not participated in a tender process does not have any locus to challenge the award of the Tender and cannot be heard to make any grievances as such a party does not acquire any right in the tender."

16. That apart, recently, this Court also considered a case in respect of a tender wherein the petitioner had neither participated in the tender process nor challenged the tender conditions within time and before the contract was awarded. The relevant paragraph of the judgment dated 17.07.2025 in ***Brijesh Kumar vs. Union of India & Anr.: W.P.(C) 9272/2025*** is extracted hereunder:



*“6. Once the tender process has progressed to an advanced stage without any challenge to the conditions; and rights may have accrued or vested with third parties, it would, in our opinion, not be permissible for any party, specially a party which was rendered ineligible due to such condition, to disrupt or derail the progress so made. Any interference at this stage would simply create multiplicity of litigation; delay and protraction of the project impacting the overall project cost, and is definitely not in the public interest.*

*7. At this stage, in our opinion, the petitioner who did not/ could not participate in the tender process cannot be permitted to challenge the tender for the reason that the tender in question is in relation to providing certain public amenities. A tenderer who did not/ could not participate in the tender process due to some tender condition, does not have any locus to challenge the same at such a belated stage.”*

17. From an examination of law enunciated not only in ***Gwalior-Jhansi*** (*supra*) but also the judgment of this Court in ***Primatel*** (*supra*), ***Maisur*** (*supra*) and ***Brijesh Kumar*** (*supra*) undoubtedly the principle that emerges is very clear. In that, an entity which claims to be aggrieved of the conditions of a tender but has not participated on the premise of such condition impacting its eligibility, is required under law, to challenge those conditions within a reasonable period preferably before the last date of the submission of a bid or atleast before the date of evaluation of the techno commercial bid. Such of those entities/bidders who do participate in the tender may also, depending upon the facts of each case, be entitled to prefer a writ petition which too must be filed within a reasonable period of such closing date of the submission of the bid, so as to ensure that third party rights are not created in the meanwhile or contract being awarded or the execution of work by a third party commences. This would ensure that the wastage of public time, public exchequer and unnecessary revision of



estimated costs of the project, is avoided. It is well known that every day's delay, particularly in infrastructure projects, may entail humongous increase in project costs at the behest of persons/entities who, due to their lack of diligence, protract or delay the execution of such projects.

18. Applying the aforesaid principles to the facts of the present case, we find that the writ petition cannot be maintained by the petitioner.

19. Undoubtedly, the petitioner was aggrieved by the cancellation dated 22.01.2025 of the contract awarded to it. Admittedly, such cancellation is now subject matter of an ongoing arbitration proceeding which has no causal link with the present purported dispute. Undeniably, though the subject tender, floated on 07.03.2025 was in the knowledge of the petitioner, yet it chose not to challenge the tender or its conditions at that stage itself. Intriguingly, not only the petitioner did not challenge the conditions of the tender dated 07.03.2025 in time, it waited all along till the contract under the instant tender was awarded to respondent no.3. In fact, it has been informed that respondent no.3 has already started executing the said project. The present writ petition, undeniably, was filed only on 03.07.2025. The aforesaid narration of relevant dates and facts unequivocally and unerringly point out to the fact that the petitioner lacks in due diligence and the challenge laid in the petition is unreasonably delayed. Thus, on this basis, we are of the firm opinion that the law as laid down and noted above, unhesitatingly, applies to the petitioner and we hold that the petitioner has no locus to maintain the present writ petition.

20. Learned senior counsel for the petitioner, with great vehemence, had



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strongly urged that respondent no.3 and its previous erstwhile Avtaars were Shell companies etc., and that they had indulged in large scale fraud, fabrication and manipulation of documents resulting in the contract being awarded to respondent no.3. These are, in our humble opinion, not only disputed questions of facts, but hotly contested issues, which we are not required to advert to in view of the fact that it has already been held by us that the instant writ petition is not maintainable.

21. In view of the aforesaid, the present petition is dismissed along with pending applications, if any.

**TUSHAR RAO GEDELA, J**

**DEVENDER KUMAR UPADHYAY, CJ**

**AUGUST 19, 2025/rl/kct**