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

% Judgment reserved on: 28.11.2025
Judgment delivered on: 23.12.2025

\+ W.P.(C) 4748/2025, CM APPLs 21775-21777/2025, CM APPL 47301/2025 & CM APPL 53787/2025

\+ W.P.(C) 4750/2025, CM APPLs 21780-21782/2025, CM APPL 39747/2025 & CM APPL 53877/2025

\+ W.P.(C) 4755/2025, CM APPLs 21888-21890/2025 & CM APPL 53870/2025

MKU LIMITED AND ANR .....Petitioners

versus

UNION OF INDIA AND OTHERS .....Respondents

Advocates who appeared in this case:

For the Petitioners : Ms. Madhavi Divan, Senior Advocate and Mr. Manish Vashisht, Senior Advocate with Mr. Anirudh Sharma, Mr. Rajiv Dalal, Mr. Sanjeev Kr Sharma, Mr. Varun Kesharwani, Ms. Dipti Singh Arya and Mr. Sudhir Atri, Advocates.

For the Respondents : Mr. R. Venkatramani, Attorney General with Mr. Vikram Jetly, CGSC, Ms. Shreya Jetly, Mr. Aakash Pathak (GP), Mr. Chitvan Singhal, Mr. Abhishek Pandey, Advocates for UOI alongwith Brig Sidharth Sen, SM, Lt Col Gaurav Chaudhary and Major Anish Muralidhar.

Mr. Kailash Vasdev, Senior Advocate, Mr. Rajiv Nayar, Senior Advocate and Mr. Kirti Uppal, Senior Advocate with Mr. Sanjay K Shandilya, Mr. Apoorva Agrawal, Ms. Molly Agarwal and Mr. Adit Srivastava, Advocates for R-5.

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. Writ petitions bearing W.P.(C) No.4748/2025 and W.P.(C) No.4750/2025, have been filed under Article 226 of the Constitution of India, 1950, seeking quashing of the communication letter dated 26.03.2025 and 28.03.2025 issued by the respondent no.2/Director General of Infantry in the Subject Tender bearing no.C/31045/UC(CI/CT)/BH/Inf-8(FINSAS), and C/31044/UC(CI/CT)/ BPJ/Inf-8(FINSAS) issued on 04.02.2025 for procurement of Quantity 11,700 Ballistic Helmets (NIJ III+), and 27,700 Bullet Proof Jacket (BPJ) (NIJ III and above) respectively.

2. In W.P.(C) 4755/2025, petitioner seeks quashing of the communication letter dated 28.03.2025 issued by the respondent no.2 in the Subject Tender bearing no.C/31074/UCP)/NS(TI)/Inf-8(FINSAS) issued on 06.02.2025 for procurement of Quantity 3213 Night Sight (Thermal Imaging) for Assault Rifle (AK-203).

3. In all the writ petitions, petitioner further seeks a direction to the respondent nos.1 and 2 to consider the bid of the petitioner as compliant on technical parameters, and allow the petitioner to participate in the tender process.

4. Since the parties in all the writ petitions, and the issues involved are similar, all the writ petitions are being disposed of by a common judgment.

FACTS IN W.P.(C) 4748/2025:

5. A Request for Proposal (hereafter referred to as ***"RFP"***) dated 04.02.2025 bearing no. C/31045/UC(CI/CT)/BH/Inf-8(FINSAS) was floated for procurement of Quantity 11,700 Ballistic Helmets (NIJ III+). In the instant case, the petitioner claimed to be a 100% Export Oriented Unit (hereafter referred to as ***"EOU"***), and the licensing authority for EOUs is vested with the respondent no.4/Department of Commerce, Ministry of Commerce and Industry (hereafter referred to as ***"DoC"***).

6. It was further stated that prior to the year 2013, the authority for issuance of Industrial Licences to EOUs as well as Domestic Tariff Area supply units (hereafter referred to as ***"DTA"***) was vested with the respondent no.3, i.e., the Department of Promotion of Industry & Internal Trade, Ministry of Commerce and Industry (hereafter referred to as *"**DPIIT"***), earlier known as the Department of Industrial Policy & Promotion, Ministry of Commerce and Industry (hereafter referred to as ***"DIPP"***). However, pursuant to the decision taken in the Committee Meeting dated 13.03.2013 constituted by the Central Government under the Industries (Development and Regulations) Act, 1951 (hereafter referred as to ***"the Act"***) and the Registration and Licensing of Industrial Undertakings Rules, 1952 (hereafter referred to as ***"RLIU Rules, 1952"***), the power to grant Industrial Licences to EOUs was transferred to the DoC.

7. One of the specific eligibility requirements for participation in the RFP

was possession of a valid Industrial Licence issued by the DIPP (now known as DPIIT), and it was stated by the petitioner that it had applied for the requisite Industrial Licence, and was granted the same by the DoC on 27.12.2024.

8. It was further stated that pursuant to the RFP, petitioner submitted its pre-bid queries to the respondent no.2 on 11.02.2025. Several correspondences thereafter took place between the petitioner and the respondent no.2 pertaining to the bid submission. It was further stated that on 22.03.2025, petitioner wrote to respondent no.2 with respect to the said RFP, stating that different interpretations were being given to the issues concerning "DPIIT, EOUs, DoC and the Act", and sought a fair opportunity to submit its clarification before any final decision or disqualification was made.

9. However, it was stated that on 26.03.2025, respondent no.2 declared the petitioner as *"non-compliant in the technical bid for not being complied with the provision of Para 1(b)(ii) of Appendix "D" to RFP"*. Thereafter, respondent no.2 issued another letter dated 28.03.2025 wherein a material correction was made, and the petitioner was held to be disqualified by stating that it was *"Non-Compliant under the provision of Para 1(d)(i) of Appendix H to the RFP"*.

10. Being aggrieved by the arbitrary and unjust decision of the respondent no.2, the petitioner has preferred the instant writ petition.

FACTS IN W.P.(C) 4750/2025:

11. The facts in W.P.(C) 4750/2025 are similar to those in W.P.(C) 4748/2025 to the extent that it pertains to an EOU, which was granted an Industrial License by the DoC on 27.12.2024.

12. In the instant petition, RFP bearing no. C/31044/UC(CI/CT)/BPJ/Inf-

8(FINSAS) was floated on 04.02.2025 for procurement of Quantity of 27,700 Bullet Proof Jacket (BPJ) (NIJ III and above). That pursuant to the RFP, petitioner submitted its pre-bid queries to the respondent no.2 on 09.02.2025. Several correspondences thereafter took place between the petitioner and the respondent no.2 pertaining to the bid submission and clarifying the petitioner's adequate experience in the field of Bullet Proof Jacket manufacturing.

13. Thereafter, on 22.03.2025, petitioner wrote to respondent no.2 with respect to the said RFP, stating that different interpretations were being given to the issues concerning "DPIIT, EOUs, DoC and the Act" and sought a fair opportunity to submit its clarification before any final decision or disqualification was made.

14. However, it was stated that on 26.03.2025, respondent no.2 declared the petitioner as *"Non-Compliant in the technical bid for not being complied with the provision of Para 1(c)(ii) and Para 1(d)(i) of Appendix "D" to RFP"*. Thereafter, respondent no.2 issued another letter dated 28.03.2025 wherein a material correction was made, and the petitioner was held to be disqualified by stating that it was *"Non-Compliant under the provision of Para 1(c)(ii) and Para 1(d)(i) of Appendix H to the RFP"*.

15. Being aggrieved by the arbitrary and unjust decision of the respondent no.2, the petitioner has preferred the instant writ petition.

FACTS IN W.P.(C) 4755/2025:

16. The facts in W.P.(C) 4755/2025 are also similar to those in W.P.(C) 4748/2025 to the extent that it pertains to an EOU, which was granted an Industrial License by the DoC on 27.12.2024.

17. In the present petition, RFP bearing no. C/31074/UCP)/NS(TI)/Inf-8(FINSAS) was floated on 06.02.2025 for procurement of Quantity 3213 Night Sight (Thermal Imaging) for Assault Rifle (AK-203). Pursuant to the RFP, petitioner submitted its pre-bid queries to the respondent no.2 on 12.02.2025. It was stated that on 24.02.2025, petitioner wrote to the respondent clarifying doubts, if any, regarding the EOU/Industrial License of the petitioner. Several correspondences thereafter took place between the petitioner and the respondent no.2 pertaining to the bid submission and clarifications regarding the various clauses of the Appendices to the RFP.

18. Petitioner claimed to have written a letter to the Deputy Chief of Army Staff (hereafter referred to as ***"DCoAS"***) and Vice Chief of Army Staff on 26.03.2025, requesting an urgent meeting to ensure fair participation in the bidding process. It was stated that in response thereto, the respondents stated that the issues highlighted by the petitioner would be considered in accordance with the policy and provisions of the Defence Acquisition Procedure, 2020 (hereafter referred to as ***"DAP 2020"***).

19. However, it was stated that on 28.03.2025, respondent no.2 declared the petitioner as *"Non-Compliant in the technical bid for not being complied with the provision of Para 1(b) and 1(d) of Appendix "K" to RFP"*.

20. Being aggrieved by the arbitrary and unjust decision of the respondent no.2, the petitioner has preferred the instant writ petition.

CONTENTIONS OF THE PETITIONER in W.P.(C) 4750/2025:-

21. Opening the argument for the petitioner, Ms. Madhavi Divan, learned senior counsel adumbrated a brief background of the case. She stated that

undeniably, the petitioner has been issued Industrial Licence under the provisions of the Act and the RLIU Rules, 1952 prescribed thereunder by the Ministry of Commerce and Industry, Union of India (hereafter referred to as ***"MoC"***). She also submitted that the Act envisages a single Industrial Licence to be issued, and does not demonstrate two types of licences which may be required by an industrial undertaking. She also stated that when neither the Act, nor the RLIU Rules, 1952 envisage or prescribe two different or distinct Industrial Licences, the respondents by way of their own interpretation cannot introduce, that too extraneously, a distinction between Industrial Licence issued by the DoC on the one hand, and by the DPIIT on the other. She urged that for all intents and purposes the Industrial Licence, whether for EOUs, or any industrial undertaking in a Special Economic Zone (hereafter referred to as ***"SEZ"***), or for any industrial undertaking other than the aforementioned industrial undertaking, issued by the DoC or DPIIT, would remain the same i.e., for manufacture of defence equipment without any further classification. She stoutly contended that by an artificial device or a methodology which is alien to the purpose for which Industrial Licences are issued under the regime of the Act and the RLIU Rules, 1952 framed thereunder, the respondents cannot hold the petitioner ineligible to participate in the subject RFP. According to her, neither the DAP 2020, nor the RFP prescribes any such distinction and therefore, wherefrom the respondents introduced such absurd distinction, is unknown and extraneous to the conditions of the RFP, or the policy and provisions of the DAP 2020.

22. Learned senior counsel emphasized that the provisions of the DAP 2020, which is a governing document formulated for the purposes of defence procurement, and the provisions whereof are undoubtedly mandatory, itself does

not prescribe any such distinction. In that view of the matter, she emphatically contended that holding the petitioner ineligible even to participate in the field trial itself is arbitrary, capricious and unconstitutional.

23. Apart from the overall perspective addressed by Ms. Divan, she would urge that even according to Para 1(d)(i) of Appendix-H of the RFP, which required the bidders to hold a valid defence Industrial Licence, the petitioner would fulfil the criteria since it admittedly holds a valid defence Industrial Licence issued by DPIIT. She further clarified this submission by stating that prior to 25.02.2013, an Industrial License under the Act was granted to an entity, be it EOU, DTA, industrial undertaking in SEZs or industrial undertaking other than mentioned above only by DPIIT (earlier known as DIPP), and Industrial License issued by DPIIT to EOUs prior to 25.02.2013 continued to operate as equivalent to Industrial License issued by DPIIT to DTA or industrial undertaking other than EOUs/SEZs post 25.03.2013, even though power to issue such license to EOUs has been transferred to DoC of the MoC. She further placed reliance on the Press Note dated 22.09.2015 issued by the DIPP, whereby initial validity of the Industrial Licenses for defence sector already issued by DIPP has been revised for 15 years and further extendable upto 18 years. Therefore, the Industrial License granted to EOUs prior to 25.02.2013 is still valid, and they can participate in the subject RFP. Therefore, she contended that even though the respondent held petitioner ineligible for not holding a valid Industrial License issued by the DPIIT, by virtue of the said press note issued by the DIPP, which revised the validity of Industrial Licenses, the petitioner holds a valid Industrial License.

24. Alluding to the affidavit of the MoC, Ms. Divan asserted that the

petitioner's licence has been issued in fact, by the DPIIT itself. It is contended that the MoC has clarified that DPIIT is the administering authority under the Act, and the DoC is its delegatee for the purpose of license to be issued to the EOUs and SEZ's. While relying on the ratio laid down in ***Roop Chand vs. State of Punjab, (1962) SCC OnLine SC 17*****,** she would contend that the act of issuance of licence by the delegatee is an act for and on behalf of the delegating authority. Thus, the Industrial Licence issued by DoC is infact, for all intents and purposes, a licence issued by the DPIIT. She further contended that the MoC in its affidavit has itself confirmed that the rigor under both the processes is the same, and is finally vetted by the same Ministries, including the Ministry of Home Affairs (hereafter referred to as ***"MHA"***). Thus, according to her, there is no distinction between the Industrial Licence issued purportedly by the DoC, and the one issued by DPIIT. She further clarified this submission by stating that though the application for the permission and issuance of the Industrial Licence of the petitioner was considered favourably for issuance of Industrial License by the Board of Approval (hereafter referred to as ***"BoA"***), it had finally been approved by DPIIT. In other words, the final authority of approval having been exercised by the DPIIT, the licence has to be deemed to be issued by DPIIT which would render the petitioner eligible to participate in the RFP.

25. Relying upon DAP 2020, learned senior counsel contended that the respondents have conceded in their counter affidavit dated 14.05.2025 that they are bound to act within the four corners of the DAP 2020. Pointing out to various paragraphs of the said counter affidavit, she contended that having conceded so, at a later point in time, the insertion of the words *"issued by DIPP/DPIIT"* in the counter affidavit was a 'mistake', and that no such requirements exist under the

DAP 2020, the natural consequence of which would be to interpret the conditions of the RFP in a manner consistent with the DAP 2020. As a caveat, she submitted that this contention is without prejudice to the submission that the licence issued by the DoC as a delegatee of DPIIT, is in fact, a licence issued by the DPIIT itself.

26. Yet another contention urged by the learned senior counsel is that the stand taken by the respondents regarding the issuance of Industrial Licence by DPIIT, as a mandatory condition for eligibility is an afterthought, and neither the MoC nor the DAP 2020 or the RFP has imposed or stipulated any such bar. She contended that the clarifications sought by the Ministry of Defence *vide* the letter dated 19.02.2025 from the MoC as to whether the Industrial Licences issued by the DPIIT, and the DoC have the same validity; whether Industrial Licence issued to EOUs qualify for defence procurement and; whether any separate regulatory requirement exists, itself establishes that the respondents themselves did not consider the two licences distinct from one another. In other words, Ms. Divan stoutly emphasized that if the version of the respondents that the RFP envisaged an Industrial Licence issued only by the DPIIT urged before this Court is believed to be true, the question of seeking clarification as to whether there is any difference or distinction between the licences issued by DPIIT or DoC, would not have arisen at all. Thus, according to her, even the respondents have not treated the Industrial Licenses issued by either DoC or DPIIT as distinct from each other.

27. Relying upon the judgment of the Hon'ble Supreme Court in ***Shivashakti Sugar Ltd. vs. Shree Renuka Sugar Ltd., (2017) 7 SCC 729***, she would contend that tender conditions must be given an interpretation consistent with the

principle of commercial prudence, and the ease of doing business. Referring to the RFP, she would forcefully contend that there is no condition or prohibition barring EOUs from participating in the bidding process. She would contend that having regard to the fact that there is no bar or prohibition, coupled with the fact that the petitioner has a valid Industrial Licence issued under the provisions of the Act and the RLIU Rules, 1952, declaration that the petitioner is *"non compliant",* and therefore ineligible, is not only violative of the conditions of the RFP, but also arbitrary and unconstitutional. She would emphasize that the respondents have blatantly exercised their power arbitrarily, which ought to be interfered with by this Court. She further stated that there could be no rationale behind the indirect elimination of the EOUs, who are otherwise eligible, and earn valuable foreign exchange for the country. In fact, while relying upon various documents on record, she contended that the petitioner as an EOU has manufactured the very same quality of defence equipment sought under the RFP, and has undoubtedly supplied the same to various Armed Forces/Central Armed Police Forces (hereafter referred to as *"CAPFs"*) of the country in DTA sales after obtaining valid permission under the Foreign Trade Policy, 2015. She also urged that the petitioner has also exported such equipment being a 100% EOU.

28. Her contention was that if the petitioner can produce world class defence equipment, and also supply the same standard equipment to the Armed Forces, and the CAPFs in India, it would be a travesty to hold that the petitioner is ineligible to bid for the very same defence equipment for the Army. She would submit that in the present case, unfortunately, the petitioner was not even permitted to demonstrate its capabilities and quality of the defence equipment in the field trials. She also submitted that as per the conditions of the RFP, the

eligibility of the bidders was to be decided simultaneously alongwith the field trial. This having been denied to the petitioner, the action has been prejudicial, and to the detriment of the very eligibility to participate in the RFP. According to her, this action is unsustainable.

29. Another relevant argument according to Ms. Divan was predicated on the clarification letter dated 19.02.2025 sought by the Ministry of Defence from the MoC, and the premature and hasty disqualification of the technical bid of the petitioner by the Technical Evaluation Committee (TEC) on 18.03.2025 which was communicated to the petitioner 26.03.2025, without awaiting the answers to the clarification letter which were forwarded to the respondent no.2 only on 28.03.2025. She would contend that having regard to the fact that the respondents themselves were not clear as to whether there is any distinction at all between the Industrial Licences issued by the DoC on the one hand and the DPIIT on the other, without awaiting the answer to the letter dated 19.02.2025, it is inconceivable as to how the technical bid of the petitioner was declared to be *"non-compliant"* on 26.03.2025. It is her fervent plea that the respondents have acted perversely to hold the petitioner ineligible even before they themselves were clear as to whether there is any distinction at all. In such fact situation, she would submit that the action being perverse and hasty, the declaration that the petitioner is non-complaint has to be quashed and set-aside and consequently, the bid of the petitioner ought to be considered.

30. In the aforesaid context, learned senior counsel also referred to the letter dated 26.03.2025 issued by the DCoAS at 5:32 p.m. which noted that the representation of the petitioner with respect to the Industrial Licence would be considered as per the existing policy and the provisions of DAP 2020. However,

to the shock of the petitioner by letter dated 26.03.2025 issued at 5:46 p.m., the petitioner was disqualified within 14 minutes of the letter issued by the DCoAS at 5:32 p.m. on the same day. According to Ms. Divan, this clearly indicates the predetermined mind of the respondents to declare the petitioner non-compliant/ineligible even before the answer to the query was received, and without considering its representation.

31. Ms. Divan would also refer to "Additional Notes" submitted by the respondents after the affidavit of MoC was furnished to submit that this is an attempt to expand and alter the case of the MoC, and is beyond the original reason for rejection. This according to her militates against the ratio laid down by the Hon'ble Supreme Court in ***Mohinder Singh Gill vs. Chief Election Commissioner, (1978) 1 SCC 405***. She would emphatically contend that once the respondents have accepted that the contents of the affidavit filed by the MoC as the last word on the said issue, these respondents would be estopped from contending otherwise. She would pray that the contents of the Additional Notes may be ignored, and eschewed from consideration.

CONTENTIONS OF THE PETITIONER in W.P.(C) 4748/2025:-

32. At the outset, Mr. Anirudh Sharma, learned counsel appearing for the petitioner in W.P.(C) 4748/2025 submitted that he would adopt the arguments addressed by Ms. Madhavi Divan, learned senior counsel. He submitted that only those issues which have not been addressed by Ms. Divan would alone be urged by him.

33. Learned counsel would submit that the respondents did not take into consideration a crucial aspect of the RFP so issued by a public authority. In that,

the financial bid of the petitioner was for Rs.48 Crores, while that of the respondent no.5 was pegged at Rs.64,47,40,200/- meaning thereby that a loss of almost Rs.18 Crores (25%) approximately has occurred to the public exchequer which was totally avoidable, and has caused prejudice to the public, and national interest.

34. Referring to the affidavit filed by the MoC, he would contend that contrary to the submissions of the respondent to project that the Ministry of Defence in respect of the subject RFP is the Nodal Ministry, a perusal of the averments in the affidavit clearly establishes that it is the MoC, which is the Nodal Ministry. He would contend that the affidavit further reveals that so far as the procedure is concerned, the DoC as well as the DPIIT both adopt similar pre-approval procedure, rigour, and concurrence of relevant Ministries, namely, MHA, Department of Defence Production, etc. Pointedly, he would contend that so far as the issuance of license to the petitioner by the DoC is concerned, the affidavit also admits that the concurrence of DPIIT is obtained by the DoC while issuing the Industrial License. He emphasizes that the MoC has admitted that the licenses, whether issued by DoC or DPIIT, are one and the same. Thus, the artificial distinction sought to be projected by the respondents is a mirage, and does not exist.

35. Relying on the judgment of the Hon'ble Supreme Court in ***Maha Mineral Mining & Benefication (P) Ltd. vs. M.P. Power Generating Co. Ltd.,*** reported in ***(2025) SCC OnLine SC 1942,*** particularly paragraphs 24 and 25, learned counsel submitted that in the eventuality of this Court finally being inclined to allow the writ petition, then by virtue of the interim order dated 17.04.2025 whereby the tender proceedings were not interfered at that stage, however were

made *"subject to further orders which may be passed in these petitions"*, not only the original tender process needs to be quashed, but the consequent actions also need to be set aside.

36. Learned counsel forcefully contended that the submission of the respondents that the distinction in the constitution of the Committee itself would convey that there is a difference or a great distinction between the license issued by DoC on the one hand, and the DPIIT on the other, is imaginative and *de hors* the provisions of the Act and the RLIU Rules, 1952. He would contend that the respondents have been unable to refer to any such section or rule, which would indicate any such restriction or interpretation. In this context, he referred to section 14 of the Act to submit that the nature of investigation required therein, whether for the license issued by DoC or DPIIT, does not draw any distinction between the two. He emphasized that when neither section 14 of the Act nor rule 10 of the RLIU Rules create any distinction between the investigations to be carried out or the consideration before the BoA or the Licensing Committee (hereafter referred to as ***"LC"***), the artificial distinction introduced by the respondents is extraneous, and ought to be eschewed.

37. Learned counsel contended that by the mere presence of Joint Secretary, Home Affairs (Security) and (Arms) in the LC, it could not be construed that the considerations while issuing license under the DPIIT is any different from the one while issuing license by the DoC. He submitted that this contention is a non-starter, and primarily a bogey raised for the purpose of misleading this Court. In fact, he urged that the respondents have failed to point out even one tangible security concern, which may have been raised by the MHA, or the Ministry of Defence.

38. On the basis of the aforesaid arguments, learned counsel for the petitioner submitted that the prayer sought in the writ petition be allowed.

CONTENTIONS OF THE PETITIONER in W.P.(C) 4755/2025

39. Appearing for the petitioner in the present writ petition, Mr. Manish Vashisht, learned senior counsel submitted that insofar as the issues covered by Ms. Divan in her arguments are concerned, the petitioner would also adopt the same. However, in addition thereto, he would urge certain crucial and relevant contentions for the consideration of this Court.

40. Mr. Vashisht, learned senior counsel would contend that the clause regarding the Industrial License in the RFP is in consonance with the clause as laid down in the DAP 2020. He would contend that the disqualification of the petitioner is not only arbitrary but also *malafide,* since neither the RFP nor the DAP require the bidder to be in possession of an Industrial License issued by a particular department of the MoC. To demonstrate the aforesaid contention, learned counsel attempted to bring the argument in the following table:-

"TABLE –A"

DAP : In Appendix-IV to Appendix-A of the Defence Acquisition Procedure ("DAP"): (PDF 171)	*Appendix-K of RFP Criteria for vendor selection/pre qualification* *The following parameters may be used, as a guideline (PDF 895)*
(d) Other Parameters *(i) Industrial License (IL):* ***Vendors should be either holding a valid defence industrial license*** *Or should have applied for the same before responding to RFP. In any case the vendor must confirm holding of IL before commencement FET. (Items requiring IL will be as per DIPP Press Note 3 of 2014 as amended from time to time).*	*1(d)(i)* ***Vendor should be either holding a valid defence industrial license*** *Or should have applied for the same before responding to RFP. In any case the vendor must confirm holding of IL before commencement of Demonstration. (Items requiring IL will be as per DIPP Press Note I of 2019 as amended from time to time).*

Alluding to the above, learned senior counsel contended that it is absolutely clear that the only requirement as per the RFP is for the bidder to hold a valid Industrial License issued under the Act, and not by a particular department of MoC. He forcefully contended that the distinction introduced artificially during the arguments before this Court are not only extraneous to the original conditions of the RFP, and the DAP 2020, but are actually perverse. According to him, such distinction which is *de hors* the statutory act or the rules governing the subject matter as also the mandatory governing document i.e. DAP 2020, necessarily must be eschewed from the consideration of this Court. If so eschewed, the very foundation of rejection under the garb of the bid of the petitioner being *"non-compliant"*, would be rendered otiose and nugatory.

41. Learned senior counsel laid great emphasis on the contention that the DAP 2020 is not only the governing document for defence acquisitions but also binding upon all the Ministries. Referring to the stand taken by the respondents, he would urge that the respondent nos. 1 and 2, on oath, have taken a stand that not only DAP 2020 has to be followed, but has indeed been followed. He stoutly contended that if such stand on oath is to be viewed seriously, the question of as to whether an Industrial License is issued by either DoC or by DPIIT would be insignificant for consideration of eligibility of the petitioner. He would also contend that if DAP 2020 has been followed, and the clause regarding the Industrial License in the RFP is in consonance and conformity with the DAP 2020, then the Industrial License issued to the petitioner would also be in conformity with such provisions. Logically, if the Industrial License of the petitioner is in consonance and conformity with the DAP 2020, and the RFP, there could be no justification as to why the bid of the petitioner has been held to

be *"non-compliant"*.

42. Mr. Vashisht would contend that the condition prescribing requirement of Industrial License falling under Appendix-K of the RFP, which is subject matter of the present petition, is not a mandatory condition and is only a guideline. According to learned senior counsel, what is provided in Appendix-M of the RFP in respect of the said condition is mandatory, and the petitioner satisfied the same till atleast the Field Evaluation Trial stage.

43. On the basis of the aforesaid arguments, in addition to the arguments addressed by Ms. Divan, learned senior counsel would urge that the petition be allowed and the consequential reliefs as sought in the writ petition be granted.

CONTENTIONS OF THE RESPONDENT NO.1 to 4:-

44. Mr. R. Venkataramani learned Attorney General for India opened the arguments on behalf of the Union of India by adumbrating the background facts. Learned Attorney General submitted that the integrated Head Quarters had hosted 20 RFPs with the objective of procuring critical military equipments to cater to the heightened security situation in the counter insurgency/counter terrorist operations in the State of Jammu and Kashmir. Pursuant thereto, the Defence Acquisition Council (DAC) in the meeting dated 22.12.2024 decided that the said procurements were to be completed by 22.06.2025. He would inform that during the aforesaid timelines, contracts for 13 procurements out of 20 cases were completed. He stated that the petitioner had participated in 5 out of 20 procurement cases, and was found non-compliant on account of mandated eligibility criteria in all the cases, which are clearly demonstrable by the documents placed on record by the petitioner as also the respondents.

45. Learned Attorney General would submit that the primary reason to conclude that the petitioner was non-compliant in all the 5 cases, is the fact that the petitioner was in possession of an Industrial License for 100% EOU issued by the DoC, while the RFPs had mandated the requirement of such license being issued by the DPIIT. He would submit that such requirement was in line with, and in conformity with the requirement in Press Note 1 of 2019 dated 01.01.2019 issued by the DPIIT. It was also submitted that out of the 104 bids, which were received against 13 procurement RFPs, and which have been contracted already, all the successful bidders had valid Industrial License issued by the DPIIT, and it was only the petitioner who was in possession of a license issued by DoC. He also informed that not even a single successful bidder referred to above, was an EOU.

46. Alluding to the elaborate and detailed affidavit dated 25.11.2025 filed by the MoC, learned Attorney General eloquently described the distinction between the license issued by DPIIT on the one hand, and such license issued by DoC. He would contend that the different classes of Industrial License operate within their own respective spheres subject to the stringent conditions imposed by the licensing authorities and clearly do not overlap. He would emphasize that though the Industrial License issued under the Act may appear to be one, however, the same is not true. He stated that an industrial undertaking falling within the First Schedule appended to the Act, and which intended to manufacture such items whether located in the SEZ or is a 100% EOU, is required to apply for such license to the DoC, while any other industrial undertaking is required to apply to the DPIIT. Applications under the Act, so far as DPIIT is concerned, are considered by the LC chaired by the Secretary, DPIIT, while applications for

such license of EOU/SEZ are to be considered by the BoA under the DoC. The Industrial License to be granted by the DPIIT under the Act for industrial undertakings other than EOU/SEZ is only with the approval of the MoC. He would emphasize that so far as the constitution of the LC is concerned, three important Members in the LC for grant of license by DPIIT are Joint Secretaries of the concerned Administrative Ministry, MHA (Security) and MHA (Arms). Whereas none of these three security members are present in the BoA, while considering the grant of license to EOU/SEZ.

47. Learned Attorney General strongly emphasized that the distinction is not merely of the constitution or the members of the LC but also on the aspect of what goes into consideration for issuance of licenses by the DPIIT. Dilating further, he would submit that although DPIIT had delegated the power of issuance of Industrial License of EOU/SEZ to the DoC, however retained the right, authority and jurisdiction to issue licenses to all industrial undertakings other than EOU/SEZ. Comparing the Industrial License issued by DPIIT to the petitioner subsequently, with the one issued by DoC for the item Electro Optical Sights he would contend that the Industrial License issued by DPIIT has not only additional conditions such as paragraphs 4(e), (f), (g) and (i) but are stringent, and are conspicuous by their absence in the Industrial License issued to the petitioner by the DoC. Learned Attorney General forcefully contended that the distinction is not merely cosmetic, but deep and pervasive.

48. That apart, learned Attorney General would contend that the tendering authority is the author of the tender document, and not only is aware of its own unique and peculiar requirements, but also is the best judge to interpret such conditions stipulated in the RFP. He forcefully contended that it is not for the

petitioner to dictate as to what would be the interpretation of a particular clause in the RFP or the tender document since the requirement and the purpose of procurement, particularly in the nature of defence procurement, is purely within the domain of the tendering authority, which may have to also consider and keep in mind national security concerns.

49. While referring to the various provisions of the Act and RLIU Rules, 1952, learned Attorney General contended that though the Act may not envisage any difference between the Industrial Licenses issued by DoC or DPIIT, yet the RLIU Rules, 1952, and the procedure prescribed therein read in consonance and conformity with the rule making power of the Central Government ascribed in the Act, would provide the Central Government, the power to constitute various committees with varying composition of such committees for the purposes of regulating and controlling the licenses to be issued to industrial undertakings falling within the First Schedule to the Act. He elaborately explained the dynamic nature of the constitution of committees as also the wide discretion available with the Central Government to constitute committees for issuance of Industrial Licenses. He laid great emphasis on the objective sought to be fulfilled by such discretion. If the contention of the petitioner were to be believed, the provisions of the Act and the RLIU Rules, 1952; the procedure prescribed regarding constitution of committees; and the various aspects which would need consideration before issuing Industrial Licenses to the industrial undertakings, would be rendered otiose. Learned Attorney General would therefore submit that the petition is without any merit and be dismissed.

CONTENTIONS OF THE RESPONDENT NO.5

50. Appearing for the respondent no.5, Mr. Kailash Vasdev, learned senior

counsel submitted that he would adopt the arguments of the learned Attorney General. However, in addition thereto, he would urge certain other relevant contentions for the consideration of this Court.

51. Learned senior counsel stoutly contended that holding a license from the MoC under the Act was not a pre-condition for participation in the RFP. He submitted that after due diligence and consideration, strictly in terms of the RFP, the technical evaluation committee had rejected the bid of the petitioner. He further submitted that pursuant to the bid evaluation, respondent no.5 was held to be a successful bidder and the work order has also been issued on 26.06.2025.

52. He further informed that the respondent no.5 has already completed the contract of supply of 11,700 Ballistic Helmets with protective bands to the respondent. Thus, nothing remains so far as RFP No.C/31045/UC(CI/CT)/BH/ Inf-8(FINSAS) is concerned. So far as the contract in respect of supply of Bullet Proof Jackets is concerned, the respondent no.5 as on the date of hearing of submission, had executed almost 50% of the said supply. He submitted that though the respondent no.5 was impleaded after the writ petition was filed, however, no relief has been sought against the respondent no.5.

53. He relied on the judgment of the Supreme Court in ***Tata Motors Ltd. vs. The Brihamumbai Electric Supply & Transport Undertaking, (2023) 19 SCC 1***, to submit that Courts should be circumspect while exercising powers of judicial review in contractual or commercial matters. Unless a clear cut case of arbitrariness, malafides, bias or irrationality is made out, the Courts should be loathe in interfering in such matters. He also submits that every error while the tender process is initiated or progresses, cannot and ought not to be interfered with by a Constitutional Court. He urged that the petitioner being ineligible on

account of not being in possession of a valid industrial licence issued by the DPIIT, the writ petition itself has no merits and may be dismissed.

ANALYSIS & CONCLUSIONS:-

54. We have heard the eloquent arguments of Mr. R. Venkataramani, the learned Attorney General for India, the passionate submissions of Ms. Madhavi Divan and Mr. Manish Vashisht, learned senior counsel assisted by Mr. Anirudh Sharma, learned counsel for the petitioners, examined the documents on record, and considered the written submissions filed on behalf of the parties.

55. We have been taken through the whole gamut of the facts obtaining in the present case and after hearing the learned senior counsel for the parties, in our humble opinion, the only fundamental and primordial question on which the relief of the petitioner hinges and needs determination, is as to whether the Industrial License issued to the petitioner under the Act, i.e., by the DoC is same as the one issued by the DPIIT having regard to the fact that both DoC and DPIIT fall under the same nodal ministry, i.e., the MoC. If so, whether the petitioner can be held to be ineligible or disqualified from participating in the subject RFP. Inextricably, if there is no distinction, the tender process shall be vitiated, however if there is, then the petition would fail without any further consideration of other ancillary issues like violation of the DAP 2020; conditions of the subject RFP; as the petitioner would be *per se,* ineligible to even participate.

56. The petitioner claims itself to be a 100% EOU, and has obtained the Industrial License issued by the DoC under the provisions of the Act on 27.12.2024. Undoubtedly, the petitioner does manufacture the defence items which are sought to be procured in the subject RFP. Enough documentary record

has been placed before us to opine that the petitioner does manufacture the defence equipment sought; and has been supplying the same to the CAPFs in the past. None of the record produced has been rebutted by the respondents in their counter affidavits or written submissions.

57. Undeniably, the domestic sales have been effected under the provisions of the DTA as envisaged in the Foreign Trade Policy, 2015 and the Special Economic Zones Act, 2005, whereby EOUs are permitted to effect sales within the country. But for the same, no local sale could be effected. The quality or standard of items being manufactured by the petitioner is not engaging the attention of this Court therefore, no opinion is to be rendered thereon.

58. In unison, the clarion call of the learned senior counsel for the petitioner is that the Act envisages only one Industrial License, therefore, this artificial distinction sought to be drawn by the respondents is contrary to the very spirit and provisions of the Act and the RLIU Rules, 1952. They would strongly urge that merely because the departments issuing the licenses are distinct, though under the common MoC, this would not *ipso facto,* make the license issued to the petitioner by the DoC ineligible for consideration or for participation in the subject RFP or even to disqualify its bid.

59. By referring to various provisions of the Act and the RLIU Rules, 1952, prescribed thereunder for obtaining an Industrial License, the learned senior counsel submitted that save and except the distinction in the procedure and method of obtaining the Industrial License for the industrial undertaking which is an EOU/SEZ unit or for any industrial undertaking other than those abovementioned, there is no palpable distinction at all. They would submit that if that is the case, then the respondents cannot be permitted to introduce, albeit

extraneously, artificial distinction to hold the petitioner ineligible. In fact, it was stoutly contended that the respondents have not placed on record any material to doubt the capability of the petitioner to manufacture the items sought to be procured. According to the learned senior counsel, the Act does not indicate or envisage any distinction in the license, rather, it only propounds one kind of Industrial License. In order to support the said contention, learned senior counsel also referred to the form of license issued by the DPIIT and the DoC to submit that the Industrial License was issued to the petitioner by the DoC through the BoA, which was ultimately approved by the DPIIT whereas, the procedure for issuance of license to other industrial undertaking for manufacture of defence items etc., required the LC constituted under sub-rule (2) of rule 10 of the RLIU Rules, 1952, to evaluate/investigate the applications made by the industrial undertaking for the grant of license after it is referred by the MoC. This procedure of inspection, and thereafter a report to be submitted by the Committee after the approval of the DPIIT is also followed in the case of a license issued by DoC, except that the said report is submitted to the BoA. Thus, they would contend that essentially, both are identical in nature and effect and there is no distinction at all, except for the procedure.

60. Great emphasis was also laid on the DAP 2020, to contend that the procedure provided in the said policy was not only mandatory but also envisaged only one license, i.e., an Industrial License. In fact, according to the petitioner, it was only holding of a valid Industrial License issued under the Act that is required to make a bidder eligible. Thus, the respondents are precluded from deviating from the procedure prescribed in the DAP 2020. It was stoutly contended that even the RFP required only one Industrial License, and the

artificial introduction of the requirement of a license issued by DPIIT was extraneous to not only the DAP 2020 but also the RFP, and thus, needs to be eschewed from consideration.

61. Whereas, the learned Attorney General, while relying upon the averments in the affidavit dated 25.11.2025 filed by the MoC, emphasised that contrary to the contentions of the petitioner, a fine and discernible but substantive distinction between the Industrial License issued to an EOU, and that issued to the industrial undertakings other than an EOU under the procedure laid down in the RLIU Rules, 1952, was manifest. Learned Attorney General eloquently described the distinction, that is, while the licenses are issued by the DoC under the MoC after clearance from the BoA for the EOUs; for the industrial undertakings other than EOUs, it is the DPIIT through the LC which not only has a distinct constitution, but the considerations of evaluation of such license are also distinct. According to the learned Attorney General, the representation of the Joint Secretary, Ministry of Home Affairs (Security), the Joint Secretary, Ministry of Home Affairs (Arms), and the Joint Secretary of the concerned Administrative Ministry in the Committee which would evaluate whether an Industrial License needs to be issued to a particular industrial undertaking by the LC under the DPIIT, is the essential distinction. He submitted that in the case of the license issued for the EOUs by the DoC, these three crucial members are not required in the BoA.

62. At the outset, we deem it appropriate to address the contention of the petitioner regarding the mandatory character of the provisions of DAP 2020 and as to whether the respondents have deviated from the conditions described therein. The petitioners would contend that DAP 2020 is a policy document containing directions and guidelines for the concerned department to be followed

at the time of procurement of defence equipment. In the present case, we have not been called upon to render any opinion as to whether the provisions of DAP 2020 are mandatory or directory. However, the provisions prescribed therein cannot be read in a manner so as to construe that a tendering authority cannot engraft any condition not so provided for in the DAP 2020.

63. *Arguendo*, even if the contention of the respondent is taken at its face value, unless a tender document or RFP contains provisions which are repugnant to the provisions of the DAP 2020, such a condition of the tender document cannot be said to be either violative of DAP 2020 or excessive. Keeping in view the unique and peculiar requirements which alone is in the domain of the tendering authority, such conditions which may be more stricter or stringent than conceived of or envisaged in the DAP 2020, cannot be said to be arbitrary or discriminatory exercise of power. Since the requirement of the bidder to hold a valid Industrial License to be issued by DPIIT as a pre-condition for eligibility, is well within the domain of the tendering authority, even if it causes some constriction in the participation of certain bidders like the petitioner, the same cannot be held to be violative of or contrary to or even repugnant to the provisions of DAP 2020. Ergo, the contention is unpersuasive.

64. Before we are able to render our decision one way or the other on the issue formulated in paragraph 55 by us, in our considered opinion, it would be relevant to examine the provisions of the Act and the RLIU Rules, 1952 framed thereunder, and governing the issuance of Industrial License to industrial undertakings manufacturing defence equipment, whether they are EOUs or undertakings other than EOUs.

65. For the sake of convenience, the relevant sections of the Act are extracted

hereunder:

> *"**11. Licensing of new industrial undertakings**. -(1) No person or authority other than the Central Government, shall, after the commencement of this Act, establish any new industrial undertaking, except under and in accordance with a licence issued in that behalf by the Central Government:*
>
> *Provided that a Government other than the Central Government may, with the previous permission of the Central Government, establish a new industrial undertaking.*
>
> *(2) A licence or permission under sub-section (1) may contain such conditions including, in particular, conditions as to the location of the undertaking and the minimum standards in respect of size to be provided therein as the Central Government may deem fit to impose in accordance with the rules, if any, made under section 30."*
>
> *xx xx xx*
>
> *"**14. Procedure for the grant of licence or permission -** Before granting any licence or permission under [section 11, section 11A, (section 13 or section 29B)], the Central Government may require such officer or authority as it may appoint for the purpose, to make a full and complete investigation in respect of applications received in this behalf and report to it the result of such investigation and in making any such investigation, the officer or authority shall follow such procedure as may be prescribed."*
>
> *xx xx xx*
>
> *"**30. Power to make rules** - (1) The Central Government may, subject to the condition of previous publication, make rules for carrying out the purposes of this Act.*
>
> ***(2)** In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :-*
>
> *xx xx xx*
>
> ***(i)** the procedure for the grant or issue of licences and permissions under [section 11, section 11A, (section 13 or section 29B)], the time within which such licences or permissions shall be granted or issued including, in particular, the publication of notices calling for applications and the holding of such public inquiry in relation thereto as may be necessary in the circumstances;*

> ***(j)*** *the fees to be levied in respect of licences and permissions issued under this Act;*
>
> ***(k)*** *the matters which may be taken into account in the granting or issuing of licences and permissions, including in particular, the previous consultation by the Central Government with the Advisory Council or any Development Council or both in regard to the grant or issue of any such licences or permission;*
>
> *xx* *xx* *xx*
>
> ***(m)*** *the conditions which may be included in any licences and permissions;*
>
> ***(n)*** *the conditions on which licences and permissions may be varied or amended under section 12;"*

66. The Act was promulgated with the objective to develop and regulate certain essential and core industries. Section 3(d) of the Act defines an "*industrial undertaking*" to mean a scheduled industry falling under the First Schedule appended thereto, and specified under sub-section (i) of section 3. The petitioner's industrial undertaking would be a scheduled industry appearing at Serial No.37 of the First Schedule to the Act. Section 11 envisages that every manufacturer is to obtain a license from the competent authority in terms of the procedure prescribed under the RLIU Rules, 1952, framed by virtue of the provisions of section 30 of the Act. Section 14 regulates the manner in which the Competent Authority is to conduct an investigation in respect of the applications of an industrial undertaking and submit the report, which is placed before the Competent Authority for consideration of the issuance of an Industrial License. It also prescribes the procedure which may be framed under the rule making power bestowed upon the Central Government by virtue of section 30. The complete and pervasive control of the Central Government while issuing Industrial Licenses under this Act is clear from Clauses (i), (j), (k), (m), and (n)

of sub-section (2) of section 30 of the Act. In that, the Central Government has the power to make rules for carrying out the purposes of the Act. Pursuant to the exercise of powers under section 30 of the Act, the Central Government framed rules called the Registration and Licensing of Industrial Undertakings Rules, 1952.

67. While an industrial undertaking desirous of obtaining license for the purpose of running its industrial undertaking unit in a SEZ or as a 100% EOU, applies for the issuance of an Industrial License to the DoC; an industrial undertaking, other than EOUs or those located in SEZs, desirous of obtaining Industrial License for the purpose of running its industrial undertaking unit, has to apply for such license to the DPIIT. For the EOUs or units located in SEZs, it is the BoA under the DoC, which considers the eligibility for issuance of an Industrial License, while for units other than EOUs or those located in SEZs, it is the LC which considers the eligibility for issuance of a license which is finally approved by the MoC. It may be relevant to understand that the EOUs are required to export their manufactured goods and items to the extent of hundred percent under the provisions of the Foreign Trade Policy, 2015 as amended from time to time. Such exports are interlinked with incentives receivable by such EOUs, subject to certain foreign exchange obligations which are necessary to be fulfilled. It is pertinent to note that EOUs are not permitted to make local or domestic sales except in accordance with the policy governing the DTA, as envisaged under the Special Economic Zone Act, 2005, read with the Act, 1951, and Chapter 6 of the Foreign Trade Policy, 2015, as well as Chapter 6 of Handbook of Procedure, 2023. Such sales in the DTA are permissible strictly in terms of the policy, and upon fulfilment of certain conditions. Unless such

conditions are fulfilled, no EOU is permitted to conduct sales in DTA. It may be relevant to note that as per para 6.07 (a)(i) of the Foreign Trade Policy, 2023, sales in DTA are permissible only if the EOU is able to, (i) fulfil the Net Foreign Exchange (NFE); (ii) on payment of excise duty, if applicable; (iii) and/or on payment of GST and compensation cess along with reversal of duties of Custom leviable under First Schedule to the Custom Tariff Act, 1975 availed as exemption, if any, on the inputs utilised for the purpose of manufacturing of such finished goods (including by-products, rejects, waste and scraps arising in the course of production, manufacture, processing or packaging of such goods). Para 6.07(i) of the Foreign Trade Policy 2023 also stipulates that, *"In case of new EOUs, advance DTA sale will be allowed, not exceeding 50% of its estimated exports for first year, except pharmaceutical units where this will be based on its estimated exports for first two years"*. Similarly, there are clearly spelt out conditions mentioned in the Industrial License issued to industrial undertakings other than EOUs which are strictly and scrupulously to be followed by such industrial undertaking. From a reading of the conditions mentioned in the said license, it is manifest that the sales of items like arms and ammunition, and allied items of defence equipment's parts, and accessories can primarily be made to the Ministry of Defence, whereas sales of such equipment within the country are prohibited to any other person or entity, other than those specified in the license, without prior permission of the Ministry of Defence.

68. Having examined the above provisions surrounding the regime for issuance of Industrial License to both EOUs and industrial undertakings located in SEZs *vis-a-vis* Industrial Licenses issued to industrial undertaking units other than the above, we are to examine whether there really exists any distinction

between the Industrial License issued by the DoC to the EOU, i.e., the petitioner, and such licenses issued by the DPIIT. In this regard, neither of the parties was able to justify their individual claims. That is, neither was the petitioner able to substantiate its contention that there is no distinction between both the types of licenses, nor did the respondents able to demonstrate to the contrary. Faced with this dilemma, we required the MoC to file an affidavit in order to discern the distinction, if any. Pursuant thereto, an affidavit dated 25.11.2025 was filed, and we have minutely scrutinised the same. Contextually, the statements in the said affidavit would have significant impact on our opinion, thus, reproduction of certain paragraphs would be apposite. The same read thus:-

> *"**DIFFERENCE BETWEEN THE TWO LICENSE ISSUED BY DPIIT AND DEPARTMENT OF COMMERCE IS AS UNDER:-***
>
> *5. The Department for Promotion of Industry and Internal Trade (DPIIT), Ministry of Commerce & Industry, administers the industries (Development and Regulation) (IDR) Act, 1951.*
>
> *6. DPIIT has delegated the power to issue a license under the IDR Act, 1951 with respect to the units situated in Special Economic Zones (SEZ) and Export Oriented Units (EOUs) to Department of Commerce (DoC), Ministry of Commerce and Industry vide its OM No.1(1)/2013-LC dated 13.03.2013.*
>
> *7. While the Industrial Licenses, either issued by the DPIIT or by the DoC, are under the Industries Development and Regulation Act, 1951, and thus there is no distinction as regards the source under which they are issued, the different classes of licence operate within their respective sphere, subject to respective condition, and do not overlap.*
>
> *8. Further, there is a distinction in the constitution of the Committee for grant of these licences (discussed later).*
>
> ***THE REQUIREMENT UNDER THE ACT OF OBTAINING AN INDUSTRIAL LICENSE:-***
>
> *9. After the Industrial Policy Resolution 1991, and considering various amendments made to Notification No. 477(E) dated 25th July, 1991 only the*

following four Industries are covered under compulsory licensing, as per Press Note No. 03 (2019) dated 11.09.2019:

i. Cigars and Cigarettes of tobacco and manufactured tobacco substitutes
ii. Electronic aerospace and defence equipment
iii. Industrial Explosives
iv. Hazardous chemicals

A copy of Press Note No. 03 (2019) dated 11.09.2019 is annexed herewith as ***Annexure R-2****.*

10. Licenses are issued by DPIIT as well as Department of Commerce under Section 11 and Section 11(A) of the IDR Act, 1951 and The Registration and Housing of Industrial Undertakings (RLIU) Rules, 1952.

A copy of the Registration and Licensing of Industrial Undertakings Rules, is annexed herewith as ***Annexure R-3****.*

11. Any unit intending to manufacture items covered under the IDR Act, 1951 in an SEZ or EOU is required to apply to Department of Commerce for Industrial License under clause (e) of sub-section 2 of section 9 of the SEZ Act, 2005 read with IDR Act, 1951 and Chapter 6 of Foreign Trade Policy (FTP) 2023 read with Chapter 6 of Handbook of Procedure (HBP) 2023.

Whereas, any industrial undertaking which is not an SEZ unit or EOU is required to apply to DPIIT of the IL, under the IDR Act.

THE PROCEDURE THEREFORE PROVIDED UNDER THE RULES OR UNDER ANY OTHER CIRCULAR F'OR EXECUTIVE INSPECTIONS, FORMAT OF ANY APPLICATION, IF PROVIDED FOR SEEKING THE INDUSTRIAL LICENSE UNDER THE ACT

12. The procedure for obtaining licenses under IDR Act is prescribed under RLIU Rules, 1952, as follows:

"Rule 7 (Application for License): *An application for a license or permission for the establishment of a new industrial undertaking or any substantial expansion of [or the production or manufacture of any new article in] an industrial undertaking shall be made;*

Each application shall be accompanied by a crossed demand draft for Rs. 2500 drawn on the State Bank of India, Nirman Bhavan, New Delhi, in favour of Pay and Accounts Officer, Ministry of Industry, (Department of Industrial Development), Government of India, New Delhi.]

Rule 8 (Acknowledgement of Application): *On receipt of the application, the receiving officer shall note thereon the date of its receipt, and shall send to the applicant an acknowledgement stating the date of receipt.*

Rule 10 (Applications to be referred to the Committee): *The Ministry of Industrial Development shall refer the application to a Committee appointed under sub-rule (2).*

Rule 15 (Grant of License): *The Ministry of Industrial Development shall consider the report submitted to it under Rule 11, and where it decides that a license or permission, as the case may be, should be granted it shall inform the applicant accordingly, not later than 5 months from the date of receipt of the application, or the date on which additional information under rule 9 is furnished, whichever is later.*

Where the Ministry of Industrial Development considers that certain conditions should be attached to the license or permission or that the license or permission should be refused, it shall not later than five months from the date of receipt of the application or the date on which additional information under rule 9 is furnished, whichever is later, give an opportunity to the applicant to state his case, before reaching decision."

13. Further, the applications under IDR Act in DPIIT are considered by the Licensing Committee chaired by Secretary, DPIIT for units other than EOU/SEZ and license is granted with the approval of Hon'ble Minister for Commerce & Industry.

14. The ***Constitution of the Licensing Committee*** *are:*

a) *Secretary, Department for Promotion of Industry and Internal Trade - Chairman*
b) *Joint Secretary of the concerned Administrative Ministry - Member*
c) *Joint Secretary, Ministry of Home Affairs (Security) - Member*
d) *Joint Secretary, Ministry of Home Affairs (Arms) - Member*
e) *Joint Secretary (Special Economic Zone), Department of Commerce- Member*
f) *Joint Secretary, Ministry of Corporate Affairs – Member*
g) *Joint Secretary, (Foreign Investment and Facilitation Section), Department for Promotion of Industry and Internal Trade- Member*

h) Principal Secretary (Industries)/ Commissioner Industries of the concerned State Government- Member

i) Joint Secretary (Industrial Licensing), Department for Promotion of Industry and Internal Trade- Member Secretary

15. In the case of applications under IDR Act for EOU/SEZ, the Board of Approval (BOA) under Department of Commerce, considers the same. The members of the Board of Approval are:

a) Secretary Department of Commerce - Chairman

b) Joint Secretary Department of Commerce - Member

c) Joint Secretary Department of Industrial Policy and Promotion- Member

d) Member (Customs) Central Board of Excise and Customs- Member

e) Member Central Board of Direct taxes- Member

f) Director General of Foreign Trade- Member

g) Joint Secretary Ministry of Environment and Forests- Member

h) Joint Secretary Ministry of Science and Technology- Member

i) A representative from Ministry of Small Scale Industries and Agro and Rural Industries- Member

j) Development Commissioner of the concerned SEZs – Member

k) Director or Deputy Secretary (EOU) Department of Commerce - Member Secretary

16. It may be noted that the composition of the committees, including the Chairman of the Committees are different. Two members (i.e., Joint Secretary Ministry of Home Affairs (Security) and Joint Secretary Ministry of Home Affairs (Arms)) in the licensing committee of DPIIT licence are not there for board of approval for EOU license.

17. So far as the procedure for approval is concerned, both the above Departments of the Ministry of Commerce and Industry adopt similar preapproval procedure and rigour and concurrence of relevant Ministries/Departments, viz. Ministry of Home Affairs, Department of Defence Production, Ministry of Corporate Affairs, Ministry of Civil Aviation, Ministry of Health and Family Welfare, Ministry of Environment, Forest and Climate Change, State Government, etc. are obtained by both the Departments. Department of Commerce (DoC) also takes concurrence of DPIIT while considering the IL application.

18. It is further stated that it is up to the tender procuring agency to lay down eligibility condition having regard to their needs which they may consider relevant.

***ANY OTHER RELEVANT INFORMATION OR DOCUMENT IS AS UNDER**:-*

19. Department of Commerce grants the ILs only in respect of SEZ units and EOUs which are primarily export oriented undertakings and are expected to largely export the goods produced by them.

20. However, in case of EOUs, they are permitted to sell goods to the Domestic Tariff Area (DTA) in terms of para 6.07(a) of FTP 2023 which stipulates that Units, other than those of gems and jewellery may sell finished goods manufactured by them as specified in LoP (including by-products, rejects, waste and scraps arising in the course of production, manufacture, processing or processing or packaging of such goods) which are freely importable under Foreign Trade Policy (FTP) in DTA, subject to fulfilment of positive Net Foreign Exchange (NFE), on payment of excise duty, if applicable, and/ or payment of GST and compensation cess along with reversal of duties of Custom leviable under First Schedule to the Customs Tariff Act, 1975 availed as exemption, if any on the inputs utilized for the purpose of manufacturing of such finished goods (including by-products, rejects, waste and scraps arising in the course of production, manufacture, processing or packaging of such goods)".

21. Also, in case of new EOUs para 6.07 (i) of FTP 2023 stipulates that "In case of new EOUs, advance DTA sale will be allowed not exceeding 50% of its estimated exports for first year, except pharmaceutical units where this will be based on its estimated exports for first two years."

22. Further, in case of SEZ units, apart from their primary orientation of exports, subject to fulfilment of positive Net Foreign Exchange (NFE), they are allowed to make DTA sales on payment of full duties of customs which includes basic customs duty, IGST, antidumping, countervailing and safeguard duties (under the Customs Tariff Act, 1975), where applicable, as leviable on such goods when imported (i.e. DT A sales on payment of import duty.

23. Clarifications regarding admissibility of Industrial Licenses issued for SEZ/EOUs have been shared by DoC with the relevant authorities on various occasions.

24. The grant of IL for EOUs is covered by Foreign Trade Policy (FTP) read with Hand Book of Procedure (HBP) (as amended from time to time). Para 6.01 (d) and 6.32 (b)(i) of HBP-2023 under FTP provide that a proposal for setting up an EOU requiring industrial license may be granted approval by Development Commissioner (DC) after clearance of proposal by Board of Approval (DoC) and DPIIT. To this effect, DoC vide letter dated 05.03.2019, read with letter dated 13.9.2019, had issued clarifications to all Zonal DCs that grant of IL under the IDR Act, 1951 to SEZs/EOUs would be dealt by DoC.

25. Subsequently, consolidated guidelines were issued by Department of Commerce vide letter dated 02.11.2020 and disseminated to all stakeholders (including DDP) describing the procedure to be followed by Department of Commerce for granting IL under the IDR Act, 1951. It is worth mentioning here that Letter of Approval (LOA)/Letter of Permission (LOP) is issued by the Unit Approval Committee (UAC) headed by the DC concerned only after the issuance of the IL under the IDR Act to the concerned SEZs/EOUs by BOA of Department of Commerce."

69. Having carefully considered and pondered over the averments of the affidavit of the MoC, it appears that substantially, there is no difference in the nature of the Industrial Licenses issued by the BoA under the DoC and the one issued by the DPIIT, and finally approved by the MoC, as the Act itself does not envisage two types of Industrial Licenses. That said, while the nature of license may not be distinct, yet the nature of consideration for issuance of the Industrial License coupled with the purport for which such license is issued may be the core and crucial distinction. This is clear from the provisions of Clauses (i), (j), (k), (m), and (n) of sub-section (2) of section 30 of the Act. In particular, clauses (k), (m) and (n) which distinctly provide overarching power and jurisdiction of the Central Government or its delegate constituted under section 25 of the Act, to

issue permissions or licenses on certain conditions. Thus, it is not as if any of the scheduled industrial undertakings who may apply for an Industrial License are to be granted the license as a matter of course or right. Such a right for consideration itself is circumscribed within the confines of Clauses (i), (j), (k), (m), and (n) of sub-section (2) of section 30 of the Act. It is significant to appreciate the exact language employed in clause (k) which reads, *"the matters which may be taken into account in the granting or issuing of licenses and permissions, including in particular, the previous consultation by the Central Government with the Advisory Council or any Development Council or both in regard to the grant or issue of any such licenses or permissions."* What is striking are the words "*.....including in particular, the previous consultation by the Central Government...*". To our mind, this consultation of the Central Government before issuance of an Industrial License to a scheduled industrial undertaking is the primordial distinction which may be an essential aspect before a license is granted by the DPIIT. In addition, Clause (m) of sub-section (2) of section 30 of the Act is also very significant and which reads, *"the conditions which may be included in any licenses and permissions"*. Thus, the Central Government or its delegate is empowered also to prescribe conditions that may be included in any license which may be granted to a scheduled industrial undertaking. Cumulatively, the aforesaid clauses provide deep insight into the manner and the considerations that might go into, before the Central Government or its delegate, grants Industrial License to any scheduled industrial undertaking. We dare say that in matters relating to issuance of licenses to the scheduled industrial undertakings, the overarching authority of the Central Government or its delegate is complete and pervasive.

70. In the above context, the composition of the Competent Committee of the DPIIT and BoA under the DoC may also be a significant consideration. The said composition is described in the table below:

"TABLE – B"

Constitution of the Licensing Committee	***Board of Approval (BOA) under Department of Commerce***
Secretary, Department of for Promotion of Industry and Internal Trade – Chairman	*Secretary Department of Commerce - Chairman*
Joint Secretary of the concerned Administrative Ministry – Member	*Joint Secretary Department of Commerce - Member*
*Joint Secretary of Ministry of Home Affairs **(Security)** – Member*	*Joint Secretary Department of Industrial Policy and Promotion- Member*
*Joint Secretary of Ministry of Home Affairs **(Arms) -** Member*	*Member (Customs) Central Board of Excise and Customs- Member*
Joint Secretary, (Special Economic Zone), Department of Commerce- Member	*Member Central Board of Direct taxes- Member*
Joint Secretary, Ministry of Corporate Affairs- Member	*Director General of Foreign Trade- Member*
Joint Secretary, (Foreign Investment and facilitation Section), Department for promotion of Industry and Internal trade- Member	*Joint Secretary Ministry of Environment and Forests- Member*
Principal Secretary (Industries)/ Commissioner Industries of the concerned State Government- Member	*Joint Secretary Ministry of Science and Technology- Member*
Joint Secretary (Industrial Licensing), Department for Promotion of Industry and Internal Trade- Member Secretary	*A representative from Ministry of Small Scale Industries and Agro and Rural Industries- Member*
	Development Commissioner of the concerned SEZs – Member
	Director or Deputy Secretary (EOU) Department of Commerce – Member Secretary

[emphasis supplied]

Plainly, from the perusal of the above comparison, there might not appear to be any distinction or difference in the composition of both, the LC and BoA,

however, the inclusion of three members, i.e., representative of the Joint Secretary, Ministry of Home Affairs (Security), the Joint Secretary, Ministry of Home Affairs (Arms) and Joint Secretary of the concerned Administrative Ministry in the LC under the DPIIT is significant.

71. To elaborate and substantiate our above observations, we feel it necessary to draw up the difference not only in their constitution, but also the clear and apparent distinction of the considerations that go into decisions for grant of Industrial Licenses, either by DoC or by the DPIIT in a tabulated form. The same is as under:

"TABLE – C"

Particulars	***License issued by DPIIT***	***License issued by Department of Commerce***
Issuance of the Industrial License subject to the Conditions	*xx xx xx* *2. The new Industrial undertaking to manufacture the above-mentioned items shall be located at 29B/30B, G.T. ROAD, UPSIDC Industrial area, Malwan, Fatehpur, Uttar Pradesh. The company shall comply with the security guidelines for category 'A' items mentioned in the Defence Security Manual while undertaking manufacturing of items for defence use. The License is subject to standard terms and conditions of licensing and the guidelines prescribed by MHA, Department of Defence Production and State Govt. Further, the company shall comply with the security guidelines for Category 'A' items mentioned in the Defence Security Manual while undertaking manufacturing of items for defence use.* *3. The new Industrial undertaking shall be completed and commercial production established within a period of Fifteen years from the date of issue of this Industrial License.* *4. The Industrial License will also be subject to the conditions stipulated in Annexure-1, which inter-alia includes the following: -* *Adequate steps shall be taken to the satisfaction of the Govt. to prevent air, water, and soil pollution. Further, such anti-pollution measures taken must conform to effluent and emission standards*	*xx xx xx* *2. Further, as per Minutes of the BOA Meeting dated 06.12.2024 the approval is subject to the following terms and conditions:-* *(i) Follow standard terms and guidelines under IDR Act, 1951;* *(ii). Obtaining other relevant clearances from any other statutory /regulatory bodies , if any; and* *(iii). Stipulations with respect to the monitoring, security audit, other compliance verification mechanisms and consequential requirements as per the Security Manual issued by the Departments of Defence Production shall be undertaken by the Ministry of Defence (MoD) and Ministry of Home Affairs (MHA) as specified in the said manual who shall be informed of the same.* *4) You shall follow all rules and regulations of Foreign Trade Policy, Customs and other concerned Departments updated from time to time.*

	prescribed by the State Govt. in which the factory of the industrial Undertaking is located. In addition, adequate industrial safety measures as provided in the Factories Act shall be undertaken to the satisfaction of the State Govt. in which the factory of the Industrial Undertaking is located. *It will be further subject to the following additional conditions:-* *a) The existing laws on employment of child labour to be complied with.* *b) Any foreign investment shall be in accordance with the extent FDI policy amended from time to time.* *c) The Government of India shall not give purchase guarantee for products to be manufactured.* *d) Adequate safety and security procedures would need to be put in place by the Licensee. The Indian Licensed Defence Companies (ILDC) shall comply with the security guidelines applicable to them as per security instructions/architectures prescribed in, 'Security Manual for Licensed Defence Industries' available at www.ddpmod.gov,in based on their categorization. The ILDC is required to give an undertaking before commencing production of Defence products for the company as well as its supply chain that it shall comply with the provisions of the Security Manual. The products to be manufactured by the Licensee have been categorized under Category ('A') in the Security Manual. Security Audit will be conducted by Government Agencies as per Defence Security Manual.* ***e) The standards and testing procedures for equipment to be produced under Licence from foreign collaborators or from indigenous R & D will have to be provided by the Licensee to the Government nominated quality assurance agency. The nominated quality assurance agency would inspect the finished products and would conduct surveillance and audit of the quality assurance procedures of the Licensee. Self-certification would be permitted by the Ministry of Defence on case to case basis, which may involve either individual items, or group of items manufactured by the Licensee. Such permission would be for a fixed period and subject to renewals.*** ***f) Arms and ammunition and allied items of defence equipment's parts and accessories thereof as contained in the Licence produced by the private***	

	manufacturers will be primarily sold to the Ministry of Defence. These items may also be sold to other entities under the control of Ministry of Home Affairs, Public Sector Undertakings, State Governments and other Defence Licensee Companies without the approval of Department of Defence Production. ***No item should be sold within the country to any other person or entity, other than those specified above without prior permission of Ministry of Defence. Export of manufactured items would be subject to policy and guidelines as applicable to Ordnance Factories and defence Sector undertakings. The Licensee would institute a verifiable system of removal of all goods out of the factory will be given by the Standing Committee in the Department of defence Production, Supply Wing, South Block, New Delhi.*** ***g) The Defence Licensees will furnish online via G2B portal Half-yearly Return as per Annexure-IV regarding details of items produced and entities to whom sold, using the same credentials which were used by the applicant to file the application. The portal can be accessed at https://services.dpiit.gov.in.*** *h) Adequate steps shall be taken to the satisfaction of the appropriate Government authority namely Chief Inspector of Factories in regard to process hazards for ensuring safety in plant. Before going in to trial production, adequacy of steps taken in this regard may be established to the satisfaction of the appropriate Government authority.* ***i) The Licensee will inform changes in management control ownership pattern Board of Directors, foreign holding/foreign Directors to the Department for Promotion of Industry & Internal Trade and Deptt. of Defence Production, Ministry of Defence, D(DIP) Section. In addition, as and when any foreign partner(s) is included, the Licensee will seek necessary clearance from Ministry of home Affairs.*** *j) Violation of any of the provision of the License, may lead to cancellation of the License. The Licence is also liable to be cancelled in the event of withdrawal of security clearance by Ministry of Home Affairs (MHA).* *Note, Detailed instructions issued by Ministry of Defence (Department of Defence Production) in regard to the conditions stipulated in para 4 (d) & (f)*	

	above, from time to time, shall also be followed by the Licensee. for strict compliance *5. It will be the responsibility of the entrepreneur to ensure that all requisite approvals/clearances under other statutes/regulations/notifications, etc., issued by Central or State Government (s) from time to time are obtained for manufacturing activity specified in the Industrial License.* *6. This License does not constitute any approval of the proposed capital structure as set out in the License application. Approval of the appropriate Government authority would be sought separately in this regard. Any prospectus or other documents by which public is invited to subscribe capital for the industrial undertaking shall contain following statement.* *"A License has been obtained from the Central Government for the manufacture of item (s) mentioned below specially designed for military application, of which a copy is open to public inspection at Head Office of the Company. It must be distinctly understood that, in soundness of this undertaking or for the correctness of any of the statements made or opinions expressed in regard to it."* *7. Your attention is invited to Rule 19 of the Registration and Licensing of Industrial Undertaking Rules, 1952. In accordance with this rule, you should furnish returns in Form 'G' (reproduced in Annexure-II) outlining the progress of implementation of the Licence for each half year ending on 31st December and 30th June until commercial production from the project is established. The return should be furnished online via G2B portal. The return should also be furnished in duplicate to the Director of Industries and Secretary Industries of the State in which the factory of the undertaking is located. The return should be furnished within one month of the expiry of the half yearly period to which it relates.* *8. The commencement of commercial production should also be notified in Annexure-III- online via G2B portal.* *9. If commercial production is not commenced within a period of 15 years from the date of grant of industrial License, the License will cease to be valid. For extension of this period, the Licensee may apply to the Ministry of Defence, Department of Defence*	

	Production, D(DIP) Section, 'B' Wing, Sena Bhawan, New Delhi, with full justification giving circumstances under which and the period for which extension is sought. *10. You are requested to confirm acceptance of the above conditions and to take effective and expeditious action in respect of your investment proposal. You may contact the Industrial Licensing Section, Department for Promotion of Industry & Internal Trade, Vanijya Bhawan, New Delhi-110011, for any further clarification or assistance, you may need.*	

[emphasis supplied]

At the risk of repetition, we reiterate that the distinction referred to above by us needs to be understood peculiarly predicated on clauses (j), (k), (m) and (n) of sub-section (2) of section 30 of the Act. From the above table, it is discernible that while there does not appear to be any difference in the nature of the license itself superficially, however, the inclusion of Joint Secretary, Ministry of Home Affairs (Security), Joint Secretary, Ministry of Home Affairs (Arms) as well as Joint Secretary of the concerned Administrative Ministry for the purposes of considerations and deliberations for issuance of Industrial License and the stringent and specific conditions imposed upon such undertakings other than EOUs/SEZs by the DPIIT, is a clear pointer of the distinction between the licenses issued under the Act. In other words, the intent and purport for which the licenses are issued are clearly distinguishable. There could be no other plausible reason why the MoC has two distinct committees for consideration of issuance of licenses under the Act.

72. Yet another reason impelling us towards the opinion that there indeed exists distinction between the Industrial License considered by the BoA and issued by DoC and that considered by the LC and issued by the DPIIT, is the procedure prescribed under the RLIU Rules, 1952. The RLIU Rules, 1952 have

been framed by the Central Government under powers conferred by section 30 read with sections 10, 11, sub-section (2) of section 12 and sections 13 and 14 of the Act. Ostensibly, the considerations that would determine issuance of an Industrial License to any scheduled industrial undertaking are governed by the provisions of sub-section (2) of section 30 of the Act, and in our opinion, more particularly Clauses (i), (j), (k), (m), and (n). Rule 10 of the RLIU Rules, 1952 is relevant for our consideration. Sub-rule (1) provides that the application seeking issuance of Industrial License shall be placed before a LC to be appointed by the MoC i.e., the erstwhile Ministry of Industrial Development, under sub-rule (2) of rule 10. Significantly, sub-rule (2) empowers the Central Government to appoint one or more committees, by notification in the official gazette, consisting of such number of members as it may think fit to represent the Ministries of the Central Government dealing with, (i) the Industrial Policy and Promotion; (ii) the Industry specified in the First Schedule to the Act; (iii) Home Affairs; (iv) Commerce, (Director General of Foreign Trade); and (v) Micro, Small and Medium Industries. Proviso appended thereto further provides that the Central Government may, at its discretion, include in such committee, any other member(s) to represent any other Ministry or Department. Sub-rule (3) empowers the Committee so constituted under sub-rule (2) to co-opt one or more representatives of other Ministries of the Central Government or of any State Government concerned, wherever it is necessary. To make it more clear, it would be apposite to reproduce rule 10 of the RLIU Rules, 1952 hereunder:

> *"**Rule 10- Applications to be referred to the Committee-** The Ministry of Industrial Development shall refer the application to a Committee appointed under sub-rule (2).*

> *(2) The Central Government may, by notification in the Official Gazette, appoint one or more Committees, consisting of such number of members as it may think fit to represent the Ministries of the Central Government dealing with –*
> *(a) the Industrial Policy and Promotion;*
> *(b) the Industry specified in the First Schedule to the Act;*
> *(c) Home Affairs;*
> *(d) Commerce, (Director General of Foreign Trade);*
> *(e) Micro, Small and Medium Industries:*
>
> *Provided that the Central Government may, if it deems fit, include in such committee any other member to represent any other Ministry or Deptt.*
>
> *(3) A Committee appointed under sub-rule (2) may co-opt one or more representatives of other Ministries of the Central Government or of any State Government concerned, wherever it is necessary.*"

73. The cumulative and harmonious reading of rule 10 of the RLIU Rules, 1952 brings to fore the absolute discretion and latitude that the Central Government enjoys while exercising powers conferred therein. In fact, in our opinion, such discretion and latitude provided in the rule 10 is only a reflection and extension of the intent and purpose of the considerations which might go into while issuing license under the Act to industrial undertakings, which fall within the First Schedule as clearly stipulated in the rule making power under section 30(2) and particularly, clauses (i), (j), (k), (m), and (n) of the Act. It has to be borne in mind that the underlying purpose of such regulation and control of the Central Government is necessitated keeping in view the fact that the Act is promulgated to regulate Industries in the country, more particularly, those falling in the First Schedule. Thus, it is not any industry that can apply for such license envisaged under the Act, but only those that are specified under the First Schedule of the Act. The fact that the RFP is related to procurement of defence

equipment for the Army from manufacturers/industrial undertakings falling under the First Schedule of the Act needs to be underscored. Undoubtedly, there may be many myriad and different considerations which may require the tendering authority to seek a particular type of manufacturer.

74. Coming to the facts of the case, it is crystal clear that formation of two separate committees in exercise of power under sub-rule (2) of rule 10 of the RLIU Rules, 1952 with distinct constitution by the Central Government is to achieve the objectives specified in clauses (i), (j), (k), (m), and (n) of sub-section (2) of section 30 of the Act. In other words, the considerations that might go into issuance of license to an industrial undertaking for the purposes of 100% EOU or such unit located in SEZ on the one hand and those for the industrial undertakings other than EOUs/SEZs may be entirely different and distinct, though the units may be manufacturing similar defence equipment. That precisely appears to be the reason for inclusion of three additional Members, i.e., Joint Secretary, MHA (Security) and Joint Secretary, MHA (Arms) apart from the Joint Secretary of the Administrative Ministry in the LC. Even the conditions that are specified, as mentioned above in Table-C, also clear the mist or the blur that may have been formed to lead one to the mirage that the licenses issued to EOUs by DoC on one hand and those issued to other industrial undertakings by DPIIT are identical, but looking at it from the aforesaid perspective, we have no doubt in our mind that there is a clear distinction between the two.

75. Apart from the above, it is trite that the tendering authority has the discretion to frame the tender conditions keeping in view its peculiar requirement. It is also trite that the tendering authority being the author of the RFP, would understand and interpret the conditions specified therein (See:

Agmatel India Private Ltd. vs. Resoursys Telecom and Ors., (2022) 5 SCC 362; Afcons Infrastructure Limited vs. Nagpur Metro Rail Corporation Limited & Anr., (2016) 16 SCC 818). It is also trite that even if there are some errors or deviation of a minor nature during the tender process, the Courts must give "*fair play in the joints*" to the government and Public Sector Undertakings in matters of contract (See: ***Tata Motors Ltd. vs. The Brihanmumbai Electric Supply & Transport Underataking, (2023) 19 SCC 1; Silppi Constructions Contractors vs. Union of India, (2020) 16 SCC 489***). It has to be borne in mind that the regime under this Act is completely controlled, supervised and regulated by the Central Government insofar as Industrial Undertakings falling within the list in the First Schedule appended to the Act are concerned. Therefore, the government being the tendering authority is the sole repository to decide as to what type of or what nature of eligibility or qualifications would be required of or fulfilled by bidders which the Courts, ordinarily, ought not to interfere with nor attempt to re-write the eligibility condition of the tender. Though the petitioner may be correct in contending that neither does the Act nor the RFP describe the nature of the Industrial License required of a bidder, however, the requirement that the bidder ought to have licence issued by the DPIIT cannot be said to be unreasonable, arbitrary or whimsical to say the least. Thus, the stand of the respondents in that context is justifiable.

76. Another argument of the petitioner was predicated on the clause in respect of the requirement of Industrial License as specified in the RFP which stipulated that, "*Items requiring IL will be as per DIPP Press Note 1 of 2019 as amended from time to time*". It was contended that the RFP did not specify that only those bidders who were in possession of a valid Industrial License issued by the DPIIT

alone, were eligible. Meaning thereby, a bidder holding valid Industrial License issued even by the DoC was also eligible since there is no express prohibition. This contention, in our humble opinion, is neither tenable nor persuasive. It appears that the condition of the RFP regarding "*Items requiring IL will be as per DIPP Press Note 1 of 2019 as amended from time to time*" is only for the purpose of informing the bidders that only those industrial undertakings which manufacture items enlisted by the DIPP alone, would be eligible to participate. It is clear that the emphasis is on the nature of the "items" and not the "Industrial License". Moreover, this would, *ipso facto,* not tantamount to or be construed as an eligibility condition permitting bidders like the petitioner who only have licenses issued by DoC and not the DIPPT, to participate. Therefore, to contend that the non specification of the requirement of license issued by DPIIT or DoC would imply that bidders who do not have license issued by DPIIT would also become eligible, is neither correct nor borne from the records.

77. Ms. Divan, learned senior counsel had also contended that the power to issue licence which was delegated to DoC by the DPIIT ought to be construed as having been issued by DPIIT itself. She emphasized that the action of the delegatee is deemed to be for and on behalf of the authority delegating such powers and therefore, even if the licence issued to the petitioner is actually issued by the DoC, yet the same has to be deemed to have been issued by the DPIIT. In such circumstances, her contention was that the respondents could not declare the bid of the petitioner as non-compliant. The proposition of law urged by Ms. Divan cannot be quarrelled with, however, the same is not applicable to the present case. What we have been called upon to answer is not just as to who is the authority which grants the Industrial Licence, but what goes into the

consideration of either the BoA or the LC before an Industrial Licence is granted to an undertaking. While analysing the aforesaid aspect we have not made any observation as to who is the delegate of the other but as to the intent and purport of the licenses which are issued either by the DoC or the DPIIT. The appreciation of various clauses of sub-section (2) of section 30 of the Act read with rule 10 of the RLIU Rules, 1952 in the preceding paragraphs have impelled us to draw the aforesaid conclusion on the considerations required to be looked into by the Committees and the issue of delegation of power is not relevant to the question we have posed to ourselves.

78. In view of our above analysis and observations, the detailed, laborious and elaborate arguments on other issues, in our humble opinion, are rendered irrelevant.

79. Since we have rendered our opinion on the basis and analysis of the legal provisions of the Act and RLIU Rules, 1952 and restricted our consideration only to the issue formulated and mentioned in paragraph 55, the need to examine and consider the judgments relied upon by the parties, in our humble opinion, may not be required.

80. Learned Attorney General had fairly stated that the petitioner can apply for Industrial License to be issued by the DPIIT and if such application is indeed submitted, it would be considered by the LC, in accordance with the Act and the RLIU Rules, 1952 framed thereunder. In fact, it has been informed that the petitioner had in fact applied for and has already been granted license by the DPIIT on 18.06.2025.

81. We have also been informed that in the interregnum, the successful bidder, in respect of one contract has already completed the supplies and in respect of

the other has almost completed the supplies in execution of the contract awarded to it.

82. Resultantly, the writ petitions are dismissed alongwith pending applications, if any, though without any order as to costs.

TUSHAR RAO GEDELA
(JUDGE)

DEVENDRA KUMAR UPADHYAYA
(CHIEF JUSTICE)

DECEMBER 23, 2025/*rl*