



2025:DHC:7498-DB



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

+ W.P.(C) 12821/2025 & CM APPL. 52329/2025

ERA INFRA ENGINEERING LIMITED

.....Petitioner

Through: Mr.Amit Sibal, Sr. Adv. with
Mr.Apporv Agarwal, Ms. Priya
Singh, Ms.Manvi Jain, Ms.Astha
Singh, Mr. Tushar Gadia, Mr.Anuj
Maheshwari and Mr. Abhiraj Das,
Adv.

versus

AIRPORT AUTHORITY OF INDIA

.....Respondent

Through: Mr.R.V. Prabhat, Adv. with Mr.
Daksh Pandit, Adv. along with
Mr.Avadhesh Yadav, Mr. Gagan
Kochar and Mr. Kashish Singhal,
Officers from AAI.
Ms.Pratima N. Lakra, CGSC with
Mr.Shailendra Kumar Mishra and
Mr.Anil Kumar, Adv. for R-2/UOI.

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Date of Decision: 28.08.2025**CORAM:****HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE TUSHAR RAO GEDELA****J U D G E M E N T****TUSHAR RAO GEDELA, J: (ORAL)**

1. An interesting and uncharted issue has arisen in the present writ petition, namely, *“whether, while formulating the tender conditions, the tendering authority should not take into account the provisions of the Insolvency and Bankruptcy Code, 2016, under which a company is resurrected as an ongoing concern by a Successful Resolution Applicant (SRA), in order to achieve the objectives underlying the IBC to nurture such companies instead of disqualifying or holding them as ineligible to*



even participate in the tender process.”

2. The factual matrix leading to filing of the present writ petition, in our humble opinion is not germane to the afore-referred question which has been formulated by us, for the reason that the aforesaid question is an essential issue of consideration for the respondents while formulating and drafting Manual for Procurement of Works, 2022 and/or drafting of the conditions of a tender.

3. However, for understanding the circumstances which lead us to formulate the aforesaid question, brief reference of arguments of parties is necessitated and hence, encapsulated below.

4. While referring to the conditions of the subject tender, Mr. Sibal, learned senior counsel invited attention of this Court to the Manual for Procurement of Works, 2022 (hereafter referred to as “*the Manual*”) particularly to Clause 1.8 of Chapter 1, wherein various laws which would have an effect on the commercial aspect of the public procurement contracts were considered and taken note of. He pointed out that though all relevant laws were indeed considered, yet, the Insolvency and Bankruptcy Code, 2016 (hereafter referred to as “*the IBC, 2016*”) was simply overlooked. He emphasizes that the IBC, 2016 would have been a relevant enactment which ought to have been considered for its purport, import and impact upon the procurement policy. He also invited attention to Clause 2.4 of the said Manual to also submit that while preparing a Detailed Project Report or Preliminary Estimate, it provides for a level playing field to the bidders and lays emphasis on ensuring that as far as possible, the widest possible competition ought to be encouraged.

5. Learned senior counsel states that the tender conditions disentitle the petitioner from participation by mandating that in case the bidding entity



has undergone Corporate Insolvency Resolution Process (hereinafter referred to as “CIRP”) in the last seven years from the date of the notification of the tender, such entity would, *per se*, be ineligible. This, according to him, is an arbitrary and discriminatory stipulation which ought to be either struck off or read down to treat the time spent by the petitioner in the CIRP process as “Zero Period”. He states that, if read in that manner, the petitioner would automatically be eligible to participate in the tender. According to him, had the tender issuing authority taken note of the objectives and the rationale sought to be achieved by the Legislature in promulgating IBC, 2016, such an arbitrary and discriminatory condition disempowering entities such as the petitioner who have successfully emerged out of the CIRP process may not have been engrafted in the tender conditions.

6. On the other hand, Ms. Lakra, Central Government Standing Counsel (CGSC) appearing for the respondent/Union of India states that the tender conditions have been drafted in accordance with not only the Manual for Procurement of Goods, Second Edition, 2024 but also as per the peculiar requirement of the respondent/Airport Authority of India (AAI). She submits that the tendering authority has to evaluate the bidders according to their turnover in the previous years, the financial capacity to execute the tender as also other highly technical aspects. Thus, according to her, the tender conditions prohibiting participation of bidders like the petitioner who have undergone CIRP process in the last seven years before the tender was issued, may not be able to surpass the aforesaid conditions in respect of the financial capacity, turnover and other financial considerations which are of crucial importance to the tender issuing authority. As such, the said tender conditions cannot be said to be arbitrary



or discriminatory at all. Mr. R.V. Prabhat, learned counsel for the respondent/AAI too has reiterated the submissions of Ms. Lakra.

7. We have heard Mr. Amit Sibal, learned Counsel for the petitioner, Ms. Lakra, learned CGSC and Mr. R.V. Prabhat, learned counsel for the respondent/AAI.

8. The issue which has been pointed out by Mr. Sibal, learned senior counsel in the aforesaid Manual in respect of the considerations of various laws, central to the commercial aspect of Public Procurement Contracts, appears to be an underlying but evolving ethos of the government in the realm of the contracts which it may have to enter into with private entities. We find from perusal of Clause 1.8 of the said Manual that the government has indeed not only considered various laws but has also examined the impact that such laws may have on the commercial aspects of the contracts that the government may enter into. We find that the government has been aware of and sensitive to various laws like the Indian Contract Act, the Arbitration & Conciliation Act, 1996, the Competition Act, 2002, the Information Technology Act, 2002, the Delhi Police Establishment Act, 1946, the Code of Criminal Procedure, 1973, various labour laws applicable at the works' site, various building and safety Acts, Codes and other relevant laws including the provisions of the Constitution of India, 1950. The IBC, 2016 is conspicuous by its absence in Clause 1.8 of the Manual. In the period of constantly evolving laws, Acts and Codes, it appears that the impact of IBC on such Procurement of Goods and Services for the purpose of formulation of tender conditions would be profound and indispensable.

9. Having said that, it would be necessary for us to consider the import and purport behind enacting the IBC, 2016. Plainly, the IBC, 2016 was



engrafted with the purpose to amalgamate many laws surrounding revival, resurrection and liquidation of various companies, “to be read in that order”, and underscored the importance of reviving an entity so as to infuse fresh life into it and rehabilitate it back into the mainstream industry as an “on going concern”. In order to appreciate the said issue, we borrow the objectives and principles for which IBC, 2016 was engrafted, from the enunciation as contained in the judgment of the Hon’ble Supreme Court in ***Innoventive Industries Ltd. vs. ICICI Bank; (2018) 1 SCC 407***. The same is extracted hereunder:-

“12. The Insolvency and Bankruptcy Code, 2016 has been passed after great deliberation and pursuant to various committee reports, the most important of which is the report of the Bankruptcy Law Reforms Committee of November 2015. The Statement of Objects and Reasons of the Code reads as under:

“Statement of Objects and Reasons.—There is no single law in India that deals with insolvency and bankruptcy. Provisions relating to insolvency and bankruptcy for companies can be found in the Sick Industrial Companies (Special Provisions) Act, 1985, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and the Companies Act, 2013. These statutes provide for creation of multiple fora such as Board of Industrial and Financial Reconstruction (BIFR), Debts Recovery Tribunal (DRT) and National Company Law Tribunal (NCLT) and their respective Appellate Tribunals. Liquidation of companies is handled by the High Courts. Individual bankruptcy and insolvency is dealt with under the Presidency Towns Insolvency Act, 1909, and the Provincial Insolvency Act, 1920 and is dealt with by the Courts. The existing framework for insolvency and bankruptcy is inadequate, ineffective and results in undue delays in resolution, therefore, the proposed legislation.

2.The objective of the Insolvency and Bankruptcy Code, 2015 is to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time-bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the priority of payment of government dues and to establish an Insolvency and Bankruptcy Fund, and matters connected therewith or incidental thereto. An effective legal framework for timely resolution of insolvency and bankruptcy would support development of credit



markets and encourage entrepreneurship. It would also improve Ease of Doing Business, and facilitate more investments leading to higher economic growth and development.”

10. The Hon’ble Supreme Court in ***Swiss Ribbons (P) Ltd. vs. Union of India; (2019) 4 SCC 17***, while scrutinizing the regime deployed by IBC, 2016 in para 28 held as under:

“28. It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters/those who are in management. Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests. The moratorium imposed by Section 14 is in the interest of the corporate debtor itself, thereby preserving the assets of the corporate debtor during the resolution process. The timelines within which the resolution process is to take place again protects the corporate debtor's assets from further dilution, and also protects all its creditors and workers by seeing that the resolution process goes through as fast as possible so that another management can, through its entrepreneurial skills, resuscitate the corporate debtor to achieve all these ends.”

11. From the aforesaid judgments, it appears that the Hon’ble Supreme Court was of a firm opinion that apart from the process of liquidation, which, was to be resorted to as a last flagmast. Essentially the efforts of the entire regime of IBC, 2016 and all the stakeholders involved therein, is to evolve a methodology whereby company which is a “*Corporate Debtor*”, can be revived and resurrected to its previous health. The entire emphasis appears to be, to ensure that an entity, whose resolution plan is accepted by the National Company Law Tribunal (NCLT) and declared to be “*Successful Resolution Applicant*” is successful in reviving and resurrecting such Corporate Debtor. The underlying object clearly appears to be to rid the “*Corporate Debtor*” of the previous unsuccessful management by introducing and involving an entity declared to be “*SRA*”



who would be given the task of reviving the Corporate Debtor as an “on going concern”. If that is the aim and purport of the IBC, 2016, it is necessary to underscore the fact that this law must and ought to be considered as a crucial component to Clause 1.8 of the said Manual alongwith all other relevant laws.

12. Yet another crucial aspect to be considered is that the stakeholders involved in an ongoing concern taken over by the SRA would also include, perhaps, a large number of workers and employees apart from financial institutions, banks and other stakeholders whose existence may be fully dependent and contingent upon such ongoing concern being rehabilitated and revived. Though, these may not be imperative considerations if examined purely from a commercial point of view, yet, when the government is the sole authority formulating the public procurement policies and manuals and may many a times be the tender issuing authority, it may be a relevant consideration, to say the least.

13. We are acutely aware that a Constitutional Court exercising judicial review under Article 226 of the Constitution of India, particularly in the matters of examining tender conditions, is circumscribed in its jurisdiction. It is trite that the Courts cannot introduce or delete any tender condition or can the same be supplanted with a view that the Court may have while considering the tender conditions. In view whereof, and also in view of the fact that the petitioner in the present case has not laid challenge to the offending Clause, we are not inclined to interfere in the present matter at this stage, however, are of the considered opinion that the respondent/Union of India as also the tender issuing authority must examine the aforesaid view expressed by us.

14. In view of the above, we grant liberty to the petitioner to submit its



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representation on or before 04.09.2025 in respect of the challenge laid before us and direct the respondents to consider such representation in the light of, and giving due regard to the aforesaid view expressed by us and dispose of the same on or before 20.09.2025 giving adequate reasons in writing. The copy of the said decision would be furnished to the petitioner on or by 22.09.2025. The petitioner would be at liberty to approach the Court in case it has any grievance against the said decision.

15. In view of the aforesaid directions, the present writ petition is disposed of alongwith pending applications.

TUSHAR RAO GEDELA, J

DEVENDRA KUMAR UPADHYAYA, CJ

AUGUST 28, 2025/rl/kct