



\$~

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

Reserved on:- 17.09.2025
Date of Decision:- 18.11.2025

+ **LPA 588/2025 & CM APPL. 58725-29/2025**

CREST DIGITEL PRIVATE LIMITEDAppellant

Through: Mr.Mukul Rohtagi, Sr. Adv. and
Mr.Dayan Krishnan, Sr. Adv. with
Mr.Sahil Naran, Mr.Madhavam
Sharma, Mr.Vidush Sinha, Mr. Sukrit
Seth and Mr.Keshav Sehgal, Advs.

versus

DELHI METRO RAIL CORPORATION LIMITED & ANR.

.....Respondents

Through: Mr.Srinivasan Ramaswamy, Adv for
R-1.
Mr.Rajshekhar Rao, Sr. Adv. with
Mr.Mehul Parti, Mr.Ashwani Malhotra,
Ms.Shivangi Bajpai, Advs for R-2.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T

DEVENDRA KUMAR UPADHYAYA, C.J.

1. This intra-court appeal instituted under Clause X of the Letters Patent takes exception to the judgment dated 04.09.2025 passed by the learned Single Judge whereby W.P.(C) 10051/2025 filed by the appellant challenging the



Letter of Acceptance (LoA) dated 13.02.2025 issued in favour of the respondent no.2 by the respondent no.1, has been dismissed.

2. Facts necessary for appropriate adjudication of the issues involved in this appeal are encapsulated as under:-

2.1 On 14.11.2018 a license agreement was entered into between the respondent no.2 and respondent no.1 for executing work relating to installation of telecom tower/mast for provision and enhancement of Mobile (Cellular) Network (2G/3G/4G) at five locations at four selected metro stations, whereunder the respondent no.2 was to design, procure, manufacture, fabricate, install, commission, manage, operate and maintain telecommunication tower/mast at its own cost. The license agreement was executed not only to augment non-traffic revenue of respondent no.1 through licensing of space but also to provide Mobile coverage at and in the surroundings of the metro stations. The licensee/respondent no.2 was obligated to operate the licensed space for installation of tower/mast for provision and enhancement of Mobile (Cellular) Network at the specified locations at metro stations of Airport Express Line(AEL). One of the conditions of this license agreement was that the service provider/integrator should confirm smooth voice communication in the vicinity of towers to achieve the objective of providing better mobile connectivity within and around the premises for commuters and employees.

2.2 Clause 2.2(c) of the license agreement dated 14.11.2018 envisaged that the sites may increase or decrease with a variation upto 25% of the tendered sites and further that additional area may also be provided upto (+/-) 10% of the tendered area. It also provided that for area beyond the timeframe of fitment period or more than 10% of the tendered area, it shall be allocated on separately



negotiated market rates. Clause 2.2 (c) of the license agreement dated 14.11.2018 is extracted hereinbelow:-

“2.2 Scope-

(c) The sites/area mentioned in Annexure - 1 may increase or decrease with a variation of up to 25 percent from tendered sites subject to availability and feasibility / clearance from DMRC. Additional area may also be provided based on availability and feasibility at the sole discretion of DMRC. Additional area of upto (+/-) 10% of tendered area and within fitment period shall be at Pro rata basis of quoted license fee. For area beyond the time frame of fitment period and or more than 10% of tendered area, the same shall be allocated on separately negotiated market rates.”

2.3 The respondent no.1 executed a license agreement in favour of the appellant on 03.01.2019. The said license agreement was executed for placement and operation of telecommunication equipments for In Building Solution (IBS) at five metro stations on AEL for providing shared Mobile coverage in the premises, tunnels and underground metro stations. One of the important obligations of the appellant was to ensure that passengers get smooth Mobile coverage without any interruption in the underground section, and that the radio system shall have an overall availability of better than 99.95% and that signal level should be such that the uplink and downlink audio quality level should be good. The license agreement further stipulated that a minimum signal level, which is sufficient for successful radio calls, must be available in all coverage areas including inside the moving train compartments, which shall be available in 95% of total area and in the worst case, not more than 50 meters of continuous stretch in the stations and in the tunnel/train should be without



coverage. Clause 2.3 (a) of the license agreement dated 03.01.2019 is extracted hereinbelow:-

“2.3 Licensee shall be responsible for the following activities,

a. The Licensee shall ensure that passengers using metro train services will get uninterrupted mobile coverage without any interruption in underground section as described in Scope of this document. It requires that the Radio system shall have an overall availability of better than 99.95%. The signal level should be such that the uplink and down link audio quality level under such conditions should be good. The minimum signal level which is sufficient for successful radio calls must be available in all coverage areas including inside the moving train compartment. It shall be available in 95% of total area and in worst case not more than 50 meter of continuous stretch in stations and in tunnel/train should be without coverage. The signal levels mentioned herewith are the worst case Down Link signal levels after taking into account all losses such as propagation losses feeder losses, body loss, fading, train penetration losses, multiple floor/ wall penetration losses, climatic losses, etc.”

2.4 Clause 5.3 of the license agreement provided that the appellant shall be provided with a 120-days fitment period, which shall commence from the handing over of the space at the concerned stations, and that the appellant shall complete its fitment in all respects within the specified fitment period. It also provided that in case of handing over of any new additional stations, a fitment period of 120 days will be provided. Clause 5.3 of the license agreement dated 03.01.2019 reads as under:-

“5. Tenure of License Agreement

“5.3. Fitment Period: *Licensee shall be provided with 120 days fitment period. Fitment period shall commence from handing over of the space at concerned station. The Licensee shall complete its fitment in all respects within the specified fitment period. In case of handing over of any new additional station on same section, fitment period of 120 days will be provided. The License fee shall commence*



immediately after the expiry/completion of fitment period 120 days for the relevant locations.”

2.5 Clause 2.2 (e) of the license agreement dated 03.01.2019 provided that any deficiency in requisite services shall entail a penalty. The said clause is also extracted hereinbelow:-

“2.2. Scope:

e. The Licensee shall endeavour to have tie- up with all mobile service providers of Delhi NCR along with the authority to receive their signals and propagate them. Licensee shall maintain availability of mobile service providers in such a manner that the sum of their mobile subscriber percentage in Delhi shall not be less than 50%. However, Licensee shall be allowed to start with 20 % on the date of commencement of License Fee. Any deficiency in requisite 20% shall be penalized @ Rs. 1000/- for each percent below 20 % for the concerned stations & month. Licensee shall attain 50 % within 6 (Six) months of date of Commencement of License fee, whichever is later. Any deficit in requisite 50% shall be penalized @ Rs. 1000/- for each percent below 50 % for the concerned station and month. The subscriber percentage shall be considered on the basis of TRAI reports from time to time for Delhi. The subscription shall be reconciled every six months on the basis of TRAI report available online on their website.”

2.6 The appellant by instituting the writ petition before the learned Single Judge, challenged the LoA dated 13.02.2025 issued in favour of respondent no.2 by the respondent no.1 on the following grounds:-

(a) That the scope of work has been extended so as to include IBS services as well, which was impermissible and beyond the scope of the original license agreement dated 14.11.2018 executed by respondent no.1 in favour of the respondent no.2.



(b) That the LoA dated 13.02.2025 renders the license agreement dated 03.01.2019, executed by the respondent no.1 in favour of the appellant, as defunct, and that the LoA, thus, has resulted in irreparable loss to the appellant as the operations of the appellant under the license agreement dated 03.01.2019 are adversely impacted.

(c) That the LoA dated 13.02.2025 envisages payment of the license fee much lower than the license fee payable by the appellant under the license agreement dated 03.01.2019 executed by respondent no.1 in its favour which is discriminatory infringing Article 14 of the Constitution of India.

(d) That the LoA dated 13.02.2025 has been issued in favour of respondent no.2 by the respondent no.1 by way of nomination without taking recourse to tendering process, which is impermissible for the reason that any public authority like the respondent no.1 is under obligation to grant any work for its execution only by way of resorting to the process of tender, which, in the instant case, is absent and as such on this count alone the LoA dated 13.02.2025 is not sustainable.

2.7 Per contra, the case set up by the respondent no.1 before the learned Single Judge was that after execution of the license agreement dated 03.01.2019, there has been gross failure and negligence on the part of the appellant in executing the work and that the appellant began defaulting on its contractual obligations. It was also the case of the respondent no.1 that in terms of the provisions contained in the said license agreement dated 03.01.2019, the work was to be completed by 07.02.2019, however till August, 2019 it remained incomplete and accordingly on several occasions the penalty was imposed on the appellant for not executing the work within the time



stipulated in the license agreement dated 03.01.2019. The penalty was imposed on 11.06.2019, 11.07.2019, 07.08.2019, 13.12.2019, 07.01.2020, thereafter penalty was also imposed on 09.09.2019, 13.02.2020, 17.03.2020, 11.08.2020, 25.09.2020, 26.10.2021 and 03.03.2022 on account of lapses which occurred at the end of the appellant.

2.8 It was also stated on behalf of the respondent no.1 that the lapses occurring at the end of the appellant in meeting its obligations in terms of the license agreement dated 03.01.2019 was also noticed by the Ministry of Communication, Department of Communication, Government of India, and accordingly expressing its concerns on the quality of telecommunication network on the route from Delhi Airport to Dhaula Kuan, New Delhi, the Government of India wrote a letter on 19.07.2019, which captured the concerns of the Government of India at the highest level in respect of quality of service and call drops, affecting the international tourists as also the domestic travellers using the said route. The letter dated 19.07.2019 also notices that the Telecom Regulatory Authority of India (TRAI) conducted extensive drive test and inspection of the area to identify the issue related to the quality of services and furnished a report. The letter also states that, as per the TRAI report, poor quality of services is linked to the infrastructure deficiencies and, therefore, action was required to support the telecom service provider in setting up of a requisite infrastructure to address the quality of services and call drop issues. The letter dated 19.07.2019 thus requested that a specific obligation/intervention was required for improvement of quality of services in the stretch of Metro Rail from Delhi Airport to Dhaula Kuan, New Delhi, and accordingly, a request was made to take suitable measures on an urgent basis. Several complaints were also received regarding poor Mobile Network



Coverage at the elevated, underground, tunnel section of AEL, which were forwarded to the concerned licensee, including the appellant, for remedial action; however, it was found that the status of the Mobile network had not improved. Accordingly, a need was felt that an additional telecom structure was required in synchronisation with existing telecom infrastructure, including IBS, to handle the continuously increasing failure of online QR ticketing and UPI payments, etc.

2.9 To address the aforesaid issue, a Negotiation Committee was formed to consider variation in the area at various metro stations on the AEL for the development of IBS 5G infrastructure and improvement of Mobile coverage under the license agreement of the respondent no.2, dated 14.11.2018. The Negotiation Committee held its meeting on 10.01.2025 and considered all relevant aspects of the matter, and after noticing continuous receipt of several complaints regarding poor Mobile Network coverage, expressed the need for an additional infrastructure in synchronisation with the existing infrastructure to handle the increasing failures of online services such as QR ticketing and UPI, etc.

2.10 In the said meeting of the Negotiation Committee, the proposal submitted by the respondent no.2 to implement an IBS 5G network solution at different metro rail stations was also considered with a view to enhance the quality of Mobile connectivity and improve commuter experience in tune with the vision and mission of the respondent no.1, particularly for digital ticketing and UPI based online payments. The Negotiation Committee also noticed that the proposal submitted by the respondent no.2 has been taken note of by the officials of the respondent no.1 and has been discussed with the respondent no.2, whereupon approval of the competent authority for the incorporation of



five metro stations on a variation basis under the existing license agreement dated 14.11.2018 was also accorded.

2.11 The Negotiation Committee asked the respondent no.2 to match the current rates of presently running contracts, which was responded to by the respondent no.1 and the licensed rate of Rs.5,500/- per sq. meter per station was taken into account. The Committee accordingly made recommendations to accept the financial offer of the respondent no.1 to cater to immediate 5G Mobile network connectivity requirements. The Committee also recommended that in case the respondent no.2 required additional area for any further expansion of IBS infrastructure, then the same may be provided on a pro rate basis i.e. Rs.5,500/- per sq.m/month. It was also recommended that the area licensed shall be co-terminus with the existing license agreement (dated 14.11.2018).

2.12 The Scope of license agreement under variation was also recommended to be read as that 'telecom tower and IBS' in place of that 'telecom tower' for certain airport metro stations on AEL. The recommendations made by the said Negotiation Committee are as under:-

“Recommendations

The committee recommends after careful evaluation that:

- 1. The financial offer of M/s Indus Towers Ltd. i.e. fixed rental of INR 5,500 per Sqm/ month [excluding of GST and other taxes] for IGI Airport, New Delhi. Shivaji Stadium, Delhi Aerocity, Dwarka Sector-21. Yashobhoomi Dwarka Sector-25 may be agreed to cater immediate 5G mobile network connectivity requirements on DMRC network for better commuting experience.*
- 2. In case licensee required additional area for any further expansion of IBS infrastructure. then the same may be provided on pro-rata basis i.e. 5.500/- per sqm/month [excluding of GST and other taxes].*



3. *The area licensed for the subject purpose shall be co-terminus with the existing license agreement and tenure of this additional work will also be co-terminus with original respective license agreement i.e. License Agreement.No.2018/Telecom/BTS/794 dated 14.11.2018 [CP-56 Pages 01 to 61].*

4. *The scope of subject licensee agreement under variation may be read as "Telecom Tower and IBS Instead of "Telecom tower" for New Delhi. Shivaji Stadium, Delhi Aerocity, Dwarka Sector-21, Yashobhoomi Dwarka Sector-25 & IGI Airport metro station of Airport Express Line.*

5. *In view of the above. First Year revised Annual Contract Value is 2,82,71,648/-[excluding of GST and other taxes] at CP-311, which is less than 3 Cr. So. in terms of SOP Para R3 [i] for earning matter, variation in contract [as calculated at CP-311] as per Para R8[v][i] and change/ Modification in terms and conditions of existing contract as per Para R8 [vi] are within power of HOD/PB for the subject proposal [CP-301 to 303].*

The above recommendations are submitted for kind approval please.

Acceptance / rejection / modification is lies with Sr. GM/ PB.

2.13 It is based on the aforesaid five recommendations of the Negotiation Committee that the LoA dated 13.02.2025 was issued by the respondent no.1 in favour of the respondent no.2, whereby the proposal made by the respondent no.2 was accepted with certain conditions. It is this LoA dated 13.02.2025, which was challenged by the appellant before the learned Single Judge by instituting W.P.(C) 1051/2025, which has been dismissed by means of the impugned judgment dated 04.09.2025, that is under challenge herein.

3. Impeaching the judgment rendered by the learned Single Judge dismissing the writ petition filed by the appellant, it has been argued by Mr.Mukul Rohtagi and Mr.Dayan Krishnan, Senior Advocates representing the appellant that the learned Single Judge has failed to consider the basis of



challenge made by the appellant to the LoA dated 13.02.2025. Submission made on behalf of the appellant are:-

- i. The LoA was issued by the respondent no.1 without resorting to tendering process, which is impermissible in law and that the exceptions provided from deviating from tender in process by public authority under Rule 194 of General Financial Rules, 2017 (GFR) does not cover the reasons given by the respondent no.1 for allotting the work through nomination instead of by way of process of tender.
- ii. Another argument made on behalf of the appellant is that the learned Single Judge has not considered the argument made on behalf of the appellant that the LoA dated 13.02.2025 issued in favour of respondent no.2 by the respondent no.1 has resulted in discriminatory treatment to the appellant for the reason that the license executed in favour of respondent no.2 fixes a minimum guarantee area of 12 sq.m per station whereas the appellant under the bidding process was bound to minimum chargeable space/area of 20 sq.m per station. It is thus, the contention on behalf of the appellant that on account of the aforesaid discrimination in the lower minimum chargeable area, it shall lower burden enabling the respondent no.2 to offer better rates to the telecom service providers for the same work, and therefore, the LoA dated 13.02.2025 causes uneven playing field for the appellant, however learned Single Judge has not considered the said ground which vitiates the impugned judgment. This submission is based on an alleged violation of Article 14 of the Constitution of India.
- iii. It is also the submission on behalf of the appellant that though the learned Single Judge has noticed that the respondent no.2 had offered rate of Rs.11,088/- per sq.m per station, however, the factum of reduced space has not



been taken into consideration by the learned Single Judge which prejudices the appellant, and, therefore, the impugned judgment appears to have rewritten the license agreement.

iv. The appellant in support of its arguments has relied upon the judgment of the Hon'ble Supreme Court in ***Nagar Nigam, Meerut v. Al Faheem Meat Exports (P) Ltd. & Ors.*** [(2006) 13 SCC 382] and a Division Bench judgment of this Court in ***Sahakar Global Limited Jv& Anr. v. Municipal Corporation of Delhi*** [2025 SCC OnLine Del 2273].

4. Opposing the appeal, learned counsel representing the respondent nos.1 and 2, Mr.Srinivasan Ramaswamy, learned counsel and Mr.Rajshekhar Rao, learned senior counsel respectively, have argued that:

i. The appellant had failed to complete the work allocated to it by the license agreement dated 03.01.2019, which led the respondent no.1 to issue LoA dated 13.02.2025 by nomination, as is permissible under Rule 194 of the GFR.

ii. It has also been argued on behalf of the respondents that the scope of work as envisaged by LoA dated 13.02.2025 is connected with the existing license agreement executed by the respondent no.1 in favour of the respondent no.2 14.11.2018, and accordingly the work allocation made through nomination by issuing the LoA dated 13.02.2025 is clearly covered within the scope of Rule 194 of the GFR.

iii. Drawing our attention to Rule 194, it has been argued that the LoA dated 13.02.2025 is completely justified as such nomination is allowed and permitted in the overall interest of the Ministry or the department i.e. respondent no.1.

iv. Our attention has also been drawn to the Minutes of the Negotiation Committee formed by respondent no.1, where a complete justification for such



nomination is recorded. As regards the license fee, it has been argued on behalf of the respondents that the respondent no.2 has voluntarily increased the rate to Rs.11,088/- per sq.m./month, which is equal to the license rate applicable to the appellant.

v. Further submission on behalf of the respondent is that the LoA was executed on 13.02.2025, however the appellant filed the instant appeal only in the month of July, 2025 and during this period the respondent no.2 has executed binding contracts and deployed infrastructure worth Rs.25.6 crores thereby creating third party rights, and hence at this late stage, the appellant is guilty of delay and laches, and therefore, in this view of the matter as well the appeal need not be entertained.

5. Having considered the respective submissions made by learned counsel for the parties, we are of the opinion that the instant appeal does not bear any force, which is liable to be dismissed for the following reasons:

A. Rule 194 of the GFR permits single-source selection by nomination under certain conditions, according to which selection by direct negotiation/nomination is considered appropriate under certain circumstances, such as when it becomes necessary to select a particular consultant where adequate justification is available for such single source selection in the interest of Ministry or Department. However, full justification for single-source selection should be recorded in the file with the approval of the competent authority. According to Rule 194, in case selection by direct negotiation/nomination is made, the authority concerned shall ensure fairness and equity and shall have a procedure in place to ensure that prices are



reasonable and consistent with the market rates for the tasks of similar nature.

Rule 194 of GFR is extracted hereinbelow:-

“Rule 194 Single Source Selection/Consultancy by nomination. The selection by direct negotiation/nomination, on the lines of Single Tender mode of procurement of goods, is considered appropriate only under exceptional circumstance such as:

- (i) tasks that represent a natural continuation of previous work carried out by the firm;*
- (ii) in case of an emergency situation, situations arising after natural disasters, situations where timely completion of the assignment is of utmost importance; and*
- (iii) situations where execution of the assignment may involve use of proprietary techniques or only one consultant has requisite expertise.*
- (iv) Under some special circumstances, it may become necessary to select a particular consultant where adequate justification is available for such single-source selection in the context of the overall interest of the Ministry or Department. Full justification for single source selection should be recorded in the file and approval of the competent authority obtained before resorting to such single –source selection.*
- (v) It shall ensure fairness and equity, and shall have a procedure in place to ensure that the prices are reasonable and consistent with market rates for tasks of a similar nature; and the required consultancy services are not split into smaller sized procurement.”*

B. If we examine the decision of the respondent no.1 to allocate the work by issuing the LoA dated 13.02.2025 in favour of the respondent no.2 what we find is that the situation which had occurred on account of consistent failure on the part of the appellant in execution of its work pursuant to the license agreement dated 03.01.2019, and also considering the objective of providing the services which is to provide better connectivity according to the needs of



the commuters in the wake of frequent complaints about poor Mobile coverage affecting the operations of the respondent no.1 and overall commuters services, there exists sufficient reason to resort to the process of nomination as permissible under Rule 194 of the GFR. It is to be noticed that poor services relating to Mobile connectivity not only causes inconvenience to the commuters but it also results in deficiency in meeting the commitment of the respondent no.1 for the reason that poor connectivity ultimately affects the ticketing facility and even operation of the Metro network itself, and therefore, we are of the opinion that allocation of work through nomination was necessitated in the interest of the respondent no.1, which is permissible as per sub-clause (iv) of Rule 194 of GFR.

C. It is also to be noticed that the Negotiation Committee has taken into consideration all relevant aspects of the matter including the complaints regarding poor Mobile network coverage at elevated, underground, tunnel section of AEL and various clauses of the license agreement dated 14.11.2018 including clause 2.2(c) which permitted variation of the site/area before making its recommendations. The Minutes of the meeting of the Negotiation Committee dated 10.01.2025 which appears to have been drawn on 20.01.2025 unambiguously reveal that the recommendations made by the said Committee are based on all the relevant aspects including the pricing, and the Committee came to a conclusion that in order to remove the deficiencies in the poor quality of services, it would be appropriate to extend the work, which after approval of the competent authority of the respondent no.1, has been done by issuing the LoA dated 13.02.2025. The appellant has utterly failed to point out any flaw in the reasons assigned by the Negotiation Committee, based on whose



recommendation, and after approval of the competent authority, the LoA dated 13.02.2025, has been issued.

D. The appellant has consistently been found to have failed in discharging its contractual obligations in terms of the license agreement dated 03.01.2019, entailing imposition of penalty several times. We are of the considered opinion that it is a case of failure on the part of the appellant in meeting its contractual obligations under the license agreement dated 03.01.2019 and, therefore, the recourse taken by the respondent no.1 to award certain work as variation to the site/area in terms of clause 2.2(c) of the license agreement dated 14.11.2018 cannot be faulted with, especially considering the interest of respondent no.1, which is to provide flawless Metro services and smooth running of its own operations. The smooth Mobile network is needed not only to provide the facilities to the commuters but also to run the Metro operations as well, and therefore, in our opinion in terms of sub-clause (iv) of Rule 194 of the GFR, it was legally permissible for the respondent no.1 to have allocated the work in question by nomination for the reason that special circumstances existed which impelled the respondent no.1 to take recourse to direct nomination in place of tendering process in the interest of the department, i.e., Delhi Metro Rail Corporation.

E. As far as the submission made on behalf of the appellant regarding pricing is concerned, we may only notice that the learned Single Judge in the impugned judgment has noted that the respondent no.2 has agreed to match the price with the price being the obligation to be paid by the appellant, i.e., Rs.11,088/- per sq.m/month. The ground taken by the appellant that license of the respondent no.2 fixes the minimum guarantee area of 12 per sq.m per station whereas the appellant is bound to 20 sq.m. minimum per station area,



and therefore, the license fee to be paid by respondent no.2 bears a lower burden as compared to the burden borne by respondent no.1, also does not come to the rescue of the appellant for the reason that as to what area would be required to set up the necessary infrastructure is to be fixed by the tendering authority i.e. respondent no.1 and further because it is primarily the rate which plays a pivotal role to consider as to whether the LoA dated 13.02.2025 has resulted in uneven playing field. The rate to be paid by the respondent no.2 is the same as the respondent no.1 is obligated under its license i.e. Rs.11,088/- per sq.m./month. Thus, the said submission merits rejection.

F. In any case, we do not find any fault with the impugned decision of the respondent no.1 for issuing the LoA dated 13.02.2025 in favour of respondent no.1, considering the need/relevance and importance of providing flawless Mobile connectivity, which is required not only for the convenience of the commuters but also for running the Metro network itself. If, for any reason, such services are disrupted, it will become difficult for the network of Metro rail to run smoothly as the same would cause disruption even in ticketing processes for the reason that payment through UPI for purchasing the tickets will get impeded. Thus, the decision which ultimately led to the issuance of LoA dated 13.02.2025, in our opinion, cannot be said to be in any manner illegal; nor is it found to suffer from any other fault.

G. The judgments cited by learned senior counsel for the appellant, in the case of **Nagar Nigam, Meerut** (*supra*) and **Sahakar Global Limited JV** (*supra*) are of no avail to the appellant for the reason that the Hon'ble Supreme Court in **Nagar Nigam, Meerut** (*supra*) has recognised grant of any contract by private negotiation in exceptional cases having regard to the nature of trade and largesse or for some other good reason. In **Nagar Nigam, Meerut** (*supra*) it



has been held that contracts by the State and its instrumentalities must normally be granted through public auction/public tender from eligible parties; however in rare and exceptional cases, the normal Rule may be departed as well. The judgment by this Court in **Sahakar Global Limited JV** (*supra*) relies upon the said legal principle enunciated by Hon'ble Supreme Court in **Nagar Nigam, Meerut** (*supra*). Paragraphs 15 and 16 of the decision in **Nagar Nigam, Meerut** (*supra*) are relevant to be reproduced which run as under:-

“15. We have no doubt that in rare and exceptional cases, having regard to the nature of the trade or largesse or for some other good reason, a contract may have to be granted by private negotiation, but normally that should not be done as it shakes the public confidence.

16. The law is well settled that contracts by the State, its corporations, instrumentalities and agencies must be normally granted through public auction/public tender by inviting tenders from eligible persons and the notification of the public auction or inviting tenders should be advertised in well-known dailies having wide circulation in the locality with all relevant details such as date, time and place of auction, subject-matter of auction, technical specifications, estimated cost, earnest money deposit, etc. The award of government contracts through public auction/public tender is to ensure transparency in the public procurement, to maximise economy and efficiency in government procurement, to promote healthy competition among the tenderers, to provide for fair and equitable treatment of all tenderers, and to eliminate irregularities, interference and corrupt practices by the authorities concerned. This is required by Article 14 of the Constitution. However, in rare and exceptional cases, for instance during natural calamities and emergencies declared by the Government; where the procurement is possible from a single source only; where the supplier or contractor has exclusive rights in respect of the goods or services and no reasonable alternative or substitute exists; where the auction was held on several dates but there were no bidders or the bids offered were too low, etc., this normal rule may be departed from and such contracts may be awarded through “private negotiations”. (See Ram and Shyam Co. v. State of Haryana [(1985) 3 SCC 267 : AIR



1985 SC 1147] .)”

H. Accordingly, the aforesaid judgments in *Nagar Nigam, Meerut (supra)* and *Sahakar Global Limited JV (supra)* do not lay down the law that in no circumstances the normal Rule of resorting to the tendering process can be deviated. The principle, rather, as laid down is that in certain exceptional circumstances the said Rule can be departed from. It is only that for departing from the normal Rule of tendering process, the circumstances as enumerated in Rule 194 of GFR, 2017 should exist.

I. As discussed above, the facts of this case justify, in our considered opinion, the departure from the normal Rule of tendering process having regard to the necessity and urgent need for smooth telecom services along the Airport Metro Line that is in the interest of the Department, i.e., DMRC.

6. For all the aforesaid reasons the appeal lacks merit which deserves to be dismissed.

7. Resultantly, the appeal, along with pending applications, is hereby dismissed; however, there will be no orders as to costs.

(DEVENDRA KUMAR UPADHYAYA)
CHIEF JUSTICE

(TUSHAR RAO GEDELA)
JUDGE

NOVEMBER 18, 2025
S.Rawat