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

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Date of decision: 15th October, 2026

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CNR No. DLHC010497682026

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W.P.(C) 15283/2026 & CM APPL. 72218/2026**UTTAM POWER TOOLS PVT LTD**

.....Petitioner

Through: Mr. Abhimanyu Bhandari, Senior Advocate along with Mr. Himanshu Sachdeva, Mr. Namanveer Singh Sodhi & Ms. Aishwarya Jha Advocates.

versus

**NATIONAL SMALL INDUSTRIES CORPORATION LTD
& ORS.**

.....Respondents

Through: Ms. Suman Kukrety, Advocate for Respondent No.1 with Mr. Dhirender Kumar, Chief Manager, NSIC.
Mr. Rohan Chawla & Mr. Rohan Rana, Advocates for Respondent No.3.

CORAM:**HON'BLE THE ACTING CHIEF JUSTICE****HON'BLE MR. JUSTICE SANJAY SHARMA****JUDGMENT (ORAL)****NITIN WASUDEO SAMBRE, J.**

1. The petitioner, an Original Equipment Manufacturer, appears to have issued the Manufacturer's Authorization Form ("MAF") in favour of a bidder who was unsuccessful.
2. The petitioner alleging non-provision of the equal play field, has approached this Court against the respondent urging that the tender conditions are not strictly adhered to, in regard to each of the tenders.



3. Since the petitioner himself is not a tenderer or has submitted his bid, an objection to his locus has been raised. The same has resulted in the passing of an order dated 13.10.2026.

4. So as to establish the locus, the learned Senior Counsel appearing for the petitioner would urge that the petitioner, even if not a person or agency who has participated in the tender process, has direct stakes in the tender in capacity of an original equipment manufacturer, pursuant to tender conditions, he has provided a MAF in favour of a tenderer. According to him, this directly connects the petitioner to the tender process in question, and in such an eventuality, he cannot be termed as a 'stranger' or a person who is not having any interest, much less locus is fairly present in the petition. Drawing support from the observations made by the Hon'ble Apex Court in the judgment of **Jasbhai Motibhai Desai v. Roshan Kumar, Haji Bashir Ahmed and Others**, reported in 1976 1 SCC 671, particularly in Paragraph Nos. 33, 34, 35 and 37, he would urge that this Court infer that the petitioner has locus to prefer this petition. According to him, if the petition is allowed, the net result will be that the person who has submitted a tender for the work in question, to whom he has provided MAF, will directly impact the business and the survival of the petitioner in the field in question.

5. He would further draw support from the judgment of this Court in the matter of **Suresh Kumar Jain v. Lt. Governor & Ors.**, reported in 2006 SCC OnLine Del 879 particularly Paragraph No. 15 which reads as under:

"15. The first question to be decided is whether the petitioner cannot maintain independent proceedings against the DDA, being a sub-contractor with no privity of contract. Undoubtedly, there is no contractual relationship between the DDA and the petitioner, the contract or agreement is between the Contractor, and the supplier manufacturer, viz. the petitioner. In that sense, the DDA is correct in contending that there is no privity of contract as between it and the



petitioner. Yet, that factor alone cannot be decisive in arriving at a conclusion as to whether the petitioner can be aggrieved by the action, or inaction of the DDA. There is no gainsaying, and nor was it urged on behalf of the DDA, that it was always aware that the goods to be supplied to it, were those of the petitioner. It had indicated the standards. **Although the petitioner was not a party, to the contract, its economic interests were vitally affected, and indeed dependant upon the DDA's continued acceptance of its products. Absence of a direct contractual relationship, did not absolve the DDA from taking into consideration the rights and obligations of the petitioner in its contract with the contractor. The contractor has chosen not to contest the determination of the DDA about rejection of the petitioner's product.** That leaves the petitioner with no occasion to ventilate its grievances. In *Cantonment Board, Dinapore v. Taramani Devi*, 1992 Supp (2) SCC 501: AIR 1992 SC 61, the Supreme Court had ruled that where the real affected party on account of a public authority's decision was not a party to the contract with it, its right to approach the Court, could not be denied. On a parity of reasoning, I am of opinion that the petitioner cannot be deprived of his right to approach the Court, to challenge the action of DDA: he has sufficient locus standi.

[Emphasis Supplied]”

6. As against the above, the counsel for respondent no. 1 would urge that, when it comes to the tender in question, the tenderer is required to conduct himself, in accordance with, the terms of the manual for procurement of goods. It is urged that the said manual provides for grievances and their redressal. It is further urged that only a directly affected bidder can represent in regards to the grievance, only then a tender process will be adopted. A specific reliance is placed on Clause 3(a), so as to substantiate the aforesaid contentions. Apart from the above, the learned counsel appearing for respondent no. 2, who is a successful bidder, has invited the attention of this Court to the Division Bench judgment in the matter of ***Primatel Fibcom Ltd. V. Indian Oil Corporation Limited & Ors.***, in W.P.(C) 8220/2024 decided on 01.06.2024, so as to urge that the



petitioner lacks locus in the matter. A specific reliance is also placed on the judgment of Hon'ble Apex Court in the matter of **NHAI v. Gwalior-Jhansi Expressway Limited**, 2018 8 SCC 243. The observations made therein reads as under:

“8. The first question to be decided is whether the Petitioner herein can maintain independent proceedings against Respondent No. 1 for impugning the award of subject Tender in favour of Respondent No. 2. In our considered opinion, the answer to the question is in the negative and in this regard, we may refer to a judgment of the Supreme Court in **NHAI v. Gwalior-Jhansi Expressway Limited**.⁶ The relevant para 20 reads as under:

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



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

(Emphasis supplied)

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

7. It is further urged that the judgment of the learned Single Judge of this Court in the matter of **Suresh Kumar Jain** (cited supra) has been duly considered in the aforesaid Division Bench judgment of this Court and an



observation is made that the said judgment will not be applicable to a challenge made by a third party to a tender process.

8. In the aforesaid background, if we appreciate the legal position with regard to the status of the petitioner and his relation with that of original tenderer, it is borne out of the record that the petitioner has provided an authorization form that he is an Original Equipment Manufacturer, which is one of the documents required for submission of tender form by a third party. Such third party, to whom the MAF was made available, is not a party before this Court either in the form of petitioner or that of respondent.

9. It is further required to be noted that the contract, if any, *inter se*, between the tenderer and that of the petitioner, won't bind the respondent and in case of any default or otherwise of any such oral contract, the remedy lies elsewhere and not through the present petition.

10. As regards, the law laid down by the Hon'ble Apex Court in the matter of **Jasbhai Motibhai Desai** (supra) is concerned, the ratio of the said case if looked into, Paragraph No. 49 of the said judgment which reads as under:

“49. It is true that in the ultimate analysis, the jurisdiction under Article 226 in general, and certiorari in particular is discretionary. But in a country like India where writ petitions are instituted in the High Courts by the thousand, many of them frivolous, a strict ascertainment, at the outset, of the standing of the petitioner to invoke this extraordinary jurisdiction, must be insisted upon. The broad guidelines indicated by us, coupled with other well-established self-devised rules of practice, such as the availability of an alternative remedy, the conduct of the petitioner etc. can go a long way to help the courts in weeding out a large number of writ petitions at the initial stage with consequent saving of public time and money.”



11. Apart from aforesaid observations, the Hon'ble Apex Court has dismissed the said proceedings against the petitioner. The fact remains that at no point of time there was any privity of contract *inter se* between the petitioner and the tender inviting authority. The original tenderer, perhaps, is not aggrieved by the tender proceedings which are adopted by respondent no. 1 and has chosen not to question the action of respondent no. 1 in allotting tender in favour of the respondent no. 2 by taking recourse to the tender process, which is questioned by the petitioner, a third party.

12. In such an eventuality, it cannot be said that the judgment in the matter of **Jasbhai Motibhai Desai** (cited supra) or that of in the matter of **Suresh Kumar Jain** (supra) supports the case of the petitioner. It cannot be said that, based on the aforesaid judgments, this Court can infer that the petitioner has locus so as to maintain the present petition at his behest. We are further fortified in view of the law laid down by the Hon'ble Apex Court in the matter of **NHAI** (cited supra).

13. The Division Bench of this Court, while following the said judgment in the matter of **Primatel Fibcom Ltd.** (cited supra), has observed that just because somebody is an Original Equipment Manufacturer, who intends to supply such equipments to a successful bidder or to a tenderer, by itself will not confer or give locus to prefer the petition questioning the tender process.

14. In any case, the petitioner cannot mix his legal right with the right of the party, who has submitted a tender and has chosen not to question the action of the respondent in not allotting the tender in his favour.

15. With the aforesaid observations, we categorically held that the petitioner lacks locus and as such, the petition at the behest of the petitioner is not maintainable.



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16. The petition is, accordingly, dismissed.
17. Pending application(s), if any, also stand disposed of accordingly.

NITIN WASUDEO SAMBRE, ACJ

SANJAY SHARMA, J

OCTOBER 15, 2026/ 'AN'/NP