

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

% Judgment delivered on: 18.03.2025

+ **W.P.(C) 15983/2024 CM APPL. 67132/2024 CM APPL.
67133/2024 CM APPL. 67134/2024**

**ADANI GLOBAL AIR CARGO SOLUTIONS
PRIVATE LIMITED & ANR.**

..... Petitioners

Versus

UNION OF INDIA & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioners : Mr. Akhil Sibal, Sr. Advocate alongwith Ms. Meghna Mishra, Mr. Ankit Rajgarhia, Mr. Shreyansh Rathi and Mr. Rohit Kumar, Advocates.

For the Respondents : Mr. Ripudaman Bhardwaj, CGSC alongwith Mr. Kushagra Kumar and Mr. Abhinav Bhardwaj, Advocates for UOI.
Ms. Shweta Bharti and Ms. Sonali Khanna, Advocates for GEM/R-2.
Ms. Anjana Gosain, Ms. Nippun Sharma and Mr. Raman Sablok, Advocates for R-3.
Mrs. Vanita Bhargana, Ms. Ajay Bhargava, Mr. Vishal Shrivastava and Ms. Phalguni Nigam, Advocates for R-4.
Mr. Varun Kalra and Mr. Krishan Kumar, Advocates for R-5.
Mr. Siddharth Sethi, Ms. Shreya Sirear, Mr. Avinash Das and Mr. Kunal Saini, Advocates for R-6.
Mr. Arnav Kumar, CGSC alongwith Ms. Aayushi Sharma and Mr. Ramesh



Radhakrishnan, Deputy Director General,
NIC, Chennai for UOI/R-7.

CORAM
HON'BLE MR JUSTICE VIBHU BAKHRU
HON'BLE MR JUSTICE GIRISH KATHPALIA

JUDGMENT

VIBHU BAKHRU, J.

INTRODUCTION

1. The petitioners have filed the present petition impugning the bidding process in respect of e-tender ID 2024_AAICL_205619_1 dated 21.08.2024 (hereafter **the impugned e-tender in question**) for receiving bids for development of New Cargo Terminal at Kolkata Airport on design, build, finance, operate and transfer basis, invited by respondent No.3 [ACLASCL].

2. It is the petitioners' case that they were excluded from participating in the said bidding process on account of a technical glitch(es), which prevented them from logging its online bid. In view of the above, the petitioners pray that the impugned e-tender in question, be cancelled.

FACTUAL CONTEXT

3. Petitioner no.1 [hereafter also referred to as **the petitioner**] is engaged in the business of providing global air cargo solution and petitioner no.2 is its director.



4. ACLASCL (respondent no.3) is a company incorporated under the Companies Act, 2013 and is wholly owned subsidiary of Airports Authority of India. ACLASCL is a major air cargo terminal operator with pan India presence at more than fifty airports. The petitioner states that ACLASCL has domestic terminal facilities at thirty-three airports in India and has also been granted special regulatory permission to handle cargo through the domestic passenger terminal at fifteen airports in India.

5. On 21.08.2024, ACLASCL issued a notice inviting e-tenders for selection of licensee for development of a new cargo terminal at Kolkata Airport on design, build, finance, operate and transfer basis (e-tender in question). The terms and conditions for submission of the bid required the bid to be submitted by electronic mode through the web portal of respondent no.2 [Government E-market place – hereafter **GeM**].

6. Clause 2.1.4.1 of the tender document set out the following schedule for bidding process:

S. No.	Details	Date
1.	RFP Published date	21 August 2024
2.	Pre-bid conference	11 September 2024
3.	Last date for submission of queries related to E-Bid (if any), on NIC CPP Portal only	17 September 2024
4.	AAICLAS response to queries latest by	27 September 2024
5.	Bid submission closing date (Bid Due date)	07 October 2024



6.	Technical Bid opening date	08 October 2024
7.	Financial Bid opening date	To be intimated later

7. By a subsequent corrigendum dated 27.09.2024, the bid submission end date was extended to 05:00 PM, 07.11.2024. It is the petitioner's case that it prepared all the documents to furnish its bid and commenced the process of submitting its bid at 04:20 PM on 07.11.2024.

8. In the first instance, the petitioner had opened its account through its login credentials, <nigamkumar.bhatia@adani.com>, and the final documents were uploaded on the GEM portal/website at 04:25 PM. The petitioner states that after uploading of documents, a green mark was shown, which indicated that uploading of the files was successful. However, when the petitioner's official clicked on the sign and submit button, a red cross mark was shown against the first five documents, which indicated that the files had not been uploaded. The petitioner claims that the concerned official attempted to re-upload the files, but the portal showed that there was an error which reflected that the files were found with duplicate names. The petitioner states that it re-named and again re-uploaded the files, but the error re-occurred multiple times and the system did not permit the petitioner to click the submit icon button. Resultantly, the time for submission of the bid lapsed. Whilst the petitioner was able to submit its technical bid, the financial bid was not successfully uploaded.



9. It is the petitioner's case that its bid was not uploaded on account of technical glitches on the GEM portal, without any fault on the part of the petitioner. Therefore, the bidding process needs to be cancelled.

10. The petitioner states that its officials sent an email dated 07.11.2024 at 05:07 PM to ACLASCL's bid manager enclosing therewith a formal communication pointing out technical glitches faced by it and sought further time of thirty minutes to upload the documents. This was followed by another email dated 07.11.2024 at 06:45 PM. enclosing therewith a formal communication setting out the technical issues faced by the petitioner in furnishing its bid, thus seeking an extension. The aforesaid two emails sent by the petitioner are reproduced below: -

Communication dated 07.11.2024 at 05:07 PM

"Dear Sir

We are facing severe issues while uploading the documents. The docs keep getting out of the upload list. It is also continuously hanging

Kindly grant another 30 minutes for this issue.

Regards, Vaibhav"

Communication dated 07.11.2024 at 06:45 PM

"Dear Sir,

Please find attached our formal request for extension due to the technical issues that we faced today while submitting the bid.

Regards, Vaibhav"

11. The aforesaid emails were followed by two emails both dated 08.11.2024. The said emails are extracted below: -

Communication dated 08.11.2024 at 10:02 AM



“Dear team,

This is regarding a tender submission. We participated in the above-mentioned tender; however, were unable to submit all documents. We faced severe technical issues wherein once we pressed sign & submit button, a few files would get unloaded/offline. We then reuploaded files and again pressed sign and submit. But, this kept getting repeated and we could not submit.

We also immediately wrote to the bid manager (email below) and attached.

Please support

Regards, Vaibhav Mathur”

Communication dated 08.11.2024 at 10:10 AM

“Dear Sir

We are requesting with regard to the technical issues we faced yesterday while submitting our credentials. The issue kept happening between 4:25pm till 5pm

Please consider

Regards Vaibhav”

12. The respondents replied to emails dated 07.11.2024 and 08.11.2024 of the petitioner by the email dated 08.11.2024 at 10:29AM.

The text of the mail is reproduced as under: -

Communicated dated 08.11.2024 at 10:29 AM

“Sir,

Please share the correct tender id.

Thanks & Regards,”

13. The petitioner submitted its tender information *vide* email dated 08.11.2024 at 10:36 AM, to which the respondents replied on the same date. The respondents by the email dated 08.11.2024 at 10:45 AM, requested the petitioner to contact ACLASCL as the said organization had issued the tender and thereafter, by the email dated 08.11.2024 at 01:02 PM, the e-procurement team stated that there was no issue with



the portal on 07.11.2024, however, requested the petitioner to submit the screen shot of the issue faced by it during the bid submission in order to analyze the issue. The said email dated 08.11.2024 is reproduced below:

Communication dated 08.11.2024 at 01:02 PM

“Dear Sir

There was no issue on the portal <https://etenders.gov.in/eprocure/app> on 7th Nov 2024.

Kindly share the screenshot of the issue which you have faced during bid submission, so that we can analyze the issue and help you out.

With Kind Regards”

14. On the same date, that is on 08.11.2024, the petitioner, by the email at 01:26 PM, furnished the details of the issues faced by it during the submission of the tender. However, the respondents *vide* email dated 08.11.2024 at 01:50 PM refused to provide help on the ground that the petitioner had not provided documentary evidence to support its claim. The petitioner followed up again with the respondents and in e-mails sent at 02:00 PM and 02:40 PM on 08.11.2024, the petitioner provided screenshot of the history of the CPPP Portal reflecting its attempt to upload the documents. The aforesaid relevant emails are extracted below: -

Communication dated 08.11.2024 at 01:26 PM

“Dear Sir/Madam,

We logged in CCCP portal at 04:20 PM and started submission on 04:25. After upload of all documents, green mark shown for all documents which means file uploaded successfully. Later when we clicked on sign and submit button, first 5 documents shown red cross which means file not uploaded. So, we tried to re upload that file, but it went on



showing error that "file found with duplicate name" so we had to rename all 5 files and re-uploaded. Again, we clicked on sign and submit, and again annex 8 shown not uploaded, this happened with all files one by one, and we must rename and re-upload all documents again. This multiple times submission of annexures (04 Times) resulted in time usage with system not permitting us to click the submit icon button which was showing error continuously.

We do not have the screenshot to further elaborate on this but our facts above are clear than we were logged in 40 minutes prior and had to face 04 times to fill the folders along with final excel sheet. We completed the process 04 time and immediately we wrote a mail to AAICLASS team for permitting us extend half an hour time.

We seek your support to resolve this matter on urgent basis.
Best Regards”

Communication dated 08.11.2024 at 01:50 PM

“Dear Sir

In the absence of documentary evidence/screenshot, we are not in a position to help you in this matter.

With Kind Regards”

15. The petitioner thereafter by the email at 03:10 PM on 08.11.2024 requested the respondents to hold the opening of the bid until the issue regarding its tender submission is resolved. The respondents replied to the said email by the email at 04:05 PM wherein it was stated that the screenshot attached by the petitioner is not the screenshot of the issue rather is a screenshot of the number of times it had accessed the portal and further mentioned that there was no issue on the portal during the specified time, that is 07.11.2024 till 6 PM.

16. The present petition was listed on 19.11.2024 and on an oral request of the petitioner, Government e-Market Place – Central Public Procurement Portal [GeM - CPPP] was impleaded as respondent no.7



and the notice was issued to the newly added respondent with the following directions:

“5. Issue notice to CPPP through email (cPPP-doe@nic.in) returnable on 22nd November, 2024. The notice should specify that CPPP shall produce its log report of the account of the petitioner for 7th November, 2024 for the time period from 2:30 PM till 5:30 PM including all events related to file uploads activity (comprising but not limited to login attempts, successful uploads as well as failure along with file names, timestamp & failure reason). A technical expert from CPPP shall also be personally present in Court on the next date of hearing. List on 22nd November, 2024.”

17. National Informatics Centre [NIC] supports the e-procurement portal. NIC filed an affidavit for respondent no.7 enclosing the bid log information report pertaining to the petitioner’s account as well as an affidavit explaining the functioning of the Central Public Procurement Portal [**the e-procurement portal**].

REASONS AND CONCLUSION

18. The principal question to be addressed is whether bidding process in relation to the impugned e-tender in question is required to be set aside on the ground that it falls foul of Article 14 of the Constitution of India inasmuch as the petitioner has been excluded from participating in the said bid. Whilst it is the case of the petitioner that the bidding process was fraught with technical glitches that disabled the petitioner from participating in the bid; the same is stoutly contested by GeM and NIC. Thus, the principal question to be addressed is whether it is established that there was a technical glitch in the e- procurement portal,



which had resulted in the petitioner being excluded from the bidding process.

19. Before proceeding further, it is apposite to refer to the contents of the tender document that are relevant for understanding the bidding process and instructions for submission of bids. The same are set out below: -

“2.1.3. Brief description of Bidding Process

2.1.3.1. AAICLAS has adopted a single stage electronic Bidding Process for selection of the Selected Bidder for award of the Project, comprising of Technical Capacity and Financial Capacity (collectively referred to as the **“Bidding Process”**), to be submitted in accordance with Clause 2.3.2 of this Article.

2.1.3.2. The Bidders are being called upon to submit their Technical Capacity and Financial Capacity details (**“Technical Bid”**) and financial quote in the format specified on the CPPP (**“Financial Bid”**). (Technical Bid and Financial Bid shall collectively referred as **“Bid”**) in accordance with the terms specified in this Article and other documents provided by AAICLAS.

2.1.3.3. Upon completion of evaluation of Financial Bids, the Qualified Bidders will finally be ranked in ascending order.

2.2 INSTRUCTIONS TO BIDDERS

2.2.1 General terms of Bidding

2.2.1.1 No Bidder shall submit more than 1 (one) Bid for the Project. A Bidder bidding individually or as a Member of a Consortium shall not be entitled to submit another bid for the Project either individually or as a Member of any other Consortium, as the case may be.

2.2.1.2 The Technical Bid, including materials evidencing the Technical Capacity and Financial Capacity, should be



furnished online in Cover – I in the formats prescribed in this Tender Document. The Financial Bid should only be provided on CPPP in the format as specified therein (format provided for reference under Appendix IX (B)), clearly indicating the amount in both figures and words, in Indian Rupees, and signed by the Bidder’s authorised signatory. In the event of any difference between figures and words, the amount indicated in words shall be taken into account. In the event the Financial Bid or any information regarding the same is submitted as part of the Technical Bid or through any other means of communication not permitted under this Clause 2.2.1.2, AAICLAS reserves the right to reject such Bid. No Financial Bid shall be submitted in a currency other than Indian National Rupees (INR).

2.2.1.3 The Bidders shall submit their respective Bids online only at the CPPP at <https://etenders.gov.in/eprocure/app>. Any Bid submitted in physical form shall be rejected by AAICLAS. For the purpose of submission of the Bid online, a Bidder shall first register itself on the CPPP.

2.2.10. Submission of Bids

2.2.10.1 The Bidder shall submit the Bid in the format specified at Appendix and Annexures, together with the documents specified in Clause 2.2.10.2. All correspondence relating to this Article should be through the online CPPP (<http://etenders.gov.in/eprocure/app>) only.

2.2.10.2 The Bidder shall upload the complete and legible scanned copies of the following documents, as also mentioned in Appendix XVI in pdf format in “Cover-1” at the CPPP:

- (a) **Appendix I:** Acceptance Letter (Unconditional Acceptance Letter) along with annexures and supporting documents;



- (aa) **Annexure 1:** Details of the Bidder;
 - (bb) **Annexure 2:** Details of Eligible Project;
 - (cc) **Annexure 3:** Certificate from the Statutory Auditor regarding Technical capacity;
 - (dd) **Annexure 4 (A) and 4 (B):** Financial Capacity of the Bidder;
 - (ee) **Annexure 5:** Certificate from Statutory Auditor regarding Affiliate;
 - (ff) **Annexure 6 (A):** Undertaking with information on contracts with AAICLAS;
 - (gg) **Annexure 6 (B):** Format of outstanding dues/ no dues certificate;
 - (hh) **Annexure 6 (C):** Format of undertaking for clearing all dues before issuance of LOIA;
 - (ii) **Annexure 7:** Integrity Pact;
 - (jj) **Annexure 8:** Undertaking on Total Responsibility;
 - (kk) **Annexure 9:** Undertaking on Conflict of Interest
- (b) **Appendix II:** Statement of Legal Capacity on the letterhead;
 - (c) **Appendix III:** Duly notarized/legalized Power of Attorney for signing the Bid;
 - (d) **Appendix IV:** Power of Attorney for Lead Member of Consortium1 (if applicable);
 - (e) **Appendix V:** Joint Bidding Agreement (applicable in case of Consortium);
 - (f) **Appendix VI:** List of near relatives employed in AAICLAS;



- (g) **Appendix VII:** Document of incorporation;
- (h) **Appendix VIII:** Copy of Memorandum and Articles of Association, if the Bidder is a body corporate, and if a partnership then a copy of its partnership deed;
- (i) **Appendix IX (A):** Format of Financial Bid;
- (j) **Appendix IX (B):** Format of BOQ;
- (k) **Appendix X:** Duly audited financial statements of the Bidder for financial years; viz., FY 2020-21, FY 2021-22 and FY 2022-23;
- (l) **Appendix XI:** Letter of Undertaking;
- (m) **Appendix XII:** Affidavit;
- (n) **Appendix XIII:** Declaration;
- (o) **Appendix XIII(A): Undertaking regarding debarment/ blacklisting/ restraintment**
- (p) **Appendix XIV: Copy of the Tender Document signed by the Authorised Signatory;**
- (q) **Appendix XV: Letter of Undertaking;**
- (r) **Appendix XVI: Submission of Checklist.**

2.2.10.3 The Bidder shall submit the Financial Bid separately in the format uploaded on CPP Portal (format provided for reference under Appendix IX (A) and Appendix IX (B)).

2.2.10.4 The Bid Security shall be paid through NEFT/RTGS only in the below mentioned bank A/c details, failing which the Bid shall be rejected:

ACCOUNT No.	Bank Name	IFSC Code	ACCOUNT NAME
-------------	-----------	-----------	--------------



2025:DHC:1689-DB



000705044092	ICICI Bank	ICIC0000007	AAI CARGO LOGISTICS & ALLIED SERVICES COMPANY LTD
--------------	------------	-------------	---

2.2.10.5 Following documents shall be submitted by Selected Bidder on demand by AAICLAS in original before issuance of LOIA, failing which the Bid shall be rejected, Bid Security will be forfeited, and the agency will be debarred for 1 (one) year.:

(a) Acceptance Letter - (Unconditional Acceptance Letter) Appendix I;

(b) Power of Attorney as required under as per format at Appendix III and Appendix IV;

(c) Joint Bidding Agreement in the format at Appendix V;

(d) Integrity pact in the format at Annexure 7 of Appendix I;

(e) Affidavit as per format at Appendix XII;

(f) Statement of Legal Capacity as per format at Appendix II.

2.2.11. Bid Due Date

2.2.11.1 The Bid shall be uploaded by the Bidders on the CPPP on or before date and time mentioned in schedule of the Bidding Process for the Bid Due Date.

2.2.11.2 Bids shall only be submitted through the CPPP. Bidders are advised to submit the Bids through online portal well in advance to avoid network problems. AAICLAS shall not be responsible for any inability for submission of Bids within the Bid Due Date due to such technical problems/errors.

2.2.12. Modifications/substitution/withdrawal of Bids



2.2.12.1. No Bid shall be modified, substituted or withdrawn by the Bidder after Bid Due Date.

2.2.12.2. Any alteration/ modification in the Bid or additional information supplied subsequent to the Bid Due Date, unless the same has been expressly sought for by AAICLAS, shall be disregarded.”

20. As is apparent from the above, the bid – which comprised of technical bid and financial bid – was required to be submitted online. The bid could be modified prior to the bid end date. The bidders were also advised to furnish their bid well in advance of the deadline.

21. As noted above, it is the petitioner’s case that it was prevented from furnishing its bid on account of technical glitches. The petitioner has described the technical glitches faced by it in the writ petition as under:-

“3.9 The Petitioners, on 07.11.2024, after procuring all the documents stipulated in the tender documents, was ready and willing to upload the same on the portal/website of the Respondent No.2. At 4:20 P.M on 07.11.2024, the Petitioner first opened its account through its login credentials, i.e. <nigamkumar.bhatia@adani.com> to upload the requisite documents. The final documents were uploaded by the Petitioners in the Respondent No.2 portal/website at 04:25 PM. After uploading all documents, the green mark was shown, which meant that the files were uploaded successfully. Later, when the official of the Petitioner clicked on the ‘sign and submit button’, the first five documents were shown a red cross, which meant that the files were not uploaded. The officials of the Petitioner tried to re-upload the files, but the portal of Respondent No. 2 showed an error that was ‘file found with duplicate name’. Thereafter, the officials of the Petitioner



renamed all five files and re-uploaded them. After uploading, they clicked on ‘sign and submit’, and again, the portal of Respondent No. 2 showed that Annexure 8 was not uploaded. This happened with all files one by one, and the Petitioner was constrained to rename and re-upload all documents again. This entire process of upload and reupload continuously reoccurred multiple times due to various technical glitches on the portal/website of Respondent No. 2 and wasted the crucial last 30 minutes of the period of the submission of the bid. Further, this multiple times submission of annexures (04 times) resulted in time usage with the system not permitting the Petitioner to click the ‘submit’ icon button, which was showing errors continuously.”

22. It is the petitioner’s case that it successfully uploaded all the files on the e-procurement portal, however, could not submit the same on account of ‘sign and submit’ button being unresponsive. The e-procurement portal indicated an error to the effect that the files were found with duplicate names. Consequently, the petitioner had to re-upload the files repeatedly, resulting in crucial time being wasted. On account of the errors, the petitioner could not upload the tender files before the deadline of 05:00 PM on 07.11.2024.

23. In response to the notice and directions issued by this court, NIC has filed an additional affidavit setting out the bid log report relating to the petitioner’s activity as captured in the system.

24. It is relevant to set out the said report, the extract of which is reproduced below:-

“Government eProcurement System



Bid Log Info Report generated as on 21-Nov-2024 11:01:10 AM

Bid Details

S. No.	Bid ID	Login ID	Bidder Name	Set as Favorite Date	Bid Frozen/Submission Date
1	763731	nigamkumar.bhatiya@adani.com	Adani Global Air Cargo Solutions Limited	18-Sep-2024 03:50:35 PM	

Bidder Login Details

S No.	Bid ID	Login ID	Bidder Name	Login Time	Logout Time a. Proper Logout Time (success) or b. Forced Logout Time (improper) i.e. previous successful login which was not closed properly and is being closed during next login or c. Forced Logout Time (error) i.e. system forcefully logs out the user with log out status as error if system receives unexpected input from the client end	IP Address	Logout Status
1	763731	nigamkumar.bhatiya@adani.com	Adani Global Air Cargo Solutions Limited	06-Nov-2024 05:31:13 PM	07-Nov-2024 01:14:31 PM	163.116.205.123	improper
2	763731	nigamkumar.bhatiya@adani.com	Adani Global Air Cargo Solutions Limited	07-Nov-2024 01:15:18 PM	07-Nov-2024 02:49:04 PM	163.116.205.117	improper
3	763731	nigamkumar.bhatiya@adani.com	Adani Global Air Cargo Solutions Limited	07-Nov-2024 02:52:04 PM	07-Nov-2024 02:52:23 PM	163.116.205.153	success
4	763731	nigamkumar.bhatiya@adani.com	Adani Global Air Cargo Solutions Limited	07-Nov-2024 02:52:52 PM	07-Nov-2024 04:10:33 PM	163.116.205.117	improper
5	763731	nigamkumar.bhatiya@adani.com	Adani Global Air Cargo Solutions Limited	07-Nov-2024 04:10:51 PM	07-Nov-2024 04:11:06 PM	163.116.205.117	success
6	763731	nigamkumar.bhatiya@adani.com	Adani Global Air Cargo Solutions Limited	07-Nov-2024 04:11:30 PM	07-Nov-2024 04:18:01 PM	163.116.205.117	error
7	763731	nigamkumar.bhatiya@adani.com	Adani Global Air Cargo Solutions Limited	07-Nov-2024 04:18:43 PM	07-Nov-2024 04:58:32 PM	163.116.205.117	improper
8	763731	nigamkumar.bhatiya@adani.com	Adani Global Air Cargo Solutions Limited	07-Nov-2024 04:59:12 PM	07-Nov-2024 05:03:15 PM	163.116.205.117	error
9	763731	nigamkumar.bhatiya@adani.com	Adani Global Air Cargo Solutions Limited	07-Nov-2024 05:03:37 PM	07-Nov-2024 05:03:42 PM	163.116.205.117	success
10	763731	nigamkumar.bhatiya@adani.com	Adani Global Air Cargo Solutions Limited	07-Nov-2024 05:04:01 PM	07-Nov-2024 05:12:52 PM	163.116.205.117	error "



25. The said bidding report indicates that the petitioner had logged in on 06.11.2024 at 05:31:13 PM from a computer with the last three digits of the IP address being 123. The logout time is indicated as 01:14:31 PM on 07.11.2024 and the logout status is reflected as improper. The login details indicate that the petitioner had relogged in at 01:15:18 PM from a different computer with the last three digits of the IP address being 117. The logout time is also reflected as 02:49:04 PM on 07.11.2024. The said logout is also reflected as improper. The petitioner had again logged in from another computer with the last three digits of IP address being 153 at 02:52:04 PM and had logged out less than a minute later. It had again logged in from the computer with the last three digits of the IP address being 117 at 02:52:52 PM, that is, barely 29 seconds after it had logged out from the computer with the last three digits of the IP Address being 117. The logout status of the said session is reflected as improper.

26. The login details indicate that it had, thereafter, logged in several times from the computer with the last three digits of the IP address as 117. The logout status as reflected is either 'success', 'improper' or 'error'.

27. According to the petitioner, it had started uploading the documents at 04:20 PM on 07.11.2024. However, the login details indicate that the petitioner had logged in on the said date at 04:10:51 PM and had successfully logged out 15 seconds later at 04:11:06 PM. It had again logged in 24 seconds, thereafter, on 04:11:30 PM. The logout time is reflected as 04:18:01 PM, but the status of the said logout



is reflected as ‘error’. The petitioner’s next session commenced on 04:18:43 PM and the logout time is recorded at 04:58:32 PM and the logout status is reflected as ‘improper’.

28. The bid documents meta data details indicate that eighteen number of files were uploaded at 04:57 PM.

29. The petitioner logged in again 04:59:12 PM, that is, 40 seconds later after the recorded logout time.

30. It is relevant to refer to the additional affidavit filed on behalf of NIC to decipher the duration of the sessions where the logout status is reflected as ‘improper’, ‘success’ or ‘error’. The same has been explained in paragraph 9 of the additional affidavit filed by NIC on behalf of respondent no.7, which is set out below:-

“9. The Bid Log Information report showing login and logout timings has already been filed by the Respondent along with the Short Affidavit dated 02.12.2024 (Annexure R1). Depending on the mode of log out, the Logout Log shows one of the following logout status:

- i. **Success:** The status “*success*” is recorded in the Logout Log when a user logs out by following the proper procedure i.e. by clicking on the “Logout” button. In such cases, the logout timestamp indicates the time when the logout request was submitted by the user to the server.
- ii. **Improper:** The status “*Improper*” is recorded in the Logout Log when a user logs out by not explicitly clicking on the “Logout” button. This can happen if a user abruptly disconnects from the GEM-CPPP due to (a) his/her own section of closing the web browser through



which the application is being accessed (b) sudden client system shutdown (c) user connectivity issue (d) power failure at the user end (e) any other unforeseen circumstances at the users end. The logout time recorded in such cases is the time of the subsequent successful login by the user. At this time, the word “*improper*” will be recorded in the Logout Log for the previous session and the user will be redirected to login once again. It is essential to close the previous login session properly to ensure that the previous session is not used by an unauthorized or malicious user.

- iii. **Error:** The status “*Error*” is recorded in the Logout Log when the GEM-CPPP receives unexpected input from user’s side, such as invalid or erroneous input or control characters. In such cases, the logout timestamp indicates the time at which the error occurred.

The “*improper*” logout status, thus, does not mean that the system has forcefully logged the user out of the system.”

31. The logout time as reflected in sessions at serial no.1, 2, 4 and 7, of the log details do not reflect the time when the petitioner had logged out of the said sessions rather indicate the time when the petitioner attempted to log in again. As explained in the affidavit, the sessions recorded at serial no. 1, 2, 4, and 7 of the login report were not terminated by the petitioner logging out through the logout button, but by logging out in an improper manner either by pressing the back button or by closing the session.



32. Thus, the sessions, which reflect the logout status as ‘error’ are sessions, which were terminated on account of the petitioner providing incorrect inputs, as explained in the affidavit filed by NIC.

33. The log report as furnished by NIC does not capture the details of activities on the said portal. For instance, it does not indicate the unsuccessful attempts to upload the documents and the errors encountered in uploading the said documents. According to the petitioner, it had uploaded the bid documents successfully but could not click on the ‘submit button’ because of an error, which reflected that there were files with duplicate names. NIC has filed an affidavit indicating that *“it is not possible for the system to record each and every activity (button click) of the user, as doing so would generate excessive amount of unnecessary data leading to a huge load on the storage service of the system”*. It is affirmed on behalf of respondent no. 7 that e-procurement system is designed to save only critical activities relating to the bid submission of e-tenders such as login-logout details; upload of EMD fee; successful upload of documentation for technical and financial bid; and acknowledgement of bid submission. Although the petitioner has stoutly contested the said contention, we find no grounds to reject the averments made in the affidavit/additional affidavit furnished by NIC.

34. Mr Ramesh Radhakrishnan, the Deputy Director General, NIC, Chennai, also joined the proceedings through video conferencing and explained the data recorded in the e-procurement portal.



35. Mr Sibal, learned counsel for the petitioner contested the averments in the affidavits furnished on behalf of GeM-CPPP and contended that the said affidavits did not provide a full explanation for the forced logout from its system under the two categories – reflected as ‘improper’ and ‘error’. However, we find the said contention unmerited. There is no ambiguity in the additional affidavit filed by NIC. It has provided an explanation regarding logout time stamps where the logout status is reflected as ‘improper’ or ‘error’. It was explained that it is the standard protocol in respect of certain secure sites to log out users following invalid or erroneous inputs. Illustratively, reference was made to commonly used net banking portals, where an erroneous input, such as pressing the ‘delete’ or ‘back’ button, results in an automatic logout and termination of the session.

36. It was also explained that once the session had been terminated by an improper logout, the user would require to login twice. The first login would serve to record the logout of the earlier session, and the second attempt of login would be reflected as a fresh login. Thus, the logout date and time stamp does not reflect the time of termination of the session, in respect of which the logout status is reflected as ‘improper’ or ‘error’. In the given cases, the logout stamp reflects the date and time when the petitioner attempted to login again.

37. We have no reason to doubt the said explanation. It also explains the short time gap between the logout time and the login time of the next session, in cases where the logout status of the previous session is reflected as “error” and “improper”. In most cases, it is less than a



minute. Illustratively, the time difference between the logout time as reflected in the session under serial no.1 and the login session at serial no.2 is 47 seconds. The logout time between the session at serial no.4 and the login session at serial no.5 is 18 seconds.

38. It is also relevant to refer to the bid document meta data details as furnished by NIC. A tabular statement as set out in the affidavit furnished by NIC, is reproduced below:-

“Bid Document Meta Data Details

S No.	Bid ID	Login ID	Bidder Name	Packer Type	File Name	Description	File Size (KB)	Uploaded Date
1	763731	nigamkumar.bhatiya@adani.com	Adani Global Air Cargo Solutions Limited	Fee/PreQual/Technical	Append1.pdf	Appendix I Unconditional Acceptance Letter	2219	07-Nov-2024 04:57 PM
2	763731	nigamkumar.bhatiya@adani.com	Adani Global Air Cargo Solutions Limited	Fee/PreQual/Technical	Annexure1DetailsofBidder.pdf	Annexure 1 Details of the Bidder	1218	07-Nov-2024 04:57 PM
3	763731	nigamkumar.bhatiya@adani.com	Adani Global Air Cargo Solutions Limited	Fee/PreQual/Technical	Annex2.pdf	Annexure 2 Details of Eligible Project	52	07-Nov-2024 04:57 PM
4	763731	nigamkumar.bhatiya@adani.com	Adani Global Air Cargo Solutions Limited	Fee/PreQual/Technical	Annex3.pdf	Annexure 3 Certificate from the Statutory Auditor regarding Technical capacity	3698	07-Nov-2024 04:57 PM
5	763731	nigamkumar.bhatiya@adani.com	Adani Global Air Cargo Solutions Limited	Fee/PreQual/Technical	annex4b.pdf	Annexure 4 (A) and 4(B) Financial Capacity of the Bidder	3710	07-Nov-2024 04:57 PM
6	763731	nigamkumar.bhatiya@adani.com	Adani Global Air Cargo Solutions Limited	Fee/PreQual/Technical	annex5.pdf	Annexure 5 Certificate from Statutory Auditor regarding Affiliate	3700	07-Nov-2024 04:57 PM
7	763731	nigamkumar.bhatiya@adani.com	Adani Global Air Cargo Solutions Limited	Fee/PreQual/Technical	SS.pdf	Annexure 6 (A) to 6 (C)	127	07-Nov-2024 04:57 PM



8	763731	nigamkumar.bhatiya@adani.com	Adani Global Air Cargo Solutions Limited	Fee/PreQual/Technical	ANNEXURE2A PSEZ.pdf	Annexure 7 Integrity Pact	52	07-Nov-2024 04:57 PM
9	763731	nigamkumar.bhatiya@adani.com	Adani Global Air Cargo Solutions Limited	Fee/PreQual/Technical	annex8.pdf	Annexure 8 Undertaking on Total Responsibility	354	07-Nov-2024 04:57 PM
10	763731	nigamkumar.bhatiya@adani.com	Adani Global Air Cargo Solutions Limited	Fee/PreQual/Technical	Annexure6a.pdf	Annexure 9 Undertaking on Conflict of Interest	82	07-Nov-2024 04:57 PM
11	763731	nigamkumar.bhatiya@adani.com	Adani Global Air Cargo Solutions Limited	Fee/PreQual/Technical	Appendix2.pdf	Appendix II to VIII	354	07-Nov-2024 04:57 PM
12	763731	nigamkumar.bhatiya@adani.com	Adani Global Air Cargo Solutions Limited	Fee/PreQual/Technical	FS21.pdf	Appendix X Duly audited financial statements of the Bidder for financial years	3381	07-Nov-2024 04:57 PM
13	763731	nigamkumar.bhatiya@adani.com	Adani Global Air Cargo Solutions Limited	Fee/PreQual/Technical	AppendixXIII.pdf	Appendix XI to XIII (A)	2888	07-Nov-2024 04:57 PM
14	763731	nigamkumar.bhatiya@adani.com	Adani Global Air Cargo Solutions Limited	Fee/PreQual/Technical	AppendixXIV.pdf	Appendix XIV Copy of the Tender Document signed by the Authorised Signatory	15164	07-Nov-2024 04:57 PM
15	763731	nigamkumar.bhatiya@adani.com	Adani Global Air Cargo Solutions Limited	Fee/PreQual/Technical	AppendixXV.pdf	Appendix XV Letter of Undertaking	498	07-Nov-2024 04:57 PM
16	763731	nigamkumar.bhatiya@adani.com	Adani Global Air Cargo Solutions Limited	Fee/PreQual/Technical	AppendixXVI.pdf	Appendix XVI Submission of Checklist	1024	07-Nov-2024 04:57 PM
17	763731	nigamkumar.bhatiya@adani.com	Adani Global Air Cargo Solutions Limited	Fee/PreQual/Technical	Financial_Report_2022-23-Integrate d.pdf	Copy of Bid Security payment details as per RFP clause 2.2.10.4	13231	07-Nov-2024 04:57 PM
18	763731	nigamkumar.bhatiya@adani.com	Adani Global Air Cargo Solutions Limited	Fee/PreQual/Technical	TenderFeeReceipt.pdf	Proof of Tender Fee payment	47	07-Nov-2024 04:57 PM"



39. The details of the said tabular statement indicate that the petitioner had uploaded certain documents at 04:57 PM on 07.11.2024. However, the process could not be completed as, admittedly, the financial bid remained. The date and time of the upload was 07.11.2024 and 04:57 PM, which is extremely close to the deadline of 05:00 PM. Thus, it does appear that the petitioner could not successfully complete the submission of its bid.

40. The logs do not support the contention that there was any systemic error on the e-procurement portal.

41. NIC has also submitted the tender statistics for the month of October 2024, which indicates that during the said month, 1,84,551 tenders were submitted. It was also contended that no systemic error was found in the said platform, which was used for receiving a large number of tenders. It is stated that on 07.11.2024, two hundred and forty-three bidders were active on e-procurement portal and between 04:00 PM to 05:00 PM, eighteen bids were placed against various e-tenders including two other bids furnished against the e-tender in question. The said tender entailed submission of 165 documents of approximately 420 mb size. It is affirmed on behalf of NIC that the e-procurement portal did not suffer any technical glitch on 07.11.2024. NIC also explained that the documents submitted are encrypted and are made available to the designated tendering authorities for opening of the bids, which are received electronically. Only the designated authorities can decrypt bids and their contents.



42. NIC is the technology facilitator for GEM-CPPP and is responsible for the software development, support, hosting and maintenance of e-procurement portal and related services for providing a safe, secure and transparent e-procurement system, which complies with the guidelines issued by the authorities. It is also affirmed that a security audit is conducted by the Standardisation Testing and Quality Certification for compliance with all security and functional aspects of the e-procurement system. Additionally, it is stated that the system is also certified by the World Bank as well as the Asian Development Bank for electronic procurement requirements of multilateral development banks financed operations.

43. It is affirmed that as soon as the due date and time lapses, the draft and the temporary documents of the bidder automatically get logged and hidden and are not accessible to anybody including the bidder, the tendering authority, as well as GeM-CPPP. The said system has been evolved to maintain complete confidentiality. NIC also stated that in the event any technical glitch is found, it is the standard protocol to extend the time for furnishing the bids. However, in this case, there was no technical glitch and thus, there was no reason to resort to extending the time for furnishing the bids.

44. In view of the above, we are unable to accept that there was any glitch in the e-procurement portal that had prevented the petitioner from furnishing its bid on time. It is also relevant to refer to clause 2.2.11.2 of the tender documents, which advised the bidders “*to submit the Bids*



through online portal well in advance to avoid network problems” and also clarified that ACLASCL “shall not be responsible for any inability for submission of Bids within the Bid Due Date due to such technical problems/errors”.

45. In ***Maharashtra Housing Development Authority v. Shapoorji Pallonji and Company Private Limited and Others: (2018) 3 SCC 13***, the Supreme Court had considered a case where the respondent/writ petitioner had complained that although it had uploaded its technical and financial bid and had pressed “freeze button”, it did not get the acknowledgement of the bid submitted. In the given circumstances, the Bombay High Court had issued directions to NIC to access the files containing the bid documents of the petitioners and make the same available to the appellant (Maharashtra Housing Development Authority). The said directions were subject matter of appeal before the Supreme Court. The Supreme Court noted that the controversy was twofold. First, whether the bid documents uploaded by the respondent/writ petitioners could be retrieved or irretrievably lost; and second, whether the respondent would be entitled to a consideration of its bid on merits assuming that the documents could be retrieved. The Supreme Court had answered both the questions in the negative. The relevant extract of the said decision is set out below:-

“7. Pursuant to the aforesaid order dated 18-1-2018 NIC has filed an affidavit dated 23-1-2018 wherein it has been stated that the data uploaded by the first respondent cannot be retrieved by NIC and Maharashtra Housing Development Authority jointly or severally under any circumstances in the present e-Tendering system with prevailing Government of



India Guidelines. In para 7 of the aforesaid affidavit dated 23-1-2018 the NIC has also stated as under:

“7. As far as NIC is concerned it cannot access the invalid bid documents since it has neither the keys nor the approved process to download the same pertaining to any packet/envelope/cover. Even though keys are available with Maharashtra Housing Development Authority (petitioner), but even with that keys the bid documents cannot be retrieved at this time as the bid opening event has already been concluded. Thus bid documents cannot be retrieved under any circumstances from the e-Tendering system.”

8. The above apart, in the counter-affidavit filed by NIC it has been stated that the bid uploaded by the first respondent was invalid as the representative(s) of the said respondent did not press the “freeze button” which alone would have completed the bid process. In this regard, NIC has further stated that on 27-7-2017 there was no problem in the server during the relevant time period and as many as 427 bid documents (pertaining to other tenders) were uploaded between 1200 hours to 1300 hours on the said date i.e. 27-7-2017. NIC in its affidavit has further stated that if the first respondent had uploaded the documents at 1216 hours on 27-7-2017 and it had not received the bid submission acknowledgment it still had 44 minutes to contact NIC for help which help was not sought. In this regard, NIC has further stated that the first respondent bidder had participated in e-Tendering in Maharashtra Government portal earlier and thus it was familiar with the entire process.

9. If NIC, which had developed the e-portal in which bids were to be submitted and maintenance and upkeep of which was its responsibility, had stated in its affidavit what has been indicated above, we do not see how the repeated statements made on behalf of the first respondent that the bid documents can still be retrieved, if required by travelling beyond the Government of India Guidelines, should commend to us for acceptance. The opinion rendered in this



regard by the consultant of the first respondent Mr Arun Omkarlal Gupta on which much stress and reliance has been placed by the first respondent could hardly be determinative of the question in a situation where NIC which had developed the portal had stated before the Court on affidavit that retrieval of the documents even jointly with Maharashtra Housing Development Authority is not feasible or possible. That apart, lack of any timely response of the first respondent when the system had failed to generate an acknowledgment of the bid documents in a situation where the first respondent claims to have pressed the “freeze button”; the generation of acknowledgments in respect of other bidders and the absence of any glitch in the technology would strongly indicate that the bid submitted by the first respondent was not a valid bid and the directions issued by the High Court in favour of the first respondent virtually confer on the said respondent a second opportunity, which cannot be countenanced.

10. In the above view of the matter, we are inclined to take the view that the High Court was not correct in issuing the directions extracted above as contained in para 29 of the impugned judgment/order dated 28-9-2017. The same are, therefore, interfered with. The appeal is allowed accordingly.”

46. In our view, the aforesaid decision is squarely applicable in the facts as obtaining in the present case.

47. In *Deep Blue Xpress Limited v. Municipal Corporation of Delhi: 2023 SCC OnLine Del 5493*, the Division Bench of this court had considered a similar case where the petitioner had contended that it had initiated the process of submission of bid well in time, however, due to a technical glitch was unable to process the payments under the RFP on the e-portal, despite multiple attempts through different banks. In the aforesaid context, this court had observed as under:-



“12. Upon perusal of the record, undisputedly, the deadline for submission of bids for the Subject Tender was 19.07.2023 at 03 : 00 PM. The Hourly Server Health Report filed by the MCD as per the direction of this Court shows that on 19.07.2023, there were 49 bids received on the bidding portal between 02 : 00 PM and 03 : 00 PM. The status report also highlights that there were a total of 5 successful bids received with respect to the Subject Tender on 19.07.2023 of which 3 bids were received between 02 : 00 PM and 03 : 00 PM. The aforesaid facts dispel all allegations vis-à-vis the occurrence of technical glitches or snags on the e-portal. If any issues were faced by the Petitioner herein while submitting its bid for the Subject Tender, they were certainly not caused by any technical glitch on the part of the NIC or the Respondents. Therefore, the failure of the bidder to submit its bid within due time on the e-portal is certainly the fault of the Petitioner itself, and this Court finds no merit in the allegations leveled by the Petitioner that it was unable to submit its bid due to technical glitches.”

48. A similar view was also expressed by the Division Bench of this court in ***Jindal Steel and Power Limited and Another v. Union of India and Others: 2023 SCC OnLine Del 4401.***

49. Before concluding the discussion on the aforesaid issue, it would also be necessary to note Mr Sibal’s contention that technical glitch was faced by another bidder (Air India SATS) as well, which too was resolved at 04:57 PM and therefore, the contention that there was no technical glitch ought to be rejected. It was further submitted that the consultant engaged by the petitioner had conducted a forensic exercise and concluded that the petitioner was unable to submit its financial bid due to disconnection caused by etenders.gov.in portal.



50. Mr Sibal submitted that the said report conclusively established that there was a glitch in the e-procurement portal, which prevented the petitioner from uploading its bid.

51. None of the aforesaid two contentions are persuasive. The problem faced by Air India SATS was completely different and has no possible co-relation with the alleged glitch as reported by the petitioner. The error encountered by Air India SATS is regarding '*tender fee details not available*'. However, the said issue stood resolved and the bid submitted by Air India SATS was uploaded.

52. The report submitted by the petitioner's consultant is based on the 'DNS Trace Log', which as explained by NIC relates to the computer at the petitioner's end and not e-procurement portal.

53. In view of the above, we are unable to accept that the petitioner was prevented from uploading its bid on account of technical glitch relating to the platform operated by respondent no. 7 [GEM-CPPP].

54. The scope of judicial review of such administrative decisions is restricted. We consider it apposite to refer to the decision of the Supreme Court in *Tata Cellular v. Union of India: (1994) 6 SCC 651*. The Supreme Court had summarized the principles governing the scope of judicial review as under:-

“(1) The modern trend points to judicial restraint in administrative action.

(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.



(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.

(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.”

55. In the present case, we are unable to accept that the bidding process falls foul of the Article 14 of the Constitution of India or is vitiated on the ground of bias. The petitioner’s challenge to the bidding process also fails the Wednesbury test of unreasonableness.

56. Having stated the above, we consider it apposite to also note that there is no cavil that the petitioner is a *bonafide* bidder and was intending to participate in the bidding process. Its efforts to upload its bid had failed due to problems encountered by it. The petition does indicate that one of the problems encountered by the petitioner was



regarding uploading of files with duplicate names. However, the petitioner had continued with its attempt to resolve the error and had managed to upload several tender documents as reflected in the bid documents meta data as furnished by NIC. It does appear that as many as eighteen documents, which were a part of the technical bid were uploaded at 04:57 PM on 07.11.2024. However, it appears that the exercise could not be completed before the deadline of 05:00 PM. The Bid Log Details also indicate that the petitioner had made repeated attempts to login but had been logged out on account of an erroneous input on four occasions after it had logged in at 04:11:30 PM on 07.11.2024.

57. We get a distinct impression that there would have been feverish attempts to ensure that all documents are properly uploaded and the process may have resulted in certain erroneous inputs that had resulted the petitioner being repeatedly logged out. Finally, the petitioner had run out of time and could not complete the process notwithstanding that it had commenced the exercise of uploading its bid much in advance of the deadline.

58. It is also material to observe the petitioner's failure to complete the submission of its bid adversely affects not only the petitioner but also ACLASCL as it is deprived of a competing bid.

59. The fact that the petitioner had encountered problems in uploading its documents is also undeniable. It is material to note that the petitioner had sent an email at 05:07 PM on 07.11.2024 to



ACLASCL, which is barely seven minutes after the deadline, which reads as under:

“Dear Sir

We are facing severe issues while uploading the documents. The docs keep getting out of the upload list. It is also continuously hanging.

Kindly grant another 30 minutes for this issue.

Regards, Vaibhav”

60. On the next date, the petitioner had also forwarded screenshots setting out its history of accessing the e-procurement portal, which reflects multiple logins attempts by the petitioner. It is also relevant to note that ACLASCL has received bids from only three bidders and exclusion of the petitioner from the bidding process has significantly reduced the pool of the competitors.

61. Whilst this court finds no ground to interfere with the bidding process, given the limited scope of judicial review, it is necessary to clarify that ACLASCL is not precluded, from considering that despite the petitioner’s *bonafide* attempts, it had failed to upload its bid, and from taking an appropriate decision in its commercial interest.

62. The petition is disposed of in the aforesaid observations. All pending applications are also disposed of.

VIBHU BAKHRU, J

GIRISH KATHPALIA, J

MARCH 18, 2025

RK