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

% Judgment reserved on*: 25.08.2026*
Judgment delivered on*: 01.09.2026*
Judgment uploaded on*: As per Digital Signature~*

CNR No. DLHC010394872026

\+ **<u>W.P.(C) 12267/2026 & CM APPL. 56877/2026</u>**

LC INFRA PROJECTS PRIVATE LIMITED & ORS.
.....Petitioners

versus

MUNICIPAL CORPORATION OF DELHI & ANR.
.....Respondents

<u>Advocates who appeared in this case</u>

For the petitioners : Mr. Manik Dogra, Senior Advocate with Ms. Ritu Bhalla, Ms.Niharica Khanna, Mr. Himanshu Goel and Mr. Siddharth Gautam, Advocate.

For the respondents : Mr. Chetan Sharma, ASG, Mr. Tushar Sannu, SC, Mr. Vaibhav Tripathi, Mr. Naman, Advocates. and Mr. Pranav Suhag, CE and Mr. Bharat, ACE for MCD.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

<u>JUDGMENT</u>

<u>V. KAMESWAR RAO, J.</u>

1. The present petition has been filed challenging a Tender Summary Report dated 20.08.2026, whereby the respondents - Municipal Corporation

of Delhi (MCD) has stated that the Earnest Money Deposit(EMD)/ Bank Guarantee submitted by the petitioner no. 1 in furtherance of its bid, is "*not in confirmation of RFP*", and as such, the bid is not admitted.

2. At the outset we shall narrate a brief factual background of the present case, as borne out from the petition. The petitioner no.1, LC Infra Projects Private Limited, is a company incorporated under the provisions of the Companies Act, 2013. Though this petition was initially filed only by LC Infra Projects Private Limited, pursuant to the order of this Court dated 21.08.2026, Radhika Opto Electronics Limited and Esmart Energy Solutions Limited were also brought on record as petitioner nos. 2 and 3 respectively. Pursuant to a Consortium Agreement dated 27.07.2026 (hereinafter referred to as the "Consortium Agreement"), the petitioner no. 1 was constituted as and appointed the Lead Member of the Consortium, while petitioner no. 2- Radhika Opto Electronics Limited was appointed as Consortium Member no. 1 and petitioner no. 3 - Esmart Energy Solutions Limited was appointed as Consortium Member no.2.

3. The respondent no.2 had issued a Request for Proposal ("RFP") for replacement of existing public lights along with comprehensive operation and maintenance for six zones (Civil Line Zone, City & SP Zone, Karol Bagh Zone, Keshavpuram Zone, Rohini Zone & Narela Zone) under the jurisdiction of the respondent no.1 including unauthorized areas for a period of 10 years. In the RFP, the respondent no.1 set out all necessary information for conducting the works under the tender, evaluation methodology of the bids, contractual conditions as well as the eligibility criteria of bidders for the bidding process. The respondent no.2 by a Corrigendum dated 07.07.2026 (hereinafter referred to as the

"Corrigendum") had modified and clarified certain Tender Conditions set out under the RFP. On 24.07.2026, the respondent no.2 by way of a Notice Inviting Tender ("NIT") invited online percentage rate tenders on behalf of respondent no.1 in a dual bid format for the *"Replacement of existing public lights along with Comprehensive operation and maintenance for Six Zones (Civil Line Zone, City & SP Zone, Karol Bagh Zone, Keshavpuram Zone, Rohini Zone & Narela Zone) under jurisdiction of MCD including unauthorized areas for a period of 10 years",* having a tender amount of Rs.13,67,50,32,000/- for a period of 10 years. The earnest money to be submitted by an interested bidder is Rs.13,77,50,520/- out of which Rs.20,00,000/- is to be submitted online and remaining amount is to be submitted by way of a Bank Guarantee or e-Bank Guarantee. As per the NIT, the timelines for the bid submission commenced on 24.07.2026; pre-bid meeting was to be held on 30.07.2026; bid submission and tender were to close on 07.08.2026 at 1500 hours; technical bids were to be opened on 08.08.2026 at 1530 hours; financial bids were, tentatively, to be opened on 17.08.2026 at 1500 hours.

4. The respondent no.2 by way of the Corrigendum revised Clause J (D) of the RFP to mean that the Lead Member shall be responsible and liable for compliance with all obligations in relation to the agreement. The eligibility criteria of the members of a Joint Venture/ Consortium were also clarified. It is the case of the petitioners that on 05.08.2026, the petitioner no. 1, as the Lead Member of the Consortium, submitted the bid (technical as well as financial) within the stipulated time, together with the documents required by Clause H 2(j) of the RFP including work-experience certificates, CA's turnover certificate with UDIN, Banker's/net worth certificate, affidavits

under Clause 1 (b) and Appendix 1, the Consortium Agreement and the Power of Attorney. It is stated that in compliance with the terms of the NIT and RFP, the Consortium through the petitioner no.1 also submitted /deposited the total EMD of Rs.13,77,50,520/- and tender fees of Rs. l,770/- with the MCD. The amount of Rs.20,00,000/- was submitted online and the remaining amount was submitted by way of a Bank Guarantee bearing no. 49570GI8D320336 dated 04.08.2026, in favour of the Commissioner, MCD i.e., respondent no.1, issued by Union Bank of India pursuant to an application made by Consortium Member no. 2 (petitioner no. 3 herein). The said Bank Guarantee is valid up to 05.02.2027, which is for a period of not less than 180 days from the last date prescribed for submission of the bid. On 05.08.2026, the petitioner no. 1 uploaded the Bank Guarantee, along with a covering letter, on the MCD's tender portal as part of the bid documents. Thereafter, on 07.08.2026, the petitioner no. 1 submitted the original physical copy of the Bank Guarantee along with the covering letter, with respondent no. 1 by depositing the same in the designated drop box.

5. It is stated in the petition that upon submission of the bid, the respondents were in possession of full security of Rs.13,77,50,520/- in respect of the petitioners' bid. The said security was fully encashable at the discretion of the respondents in every circumstance in which the tender conditions contemplated forfeiture of the EMD. There was, therefore, no shortfall in the quantum of the EMD, no defect in the form of security furnished, no deficiency in its validity period and no infirmity whatsoever with regard to the identity of the beneficiary. However, the respondents did not admit the technical bid submitted by the petitioners on the purported

ground that the EMD/Bank Guarantee submitted by them was not in conformity with the requirements of the RFP.

6. Mr. Manik Dogra, the learned Senior Counsel for the petitioners submitted that the respondents have merely by a one-line statement "*Earnest Money Deposit /Bank Guarantee is not in confirmation of RFP*" rejected the bid submitted by the petitioners. The respondents have failed to set out the provision or relevant clause of the RFP or the Corrigendum which has not been complied with by the petitioner no. 1 and other Consortium members. According to him, the petitioners have duly complied with the requirements set out in Clause J of the RFP read along with the Corrigendum by executing and entering into the Consortium Agreement.

7. He stated that tender requires the prescribed EMD of Rs.13,77,50,520/- to be furnished as security for the bid, with Rs. 20,00,000/- to be submitted online and the balance amount to be secured by way of a Bank Guarantee/eBank Guarantee in favour of the Commissioner, MCD. The petitioners, who form the Consortium, duly furnished the prescribed security in favour of the Commissioner, MCD. The EMD is intended to secure the interests of the tendering authority against the contingencies contemplated under the tender. In the present case, the Bank Guarantee has been furnished in favour of the Commissioner, MCD and by a constituent member of the very Consortium which submitted the bid. There is consequently no diminution whatsoever in the security available to MCD. Thus, the substantive object of the EMD requirement stands fully satisfied, and the identity of the Consortium Member furnishing the security does not affect the existence, validity or enforceability of the security furnished in favour of the MCD.

8. He also stated that the respondents, by ousting the petitioners without any valid, cogent or legally sustainable reason, has materially curtailed the rights of an eligible bidder and has thereby defeated the very object of ensuring fair competition in the tender process, prejudicing not only the petitioners but also public interest in securing the most competitive and advantageous bid through a fair and open process. According to him, the respondents, by arbitrarily preventing otherwise eligible participants from competing, has conferred an undue advantage upon the remaining bidders and has consequently distorted the level playing field, rendering the tender process susceptible to arbitrariness, discrimination and unfair competition.

9. On the other hand, Mr. Chetan Sharma, the learned Additional Solicitor General, appearing with Mr. Tushar Sannu, the learned Standing Counsel for the respondents - MCD, contested the submissions advanced on behalf of the petitioners. He stated that the original Bank Guarantee submitted physically in the tender box on 07.08.2026 contained only two documents- (i) Covering Letter dated 05.08.2026 by LC Infra Projects Private Limited, i.e., the petitioner no.1; and (ii) Bank Guarantee dated 04.08.2026 issued by the Union Bank of India showing the name of the applicant as "*M/s. ESMART ENERGY SOLUTIONS LIMITED*", i.e., the petitioner no. 3. Though the Covering Letter dated 05.08.2026 referred to the Bank Guarantee dated 04.08.2026, it had no mention whatsoever of the petitioner no.3, its role as the Consortium member no.2, or that the Bank Guarantee was being furnished on behalf of the Consortium. Likewise, the Bank Guarantee dated 04.08.2026 makes no reference to the petitioner no.1, the Consortium, or any arrangement of a Consortium. The petitioner no.3 is identified throughout the terms of the Bank Guarantee as the sole applicant.

10. According to him, on the face of the said two documents, the following irreconcilable disparities arose:

(i) The Covering Letter identified the petitioner no. 1 as the submitting party, but made no mention of the petitioner no. 3 or the source/applicant of the Bank Guarantee.

(ii) The Bank Guarantee identified petitioner no. 3 as the sole applicant but made no reference to the petitioner no.1, the Consortium, or any Consortium arrangement.

(iii) No connecting language existed in either document to establish that the Bank Guarantee furnished by the petitioner no. 3 constituted EMD/security on behalf of the Consortium or the petitioner no. 1 as the Lead Member.

11. As such, from the available documents, the respondents could not establish the relationship of the applicant of the Bank Guarantee, i.e., the petitioner no. 3, with the Lead Member, i.e., the petitioner no. 1. In other words, in the documents, the petitioners failed to establish any relationship *inter se*.

12. Mr. Sharma stated that on a proper and harmonious reading of the RFP, the Corrigendum and the prescribed Consortium structure, the respondents' interpretation is that the Bid Security for a Consortium bid must be furnished by, or be unequivocally referable to, the Lead Member who represents the Consortium and bears the principal responsibility under the tender. While conceding that the RFP does not contain a specific provision stating that only the Lead Member may furnish the Bank Guarantee, he stated that such a requirement necessarily flows from the

scheme of the tender, which assigns distinct roles to the Lead Member and other Consortium members.

13. The Bank Guarantee dated 04.08.2026, issued by Union Bank of India for Rs. 13,57,50,520/-, expressly records the petitioner no. 3-M/s Esmart Energy Solutions Limited as the applicant and, more importantly, treats it as the "Contractor". Clause 2 of the Bank Guarantee makes the Bank's liability referable to "*recoveries due or likely to be due from the said Contractor*", and the subsequent clauses similarly proceed with reference to liabilities of that Contractor. The Bank Guarantee is also non-transferable and non-assignable without the Bank's consent. He stated that the defect is therefore not merely who funded or procured the Bank Guarantee; it concerns the identity and scope of the Bank's own undertaking.

14. Further, he stated that this position is substantiated by the tender structure. Clause J of the RFP provides that the Lead Member represents the Consortium during the bidding process, while the Corrigendum places responsibility and liability upon the Lead Member and separately distinguishes requirements to be met by any one member, the Lead Member, or all members. Clause (xxii) of the Corrigendum amended Clause J(D) of the RFP to provide that "*the lead member shall be solely responsible and liable for meeting all obligations in relation to the agreement*". As such, the RFP itself assigns distinct roles and responsibilities to the Lead Member and other members. This distinction is further demonstrated by the Corrigendum's eligibility matrix, which separately specifies requirements to be fulfilled by "*any one member*", the "*Lead Member*", or "*all members individually*". The tender therefore consciously distinguishes between the juridical capacities of the Consortium constituents and does not proceed on

the basis that each corporate entity is interchangeable for every tender obligation. That distinction becomes material when the Bank Guarantee does not merely show the petitioner no.3 as the entity arranging the security, but actually proceeds by describing the petitioner no. 3 itself as the Contractor whose liabilities are guaranteed.

15. The Consortium Agreement appoints petitioner no. 1 as the Lead Member and Financial Custodian, authorises it to submit and bind the Consortium, and places with it oversight over project funds, security bonds and financial allocations. The objection of Mr. Sharma, is therefore not that the petitioner no. 3 is a stranger or that no connection exists between it and the Consortium, but that the Bank's own undertaking identifies the petitioner no. 3 individually as Applicant/Contractor, whereas the petitioners' own tender arrangement assigns the representative and financial-custodian role to petitioner no. 1.

16. That apart, he stated that Clause K of the RFP expressly provides that the Authority may disqualify the bidder as non-responsive where "*Bid Security/Earnest Money Deposit do not conform to the provisions set forth in this RFP or is not submitted*". Thus, conformity of the Bid Security is expressly made part of the responsiveness of the bid itself. The impugned decision is therefore not founded upon a new eligibility condition subsequently invented by respondents; it is an exercise of the evaluation contemplated by the RFP itself. Clause H of the RFP further requires the Bank Guarantee to be furnished within the prescribed bid period. Consequently, any fresh confirmation or amended security now seeking to establish that the Bank Guarantee of the petitioner no. 3 also secures the bid

of the Consortium/ petitioner no. 1 would go beyond mere clarification and would amount to post-bid curing of a material financial instrument.

17. It is also submitted that the electronic technical documents remain encrypted until the technical opening, and the complete bid documents could be substantively correlated only during evaluation. The record shows technical scrutiny on 13.08.2026, following which the bid was rejected on 20.08.2026 with the portal showing reason as "*Earnest Money Deposit/Bank Guarantee is not in confirmation of RFP*".

18. He has drawn our attention to the judgments in the cases of ***Silppi Constructions Contractors v. Union of India, (2020) 16 SCC 489*** and ***Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corporation Ltd., (2016) 16 SCC 818***, wherein the Supreme Court held that the author of the tender is ordinarily the best judge of its requirements and that a reasonable interpretation adopted by the tendering authority deserves deference. A reference is also made to the judgment in ***National High Speed Rail Corporation Ltd. v. Montecarlo Ltd., (2022) 6 SCC 401***, wherein the Court specifically held that whether a deviation is material or substantial is primarily for the tendering authority to determine and upheld technical rejection without an automatic right to cure. Based on the above judgments, it is the submission of Mr. Sharma that upon a reading of the RFP, NIT and Corrigendum, the respondents who are the tender inviting authority, have taken a stand that the Bank Guarantee in the present case cannot be accepted.

19. Relying upon ***Ansal Engineering Projects Ltd. v. Tehri Hydro Development Corporation Ltd., (1996) 5 SCC 450***, Mr. Sharma contended that a Bank Guarantee is an autonomous and independent contract, the legal

effect of which must principally be gathered from its own terms. The respondents do not need to establish that the Bank Guarantee would necessarily be incapable of invocation in every imaginable circumstance. The relevant commercial question was whether a Bid Security exceeding Rs. 13.57 crore was sufficiently certain as to whose bid and whose defaults the Bank had actually undertaken to secure. Reliance is also placed on the judgment in the case of ***Central Coalfields Ltd. v. SLL-SML (JV Consortium), (2016) 8 SCC 622***, which according to the learned ASG, postulates strict treatment of essential Bank Guarantee requirements and cautions against rearranging the "goalposts" after bids close.

20. Answering the submission of Mr. Dogra, he stated that increased competition cannot override responsiveness. Public procurement requires competition amongst responsive bidders on equal terms. A bidder cannot be permitted to materially cure an error in essential Bid Security after technical opening merely because its inclusion may increase the number of financial bids.

21. Further, he stated that the case advanced by the petitioners requires the Court to read the Bank Guarantee, Consortium Agreement, Power of Attorney and Covering Letter together and treat the Bank Guarantee as though Union Bank of India had itself expressly issued the undertaking for the Consortium. Even if the Bank was to now confirm that the Bank Guarantee should also be treated to cover the Consortium and/or the petitioner no.1, such an act would in itself demonstrate the material defect/uncertainty in the original instrument as on the bid due date. Permitting such a substantive correction after technical opening would also affect the level playing field, since every bidder was required to furnish a

complete and legally adequate Bid Security within the stipulated period. Further, Clause F of the RFP additionally provides that no further information is to be entertained after submission of the eligibility documents unless called for by the Employer. The clause does not give a bidder an entitlement to improve or reconstruct an essential financial security after submission.

22. The present project involves substantial public funds and a Bid Security exceeding Rs.13.57 crore, and therefore, the respondents were entitled to insist upon certainty as to the entity and liabilities actually secured. Such a decision is a *bona fide* commercial assessment of a material non-conformity and does not warrant interference under Article 226. Reference is made to the judgments in ***Jagdish Mandal v. State of Orissa, (2007) 14 SCC 517***, ***Michigan Rubber (India) Ltd. v. State of Karnataka, (2012) 8 SCC 216*** and ***Montecarlo Ltd. v. NTPC Ltd., (2016) 15 SCC 272***, wherein the Supreme Court has emphasised judicial restraint in public procurement where the tendering authority's decision is *bona fide*, rational and in public interest.

ANALYSIS AND CONCLUSION

23. Having heard the learned counsel for the parties and perused the record, the challenge in the writ petition is primarily to the Tender Summary Report uploaded by the respondents on their portal, wherein it is stated that the bid of the petitioner no.1 has not been admitted as EMD/ Bank Guarantee is not in conformity with the RFP.

24. At the outset, it may be stated that initially LC Infra Projects Private Limited had filed the petition. Later in view of the order dated 21.08.2026 passed by this Court, Radhika Opto Electronics Limited and Esmart Energy

Solutions Limited have been brought on record as petitioners. The amended memo of parties was filed on 22.08.2026.

25. The case of the petitioner no. 1 is that it is a member of the Consortium formed by way of the Consortium Agreement dated 27.07.2026. The other members of the Consortium are Radhika Opto Electronics Limited and Esmart Energy Solutions Limited i.e., the petitioners no. 2 & 3 respectively. It is the case of the petitioners that as per the tender conditions, the bidders were to furnish an EMD of Rs.13,77,50,520/-, of which Rs.20,00,000/- was required to be deposited online, while the balance amount of Rs.13,57,50,520/- was required to be furnished by way of a Bank Guarantee in favour of the Commissioner-MCD i.e., respondent no.1. Consequently, the amount of Rs.20,00,000/- was remitted online on 05.08.2026 and the balance was furnished by way of the Bank Guarantee no. 495700G18DD3203368 dated 04.08.2026 issued by Union Bank of India in favour of the Commissioner MCD on an application made by Esmart Energy Solutions Limited i.e., petitioner no.3.

26. The rejection of the bid, as submitted by Mr. Sannu on the first date of hearing is primarily on the ground that there is a mismatch between the Covering Letter of the bid and the Bank Guarantee, as the former depicts that the same has been submitted by the petitioner no.1, whereas the latter depicts Esmart Energy Solutions Limited as the applicant/contractor. In view of this mismatch, the tender has not been admitted.

27. According to Mr. Dogra, there is nothing in the RFP which bars submission of the Bank Guarantee by a member of a Consortium. In other words, there is no express provision that in the case of a Consortium, the Bank Guarantee needs to be furnished by the Lead Member and not by any

other member of the Consortium. He submitted that as such, the rejection of the bid is not sustainable.

28. On the other hand, the attempt of Mr. Chetan Sharma is to justify the rejection by stating that the covering letter attached to the bid reveals that the bid has been submitted by the petitioner no.1. There is no reference whatsoever to the Consortium or the members of the Consortium. The respondents having found the mismatch, inasmuch as the Bank Guarantee submitted was applied for by another entity, has not admitted the bid. He also stated there was no occasion for the respondents to go through the documents attached to the bid as the same are in encrypted format at this stage. That apart, the submission of Mr. Sharma by drawing our attention to the provisions of the RFP, more specifically Clause J read with the Corrigendum, is that it is an essential tender condition that all the obligations as contemplated in the RFP have to be fulfilled by the Lead Member and not other members of the Consortium.

29. We are not in agreement with the submissions advanced by Mr.Sharma. The stipulation in the RFP with regard to the EMD as found in Clause H.2(i) reads as under:-

> *"(i) Out of total earnest money deposit (EMD) of Rs.13,87,50,520/-, Rs.20.00 Lacs shall be submitted in online mode. Balance amount shall be in the form of bank guarantee or e-bank guarantee in favor of Commissioner, MCD issued by commercial bank and should be scanned and uploaded alongwith technical bid. The bank guarantee should be valid upto 180 days or more from last date of submission of bids. Original of the same should be submitted in tender box kept at office of E.E. (Elect.) CLZ, Lucknow Road, Timarpur New Delhi-110054 on or before the last date and time of bids submission."*

30. By way of the Corrigendum, some of the provisions of the RFP have been revised, relevant part of which is reproduced as under:

> "*(viii) EMD amount revised to Rs.13,77,50,320/-. Rest as per RFP clause No. H.2. (i).*
>
> *XXXX XXXX XXXX*
>
> *(xi) Regarding joint Venture or Consortium it is clarified that any individual eligibility criteria shall be by members of the Joint Venture / Consortium as under:*

S.N.	*RFP Clause*	*Eligibility Criteria*	*Clause applicability*
1.	*H.2.a.*	*Should have satisfactorily completed or substantially completed the works as mentioned below during the last Seven years ending last day of the month previous to the one in which tenders are invited: -Three similar completed works each costing not less than Rs. 54,70,01,280 /OH Two similar completed works each costing not less than Rs.82,05,01,920/- OR One similar completed work costing not less than Rs.109,40,02,560/-*	*To be met by any one member of the Joint Venture/ Consortium*
2.	*H.2.b.*	*The sole bidder or at least one of the Members of the Consortium / Joint Venture needs to be light manufacturer having minimum average annual turnover of Rs.250 Crore from manufacturing of light fixtures during the last three years. The value of annual turnover figures shall be brought to current value by enhancing the actual turnover figures at simple rate of 7% per annum. The sole bidder or at least one of the Members of the Consortium should have manufacturing facility of light fixtures in India and should utilize their own product only for execution of this project.*	

3.	*H.2.d.*	*The sole bidder or at least one of the Members of Consortium/Joint Venture should have manufacturing facility of light fixtures in India and should utilize their own product only for execution of this project.*	
4.	*H.2.e.*	*The bidder should have a Bankers certificate from Commercial Bank for at least Rs.547,00,12,800/· certified by his bankers or the bidder should submit Networth Certificate of minimum Rs. 136,75,03,200/- issued by certified Chartered Accountant.*	
5.	*H.2.c.*	*Should have bad Average Annual Financial Turnover of Rs.410,25,09,600/- during the last three years ending 31st March 2025 (Scanned copy of Certificate from CA with Unique Document Identification Number (UDIN) to be uploaded). The value of annual turnover figures shall be brought to the current value by enhancing the actual turnover figures at simple rate 7% per annum.*	*Both Criteria to be met by lead member of the Joint Venture / Consortium*
6.	*H.2.e.*	*The bidder should not have incurred any loss (profit after tax should not be negative) in more than two years during available last five consecutive balance sheets (standalone financial statement), duly certified and audited by the Chartered Accountant with Unique Document Identification Number (UDIN).*	
7.	*H.2.h.*	*The bidder should enclose an affidavit in his technical bid that he is not debarred / blacklisted from participating in tenders by any Government or private organization / company.*	*To be met by all members of the Joint Venture/ Consortium individually.*

XXXX *XXXX* *XXXX*

(xxii) Clause J. (D) of RFP to be read as "the lead member shall be solely responsible and liable for meeting all obligations in relation to the agreement."

Signature Not Verified
Signed By:PRADEEP SHARMA
Signing Date:01.09.2026 17:11:21

31. It is clear from the above that the EMD amount was revised to Rs.13,77,50,320/- from Rs.13,87,50,520/-. The Corrigendum also clearly demarcates the obligations to be fulfilled by the Lead Member and other members of the Consortium.

32. However, there is no stipulation either in Clause H.2(i) of the original RFP or the Corrigendum qua the same Clause, which puts the onus of furnishing the Bank Guarantee on the Lead Member of the Consortium. In fact, this position has been accepted by the respondents as well, as can be seen from paragraph 74 of its counter affidavit, which reads as under:

> *"74.It is respectfully submitted that the case of MCD is ultimately simple and consistent. Esmart's membership of the Consortium is admitted. MCD does not contend that the RFP expressly prohibits every constituent other than the Lead Member from arranging a Bank Guarantee. The defect lies in what the Bank actually guaranteed."*

33. The submission of Mr. Sharma is that Clause J (D) of the RFP (revised by way of paragraph (xxii) of the Corrigendum) which states that "*the lead member shall be responsible and liable for meeting all obligations in respect to the agreement*" puts the onus of furnishing the Bank Guarantee on the Lead Member. This submission is not appealing for the simple reason that a reading of the clause reveals that it contemplates all those obligations put in the '*agreement*' which would be entered into between the respondents and a successful bidder in the future on award of work, and not the obligations set forth by the RFP.

34. The concern of the respondents, as stated by Mr. Sharma, is that there is a material defect in the actual guarantee given by the Bank, and that there should be sufficient safeguards for the MCD to recover any money from the

Consortium. This would only be possible if the Lead Member who submitted the bid, has furnished the Bank Guarantee. However, we are of the view that such a position does not arise from any of the conditions of the RFP. If the respondents had any concerns with regard to recovery/ redemption of Bank Guarantees submitted by a Consortium bidder, they ought to have expressly stated that the Bank Guarantee necessarily has to be submitted by the lead partner who has signed the bid. Not having done so, the respondents cannot now attempt to impose a condition that was not contemplated by the terms of the RFP or the Corrigendum.

35. It is the submission of Mr. Sharma that the MCD being the author of the tender, the prerogative to construe/ interpret the provisions of the RFP rests exclusively with it and the same is beyond the scope of judicial review. This submission is also not appealing. When the respondents themselves had issued the Corrigendum dated 07.07.2026, categorically clarifying the obligations cast on various members of a prospective Consortium bidder, nothing precluded them from making an express provision, calling upon the Lead Member to furnish the Bank Guarantee. In the absence of any such stipulation, the ground on which the respondents have rejected the bid of the petitioners cannot be sustained. Though interpretation of the terms of a tender squarely falls within the domain of the tender inviting authority, such interpretation has to be of provisions that were included in or at least contemplated by the RFP/NIT.

36. In fact in ***Kimberly Club Pvt. Ltd. V. Krishi Utpadan Mandi Parishad and others, 2025 INSC 1276***, relied upon by the learned Senior Counsel for the petitioners, the Supreme Court has held as under:-

"8. The issue which falls for consideration is whether appellant, while submitting a valuation certificate issued by a professional architect cum private valuer attached to the Income Tax Department, had complied with Clause 18 of NIT which required it to submit a 'haisiyat praman patra' of minimum ₹10 crores.

9. Appellant has strenuously argued that nothing in the NIT necessitated that 'haisiyat praman patra' be issued by a District Magistrate. It contended 'haisiyat praman patra' submitted by the appellant was by an experienced valuer who was empanelled with the Income Tax Department and there was no justification to reject such certificate. It was also argued that the valuation certificate assessed the value of the asset at around ₹99 crores, of which appellant was 76.09 % shareholder, whereas as per clause 18 the bidder was to furnish a 'haisiyat praman patra' of minimum ₹10 crores only.

10. In rebuttal, the 1st respondent-Mandi Parishad referred to Uttar Pradesh government notification dated 29.10.2018 [Notification No.C.M.-648/One-9-2018-7(M)/18,hereinafter referred to as "government notification] laying down the procedure for issuance of 'haisiyat praman patra' by District Magistrate. It was contended that Clause 18 required submission of such 'haisiyat praman patra' and not valuation certificate issued by a private valuer. All bidders apart from appellant had submitted 'haisiyat praman patra' issued by District Magistrate. It was also contended that valuation certificate does not disclose appellant's net worth as it fails to indicate whether the asset so valued was free from encumbrances.

11. In tender matters, the court exercising judicial review does not sit in appeal over the decision of a tendering authority regarding disqualification of bid. Only in cases where such decision is dehors the terms of the NIT or is patently arbitrary would the Court exercise powers of *judicial review and set aside such a decision.[Tata Cellular v. Union of India, (1994) 6 SCC 651 (Para 94)]*

12. Having scanned the NIT, we are of the considered view that neither Clause 18 nor any other condition specifies that the 'haisiyat praman patra' submitted by a prospective bidder must be issued only by a District Magistrate in terms of the government notification.

13. It is trite that the terms of an NIT must be clear and unambiguous.[Maha Mineral Mining & Benefication Pvt. Ltd. V. Madhya Pradesh Power Generating Co. Ltd. & Anr., (2025) SCC Online SC 1942 (Para 19)] If 1st respondent-Mandi Parishad intended that 'haisiyat praman patra' must be issued by District Magistrate alone, it ought to have specified so in the NIT conditions.

14. We are also unimpressed by 1st respondent-Mandi Parishad's submission that such condition was implied and followed by other bidders, as nothing is placed on record to show that the government notification was applicable to all tenders floated by 1st respondentMandi Parishad. It may not be out of place to bear in mind that the 1st respondent-Mandi Parishad is not a government department to which the notification is per se applicable but is a body constituted under a statute, namely Uttar Pradesh Krishi Utpadan Mandi Adhiniyam, 1964.

15. Given the situation, it was incumbent on 1st respondent-Mandi Parishad to indicate in the tender conditions that the 'haisiyat praman patra' was to be obtained from a District Magistrate as per the procedure laid down in such government notification. Having failed to do so, the 1st respondent-Mandi Parishad could not have rejected the certificate submitted by appellant on the ground that it was not issued by a District Magistrate. That apart, appellant's certificate has been issued by an experienced valuer

> *registered with the Income Tax Department who is otherwise competent to issue such certificate.”*
>
> (emphasis added)

37. According to Mr. Sharma, it is only through the present writ petition that the respondents have come to know that the bid has been submitted on behalf of the Consortium. Suffice to state, the RFP itself permits bids by a Consortium/Joint Venture, and lays down the conditions to be satisfied and documents to be submitted by the Consortium/ Joint Venture. It is the case of the petitioners that the bid is in compliance of all such requirements, and that it had submitted the Consortium Agreement as well as the Power of Attorney along with the bid. Be it noted, whether the bid fulfils the requirements can only be known during its technical evaluation, which could not happen due to the impugned action of the respondents, treating the bid as not admitted.

38. In view of the foregoing, we hold that decision of the respondents to not admit the bid on the ground that the Bank Guarantee is not in conformity with the RFP, is not sustainable. We direct the respondents to admit the bid and technically evaluate the same and proceed accordingly.

39. Mr. Sharma has relied upon a host of judgments in support of the submissions, as recorded above. Though there is no cavil to the propositions of law laid down in those judgments, they cannot come to the aid of the respondents, in these facts and also in view of our discussion above.

40. We may clarify that we have only examined the limited issue which has been raised in the petition based on the impugned report. We have not ventured to examine as to whether the bid by the Consortium meets the

conditions of the RFP on other aspects, which necessarily has to be looked into by the respondents by considering the bid and the attached documents.

41. The petition is disposed of on the above terms. The pending application is also disposed of.

V. KAMESWAR RAO, J

MANMEET PRITAM SINGH ARORA, J

SEPTEMBER 01, 2026
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