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

% *Date of Decision : 30.03.2026*

+ W.P.(C) 3585/2026, CM APPL. 17390/2026
MS JK INFRASTRUCTURE THROUGH AUTHORISED
SIGNATORY MR SATYAPAL SINGH

.....Petitioner

Through: Mr. Pawanjit Singh Bindra, Sr. Adv.
with Mr. Keshav Sehgal, Mr. Shivam
Gaur, Mr. Aryan Kumar and Ms.
Rashi Singh, Adv.

versus

MUNICIPAL CORPORATION OF DELHI & ORS.

.....Respondents

Through: Mr. Sanjay Jain Sr. Adv. with Mr.
Tushar Sannu, Mr. Nishank Tripathi,
Ms. Harshita Sukhija, Ms. Rishika
Agrawal and Ms. Priya Tyagi Adv.
and Mr. Ajay Aggarwal, SE, Mr. Anil
Kumar, EE and Mr. Saurabh Garg, JE
for R-1/MCD.
Mr. Rajeev Nayar, Sr. Adv. with Mr.
Arkaj Kumar, Ms. Ramya Aggarwal,
Mr. Aakarsh Mishra and Mr. Karsh
Rebelo, Adv. for R-2.
Mr. Gagan Gupta, Sr. Adv. with Mr.
Padmesh Mishra and Mr.
Yashwardhan Rai, Adv. for R-3.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

V. KAMESWAR RAO, J. (ORAL)

1. This petition has been filed with the following prayers:-



“a) Issue a Writ(s), of Certiorari or any other appropriate Writ, Order, thereby quashing any Award, Letter of Intent, Corrigendum, Office Order etc. issued by the Respondent No. 1 in favour of Respondent Nos. 2 and 3 or any other Bidder thereby awarding/ finalising the Tender bearing Notice No. EE (EMS)/SZ,CNZ& WZ/2025-26/D806 dated 06.09.2025 for “Collection & Transportation of Municipal Solid Waste, Street Sweeping Waste, Desilted Waste, Horticulture Waste, Domestic Hazardous Waste (including Sanitary Waste) in South, Central & West Zone to the Designated Processing Facility/Dump Site/ Depositing Centers of Municipal Corporation of Delhi (the Authority) under Design, Built, Finance, Operate & Transfer (DBFOT) Basis” for being illegal, non-est in eyes of law;

b) Issue a Writ(s), of Mandamus or any other appropriate Writ, Order, thereby directing the Respondent No. 1 to permit the consortium comprising the Petitioner to submit its bid and participate in the Subject Tender;

c) Issue a Writ(s), of Mandamus or any other appropriate Writ, Order, thereby directing the Respondent No. 1 to produce the entire record and files pertaining to Subject Tender;

d) Issue appropriate Writ(s) of Mandamus or any other appropriate Writ, Order, direction to the Respondent Nos. 1 and 2 to stay the operation of award of tender till disposal of the present Writ Petition;”

2. The case of the petitioner as submitted by Mr. Pawanjit Bindra, learned Senior Counsel along with Mr. Keshav Sehgal for the petitioner is that the respondent no. 1/MCD has issued a tender dated 06.09.2025 for collection and transportation of municipal solid waste, street sweeping waste, desilted waste, horticulture waste, domestic hazardous waste in South, Central and West Zone to the designated processing facility/dump site/depositing centres of Municipal Corporation of Delhi (“MCD”) under design build, finance, operate and transfer basis.

3. According to him, the MCD issued a Draft Concessionaire Agreement



("DCA") dated 24.09.2025 to the said tender inter-alia providing the draft of the contract proposed to be entered between the successful bidder and the MCD. On 03.10.2025, the MCD issued project information memorandum as volume 3 to the said tender. The said memorandum provided information about each zone and laid down detailed scope of the tender/logistics and technical specifications necessary for the execution of the project. He submitted that the petitioner upon perusing the tender documents observed that a conjoint reading of the tender, draft Concessionaire Agreement and memorandum reflected that there are multiple ambiguities in the said documents and the said tender has been issued without providing the necessary details. The respondent MCD issued corrigendum/addendum 4 on 08.10.2025 to enable the prospective bidders submit their pre-bid queries on or before 13.10.2025. He does concede to the fact that the petitioner herein had submitted as many as 33 queries pertaining to the several clauses of the DCA, tender and PIM seeking clarifications on various aspects.

4. He also stated that pursuant to the clarification sought by the prospective bidders, the MCD issued corrigendum 5 dated 04.11.2025 *inter-alia* allegedly providing clarification to the said pre-bid queries and making amendments in several clauses of the tender. According to him, the respondent MCD in an arbitrary manner failed to respond to particular queries and clarifications sought by the petitioner and other bidders and had merely done an empty formality by merely replying, as no change to the said queries and clarifications, which were crucial in nature. He also stated that the respondents permitted partnership firm to participate in the said tender, however, still excluded the proprietorship firm. He has also stated that the respondent MCD extended the last date for submission of bids to 05.12.2025



vide corrigendum 6 dated 04.11.2025. It is his case that the petitioner and the other bidders were not satisfied with the clarifications given by the MCD and due to the ambiguities prevailing regarding the said tender, the respondent MCD was constrained to extend the submission of clarification to 26.11.2025. He made a reference to corrigendum dated 04.12.2025, extending the timeline for bids submission to 20.12.2025, which ignored the queries of the petitioner. He stated that the petitioner had approached this Court *vide* writ petition bearing WP(C) No. 19175/2025 titled ***JK Infrastructure vs. Municipal Corporation of Delhi*** seeking directions to the respondent MCD to clarify the ambiguity and ensure the bidding process is conducted in a proper and a fair manner. The said writ petition was withdrawn in view of the subsequent developments and liberty granted to the petitioner to file a fresh writ petition. In any case, it is his submission that the present writ petition has been filed for quashing the award; letter of intent issued with respect to the subject tender and permitting consortium comprising of the petitioner to submit its bid and participate in the subject tender.

5. He stated that the corrigendum dated 04.12.2025 created further confusion *inter-alia* stipulating that all Secondary Collection Points (“SCPs”) shall be converted into Fixed Compact Transfer Station (“FCTS”) and the responsibility of the establishment of operation and maintenance of an FCTS in all respect shall be of the Concessionaire. The said stipulation of converting SCPs into FCTS and the responsibility of establishment, operation and maintenance of FCTS shall be of the Concessionaire, had drastic impact on the cost of the project inasmuch as the same increased the cost of the project multi-fold, as the cost of converting one SCPs into FCTS



is Rs. 1.80 crores (approx.). Therefore, for instance in the South zone wherein the bidder was expected to construct 14 FCTS and modify existing 46 FCTS, the conditions in the corrigendum dated 04.12.2025 envisaged construction of atleast 321 FCTS (including 275 SCPs to be converted to FCTS). He stated that it was later learnt that the said stipulation was merely a scarecrow floated by the respondent/MCD only to clarify later and to ward off the bidders and only to invite bids from favoured entities.

6. He emphasised on the facts that Article 11 of the DCA envisaged that if the Concessionaire fails to achieve the commercial operation date within a period of 105 days, the same shall constitute an event of default. The sudden increase in the cost of the tender prevented the petitioner to participate in the same and submit its bid. Therefore, it is imperative that the respondent/MCD ought to have made the modification applicable to prospective bidders and given a fair opportunity to the petitioner.

7. He stated that as the queries of the petitioner remained unanswered, which is why the petitioner was unable to submit its bid. Therefore, the petitioner had approached this Court seeking a direction to the MCD to clarify that the said ambiguities and ensure that the bidding process is conducted in a proper and fair manner. He submitted that a further corrigendum dated 24.02.2026 was also issued clarifying that the Concessionaire only required construction of fresh FCTS and modification of the FCTS at the location specific therein. He also stated that the said corrigendum changed material condition of the tender revising, that the cost of the civil work will be borne by the respondent MCD as opposed to addendum/corrigendum dated 04.11.2025 that stated that the entire cost of construction ought to be incurred by the Concessionaire only. He stated that



the act of reducing the cost of the tender drastically was carried out under the garb of exercise of normalisation as capital contribution. He quoted that for instance in the South zone, the conversion of SCPs into FCTS and creation of additional FCTS would alone costed Rs. 541 crores (approx.), which has been reduced to Rs. 71 crores (approx.) in terms of addendum dated 24.02.2026. Similar instances have been narrated by Mr. Bindra with regard to the other zones.

8. According to Mr. Bindra, the respondents could not have challenged the conditions of the tender after opening the technical bids. The respondent MCD being the tendering authority was obligated to clearly clarify the number of FCTS proposed to be installed and answer the bid queries in order to clear the uncertainty and permit wider and fair participation. The corrigendum dated 04.12.2025 was impractical and raised the cost of the tender exponentially, which prevented several bidders like the petitioner to submit their bids. Therefore, the action of respondent MCD in releasing the corrigendum dated 24.02.2026 after submission of the bids and only for selected bidders is highly unfair and discriminatory inasmuch as the same amounts to changing rules of game midway and is in clear contravention to Article 14 of the Constitution of India. It has vitiated the sanctity of the tendering process and places the petitioner and several others at unfair position.

9. According to Mr. Bindra, the petitioner would have been able to submit its bid, if the respondent no. 1 had issued the said corrigendum dated 24.02.2026 before closing of bid submission. The failure on the part of respondent no. 1 to clarify crucial queries such as number of FCTS at pre-bid stage coupled with the exponential increase in cost of tender floated as a



scarecrow by corrigendum dated 04.12.2025 has gravely impacted the petitioner and has deprived the petitioner from submitting its bid in public tender. He submits that immediately the petitioner submitted representation dated 25.02.2026 to the respondent *inter alia* highlighting the fact that the issuance of corrigendum dated 24.02.2026 has rendered several bidders such as petitioner at a disadvantageous stage and requested that fresh bids may be invited on the revised terms for larger participation and fair competition. He seeks the prayers as made in the petition. Mr. Bindra has relied upon the following judgments in support of his submissions:-

- i. ***Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium), (2016) 8 SCC 622.***
- ii. ***Prakash Asphaltings & Toll Highways (India) Ltd. v. Mandeepa Enterprises, (2025) SCC OnLine SC 1959.***
- iii. ***Monarch Infrastructure (P) Ltd. v. Ulhasnagar Municipal Corporation & Ors., (2000) 5 SCC 287.***
- iv. ***Xcellence Medical Technologies Private Limited v. HLL Infra Tech Services Ltd. & Anr., (2021) SCC OnLine Del 4635.***

10. On the other hand, Mr. Sanjay Jain, learned Senior Counsel appearing for the respondent MCD would contest the present petition by stating that this petition is nothing but an abuse of process of law inasmuch as the petition has been filed by an entity, who has no *locus* as the petitioner has not participated in the tender, being ineligible to participate as it is only a sole proprietorship. The attempt is only to delay the tendering process. According to Mr. Jain, the present petition is a second round of litigation by the petitioner, who had earlier withdrawn the W.P.(C) 19175/2025. He states that the ground of the petitioner that the petitioner was prevented from



participating in the tender because of the amended requirement brought in by corrigendum 9 dated 04.12.2025, which required the bidders to install FCTS equivalent to number of pre-existing SCPs is a misconceived argument. He stated even the stand that subsequent to the closure of bids on 05.01.2026, the MCD vide the corrigendum 12 dated 24.02.2026 had drastically brought down the number FCTS, which could have been bid for by the petitioner is a misconceived argument.

11. Mr. Jain would submit that the challenge is primarily to the tendering process and as per the settled law by the Supreme Court, it is clear that (a) stay ought not to be granted on infrastructure projects of public importance; (b) awarding of tendering contracts is essentially a commercial function and judicial review will not be invoked to protect private interest, even if a tenderer claims aberration or error in assessment or a prejudice; (c) non-participation to a tender cannot maintain a challenge to a tender; (d) tender conditions are sacrosanct and must be interpreted from the understanding of the author of the tender and the writ Court would not sit as an Appellate Authority over the understanding of the author.

12. Mr. Jain's submission primarily is that the submissions of Mr. Bindra are on a mis-reading of the tender document dated 06.09.2025 as also the amendments brought in by successive corrigenda dated 04.11.2025, 04.12.2025, 24.02.2026 and 27.02.2026. He stated that there is no ambiguity with regard to numerical requirement of new FCTS systems in any of the three zones. This he says so because the bidders were given complete liberty to submit their own initial implementation and operational plan and the tender documents, as well as answers to pre-bid queries clearly clarifies that the numbers mentioned in the tender documents are indicative. There was no



scope, reason or occasion for any genuine bidder, being otherwise eligible as per tender conditions, being misled.

13. He stated that the petitioner is deliberately mis-projecting a scenario, which is non-existent and speculative inasmuch as any genuine player in the industry, concerning solid waste management would understand that a FCTS is a mechanised system requiring a larger system in comparison to requirement for a *Dhalao*, dustbin or open site as it requires erection of a civil structure; each unit of FCTS will do away with requirement of many SCPs.

14. According to Mr. Jain, the pre-existing SCPs beside those already functioning as FCTS in West Zone (45), Central Zone (20) and South Zone (39) comprised of *dhalaos*, dustbin and open site and merely because a data regarding the pre-existing SCPs was included in the tender documents, it did not mean that the bidders were being called upon to install fresh FCTS in all SCPs. The petitioner having missed the bus besides being otherwise ineligible to participate in the tender cannot state that he got an impression that he would have to set up as many FCTS as were the pre-existing SCPs comprising of *dhalaos*, dustbin and open sites, oblivious of the well-known fact that FCTS once installed are capable of substituting the handling of solid waste hitherto to be collected at multiple SCPs.

15. Mr. Jain has emphasised the fact that the respondent no. 1 as well as the prospective bidders were fully conscious of the capital intensive nature of the FCTS and it was for this reason, the bidders were given an opportunity of making their own studies based on households, population and area in project areas and submit their respective Initial Implementation Operational Plan (“IIOP”) and that after evaluating the same, MCD to notify



the normalised number, which would be the finalised number indicating the requirement of total FCTS. It is submitted that after final numbers of required FCTS got notified, the bidders got opportunity to revise their financial bids at their option. It was pointed out that no goal post was changed as alleged, after the submission of the bids on 05.01.2026. The corrigendum dated 24.02.2026 was only a step to notify that the said normalised number meant only for consumption of such bidders, who were declared eligible and whose technical bids were found compliant.

16. Mr. Jain, during the course of his submissions, has drawn our attention to the compilation of documents, which formed part of writ petition in support of his submissions. He states that from the perusal of the documents, it is clear that the provisions in the tender /corrigenda depict the position, which he has narrated. He states, the petitioner has no *locus standi* to file this petition. In any case, the petition being without any merit, is liable to be dismissed. In support of his submissions, Mr. Jain has relied upon the following judgments:-

- i. National High Speed Rail Corpn. Ltd. v. Montecarlo Ltd., (2022) 6 SCC 401.*
- ii. Tata Motors Ltd. v. Brihan Mumbai Election Supply & Transport Undertaking (BEST), (2023) SCC OnLine 671.*
- iii. Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corporation Ltd. & Anr., (2016) 16 SCC 818.*
- iv. N.G. Projects Ltd. v. Vinod K. Jain & Ors., (2022) 6 SCC 127.*

17. On the other hand, Mr. Rajiv Nayar, learned Senior Counsel appearing for respondent no. 2 and Mr. Gagan Gupta, learned Senior Counsel appearing for respondent no. 3 has contested the writ petition



primarily on the basis of the submissions advanced by Mr. Jain and have also relied upon the following judgments in support of their contentions:-

- i. *NHAI v. Gwalior-Jhansi Expressway limited, through Director, (2018) 8 SCC 243.*
- ii. *Primatel Fibcom Ltd. v. Indian Oil Corpn. Ltd., 2024 SCC OnLine Del 4278.*
- iii. *Jagdish Mandal v. State of Orissa, (2007) 14 SCC 517.*
- iv. *Michigan Rubber (India) Ltd. v. State of Karnataka, (2012) 8 SCC 216.*
- v. *Tata Motors Ltd. v. Brihan Mumbai Electric Supply & Transport Undertaking, (2023) 19 SCC 1*
- vi. *Raunaq International Ltd. v. I.V.R. Construction Ltd., (1999) 1 SCC 492.*

18. Having heard the learned counsel for the parties, the short issue, which arises for consideration is whether the petitioner is entitled to the prayers as made in the petition. There is no dispute that tender, which was issued by the respondent no. 1 is primarily for collection and transportation of municipal solid waste, street sweeping waste, desilted waste, horticulture waste, domestic hazardous waste in South, Central and West Zone of Delhi and the same was issued on 06.09.2025. Mr. Bindra has filed a chart highlighting the following position, in support of his submissions:-

	<i>Original RFP Addendum / Corrigendum Dated</i>	<i>Addendum / Corrigendum Dated</i>	<i>Addendum / Corrigendum Dated</i>	<i>Addendum / Corrigendum Dated</i>
	<i>04.11.2025 P-8, Pg. 920-1019 (Q. 154 @ Pg. 954)</i>	<i>04.12.2025 P-17, Pg. 1065-1108</i>	<i>24.02.2026 P-23, Pg. 1165-1193</i>	<i>27.02.2026 P-26, Pg. 1199-1202</i>
<i>SZ</i>	<i>60 with 46 Existing P-9. Pg. 1030-1032</i>	<i>321 (275 SCPs converted to FCTS + Existing FCTS</i>	<i>14 (60-46) (Pg. 1166 and 1170)</i>	<i>14 (60-46)</i>



		<i>P-9, Pg. 1020-1032</i>		
<i>CZ</i>	<i>50 with 20 Existing P-10 Pg. 1042</i>	<i>234 (214 SCPs converted to FCTS+ Existing FCTS P-10 Pg. 1033-1044</i>	<i>30 (50-20) (Pg. 1176 and 1180)</i>	<i>30 (50-20)</i>
<i>WZ</i>	<i>56 with 51 Existing P-11 Pg. 1046-1447</i>	<i>81 (30 SCPs converted to FCTS+ Existing FCTS P-11 Pg. 1045-1448</i>	<i>5 (56-51) (Pg. 1186 and 1190)</i>	<i>5 (56-51)</i>

19. The chart has been filed by Mr. Bindra to highlight the fact, how the corrigendum dated 04.12.2025 has increased the numbers of FCTS, which later got reduced. His submission is primarily that corrigendum dated 04.12.2025 required bidders to install FCTS equivalent to the number of pre-existing secondary collection points, increasing the number of FCTS to 321 (South Zone), 234 (Central Zone) and 81 (West Zone), which numbers could not have been bid by a tenderer as it has exponentially increased the cost of the project.

20. On this, the submission of Mr. Jain is primarily relying upon clause 3.4.1(e) (at page 923) of the writ petition to contend that the same stipulates submission of IIOP, the purpose of which was, that at the bidding stage by the bidders (as part of technical trials) is to obtain optimum requirement of machinery as envisaged by each bidder after his own assessment of the field conditions, such as geographical location, population, commercial areas, waste collection and disposal sites. The IIOP of each bidder was evaluated by the Authority. The Authority decided the normalised quantity of the key components of the IIOPs. After the notification of the normalised quantity by the Authority, at the bidding stage, in accordance with clause 3.1.1(b)(2), the bidder was given the option to revise the financial bid. Mr. Jain has also highlighted the fact that the Authority had indicated certain number of



primary collection and secondary transport vehicles, FCTS sites etc., which were purely indicative and the bidders were expected to make their own assessment to be submitted as IIOP. Mr. Jain has also referred to page 1065 of the writ petition to contend the plea of Mr. Bindra by relying upon corrigendum dated 04.12.2025 to state that the MCD has clearly stated that it envisages to convert all SCPs into FCTS is a misconceived argument as according to him, the said clause itself clarified the responsibility for establishment, operation and maintenance of FCTS in all respect shall be that of the Concessionaire and hence, it is ultimately the evaluation to be carried out by each bidder, which was to be submitted to the respondent MCD for a decision on normalised quantity, which was to be notified to enable the bidders submit their revised bids. He has also highlighted that the aforesaid aspect has been clarified in the pre-bid meeting on a query put by the petitioner. In this regard, he has drawn our attention to the query put and answer given by the MCD as under:-

S. No.	Tender Document Reference Clause / page	Queries	Suggestions	Reply / Clarifications
	xxx	xxx	xxx	
10	In Addendum / Corrigendum-5 Page 4, Clause 3.4.1 (e) (Vol-1 of RFP, ITB)	It is mentioned that the authority has provided indicative numbers for primary collection & secondary transport vehicles, FCTS sites, etc.	Could MCD kindly confirm whether these indicative numbers represent a minimum requirement, or if they can be reduced based on the bidder's operational plan submitted as part of the Initial Implementation Operation Plan (IIOP)?	Authority has indicated a certain number of primary collection & secondary transport vehicles, FCTS sites etc. in the bidding documents which are purely indicative in nature and bidders are expected to make its own assessment to be submitted as IIOP.



21. The aforesaid leaves no ambiguity that the number of primary collection and secondary transport vehicles, FCTS sites etc., stated by the authority in the bidding documents were purely indicative and the bidders were expected to make their own assessment to be submitted as IIOPs. The submission made and numbers indicated by Mr. Bindra in the aforesaid chart are/is on a misreading of corrigenda dated 04.11.2025 and 04.12.2025. At no point of time, did the respondent no. 1 represent to the petitioner/bidders the aforesaid numbers.

22. Insofar as the corrigendum dated 04.12.2025, more specifically Clause 2 on which reliance has been placed by Mr. Bindra is concerned, the same has to be read in conjunction with corrigendum dated 04.11.2025 to mean that the intent of the project is to convert all the SCPs into FCTS but that cannot be understood to mean that every SCPs shall be converted to FCTS. It means that the objective of the tender is to convert SCP into FCTS based on IIOP and the MCD notifying the normalised number of FCTS. It follows the ground of challenge to the tender and the consequential prayer sought, are not tenable, infact a figment of imagination of the petitioner, more so at the behest of a proprietorship concern, which is not eligible to bid and has also not submitted the bid as a consortium.

23. Mr. Bindra has relied upon the two judgments in the case of ***Central Coalfields Ltd. (supra)*** to contend that if the petitioner would have known the prescribed stipulation in the tender, it would have also meaningfully participated in the bidding process is not appealing for the simple reason that the corrigendum issued on 04.11.2025 has clearly brought to the notice of all the bidders about the IIOP; also stating the purpose of submission of IIOPs is to obtain optimum requirement of machinery as envisaged by each bidder



after his own assessment of the field conditions.

24. In that sense, the respondent having notified the bidders on 04.11.2025 and extending the date of submission of the tender till 05.01.2026, still the petitioner having not submitted the bid, surely the petitioner would not have any *locus standi* to challenge any subsequent corrigenda issued by the respondent/MCD on 24.02.2026 and also 27.02.2026.

25. Even the judgment referred to by Mr. Bindra in the case of ***Prakash Asphaltings & Toll Highways (India) Ltd. (supra)*** to contend that the sanctity of public tenders and contract is fundamental principle that underpins the stability and predictability of legal and commercial relationships and the respondents having not maintained the sanctity, the same is liable to be set aside is concerned, the plea is not appealing, for the reasons and finding stated/given above. Similarly, insofar as ***Monarch Infrastructure (P) Ltd. (supra)*** relied upon by Mr. Bindra wherein the Supreme Court held that the changing of the rules of the games after it had begun and if the Municipal Corporation was free to alter the conditions, fresh process of tender was the only alternative permissible and such a recourse be followed in this case is concerned, the same also does not appeal us in view of our findings above. Similarly, in ***Xcellance Medical Technologies Private Limited (supra)***, the Court held that the employer should ensure level playing field for all the bidders; it is imperative for the tendering authority to make sure that there is certainty in the tender condition, especially where amendments have been issued in the tender conditions to contend that the same is applicable to the facts of this case is concerned, we are not impressed by the said submission in view of the



conditions of the tender/corrigendum as noted above and also in view of our findings.

26. Mr. Jain is justified in relying upon the following judgments for the proposition as stated under those judgments:-

- (i) ***National High Speed Rail Corpn. Ltd. (supra)*** to argue that the High Court should be extremely careful and circumspect in exercise of their discretion while entertaining or granting stay in projects of public importance.
- (ii) ***Tata Motors Ltd. (supra)*** for the proposition that the award of tender is a commercial function and if the decision to award the contract is *bona fide* and in public interest along with compliance of tender conditions then in such circumstances, the Courts ought not to interfere by exercising judicial review to protect private interest even if a tenderer claims procedural irregularities or error in assessment or a prejudice caused to the tenderer. In such cases, judicial review ought not to be invoked to protect private interest at the cost of public interest or to decide contractual disputes.
- (iii) ***Afcons Infrastructure Ltd. (supra)*** has been referred to advance the case that the owner or the employer of a project, who has authored tender documents is the best person to understand and appreciate its requirements and interpret the documents. Even if, the owner or employer of a project gives an interpretation to the tender documents that is not acceptable to the Constitutional Courts but the same is not a reason to interfere with such an interpretation.



(iv) The judgment in the case of *N.G. Projects Ltd. (supra)* has been relied upon to state that a Writ Court should refrain itself from imposing its decisions over those of the employer for the lack of expertise to examine the terms and conditions of the economic activities undertaken by the State. The approach of the Court should not be to find fault but rather to examine whether the decision making process complies with the procedure contemplated under the tender conditions. Even if the Court finds that there is a total arbitrariness and that the tender has been granted in a *mala fide* manner still the Court ought to refrain from interfering in such grant and instead relegate the parties to seek damages for wrongful exclusion rather than to injunct the execution of the contract.

27. Insofar as the judgments as relied upon by Mr. Rajeev Nayar and Mr. Gagan Gupta, learned Senior Advocates are concerned, need is not felt to refer to them, in view of our discussion above. Accordingly, we find no merit in the petition, the same is dismissed. The pending application is also dismissed.

V. KAMESWAR RAO, J

MANMEET PRITAM SINGH ARORA, J

MARCH 30, 2026/sr