



2026:DHC:4840-DB



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

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Judgment reserved on: 05.05.2026
Judgment pronounced on: 29.05.2026
Judgment Uploaded on: 29.05.2026

+ W.P.(C) 3885/2026, CM APPL. 19062/2026, CM APPL. 20206/2026, CM APPL. 21085/2026 & CM APPL. 24254/2026
S AND P INFRASTRUCTURE DEVELOPERS PVT LTD

.....Petitioner

Through: Mr. Gaurav Chopra, Sr. Adv.
along with Ms. Anusuya
Salwan, Mr. Jatin Bansal, Mr.
Divyam Suri, Mr. Afaq
Sherwani, Mr. Shantanu
Mishra, Mr. Jagrit Vyas and
Mr. Himanshu Bindal, Advs.

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA

....Respondent

Through: Mr. Sanjay Jain Sr. Adv. Along
with Mr. Santosh Kumar,
Standing Counsel, Mr. Ritik
Dwivedi, Mr. Devansh
Malhotra, Mr. Adithya Ramani,
Mr. Nishank Tripathi, Ms.
Harshita Sukhija, Ms. Rishika
Agrawal and Ms. Priya Tyagi,
Advs. for R-1.

Mr. Dayan Krishnan, Sr. Adv.
along with Mr. Sanjeev K.
Kapoor, Mr. Dhritiman Roy,
Ms. Sania Abbasi and Mr.
Shreedhar Kale, Advs. for R-2.

CORAM:

HON'BLE MR. JUSTICE ANIL KSHETARPAL

HON'BLE MR. JUSTICE AMIT MAHAJAN



J U D G M E N T

AMIT MAHAJAN, J.:

1. The present Petition has been filed under Article 226 of the Constitution of India, seeking the following prayers:

a. Issue appropriate writ, order or directions in the nature of certiorari quashing the order dated 23.03.2026 passed by the Respondent rejecting the technical bid of the petitioner as non-responsive.

b. Issue appropriate writ, order or direction in the nature of Mandamus directing the Respondent to declare petitioner as technically qualified, and

c. Issue appropriate writ, order or direction in the nature of mandamus directing the Respondent to open and consider the financial bid of the petitioner.

FACTUAL MATRIX

2. Respondent No.1, NHAI *vide* Request for Proposal ('RFP') dated 12.12.2025 invited bids for the work of Upgradation of existing highway to two lanes with paved shoulders from Parsarma to Araria Section of NH-327E on Hybrid Annuity Mode in the state of Bihar on design, build, operate and transfer basis. In terms of the RFP, the bid was invited in a two-bid system for selection of the bidder for award of the project. Under the process, eligibility and qualification of the bidder was to be first examined based on the details submitted under the first part (Technical Bid) with respect to the eligibility and qualification criteria prescribed in the RFP. The financial bid under the second part shall be opened for the bidders whose technical bids are responsive to eligibility and qualification requirements as per the RFP.



3. The Petitioner submitted their bid document to Respondent No.1 on 12.03.2026. In the said bid document, the Petitioner submitted the Net Worth Certificate of its Associate (Ms. Krishna Pandey) as on 27.12.2025, certified/authorised by its Statutory Auditor.

4. Thereafter, on 17.03.2026, Respondent No.1 sent a letter to the Petitioner seeking certain clarifications including a clarification regarding the Net Worth of the Associate of the Petitioner, namely, Ms. Krishna Pandey. Respondent No.1 asked for a clarification regarding why the Net Worth of the Associate of the Petitioner had been provided as on 27.12.2025 in the Petitioner's bid, when the RFP required the Petitioner to provide the same as on 31.03.2025. The relevant extract of the said letter is reproduced herein below:

| | | |
|-----|-----------|---|
| 10. | Net Worth | <i>The bidder has submitted the Net Worth of the Ms. Krishna Pandey as on 27.12.2025 instead of as on 31.03.2025. Bidder to clarify why the Net Worth of the Associate has been provided as on 27.12.2025 instead of 31.03.2025</i> |
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5. Pursuant the same, the Petitioner submitted clarifications to Respondent No. 1 on 19.03.2026. In reply to the clarification sought pertaining to the Net Worth of the Associate of the Petitioner/ Ms. Krishna Pandey the Petitioner submitted as under:

“The Authority is requested to refer page 108-110 of pdf file named '3TechnicalBidParsarmaArariaPart1' submitted with the Bid documents. Wherein Net Worth Certificate of Ms. Krishna Pandey have been issued by Statutory Auditor on 21.08.2025 based on (1) Market value of immovable properties has been taken on the basis of valuation certificate issued by an Approved Valuer /Chartered Engineer, and (2) investments in equity shares



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have been considered at book value of shares as per audited financial statements as on 31.03.2024.

Therefore, the Net Worth certificate of the Ms. Krishna Pandey have been issued as per procedures. The same Net Worth is applicable as on 31.03.2025 as well as on Bid due date.”

6. On 23.03.2026, Respondent No.1 issued a communication addressing all participating bidders, including the Petitioner, whereby the technical bid of the Petitioner was held to be ‘non responsive’ on the ground that the “*Assessed Available Net Worth of the Petitioner at the close of the preceding financial year (FY 2024-25) is less than the minimum requirement of ₹152.25 Cr. as per clause 2.2.2 (BB) of the RFP Document.*”

7. The Petitioner filed a representation dated 24.03.2026 with Respondent No.1 *vide* letter No. S&P/Tender/2025-26/342. The Petitioner in its representation asserted that its Assessed Available Net Worth was ₹244.38 Cr., which was well above the minimum requirement of ₹152.25 Cr.

8. The Petitioner in the aforesaid representation also explained why it had not earlier submitted the Net Worth of this Associate as on 31.03.2025, while also submitted that it was ready to provide the same at that juncture, the reasons provided by the Petitioner are as under:

“It is to submit that, the concept of Assessed Available Net Worth of the bidder was published by the Authority vide circular no. 11.68/2025 dated 6th August, 2025. Earlier there was no requirement of the same. Therefore, viewing the situation the Bidder started the practice of taking Net Worth of Associate in account. However, this Net Worth was available with the Associate from long time as also was available at close Financial Year 2024-25. Therefore, the Net Worth of the Associate shall be taken in to account. it is also to be submitted at Authority is requested to refer clause 2.1. 18, wherein, nothing is written about the timing of availability of Net Worth of the Associate. However, the valuation



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of the assets of the Associate were got conducted after Authority circular no. 11.68/2025 dated 6th August, 2026. Therefore, the valuation reports of the Assets of the Associate are also valid as on close of preceding financial year (FY 2024-25). It is also to submit that, if the Authority fee is that, Net Worth of 31.03.2025, then we are ready to provide the same at the direction of Authority.”

9. Thereafter, the Petitioner *vide* Letter No. S&P/Tender/2025-26/343 dated 24.03.2026 submitted a certificate from the Statutory Auditor of the Petitioner which provided the net worth of the associate of the Petitioner (Ms. Krishna Pandey) as ₹192.36 Cr as on 31.03.2025.

10. The Petitioner approached this Court assailing the letter dated 23.03.2026 and this Court *vide* order dated 25.03.2026 directed Respondent No.1 to not open the financial bids of the subject tender till the representation of the Petitioner was decided.

11. Respondent No.1, while deciding the Petitioner’s representation *vide* communication dated 27.03.2026, observed that although the Petitioner had furnished valuation reports dated 18.08.2025 in respect of the immovable properties of Ms. Krishna Pandey, the said reports nowhere specified that the valuation had been undertaken as on 31.03.2025. Respondent No.1, therefore, treated the valuation as pertaining to the date of issuance of the reports itself, namely 18.08.2025, and consequently excluded the immovable properties from consideration while computing the net worth of the Associate. Respondent No.1 also considered the subsequent Chartered Accountant’s Certificate dated 24.03.2026, but declined to place reliance upon the same observing that it was unsupported by any



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contemporaneous valuation documents establishing the value of the immovable properties as on 31.03.2025.

12. Respondent No.1 in the aforesaid letter calculated the Assessed Available Net worth of the Petitioner as ₹121.72 Cr., which was less than the minimum requirement of Clause 2.2.2. (BB) of the RFP Document, i.e. ₹152.25 Cr and accordingly decided the bid of the Petitioner to be Technically Non-Responsive.

13. In response thereto, the Petitioner, *vide* email dated 28.03.2026, disputed the computation of the balance value of ongoing PPP works undertaken by Respondent No.1 and contended that Respondent No.1 had incorrectly assessed the value of completed work in respect of Projects 1, 2 and 3 by considering only the amounts of MoRTH grant certified and paid, while ignoring the actual physical and financial progress already achieved in the projects. The Petitioner further asserted that the EPC costs adopted by it for the respective projects were in accordance with the financing documents and were exclusive of escalation, GST, and other financing components, and therefore maintained that the “B” value originally submitted by it was correct and that the calculations undertaken by Respondent No.1 were erroneous.

14. Thereafter, Respondent No.1, *vide* communication dated 28.03.2026 issued in response to the Petitioner’s objections regarding computation of Component “B”, stated that the evaluation had been undertaken strictly on the basis of the documents furnished along with the bid and the financial progress reflected therein. Respondent No.1 clarified that, in terms of the MoRTH Circular dated 06.11.2025, the



“Estimated Project Cost” included EPC cost, pre-operative expenses, financing and legal costs, and interest during construction, and accordingly recalculated the Petitioner’s existing commitments on the basis of the financing agreements and bid documents on record. Respondent No.1 further stated that even upon reconsidering the Petitioner’s contention regarding the percentage of project progress, the assessed available net worth of the Petitioner worked out to ₹148.812 crores, which remained below the minimum threshold of ₹152.25 crores prescribed under Clause 2.2.2(BB) of the RFP, and consequently maintained the Petitioner’s status as “Technically Non-Responsive”.

15. Respondent No.1 proceeded further with the subject tender and awarded the letter of award dated 30.03.2026 to M/s Dineshchandra R. Agrawal InfraconPvt. Ltd. This Court *vide* order dated 22.04.2026 allowed the impleadment application filed by the Petitioner and M/s Dineshchandra R. Agrawal InfraconPvt. Ltd. was impleaded in the present case as Respondent No.2. It was also noted in the said order that the financial bid of the Petitioner was lower than the bid of M/s Dineshchandra R. Agrawal InfraconPvt. Ltd.

SUBMISSIONS ON BEHALF OF THE PETITIONER

16. Learned Senior Counsel appearing for the Petitioner submitted that the rejection of the Petitioner’s technical bid by Respondent No.1 was wholly arbitrary and based upon an erroneous determination that the Petitioner failed to satisfy the minimum net worth requirement under Clause 2.2.2 of the RFP, despite the Petitioner’s assessed



available net worth being above the prescribed threshold of ₹152.25 crores.

17. He submitted that Respondent No.1 arbitrarily excluded 20 immovable properties of the Petitioner's Associate, Ms. Krishna Pandey, valued at ₹87.48 crores, solely on the ground that the valuation reports and auditor's certificates did not expressly mention the date 31.03.2025. It was contended that Clause 2.2.2(B) merely prescribes the reference date for assessing net worth and does not mandate that the valuation report itself must be issued on that date.

18. He submitted that the Associate's net worth as on 31.03.2025 stood duly certified by the statutory auditor *vide* certificate dated 27.12.2025 on the basis of valuation reports dated 18.08.2025 issued by an approved valuer. Upon Respondent No.1 raising objections regarding the valuation date, the statutory auditor issued a clarificatory certificate dated 24.03.2026 reaffirming the net worth position as on 31.03.2025, and the approved valuer thereafter issued a clarification dated 26.03.2026 specifically stating that the valuation had been undertaken with reference to prevailing market rates as on 31.03.2025.

19. He further submitted that the RFP prescribed no separate methodology for determination of the net worth of an Associate, and therefore valuation of immovable properties by an approved valuer, duly certified by the statutory auditor, constituted a valid method of assessment. It was submitted that Respondent No.1 never disputed either the existence or ownership of the immovable properties, all of which had been acquired prior to 31.03.2025 through registered sale deeds.



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20. It was contended that Respondent No.1 arbitrarily accepted only the liquid assets of the Associate amounting to ₹16.63 crores while excluding immovable assets worth ₹87.48 crores, despite the RFP drawing no distinction between liquid and immovable assets for the purpose of assessing net worth. Learned Senior Counsel submitted that the subsequent certificates dated 24.03.2026 and 26.03.2026 did not introduce any new assets, but merely clarified the valuation date of the very same properties already disclosed in the original bid documents.

21. He further submitted that the RFP itself contemplated post-bid clarifications and updating of the assessed available net worth prior to opening of financial bids, and therefore Respondent No.1 could not reject the clarificatory documents on a hyper-technical basis. It was submitted that the Petitioner's detailed reply dated 19.03.2026 to Respondent No.1's query dated 17.03.2026 was never genuinely considered, as the impugned rejection order dated 23.03.2026 neither referred to the said clarifications nor disclosed any reasons or calculations forming the basis of rejection.

22. Learned Senior Counsel further submitted that Respondent No.1 repeatedly altered the Petitioner's net worth assessment after rejection of the technical bid, thereby exposing the arbitrary and unreliable nature of the evaluation process. While the order dated 27.03.2026 reflected the Petitioner's assessed available net worth as ₹121.72 crores, the same was revised within a day to ₹148.81 crores. Likewise, the "B" value was altered from ₹1082.95 crores to ₹947.49 crores, with Respondent No.1 itself admitting in its Counter Affidavit



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that certain errors in the earlier computation had “inadvertently” gone undetected. It was submitted that no material or calculation supporting the original rejection dated 23.03.2026 had been placed on record, and the subsequent re-evaluation itself rendered the impugned decision unsustainable.

23. It was further submitted that no objection regarding the Petitioner’s computation of the “B” value or Estimated Project Cost had been raised during the original evaluation process and that the same was introduced only subsequently during the pendency of the present proceedings.

24. It was contended that Respondent No.1 acted contrary to Clause 2.2.2(BB) of the RFP by relying upon the MoRTH Circular dated 06.11.2025, despite the same never having been incorporated into the RFP through any corrigendum. Learned Senior Counsel submitted that under the RFP, the “Estimated Project Cost” referred only to the EPC cost reflected in the approved financing documents and did not include financing costs, interest during construction, or pre-operative expenses.

25. He submitted that Respondent No.1, by relying upon the aforesaid circular, altered the methodology for computation of Component “B” by including financing liabilities and other additional costs within the Estimated Project Cost, thereby artificially inflating the “B” component and correspondingly reducing the Petitioner’s assessed available net worth below the prescribed threshold. It was submitted that the revised methodology was never disclosed in the



tender conditions and was introduced subsequently only to justify the Petitioner's disqualification.

26. It was further submitted that even on the basis of Respondent No.1's revised computation of Component "B", the Petitioner would satisfy the prescribed threshold once the correct value of Component "A" was considered. Applying the formula prescribed under the RFP, the Petitioner's assessed available net worth would amount to ₹237.23 crores, which is substantially above the minimum requirement of ₹152.25 crores.

27. Lastly, it was submitted that during the pendency of the present petition, Respondent No.1 proceeded with undue haste to issue the Letter of Award dated 30.03.2026 in favour of the sole remaining bidder, M/s Dineshchandra R. Agrawal InfraconPvt. Ltd., immediately after opening of the financial bids, with the apparent intent of creating a fait accompli and frustrating the Petitioner's right to an effective remedy. It was submitted that only two bidders had participated in the tender process and the arbitrary disqualification of the Petitioner defeated the doctrine of a level playing field, thereby rendering the process violative of Article 14 of the Constitution of India.

SUBMISSIONS ON BEHALF OF THE RESPONDENT

28. The learned Senior Counsel appearing on behalf of Respondent No.1 submitted that the present petition is devoid of merit and liable to be dismissed. He submitted that under Clause 2.2.2(B) of the RFP, the Petitioner was required to demonstrate a minimum assessed



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available net worth of ₹152.25 crores as on 31.03.2025. He submitted that Clause 2.2.2(BB) prescribed the formula for determining assessed available net worth as “A – (20% of B)”, where Component “A” represented the net worth of the bidder as on 31.03.2025 and Component “B” represented the aggregate value of existing PPP commitments secured by the bidder.

29. In relation to the computation of Component “A”, learned Senior Counsel submitted that Respondent No.1, *vide* communication dated 17.03.2026, had specifically sought clarification from the Petitioner regarding the valuation of the immovable properties of Ms. Krishna Pandey, associate of the Petitioner, since the Chartered Accountant’s certificate forming part of the bid was dated 27.12.2025 whereas the RFP required the net worth to be assessed as on 31.03.2025. It was submitted that the Petitioner, in its response dated 19.03.2026, merely stated that the Chartered Accountant’s certificate was based upon a valuation undertaken by an approved valuer, without producing any material to establish that the valuation itself had been carried out as on 31.03.2025. Learned Senior Counsel submitted that the valuation reports relied upon by the Petitioner were admittedly dated 18.08.2025 and did not specify the effective date of valuation of the properties. Consequently, in the absence of any indication that the valuation had been undertaken as on 31.03.2025, Respondent No.1 rightly treated the valuation as pertaining to the date of the report itself and excluded the said immovable properties while computing the Petitioner’s net worth.



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30. He submitted that only such assets of Ms. Krishna Pandey as were demonstrably reflected as on 31.03.2025, namely cash and bank balances and loans and advances aggregating to ₹16.63 crores, were added to the admitted net worth of the Petitioner company amounting to ₹321.68 crores for the purpose of computing Component “A”.

31. Learned Senior Counsel further submitted that there was no scope under the tender conditions to cure defects or supplement deficiencies by placing additional documents on record after expiry of the bid submission deadline on 12.03.2026. In this regard, reliance was placed upon Clause 2.14.3.1 of the RFP as well as the decision in *M/s Hazoor Multi Projects Limited v. Union of India*, W.P.(C) 3434/2026, to contend that fresh material cannot be introduced after the bid due date. It was submitted that the subsequent Chartered Accountant’s certificate dated 24.03.2026 and valuation clarification dated 26.03.2026 were rightly disregarded by Respondent No.1, as the same had been furnished belatedly after the technical evaluation and were intended only to cure defects in the original bid documents.

32. Insofar as computation of Component “B” was concerned, learned Senior Counsel submitted that the estimated project cost for existing PPP commitments necessarily included not only the EPC or civil construction cost, but also pre-operative expenses, financing and legal costs, and interest during construction. He submitted that the said interpretation was consistent with the MoRTH Circular dated 06.11.2025. According to Respondent No.1, the Petitioner, while calculating Component “B”, had considered only the civil construction cost and excluded other relevant components of the



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estimated project cost, thereby understating its existing commitments. It was submitted that the said discrepancy was specifically communicated to the Petitioner *vide* letter dated 28.03.2026.

33. Learned Senior Counsel further submitted that the Petitioner had wrongly sought to attribute *mala fides* to Respondent No.1 on account of the revised calculations communicated on 28.03.2026. He submitted that the subsequent calculation in fact gave greater benefit to the Petitioner by enhancing its assessed available net worth from ₹121.72 crores to ₹148.812 crores after rectification of certain arithmetical errors in the earlier computation. It was submitted that Respondent No.1 had additionally granted benefit to the Petitioner by including amounts that had become due under milestone charts, even if not actually received, resulting in an increase of ₹290.23 crores while computing Component “B”. However, despite such benefit, the Petitioner’s assessed available net worth still remained below the prescribed threshold of ₹152.25 crores and therefore the Petitioner was rightly declared technically non-responsive.

34. Learned Senior Counsel appearing for Respondent No.2 submitted that the Petitioner had admittedly failed to satisfy the minimum net worth requirement prescribed under Clause 2.2.2 of the RFP, inasmuch as the assessed available net worth of the Petitioner, as determined by NHAI, was ₹148.812 crores, which fell below the prescribed threshold. He submitted that the decision of NHAI to exclude the immovable properties of Ms. Krishna Pandey while assessing the Petitioner’s net worth was justified and consistent with the framework of the RFP.



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35. He further submitted that Respondent No.1 was barred under Clause 2.14.3.1 of the RFP from accepting any additional documents after the Bid Due Date, and therefore the subsequent documents sought to be relied upon by the Petitioner could not have been considered. Learned Senior Counsel submitted that after the Petitioner had already been declared technically non-responsive, it sought to rely upon a fresh Chartered Accountant's certificate dated 24.03.2026 certifying the net worth of Ms. Krishna Pandey as on 31.03.2025. It was submitted that unlike the earlier certificate forming part of the bid documents, the said certificate was not based upon any valuation report, but had been issued merely on the request of Ms. Krishna Pandey and was unsupported by any contemporaneous material. He submitted that Respondent No.1, while rejecting the Petitioner's representation on 27.03.2026, had specifically declined to consider the said certificate on the ground that it was unsupported by relevant valuation documents.

36. He submitted that the subsequent valuation certificate dated 26.03.2026 issued by the same valuer was also a self-serving document created after rejection of the technical bid solely to cure deficiencies in the original bid documents. It was submitted that the said certificate, for the first time, stated that the earlier valuation report dated 18.08.2025 had assessed the properties as on 31.03.2025, despite there being no such indication either in the original valuation report or in the earlier Chartered Accountant's certificates.

37. He submitted that Respondent No. 1 has elaboratively explained the entire calculation of component A and B undertaken by



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Respondent No. 1 and the same does not involve any arbitrariness or discrimination. He submitted that in such circumstances, no ground to interfere has been made out, and the present petition is consequently liable to be dismissed.

ANALYSIS

38. Before this Court embarks on the journey to delve into the examination of the merits of the case, at the outset, it is apposite to briefly note the scope of judicial review in matters pertaining to public auction/tender. It is not in doubt that the terms concerning the invitation to tender and its consequential evaluation thereof primarily falls within the domain of executive discretion. The Tender Evaluation Committee, more often than not, comprises a body of experts who are best suited to determine the financial and technical merits of the bids received. This Court therefore does not sit as a Court of appeal but merely reviews the manner in which the decision was made. For this reason, plausible decisions ought not to be interfered with and latitude also ought to be granted to the State to exercise its executive power. At the same time, it is pertinent to note that the circumspection involved in exercise of jurisdiction does not tantamount to mean that the actions of the State or its instrumentalities are beyond scrutiny. Pertinently, the scope of judicial review in matters relating to tender has been navigated by the Hon'ble Apex Court in several judgments and it has consistently been emphasised that accusations of illegality, irrationality and procedural impropriety would suffice for Courts to assume jurisdiction to remedy such defects. In the case of *State of*



Punjab v. Mehar Din¹, the Hon'ble Apex Court while considering the principles pertaining to the exercise of judicial interference as evolved over time, observed as follows:

21. *In Tata Cellular v. Union of India [Tata Cellular v. Union of India, (1994) 6 SCC 651] it was held that judicial review of government contracts is permissible in order to prevent arbitrariness or favouritism. It was fearlessly opined in this case as under : (SCC pp. 687-88, para 94)*

“94. The principles deducible from the above are:

- (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.”*

22. **The exposition of law on the subject has been consistently followed by this Court even in the later decisions holding that superior courts should not interfere in the matters of tenders, unless**

¹(2022) 5 SCC 648



substantial public interest was involved or the transaction was mala fide. It was consistently stressed by this Court that the need for overwhelming public interest should always be kept in mind to justify judicial intervention in contracts involving the State and its instrumentalities and while exercising power of judicial review in relation to contracts, the courts should consider primarily the question whether there has been any infirmity in the decision-making process.

23. This view has been further considered by this Court in *Jagdish Mandal v. State of Orissa* [*Jagdish Mandal v. State of Orissa*, (2007) 14 SCC 517], wherein it was observed as under : (SCC p. 531, para 22)

“22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made “lawfully” and not to check whether choice or decision is “sound”. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold.”

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25. **The law on the subject is settled that the courts being the custodian of fundamental rights are under an obligation to interfere where there is arbitrariness, irrationality, unreasonableness, mala fides and bias, if any, but at the same time, the courts should**



exercise the power of judicial review with a lot of restraint, particularly in contractual and commercial matters.

(Emphasis Supplied)

39. From a reading of the judgment as quoted *supra*, it materialises that while there are inherent limitations to the exercise of judicial review, the power may be invoked to obviate favouritism, arbitrariness, irrationality, unreasonableness and public interest.

40. In the present case, the technical bid submitted by the Petitioner was held to be ‘non responsive’, by Respondent No.1, on the ground that the “*Assessed Available Net Worth of the Petitioner at the close of the preceding financial year (FY 2024-25) is less than the minimum requirement of Rs. 152.25 Cr. as per clause 2.2.2 (BB) of the RFP Document.*” The controversy in the present petition, therefore, primarily pertains to the manner in which the Respondent computed the Petitioner’s “Assessed Available Net Worth” under the terms of the RFP.

41. Under Clause 2.2.2 of the RFP, a bidder was required to fulfil the following condition of eligibility in terms of the Financial Capacity of the Bidder:

2.2.2(B) Financial Capacity: *The Bidder shall have a minimum available Net Worth (the “Financial Capacity”) of Rs. 152.25 crore (Rs. One hundred Fifty Two Crore and Twenty Five Lakh only) at the close of the preceding financial year[§].*

In case of a Consortium, the combined technical capability and net worth of those Members, who have and shall continue to have an equity share of at least 26% (twenty six per cent) each in the SPV, should satisfy the above conditions of eligibility; provided that each such Member shall, for a period of 06 (six) months from the date of commercial operation of the Project, hold equity share capital not less than: (i) 26% (twenty six per cent) of the subscribed and paid up equity of the SPV; and (ii) 5% (five per cent) of the Total Project Cost specified in the Concession Agreement[£].



Provided further that each member of the Consortium shall have a minimum available Net Worth of 10% of Estimated Project Cost in the immediately preceding financial year^{\$€}.

2.2.2. (BB) Bidders who inter-alia meet the minimum qualification criteria will be qualified only if their available Net Worth is more than or equal to the required Net Worth value (value as per Clause 2.2.2(B)). The available Net Worth will be assessed as per following, based on information mentioned at Annexure-VIII of Appendix-IA:

*Assessed Available Net Worth = (A-B*20%), Where A = Net Worth of the Bidder.*

B = Balance value of existing commitments of PPP works for which the bidder has emerged as the winner of the bids or on-going works to be completed during the period of completion of the works for which BID is invited. For the avoidance of doubt, it is clarified that works for which bidder has emerged as the winner of the bids but LOA has not been issued as on the day before opening the financial bids shall also be considered while calculating value of B.

The status of Assessed Available Net Worth of the bidder to be updated as on the date before opening the financial bids.”

42. Further, Clause 2.1.18 of the RFP specifically provides that for the purpose of determining Net Worth under Clause 2.2.2, the Net Worth of an Associate of the Bidder would also be eligible for consideration.

43. As is evident from the above, Clause 2.2.2(BB) of the RFP prescribes the following formula for determination of the “Assessed Available Net Worth” of a bidder:

*Assessed Available Net Worth = (A-B*20%),*

Where:

A = Net Worth of the Bidder.

B = Balance value of existing commitments of PPP works for which the bidder has emerged as the winner of the bids or on-going works to



be completed during the period of completion of the works for which BID is invited.

44. The challenge laid by the Petitioner essentially proceeds on two principal grounds concerning the computation adopted by Respondent No.1 while assessing the aforesaid components.

i. Respondent No.1 excluded the immovable properties of the Petitioner's Associate, namely Ms. Krishna Pandey, worth approximately ₹87 crore, while computing Component "A", thereby substantially reducing the net worth attributable to the Petitioner.

ii. Respondent No.1, while computing Component "B", relied upon the MoRTH Circular dated 06.11.2025 and included financing costs, pre-operative expenses, and interest during construction within the "Estimated Project Cost", thereby inflating the Petitioner's existing commitments.

Component "A" of the Assessed Available Net Worth

45. At the outset, this Court is conscious of the settled position that the tendering authority is well within its jurisdiction to prescribe eligibility conditions, including financial thresholds and cut-off dates for determination of net worth of bidders, and ordinarily, such conditions are not liable to be interfered with in exercise of judicial review unless found to be arbitrary, discriminatory, or actuated by *mala fides*. The requirement of assessing the financial position of a bidder as on a particular date serves a legitimate commercial purpose, namely, to ensure that only financially stable and established entities



possessing the requisite economic capacity are permitted to participate in public projects of substantial value.

46. However, the rationale underlying such a requirement would stand on a somewhat different footing in the case of an Associate whose net worth is permitted to be considered along with that of the bidder under Clause 2.1.18 of the RFP. The purpose of permitting inclusion of the Associate's net worth is evidently to assess the overall financial capacity available to the bidder for execution of the project. Viewed from that perspective, the financial capability of the Associate at the stage of bid evaluation and award of the contract may arguably assume greater significance than its precise financial position as on the close of the preceding financial year.

47. Nevertheless, since the Petitioner has participated in the tender process without assailing the validity of the tender conditions, the controversy in the present case does not pertain to the validity of the eligibility criteria prescribed under the RFP itself, but to the legality, reasonableness, and manner in which Respondent No.1 interpreted and applied the said conditions while evaluating the Petitioner's bid.

48. Clause 2.2.4(ii) of the RFP required bidders to furnish certificates from their Statutory Auditors specifying the net worth of the bidder as at the close of the preceding financial year. In compliance thereof, the Petitioner submitted a Net Worth Certificate dated 27.12.2025 certifying the net worth of its Associate, Ms. Krishna Pandey, at ₹192.36 crores. The said certificate was based upon the Net Worth Certificate dated 21.08.2025 and valuation reports dated 18.08.2025 relating to various immovable properties valued at



approximately ₹87 crores. Since the valuation reports did not expressly recite that the valuation had been undertaken as on 31.03.2025, Respondent No.1 proceeded to seek further clarification from the Petitioner despite the fact that the RFP itself did not prescribe any specific format, language, or separate valuation documentation requirement in which such valuation was required to be expressed.

49. Pursuant thereto, the Petitioner, *vide* reply dated 19.03.2026, clarified that the said net worth was equally applicable as on 31.03.2025. Thereafter, by way of a representation dated 24.03.2026, the Petitioner also furnished a fresh Chartered Accountant's Certificate certifying the net worth of Ms. Krishna Pandey as on 31.03.2025.

50. Respondent No.1 decided the representation of the Petitioner *vide* letter dated 27.03.2026. Respondent No.1 considering the submissions of the Petitioner regarding net worth of the Associate of the Petitioner(Ms. Krishna Pandey), decided as under:

“Considering the Net Worth of the Associate: The bidder in its 4th, 5th and 6th para of its representation vide letter no. 341 dated 24.03.2026 has submitted regarding net worth of the Associate of the bidder. As per clause 2.2.2(B) of the RFP Document, it is evident that the bidder is required to submit its Net Worth at the close of the preceding financial year (31.03.2025). Accordingly, the Net Worth of Associate is to be taken at the close of the preceding financial year which in the instant case is 31st March 2025. However, the bidder has submitted the certificate dated 27.12.2025 from its Statutory Auditor certifying that the Net Worth has been computed on the basis of Audited financial statements of the Company as on 31 .03.2025; Relevant books of accounts and supporting schedules up to 27.12.2025; and Net worth position of Ms. Krishna Pandey as per records and declarations made available to Statutory Auditor. Further, the bidder has submitted the certificate dated 21.08.2025



from its Statutory Auditor certifying the Net Worth of its Associate i.e., Ms. Krishna Pandey on the basis of information and explanations furnished to Statutory Auditor, wherein the details of assets and liabilities considered for the Net worth of Ms. Krishna Pandey are as under: -

a. Immoveable Properties (As per Valuation Report issued by Approved Valuer)- Submitted Valuer's certificates were issued on 18.08.2025, but nowhere in the Valuer's Certificates it is mentioned that the valuation of the immovable properties has been done as on 31.03.2025, therefore, the date of valuation has been considered as on the date of issuance of the said certificates i.e., 18.08.2025. Since, the valuation of immovable properties are not certified as on 31.03.2025, hence, the immovable properties have not been considered as part of the Net worth of the Associates as on 31.03.2025 as per clause 2.2.2(B) of RFP.

b. Investment in Equity Shares (basis Valuation of shares as on 31.03.2024)- Since, the same amount is deducted by the bidder as crossholding investments, hence, the same has been agreed to.

c. Investment in current Assets (Jewellery at cost declared, Furniture & Fixtures at cost as declared, Investment in Public Provident Fund, Cash ft. Bank Balance as on 31.03.2025, Loan ft Advances given up to 31.03.2025)- Cash & Bank Balance as on 31.03.2025, i.e., Rs 14.78 Cr. and Loan & Advances given up to 31.03.2025 i.e., Rs 1.85 Cr. were considered for evaluation as the same are given as on 31.03.2025. Assets for which valuation as on 31.03.2025 were not certified, have not been considered for evaluation.

Earlier, the bidder was given an opportunity to clarify why the Net Worth of the Associate has been provided as on 27.12.2025 instead of 31.03.2025. However, the reply furnished by the bidder vide its letter dated 19.03.2026 was not found satisfactory as bidder in its letter dated 19.03.2025 has submitted that the same Net Worth of the Associate, namely, Ms. Krishna Pandey as per bid documents is applicable as on 31.03.2025 without any supplementary evidence. In light of the above, the assessed Net Worth of Ms. Krishna Pandey comes as Rs 16.63 Cr., considering the following items which have been valued as on 31.03.2025 in the Statutory Auditors' Certificate:

- 1. Cash & Bank Balance as on 31.03.2025, i.e., Rs 14.78 Cr.;*
- 2. Loan & Advances given up to 31.03.2025 i.e., Rs 1.85 Cr.*

Accordingly, the Assessed Available Net Worth of the bidder comes out to be less than the minimum requirement of Cl. 2.2.2. (BB) of the RFP Document, i.e., Rs 152.25 Cr. and the bidder was treated as "Technically Non-Responsive" as per Cl. 2.2.2.(BB) of the RFP Document'.



It is pertinent to inform that the bidder in its supplementary representation vide letter no. 343 dated 24.03.2026 has submitted another Statutory Auditors' certificate dated 24.03.2026. Notwithstanding, this is an additional document, the merit of this document has been evaluated. In this certificate the same value of Net Worth of the Associate has been shown as was submitted in the bid but now as on 31 st March 2025 excluding the words, "As per Valuation Report issued by Approved Valuer" after the words "Details of immovable Properties at Market Value". No supporting documents confirming the value of Immovable properties and other claimed assets (except Cash & Bank Balance as on 31.03.2025, Loan & Advances given up to 31.03.2025) as on 31st March 2025 has been submitted by the bidder in the representation vide letter no. 343 dated 24.03 .2026. Hence, the same may not be considered as part of the Net Worth of the Associate as on 31.03.2025."

51. At this stage, it is apposite to note the Clause 1 of the Instructions contained in Annexure-3 relating to "Financial Capacity of the Bidder", which read as under:

"Instructions:

1. The Bidder/ its constituent Consortium Members shall attach copies of the balancesheets, financial statements and Annual Reports for 5 (five) years preceding the Bid Due Date. The financial statements shall:

- (a) reflect the financial situation of the Bidder or Consortium Members and its/ their Associates where the Bidder is relying on its Associate's financials;*
- (b) be audited by a statutory auditor;*
- (c) be complete, including all notes to the financial statements; and*
- (d) correspond to accounting periods already completed and audited (no statements for partial periods shall be requested or accepted)."*

52. A plain reading of the aforesaid clause demonstrates that the RFP nowhere mandated submission of any separate valuation certificate or independent Statutory Auditor's certificate of the Associate in any particular format as a pre-condition for consideration of the Associate's net worth. In the present case, the Petitioner had furnished a consolidated Statutory Auditor's certificate concerning both the Petitioner company and its Associate, wherein the relevant financial information was compiled in tabular form and the net worth



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of Ms. Krishna Pandey as on 31.03.2025 was specifically reflected as ₹192.36 crores. *Prima facie*, therefore, the requirement under the tender conditions stood satisfied. Significantly, even while seeking clarification *vide* communication dated 17.03.2026, Respondent No.1 neither questioned the methodology adopted by the Statutory Auditor nor undertook any independent assessment disputing the correctness of the valuation reflected in the certificate.

53. It is also pertinent to note that while furnishing the net worth details of the Associate, the Petitioner had specifically disclosed details of approximately 20 immovable properties situated in New Delhi under the signatures of the Statutory Auditor itself. Note-1 appended to the certificate expressly clarified that the market value of the immovable properties had been taken on the basis of valuation certificates issued by an approved valuer. In addition thereto, valuation reports issued by Chartered Engineers and Designers in respect of each of the said immovable properties were also furnished along with the bid documents. The said valuation reports were admittedly issued on 18.08.2025, i.e., prior to submission of the bid itself. In such circumstances, exclusion of the entirety of the immovable assets from consideration while computing the Associate's net worth merely because the valuation reports did not expressly mention the date "31.03.2025" was wholly inappropriate and arbitrary, particularly when the ownership and existence of the properties prior to the relevant date was never disputed by Respondent No.1.



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54. As is evident from the above, Respondent No.1 did not reject the subsequent Statutory Auditor's Certificate on the ground that the assets were non-existent, ineligible, or incorrectly disclosed. The dispute throughout remained confined only to the absence of express reference to the valuation date in the supporting valuation material, despite the substantive financial particulars of the Associate having already been disclosed in the original bid documents.

55. Subsequently, *vide* email dated 28.03.2026, the Petitioner furnished a further clarification issued by the Approved Valuer stating that the valuation of the immovable properties had in fact been undertaken with reference to prevailing market rates as on 31.03.2025 and that the issuance date of the reports, i.e., 18.08.2025, had no bearing on the assessment date. Respondent No.1 has contended that the said clarification could not be considered since it was furnished after the Bid Due Date and after completion of the technical evaluation process. However, the aforesaid clarification neither introduced any new asset nor altered the financial position already disclosed in the original bid documents. The clarification merely explained the reference date and basis of valuation of the very same immovable properties which already formed part of the bid documents and whose existence and ownership were never disputed by Respondent No.1.

56. In the opinion of this Court, the approach adopted by Respondent No.1 while excluding the immovable properties of the Petitioner's Associate from consideration for computation of Component "A" was manifestly arbitrary and founded upon an unduly



hyper-technical interpretation of the tender conditions. Significantly, Respondent No.1 has nowhere disputed the existence, ownership, or antecedent acquisition of the immovable properties in question. *Vide* letter dated 17.03.2026, the Petitioner was never called upon to furnish ownership documents pertaining to Mrs. Krishna Pandey, the Petitioner's Associate. In these circumstances, it is reasonable to infer that the Respondent did not, at any stage, dispute the Associate's ownership of the 20 immovable properties as on 31.03.2025. The sole basis for exclusion of assets worth approximately ₹87 crores was that the valuation reports dated 18.08.2025 did not expressly state in so many words that the valuation was being reflected as on 31.03.2025. Thus, the rejection was not founded on absence of assets, absence of ownership, or falsity of disclosure, but merely on the form in which the supporting valuation material was expressed.

57. In view of the foregoing it is essential to examine Clause 2.2.4(ii) of the RFP which mandates bidders to submit Certificates from its Statutory Auditor specifying the net worth of the Bidder, as at the close of the preceding financial year. The said clause is reproduced herein below:

“2.2.4 The Bidders shall enclose with its bid, to be submitted as per the format at Appendix-IA, complete with its Annexes, the following:

(i) Certificate(s) from its statutory auditors or the concerned client(s) stating the payments made/ received or works commissioned, as the case may be, during the past 5 years in respect of the projects specified in paragraph 2.2.2 (A) above. In case a particular job/ contract has been jointly executed by the Bidder (as part of a Consortium), it should further support its claim for the share in work done for that particular job/ contract by producing a certificate from its statutory auditor or the client; and

(ii) Certificate(s) from its statutory auditors specifying the net worth of the Bidder, as at the close of the preceding financial year, and also



specifying that the methodology adopted for calculating such net worth conforms to the provisions of this Clause 2.2.4 (ii). For the purposes of this RFP, net worth (the “Net Worth”) shall mean the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write back of depreciation and amalgamation.”

(Emphasis Supplied)

58. A conjoint reading of Clause 2.2.4(ii) and the Instructions contained in Annexure-3 makes it abundantly clear that the RFP principally required submission of audited financial statements and a certificate from the Statutory Auditor specifying the net worth of the bidder as at the close of the preceding financial year. The RFP did not prescribe any separate mandatory format of valuation certification nor require independent valuation reports in any particular form as a condition precedent for consideration of the Associate’s net worth.

59. In fact, the valuation reports relied upon by the Petitioner were additional supporting material voluntarily furnished along with the bid documents. Respondent No.1, however, proceeded to treat the absence of an express recital regarding the valuation date in the valuation reports as fatal to the bid itself, despite such a requirement being absent from the tender conditions. It is well settled that a tendering authority cannot introduce, during evaluation, eligibility conditions or documentary requirements not contemplated under the terms of the RFP itself.

60. Furthermore, the approach adopted by Respondent No.1 becomes wholly inappropriate when examined in the factual context of the present case. The immovable properties excluded from



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consideration were valued at approximately ₹87.48 crores, whereas the shortfall ultimately attributed to the Petitioner, even on the Respondent's own revised calculations, was only approximately ₹3.44 crores. Thus, exclusion of even a small fraction of the value of the said immovable properties would have been sufficient to render the Petitioner technically qualified. Once the existence and ownership of the assets prior to 31.03.2025 was undisputed, rejection of the entire value of the immovable properties merely because the valuation reports did not expressly mention the valuation date was clearly arbitrary, irrational, and disproportionate to the object sought to be achieved under the tender conditions.

61. It is also pertinent to note that Respondent No.1 itself proceeded to examine the subsequent Chartered Accountant's Certificate dated 24.03.2026 on merits while deciding the Petitioner's representation. Once Respondent No.1 chose to evaluate the said document substantively, it cannot simultaneously contend that no post-bid clarificatory material whatsoever could be looked into under the tender conditions. The stand adopted by Respondent No.1 is therefore internally inconsistent. The subsequent documents furnished by the Petitioner did not introduce any new asset, alter the financial position of the bidder, or improve the bid in any substantive manner, but merely clarified the valuation date of already disclosed assets forming part of the original bid documents.

62. It is well settled that the chief objective of a tender process is maximization of public value through a fair, transparent and competitive bidding process. Since public procurement involves



expenditure of public funds, tender conditions are required to be interpreted and applied in a manner that promotes genuine competition and secures the most beneficial outcome for the public exchequer. Reference in this regard is drawn to the judgment in *Shanti Construction (P) Ltd. v. State of Odisha and Others*², where the Hon'ble Apex Court held as under:

“10. A public tender is not a private bargain. It is instrument of governance, a mechanism through which the State discharges its solemn duty as trustee of public wealth. Its purpose is not merely procedural compliance, but maximisation of public value through a process i.e. fair, transparent and competitive. The obligation of the Tendering Authority is therefore twofold, namely, to interpret its own terms with consistency and to ensure that such interpretation advances, not defeats, the object of tender. The court must intervene in a case of demonstrable misconstruction of a tender condition or irrationality which affects the public interest. When an interpretation of a tender condition narrows competition and excludes the highest bidder on a ground unsupported by law, the decision making process is vitiated. The interpretation of the terms of tender must, therefore, serve the object and purpose of the tender mainly to maximise the revenue to the State, when it deals with a natural resource.”

(Emphasis Supplied)

63. Bearing the aforesaid principles in mind, this Court is of the considered view that the decision-making process adopted by Respondent No.1 in relation to Component “A” stood vitiated by an excessively technical interpretation of the tender conditions which had the effect of excluding an otherwise financially eligible bidder from the zone of consideration. Public procurement norms are intended to secure genuine competition and protect public interest, and not to eliminate bidders on procedural technicalities having no bearing on substantive eligibility. Particularly in a case where only two bidders

²2025 SCC OnLine SC 2368



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participated in the tender process and where, during the course of hearing, the Petitioner has contended that its financial bid is lower than that of Respondent No.2, the approach adopted by Respondent No.1 had the direct consequence of restricting competition and adversely affecting public interest.

64. In the facts of the present case, this Court is therefore unable to sustain the exclusion of the immovable properties of the Petitioner's Associate while computing Component "A" of the Assessed Available Net Worth. Once the statutory auditor's certificate stood furnished in terms of Clause 2.2.4(ii), the assets themselves were undisputed, Respondent No.1 could not have rejected the Petitioner's bid merely because the accompanying valuation reports did not expressly specify the valuation date in a particular format. Such an approach amounts to elevating form over substance and results in defeating the very object of competitive public procurement.

65. Permitting Respondent No.1 to reject the Petitioner's bid in the aforesaid circumstances would effectively amount to permitting disqualification of an otherwise eligible bidder on the basis of a deficiency which neither affected the substance of the bid nor caused any prejudice to competing bidders. The law relating to public procurement consistently distinguishes between essential conditions affecting eligibility and ancillary procedural requirements relating to the mode of proof. In the present case, the substantive requirement of financial capacity stood fulfilled, while the alleged defect pertained only to the manner in which the supporting valuation material was expressed.



Component “B” of the Assessed Available Net Worth.

66. As regards the assessment of Component “B”, the controversy in the present case is confined to the question whether Respondent No.1 was justified in relying upon the MoRTH Circular dated 06.11.2025 while computing the “Estimated Project Cost” for the purposes of Clause 2.2.2(BB) of the RFP, and consequently including components such as pre-operative expenses, financing and legal costs, and interest during construction within the computation of Component “B”.

67. The MoRTH Circular dated 06.11.2025 clarifies that the “Estimated Project Cost” for HAM projects would include not merely the EPC/civil construction cost, but also pre-operative expenses, financing and legal costs, and interest during construction. Respondent No.1 has relied upon the said circular while assessing the balance value of the Petitioner’s ongoing commitments for the purposes of computation of Component “B”.

68. It is pertinent to note that Clause 2.1.24 of the RFP specifically provides that all orders issued by the Ministry of Finance, DPIIT, or any other Government agencies, as applicable and prevalent on the date of issuance of the LOA, shall apply to the tender process. The said clause reads as under:

“2.1.24 All Orders of Ministry of Finance/DPIIT/any other Government agencies, as applicable and prevalent on the date of LOA, shall be applicable.”

69. The Ministry of Road Transport & Highways (MoRTH), being the nodal ministry governing the subject project and the issuing



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authority of the circular dated 06.11.2025, would clearly fall within the ambit of “other Government agencies” contemplated under Clause 2.1.24 of the RFP. Consequently, the contention of the Petitioner that the said circular could not have been relied upon merely because it was not separately incorporated through a corrigendum to the RFP cannot be accepted. At the same time, even accepting the methodology adopted by Respondent No.1 for computation of Component “B” on the basis of the aforesaid circular, the Petitioner would still satisfy the prescribed threshold of Assessed Available Net Worth once Component “A” is computed by taking into consideration the immovable properties of the Associate which already formed part of the original bid documents. The controversy in the present case, therefore, essentially does not arise on account of the methodology adopted for computation of Component “B”, but on account of the exclusion of the immovable properties while assessing Component “A” on an unduly hyper-technical basis.

70. In the aforesaid circumstances, this Court finds no arbitrariness or illegality in the methodology adopted by Respondent No.1 while computing Component “B” of the Assessed Available Net Worth, and consequently no fault can be found with the reliance placed upon the MoRTH Circular dated 06.11.2025 for the said purpose.

71. It has also been contended by the Petitioner that Respondent No.1 repeatedly altered the assessment of the Petitioner’s Assessed Available Net Worth and the computation of Component “B” even after rejection of the technical bid. It was submitted that while the communication dated 27.03.2026 reflected the Petitioner’s Assessed



Available Net Worth as ₹121.72 crores, the same was subsequently revised to ₹148.81 crores. Similarly, the computation of Component “B” was revised from ₹1082.95 crores to ₹947.49 crores. Although the aforesaid circumstances do raise certain concerns regarding the manner in which the evaluation exercise was undertaken by the tendering authority, Respondent No.1 has explained the same as inadvertent computational errors on the part of the concerned officials. Be that as it may, the repeated revisions undertaken by Respondent No.1 itself demonstrate that the evaluation process was neither treated as immutable nor incapable of correction. In such circumstances, Respondent No.1 could not have simultaneously adopted a rigid and hyper-technical approach while considering the clarificatory material furnished by the Petitioner in relation to Component “A”, particularly when the same neither introduced any new asset nor altered the substantive financial position already disclosed in the original bid documents.

CONCLUSION

72. In view of the foregoing discussion, this Court finds no infirmity in the methodology adopted by Respondent No.1 while computing Component “B” of the Assessed Available Net Worth. However, insofar as Component “A” is concerned, this Court is of the considered opinion that Respondent No.1 acted arbitrarily and adopted an unduly hyper-technical approach in excluding the immovable properties of the Petitioner’s Associate from consideration.

73. The rejection of the Petitioner’s bid was not founded upon any dispute regarding the existence, ownership, or antecedent acquisition



of the assets in question, nor upon any finding that the Petitioner lacked substantive financial capacity. The disqualification arose solely because the valuation reports accompanying the Statutory Auditor's Certificate did not expressly state that the valuation was as on 31.03.2025, despite no such specific requirement being prescribed under the RFP. The tender conditions merely required submission of a Statutory Auditor's Certificate specifying the net worth as at the close of the preceding financial year, which requirement stood duly complied with by the Petitioner. Respondent No.1, in effect, introduced an additional documentary condition during the course of evaluation which was never stipulated in the RFP.

74. This Court is also unable to overlook that the shortfall attributed to the Petitioner by Respondent No.1 was itself marginal, being approximately ₹3.44 crores even on the revised calculations of Respondent No.1, whereas the value of immovable properties excluded from consideration was approximately ₹87.48 crores. In such circumstances, wholesale exclusion of the said assets on a purely technical basis was wholly inappropriate and contrary to the principles governing fair and competitive public procurement.

75. Significantly, Respondent No.1 has never contended that consideration of the immovable properties of the Associate would prejudice any competing bidder or alter the level playing field. On the contrary, the properties in question formed part of the original bid documents themselves. The present case, therefore, is not one involving supplementation or improvement of a bid after submission, but merely one concerning clarification of already disclosed material.



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76. Accordingly, the impugned decision declaring the Petitioner as “Technically Non-Responsive” insofar as it excludes the immovable properties of the Petitioner’s Associate while computing Component “A” is set aside. Respondent No.1 is directed to recompute the Petitioner’s Assessed Available Net Worth by taking into consideration the said immovable properties forming part of the original bid documents and thereafter proceed consequentially in accordance with law.

77. The present petition is disposed of in the aforesaid terms. Pending applications also stand disposed of.

AMIT MAHAJAN, J.

ANIL KSHETARPAL, J.

MAY 29, 2026
s.godara/vv/shah