

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

Judgment reserved on: 8th July, 2011
% **Judgment pronounced on: 30th September, 2011**

+ **WP(C) No.13478/2009**

M/S SELEX SISTEMI INTEGRATI, SPA PETITIONER

Through: Mr. Rajive Sawhney, Sr. Advocate with
Mr. Vineet Jhanji, Mr. Gaurav Duggal,
Advs.

versus

UNION OF INDIA & ORS. RESPONDENTS

Through: Mr. A.S. Chandhiok, ASG with Ms.Manisha
Dhir, Mr. Ritesh Kumar, Mr.Preeti Dalal,
Mr. Nitin Jain, Mr. Simranjeet Singh,
Mr.Piyush Sanghi, Mr.Nipun Bhavi,
Mr.Sumit Goyal, Advs. for R-1 & R-2
Dr. A.M. Singhvi, Sr. Adv. with Mr.R.N.
Karanjawala, Mr. Gopal Jain, Mr. Sanjeev
Sen, Ms.Nandini Gore, Ms.Abhiruchi
Mengi, Mr. Akhil Sachar, Mr.Abhishek
Roy, Mr.Amit Bhandari, Ms.Mehak Bhalla,
Mr.Jai, Advocates for Respondent No.3

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE MANMOHAN

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| 1. Whether reporters of the local papers be allowed to see the judgment? | Yes |
| 2. To be referred to the Reporter or not? | Yes |
| 3. Whether the judgment should be reported in the Digest? | Yes |

DIPAK MISRA, CJ

A Division Bench of this Court referred the following issue to be dwelled upon by the Full Bench:

“The question which thus arises for consideration is whether in the matter of scrutiny and award of tender, the fairness of procedure under Article 14 of the of the Constitution of India can be examined de hors the rights under Article 19(1)(g) of the Constitution of India to carry on the business and trade at the behest of a foreign company invoking the jurisdiction under Article 226 of the Constitution of India, especially keeping in view of the fact that the issue of fairness in treatment and absence of arbitrariness when involved on the basis of Article 14 in tender matters is relatable to the doctrine that the State has to be fair in distribution of State largesse to its citizens.”

2. When the matter was placed before us on certain dates, there was debate as regards the said issue. Thereafter on 4th February, 2011, learned counsel for the parties fairly stated that they have no objection if the Full Bench addresses the controversy in entirety. Regard being had to the said concession, Mr. A.S. Chandhiok, learned Additional Solicitor General was requested to produce the relevant file. Thereafter, the matter was heard on merits of the lis but not with regard to the reference that was initially made.

3. In view of the aforesaid, we proceed to dwell upon the lis on merits. The petitioner company is a company incorporated under the laws of Italy having its

registered office at VIA TIBURTINA, 1231, Rome, Italy. The petitioner company was previously known as Seleina, Aleina and Alenia Marconi Systems and was one of the subsidiaries of Finmeccanica Company. As pleaded, it has 50 years' of experience in the business of designing, developing, manufacturing, installing and integrating Navigation Aids and Air Traffic Management System, etc. The system offered by the petitioner company can be broadly divided into Air Traffic Management and Global Airport Systems, large systems for homeland protection, systems and sensors for air and ground defence and integrated logistic support and customer support.

4. The Ministry of Defence in Government of India, the first respondent herein, floated a Request For Proposal (RFP) dated 4th January, 2008 inviting bids inter-country and intra-country for modernization of 30 air fields of the Indian Air Force, the second respondent herein. Pursuant to the RFP, the petitioner submitted its bid and was declared as technically qualified along with others.

5. In response to the offer, the petitioner received the request for expression of interest for the Modernization of Air Field Infrastructure (MAFI) of IAF air fields from the Respondent No.2. In response to the aforesaid invitation, the petitioner submitted its expression of interest vide letter dated 15th October, 2007. After the expression of interest submitted by various parties, though 8 bidders were

shortlisted and were issued the RFP, yet only 6 submitted their proposal including the petitioner. The RFPs were issued to the shortlisted bidders pursuant to the provisions of the DPP-2006 (Defence Procurement Procedure). In the RFP, it was specifically mentioned that the project would be executed on a turnkey basis as per para 45 of the DPP-2006, which includes Supply, Installation, Testing Integration and Commissioning (SITIC) of all equipments/sub-systems, etc. to ensure that the complete working system is made available at each airbase by the contractor at the end of the specified period. The RFP consisted of four parts. Each bidder interested in participating in the bid was required to comply with the act in terms of the provisions of each of the four parts. Under paragraph 2 of the RFP, it has been stipulated that the Government of India invites responses to the said request from Original Equipment Manufacturer (OEM) or Authorised Vendors or Government sponsored Export Agencies or System Integrators or duly registered Joint Venture Company or Consortium of firms and companies subject to the condition that where the same equipment is offered by more than one of the above mentioned parties, preference would be given to OEM. Under Part-I of the RFP titled “General Requirements”, certain guidelines were postulated pertaining to the quality of supplies, the time frame for completion of the work, creation of training facilities, warranty of goods, conditions in the contract, maintenance of the goods, technical knowhow, trials, who can apply, comparison of offers, payment

conditions, etc. As is vivid from para 37 of the RFP, a declaration has been made by the Government of India that all actions regarding procurement of equipment would be transparent and carried out as per established procedure. The supplier is required to accept the stipulated standard clauses regarding agents/agency commission, penalty for use of undue influence and integrity pact.

6. As set forth, in terms of the RFP, the petitioner signed the “Pre-Contract Integrity Pact” submitting its technical and commercial bid. The objective of the said Pact was to avoid all forms of corruption. After accepting the invitation, the petitioner participated in the bidding process expecting that the procedure to be adopted by the Respondents No.1 and 2 would be fair, transparent and totally free from any prejudice. Be it noted, Respondent No.3 had also been declared to be technically qualified in the bid. It is not disputed that the Respondent No.3 executed the Pact in terms of the RFP and agreed to maintain total transparency in the consideration and evaluation of the bid.

7. As the factual narration would further exposit, the technical and commercial bids were submitted by six parties. The technical bids were opened in the presence of the representatives of all concerned on 3rd June, 2008 at the Indian Air Force Headquarters, New Delhi. No bid document was rejected and all bids were accepted for technical evaluation. The sealed commercial bids were separately

filed by each party and kept in a sealed box. The commercial bids of only those parties who are qualified in the technical bid were to be opened. It has been asseverated that the bidders whose technical bids were found to be in compliance with the rules, bid terms were acceptable after tests and trials. Paragraph 34 of the DPP-2006 provides for the constitution of the Technical Evaluation Committee (TEC) for evaluation of the technical bids received in response to the RFP. While preparing the compliance statement, the TEC is required to ensure that the same equipment is not offered by two or more vendors. In such an eventuality, only the equipments offered by the OEM can be accepted. In para 35 of the DPP-2006, it is stipulated that once a technical offer is submitted, the same shall not be materially changed at a subsequent date. However, minor variations which do not change the basic character/profile of the offer would be acceptable. Para 37 of DPP-2006 mandates that field evaluations/trials would be conducted on the basis of standard operating procedure. Para 38 of DPP-2006 provides that where field evaluations are not feasible, there may be a possibility of conducting evaluation through computer simulation. Para 41 of DPP-2006 provides that after the acceptance of TEC report, all selected vendors shall be asked to provide their equipment for trials simultaneously in India and if the equipment is not evaluated in the initial trials, then the said equipment would not be considered at a later stage. There is a stipulation in para 45 of the DPP-2006 that in the case of turnkey projects, trials

are not initially envisaged till establishment of the test bed and, hence, it is essential to select the vendors with requisite capabilities prior to issuing a RFP. Various other assertions have been made referring to the RFP which need not be stated in detail as they relate to the earlier contracts executed by the petitioner and the relevance of technical trials and such ancillary facets.

8. As per the petitioner, the Respondent Nos. 1 and 2 addressed and enquired from it and other vendors certain information to be filled up in a questionnaire vide communication dated 19th June, 2008. There was exchange of number of communications for satisfaction of Respondent Nos. 1 and 2.

9. As is evincible from the material brought on record, on 12th August, 2009, the concerned Committee opened the commercial bids of the six participating parties including the petitioner and the Respondent No.3 in presence of their representatives. On the opening of the commercial bids, it was observed by some of the members of the Committee that the commercial bid submitted by Respondent No.3 was not complete and costs with respect to various items/services had not been stated and left blank. It has been specifically averred that no figure had been mentioned in relation to the Maintenance of Transfer of Technology (MTOT). Despite the aforesaid fact situation, the Chairman of the Committee declined to discuss the matter stating that there was no time to undertake detailed

evaluation of the commercial bids and that the committee would undertake the said exercise later on. The meeting did not continue and it failed to disclose the unit price and rates that would be applicable in relation to deviations found on actual measurements of the sites from the site model quoted by each of the bidder.

10. Keeping in view the procedure followed by the Committee, the petitioner lodged his protest on 16th September, 2009 with the Respondent No.1 with copies to other concerned departments. It was urged in the said letter of protest that though as per the announcement of the bid quotations of the parties made at the meeting on 12th August, 2009, it had been indicated that Respondent No.3 was the lowest price bidder despite the fact that the commercial bid was incomplete as the prices had not been indicated for various items such as MTOT which was one of the major requirements of RFP. It was clearly indicated to the first Respondent to ensure that the third Respondent should not be afforded any opportunity to modify its proposal as in that event the principles of transparency in bidding process, approach of fairness and a level playing field would be defeated. As pleaded, the petitioner received no response to his letter. Thereafter, the commercial bids were opened but the petitioner was not invited for any meetings or discussions nor had he been informed of any decision taken with respect of declaration of any bidder as L-1.

11. As has been set forth, eventually the commercial bid of the third Respondent was accepted treated him as L-1 which compelled the petitioner to prefer the writ petition assailing the action of the authorities.

12. A counter affidavit has been filed by the Respondent Nos.1 and 2 contending, inter alia, that the technical bids of the third Respondent and all other five bidders including the petitioner were duly assessed by the TEC as per the established norms of the DPP-2006. It is also urged that the evaluation of the technical bid was accepted by all concerned and, therefore, the challenge in the writ petition fundamentally rests on acceptance of commercial bid. In that regard, it is put forth that the Respondent No.3 had categorically stated that Depot Level Maintenance will be carried out by the seller and, therefore, the stand that the commercial bid was incomplete inasmuch as costs with respect to various items/services had not been stated and left blank really has no bearing on the bid. As regards, the failure of the Contract Negotiation Committee (CNC) to disclose the unit price and rates that would be applicable in relation to deviations found on actual measurement of the sites from the representative airfield, it has been averred that the prices quoted by each of the participating vendors were announced by the committee as it had a bearing on deciding the L-1. Other items including the unit price and rates that would be applicable in relation to deviations found on actual

measurement of the sites from the representative airfield was not quoted as it was not a factor for determining the L-1. In this backdrop, it is set forth that the contention of the petitioner that not quoting the unit price and rates amounted to substantial breach of the terms of clarification issued by the Respondent Nos. 1 and 2 pursuant to the pre-bid meeting is totally incorrect and does not deserve acceptance. Meeting the allegation that the commercial bid of the third Respondent was incomplete with blanks and, hence, unresponsive, it has been asseverated that the commercial bid was opened on 12th August, 2009 in the presence of the representatives of all the vendors and the complete package costs of the various proposals including that of the third Respondent was read out. It was stated in categorical terms that the proposals would be studied in detail thereafter. So far as the maintenance of transfer of technology is concerned, it had been stated by the third Respondent in its proposal that Depot Level Maintenance shall be carried out by the seller. This stipulation, therefore, fulfils the requirement of RFP. Controverting the allegation of the petitioner that the Respondent No.3 had been given an opportunity to substitute equipment and systems offered by the petitioner, it was asserted that RFP and DPP-2006 did not confer any preferential right to OEM over others. In paragraph 2 of RFP, it has been clearly stated that only if the same equipment was being offered by more than one vendor, preference would be given to OEM and, therefore, the said allegation is totally baseless.

Defending the act of choosing the third Respondent as L-1, it has been asserted that he was conferred the status of L-1 on the basis of comparative statement of quotes by all vendors as it had been found that the third Respondent had quoted the lowest price in the bid.

13. A return has been filed by the third Respondent controverting all the allegations made in the writ petition by the petitioner. Certain aspects have been highlighted to portray how the TEC evaluated the bids in accordance with the objective/criteria laid down in RFP which is common to all bidders, but we do not think it apposite to dwell upon the same as we have clearly indicated earlier that the same was accepted by the petitioner. As regards the acceptance of the commercial bid, it is contended when the commercial bids were opened the third Respondent was found to be the lowest bidder as there was a difference of 47 crores between the petitioner and it. Meeting the allegation that certain columns were not filled up and left blank, it has been stated that it relates to MTOT and the third Respondent had clearly clarified that “depot level maintenance would be carried out by the seller”. As far as the L-1 determination process is concerned, the unit rates have no relevance as they are not part of the procedure for determination of L-1. It is to be determined on the basis of the cost quoted for the requirement given. The L-1 vendor is required to go for the site survey of all 30 air fields and

actual cost of each location would be determined before finalization of the contract and, therefore, there was no need to read out the unit rates at the time of bid opening as they have no impact on L-1 calculation. Other items including the unit price and rates that would be applicable in relation to deviation found on actual measurements of the site from the representative air field was also not announced during the opening of the commercial bid. The price quoted by the third Respondent was Rs.1094.79 crores, which was the lowest amongst all bidders and was complete in all aspects and resultantly as per the RFP and DPP-2006, he was declared as L-1. As per para 45 of DPP-2006, an equipment is required to be proved on a test bed for a turnkey project post contractual conclusion. In MAFI, Program Model Airbase has been designated as the test bed; according to the clarification III dated 14th March, 2008 stating that all equipment would be tested at the Model Airbase, there was no requirement for trial or testing of equipment under TEC evaluation before opening of the commercial bid. The same needs to be done only after signing of the contract. The answering Respondent has put forth that the procedure followed by Respondent Nos.1 and 2 in evaluation of the bids was strictly in accordance with DPP-2006 and RFP and had been done in open, fair and transparent manner. In this regard, it was also noted that this project was a turnkey project and was not a normal procurement equipment supply contract.

14. Mr.Rajive Sawhney, learned senior counsel appearing for the petitioner has submitted that Respondent Nos.1 and 2 have violated the sacrosanct principles relating to acceptance of tender by suppressing facts relating to material defects in the commercial bid of the third Respondent inasmuch as no reasons or any justification has been given for accepting such non-responsive bid. It is urged by him that the commercial bid of the third Respondent is not firm and fixed since it has blanks at certain spaces and, therefore, should have been treated as incomplete. It is canvassed by him that the bid was conditional with riders and the acceptance of such a bid manifestly smacks of arbitrariness, unfairness and unreasonableness. It is his further submission that as per the conditions laid down in para 4.2 of the 'Integrity Pact' observations of the stipulation therein are mandatory and no relaxation is possible. When the bid is non-responsive and incomplete, it should have been treated as non-responsive.

15. It is worth noting that in the writ petition as well as in the submission certain stands have been taken with regard to acceptance of the technical bid. In the course of hearing, we categorically asked Mr. Sawhney, learned senior counsel as to how the issue of technical bid can be gone into at that stage. Learned senior counsel really failed to satisfy us on that count inasmuch as the technical bid was accepted long back and there was no protest by the petitioner. Everyone was

satisfied that the technical bid of the third Respondent was in order. It needs no special emphasis to state that it is the considered position that after technical bid is accepted the commercial bid is opened. Therefore, we do not intend to advert to the submissions that have been raised, of course, to put the clock back. Hence, we have referred to the submissions of the learned counsel for the petitioner pertaining to the acceptance of the commercial bid by the Respondent Nos. 1 and 2. The learned counsel in favour of his submission pertaining to the issue that the commercial bid was non-responsive has commended us to the decisions in *The Tata Power Company Ltd. & Anr. v. Union of India*, 2009 (8) AD (DEL) 583, *S.J.S. Business Enterprises (P) Ltd. v. State of Bihar & Ors.*, (2004) 7 SCC 166, *Dilip Singh v. State of U.P. & Ors.*, JT 2009 (15) SC 201, *W.B. State Electricity Board v. Patel Engineering Co. Ltd. & Ors.*, (2001) 2 SCC 451, *P.K. Delicacies Pvt. Ltd. v. Union of India & Ors.*, 122 (2005) DLT 685 (DB), *Siemens Public Communication Network Pvt. Ltd. & Anr. v. Union of India & Ors.*, (2008) 16 SCC 215, *Sumitomo Chemical India Pvt. Ltd. v. Union of India & Ors.*, W.P.(C) No.4196/2010 (26th July 2010) (DB : Delhi High Court), *Rakesh Kapoor v. Oriental Insurance Co. Ltd. & Anr*, 91 (2001) DLT 677.

16. Mr. A.S. Chandhiok, learned Additional Solicitor General on behalf of the Respondent Nos. 1 and 2 submitted that the Respondent No.3 had qualified in the

technical bid and for the said purpose he had placed reliance on clause 39(b) of the RFP. Mr.Chandhiok, learned Additional Solicitor General by abundant caution also argued that the acceptance of technical bid is absolutely correct. Be it noted, the learned Additional Solicitor General has canvassed many a aspect to show how the same is unimaginable but as noted earlier we have not taken note of the submissions of Mr. Sawhney in this regard. Similarly there is no necessity to deal with the counter submission as this is the agreed position that acceptance of technical bid was not an issue in the whole scheme of things at any point, otherwise the petitioner would have protested at that stage. He chose not to do so. After the short listing of the bidders, whoever qualified in the technical bid, the commercial bid was opened in the presence of others.

17. Mr. Chandhiok countering the submissions of Mr. Sawhney with regard to the non-responsive and incomplete commercial bid of the Respondent No.3 urged that the commercial proposals were opened on 12th August, 2009 in the presence of the representatives of all vendors and the complete package costs of the various proposals including that of Respondent No.3 were read out which were subsequently examined in detail by the CNC and as a result of a comprehensive valuation of the commercial proposal that the Respondent No.3 was found to be the L-1. It is urged by him that the proposal for the third Respondent carrying out

the 'D' level facilities by itself was in consonance with the requirements of RFP. Learned ASG would submit that the 'D' level maintenance facility has to be provided to M/s BEL by the bidder. As the commercial bid would reflect that the third Respondent had the requisite 'D' level maintenance capability and it is ready to provide the maintenance support, the same was duly evaluated by a team of experts and found them to be compliant with the requirements of the RFP. It is urged by him that the bidder had 'D' level maintenance facility available in India, no cost component was incorporated in MTOT and it is an inclusive cost and, therefore, the bid was firm and fixed and not a conditional one with riders. Commenting on the fairness and transparency of procedure, it is proponed by Mr.Chandhiok that it was clearly mentioned by the Chairman to all the representatives of the bidders that the CNC would examine all the commercial clauses in detail and the L-1 bidder would be informed that the CNC, constituted as per DPP 2006, evaluated commercial bid and on the basis of the recommendations of the CNC, the Secretary (Defence Finance) and the Ministry of Finance accepted the said commercial bid. The learned Additional Solicitor General has urged that the commercial bid of the third Respondent by no stretch of imagination can be regarded as unresponsive just because certain columns were not filled up and as no cost impact was there. Once the total cost addition is less than that of the petitioner, there is no irregularity or illegality in accepting the commercial bid.

Had it been stated otherwise with conditions or riders, the matter possibly would have been different. It is urged by him that in exercise of power of judicial review especially, pertaining to tender relating issues involve highly technical issues, a free play in the joints has to be allowed to the owners and the writ court should not ordinarily interfere. In support of the said decisions, he has drawn inspiration from *Tata Cellular v. Union of India*, AIR 1996 SC 11, *G.B. Mahajan v. Jalgaon Municipal Council*, AIR 1991 SC 1153, *Poddar Steel Coporation v. Ganesh Engineering Works*, [1991] 2 SCR 696, *AIR India Ltd. v. Cochin International Airport*, (2000) 2 SCC 617, *Siemens Public Communication Network Pvt. Ltd.* (supra) and *Larsen & Turbo Ltd. v. Union of India*, 172 (2010) DLT 454 (DB).

18. Dr. A.M. Singhvi, learned senior counsel appearing for the Respondent No.3 submitted that the challenge to the acceptance of the technical bid of the third Respondent by the petitioner is of ulterior motive and, in fact, is an effort to bring an issue to the Court which had been put to rest long back and when such an attempt is made, the writ petition deserves to be thrown overboard on the said score. It is worth noting the learned senior counsel had argued that the technical bid has been appropriately accepted as there had been detailed scrutiny at every stage. We repeat at the cost of repetition that we will not enter into the said arena as at no point of time there was any protest by the petitioner and the matter

travelled to this court after the commercial bid of the third Respondent was accepted.

19. It is contended by Dr. Singhvi that the bid submitted by the third Respondent is compliant of the essential conditions of RFP and on proper scrutiny it was treated lower than that of the petitioner. The evaluation has been correctly made by the CNC which is empowered under clause 32 of the RFP. It is urged by him that the price offered by the third Respondent was complete, firm and fixed and not in the realm of speculation. The criticism that there were blanks in the commercial bid of the third Respondent which would enable it to increase its bid at a later point of time was completely incorrect inasmuch as on a specific query made by the Respondent Nos.1 and 2 on a specific query put forth by one of the bidders qua the 'D' level maintenance facility, it had been clarified at the pre-bid meeting held on 14.2.2008 that the need was to have 'D' level maintenance facility in India and if a particular vendor had the said facility, the same shall be validated by the nominated team. It was further clarified that only in a scenario wherein the bidder does not have 'D' level maintenance facility in India then the same shall be provided to Bharat Electronics Limited by the Respondent Nos.1 and 2. The 'D' level maintenance capability of Tata Power SED was validated by TEC and a bare perusal and reading of the clarification would make it abundantly clear that the

requirement of MTOT was to have 'D' level maintenance capability and, accordingly, nothing was left blank in the pricing payable against MTOT by the third Respondent. On the contrary, it clearly stated that the Depot Level Maintenance would be carried out by the seller; the pricing table, MTOT is the cost of transferring the technology for maintenance to BEL and not the cost of providing the maintenance support. The Respondent No.3 and its vendors had the existing infrastructure and capability at the time of submission of the bid and the same has been evaluated in an appropriate manner regard being had to the terms of the RFP and the clarification provided by the third Respondent.

20. Meeting the stand with regard to seeking clarification from a bidder, it has been urged by Dr. Singhvi that the clauses in DPP-2006 and RFP enable the Respondent Nos. 1 and 2 to seek clarifications / ascertain as regards the reasonability of price bids and more so when the bid was in conformity with the DPP-2006 and all essential conditions of the RFP were fulfilled. It is urged by him that as per the process enumerated under DPP-2006, it allowed the CNC to record any kind of dissonance as per paragraph 49 of the DPP and if merited, clarification can always be sought from the bidder as it has been so stipulated in paragraphs 42, 49 and 51 of the DPP-2006 and the said procedure had been followed by the Committee. It is canvassed by him that a combined reading of the relevant clauses

of DPP and RFP clearly show that the CNC can go into the reasonability of an offer and have negotiations in such circumstances. It is further contended by him that when the essential conditions were fulfilled, there was no speculative bid, the space that was not filled up as it was mentioned that the MTOT shall be maintained by the vendor and it had no impact on the final cost and if total cost is taken into consideration it was less than 47 crores than the petitioner, the concept of judicial review more so pertaining to defence contract, does not arise. It is propounded by him that the court should always keep the larger public interest in view and a judicial intervention would only be called for when there is a definite conclusion that overwhelming public interest requires interference or the action taken by the Respondent Nos.1 and 2 is, *per se*, arbitrary, unreasonable and totally perverse. The learned senior counsel would contend that the State, its corporations and agencies are required to adhere to norms, standard and procedures laid down by them and cannot depart from them arbitrarily and though their decision is not amenable to judicial review, yet the court has to examine the decision making process, if the decision is not vitiated by malafides, unreasonableness and does not smack of arbitrariness and to that extent the scope of judicial review is limited. The learned senior counsel propounded that in the case at hand there has been total transparency and tested on the touchstone and anvil of every limb of Article 14 of the Constitution, it withstands keen scrutiny. To bolster his submission, he has

placed reliance on *Cochin International Airport Ltd.* (supra) and *Reliance Airport Developers (P) Ltd. v. Airports Authority of India*, (2006) 10 SCC 1 and *Siemens Public Communication Network Pvt. Ltd.* (supra).

21. The controversy which has been portrayed on a larger canvass by the learned counsel for the petitioner and sought to be narrowed down fundamentally to the concept of public interest, really adverted to three core issues, namely, (i) whether the bid of the third Respondent was non-responsive to be ignored for consideration at the stage of commercial bid; (ii) whether the clarification sought from the third Respondent smacks of arbitrariness and vitiates the decision determining the said respondent as L-1; and (iii) whether the whole decision judged on the touchstone of the principles, namely, “allowing some play in the joints” and “involvement of public interest” is justified or deserves to be lanced.

22. Before we proceed to scan the factual contours and move through the terrain of the real crux which has been astutely and assiduously pyramided and edified by the learned counsel for the parties, we think it apposite to refer to certain authorities in the field. We think it seemly as Mr. Sawhney, learned senior counsel for the petitioner would urge that the whole decision making is absolutely vitiated and is bound to founder and collapse like a pack of cards and in oppugnation Mr. Chandhiok and Dr. Singhvi would submit that the decision arrived at by the

competent authority falls within the essential power of flexibility bestowed on the owner regard being had to the field of contract which necessitates adaptability and thereby, in the ultimate eventuate, the decision stands on the *terra firma* presently to the authorities.

23. In ***Poddar Steel Corporation*** (supra), a two-judge Bench of the Apex Court has held as follows:

“.....As a matter of general proposition it cannot be held that an authority inviting tenders is bound to give effect to every term mentioned in the notice in meticulous detail, and is not entitled to waive even a technical irregularity of little or no significance. The requirements in a tender notice can be classified into two categories-those which lay down the essential conditions of eligibility and the others which are merely ancillary or subsidiary with the main object to be achieved by the condition. In the first case the authority issuing the tender may be required to enforce them rigidly. In the other cases it must be open to the authority to deviate from and not to insist upon the strict literal compliance of the condition in appropriate cases.”

24. In ***Sterling Computers Ltd. V. M.N.Publications Ltd.***, (1993) 1 SCC 445 = AIR 1996 SC 51, the Apex Court, while dealing with the concept of judicial review in respect of contracts entered into on behalf of the State, had expressed the view as follows: -

“18. While exercising the power of judicial review, in respect of contracts entered into on behalf of the State, the Court is concerned primarily as to whether there has been any infirmity in the “decision making process.” By way of judicial review the Court cannot examine the details of the terms of the contract which have been entered into by the public bodies or the State. Courts have inherent limitations on the scope of any such enquiry. But at the same time as was said by the House of Lords in the aforesaid case, *Chief Constable of the North Wales Police v. Evans* (supra), the Courts can certainly examine whether “decision making process” was reasonable, rational, not arbitrary and violative of Art. 14 of the Constitution.

19. If the contract has been entered into without ignoring the procedure which can be said to be basic in nature and after an objective consideration of different options available into account the interest of the State and the public, then Court cannot act as an appellate authority by substituting its opinion in respect of selection made for entering into such contract.”

25. In *New Horizons Ltd. & Anr. v. Union of India & Ors.*, (1995) 1 SCC 478,

the Apex Court in para 17 opined thus:

“17. The decision of this Court, therefore, insist that while dealing with the public, whether by way of giving jobs or entering into contracts or issuing quotas or licenses or granting other forms of largesse, the Government cannot act arbitrarily at its sweet will and like a private individual, deal with any person it pleases, but its action must be in conformity with the standards or norms which are not arbitrary, irrational or irrelevant. It is, however, recognized that certain measure of "free play in the joints" is necessary for an administrative body functioning in an administrative sphere [See : *Ramanna Dayaram Shetty v. The International Airport Authority of India*, (1979) 3 SCC 489; *Kasturi Lal Lakshmi Reddy v. State of J&K*

: (1980) 4 SCC 1; Fasih Chaudhary v. Director General, Dooradarshan (1989) 1 SCC 89; Sterling Computers Ltd. v. M&N Publications Ltd. and Anr. (supra); Union of India v. Hindustan Development Corporation, (1993) 3 SCC 499.”

It is worth noting that in the said case, their Lordships ruled that the terms and conditions of a tender should be construed from the standpoint of a prudent businessman and the terms of the offer of the tenderer should be first considered and if found suitable, then only its credentials and ability to perform the work should be considered from a practical point of view.

26. In *Tata Cellular* (supra), the Apex Court has laid down as follows: -

“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 facets 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.

27. In *Asia Foundation and Construction Ltd. V. Trafalgar House Construction (I) Ltd. And Others*, (1997) 1 SCC 738, it has been held that the principles of judicial review cannot be denied to be applicable to contractual powers of government bodies but it is intended to prevent arbitrariness or favouritism and it is to be exercised in the larger public interest.

28. In *Raunaq International Ltd. v. I.V.R. Construction Ltd.*, (1999) 1 SCC 492, the Apex Court, while laying emphasis on public interest and commercial consideration in the award of contract, expressed thus:

“11. When a writ petition is filed in the High Court challenging the award of a contract by a public authority or the State, the court must be satisfied that there is some element of

public interest involved in entertaining such a petition. If, for example, the dispute is purely between two tenderers, the court must be very careful to see if there is any element of public interest involved in the litigation.....”

Their Lordships further observed thus:

“.....Therefore, unless the court is satisfied that there is a substantial amount of public interest, or the transaction is entered into mala fide, the court should not intervene under Article 226 in disputes between two rival tenderers.”

In the said case, their Lordships also emphasised upon the fact that an expert committee has special knowledge which plays a decisive role in deciding as to which is the best offer. The past record of the tenderers, the quality of the goods or services which are offered and the assessment of such quality on the basis of the past performance of the tenderer have an important role in deciding to whom the contract should be awarded.

29. In *Cochin International Airport Ltd.* (supra), their Lordships expressed the view that the award of a contract, whether by a private party or by the State, is essentially a commercial transaction. It was held therein that when even some defect is found in the decision making process, the Court must exercise its discretionary powers under Article 226 of the Constitution with great caution and should exercise it only in furtherance of public interest. Emphasis was laid, apart

from legal point, on public interest. The Apex Court has observed that in the matters of award of contract, the larger public interest has to be kept in view and when it is vivid that public interest commands that there has to be interference, then the Court should interfere.

30. In *M/s Moarch Infrastructure (P) Ltd. v. Commissioner, Ulhasnagar Municipal Corporation and others*, AIR 2000 SC 2272, the Apex Court held that if a term of the tender is deleted after the players entered into the arena, it is like changing the rules of the game after it had begun and, therefore, if the Government or the Municipal Corporation was free to alter the conditions, fresh process of tender was the only alternative permissible. By reason of deletion of a particular condition, the wider net will be permissible and a larger participation or more attractive bids could be offered.

31. In *Centre for Public Interest Litigation & Another v. Union of India & Others*, (2000) 8 SCC 606, after referring to a passage from *Kasturi Lal Lakshmi Reddy v. State of J&K*, (1980) 4 SCC 1, it has been held thus:

“20. It is clear from the above observations of this Court that it will be very difficult for the courts to visualise the various factors like commercial/technical aspects of the contract, prevailing market conditions, both national and international

and immediate needs of the country etc. which will have to be taken note of while accepting the bid offer. In such a case, unless the court is satisfied that the allegations leveled are unassailable and there could be no doubt as to the unreasonableness, mala fide, collateral considerations alleged, it will not be possible for the courts to come to the conclusion that such a contract can be prima facie or otherwise held to be vitiated so as to call for an independent investigation, as prayed for by the appellants. Therefore, the above contention of the appellants also fails.”

32. In *Patel Engineering Co. Ltd.* (supra), the Apex Court emphasised on maintaining the sanctity and integrity of the process of tender / bid and also the award of a contract. Adherence to the instructions cannot be given a go-by as the very purpose of issuing rules / instructions is to ensure their enforcement, lest the rule of law should be a casualty.

33. In *State of NCT of Delhi & Anr. v. Sanjeev (alias Bitto)*, (2005) 5 SCC 181, while dealing with the scope of judicial interference in matters of administrative decisions, the Apex Court has held that the authority must act in good faith, must have regard to all relevant considerations and must not be influenced by irrelevant considerations, must not seek to promote purposes alien to the letter or to the spirit of the legislation that gives it power to act, and must not act arbitrarily or capriciously.

34. In *Laxmi Sales Corporation v. Bolongir Trading Co. & Ors.*, AIR 2005 SC 1962, the Apex Court disallowed the order passed by the High Court which had held that the rejection of the offer made by the second Respondent therein was arbitrary and unfair. The Apex Court took note of the fact that the necessary documents were not filed along with the tender form solely on the ground that the same were not mandatory. Thereafter, their Lordships proceeded to state that on a reading of the various conditions in the tender form and the annexures annexed thereto, it was quite clear that proof of turnover of the firm over the last two relevant years with supporting documents were to be filed.

35. In *M/s. B.S.N.Joshi and Sons Ltd. V. Nair Coal Services Ltd.*, AIR 2007 SC 437, their Lordships reiterated the principles of judicial review which have been developed for interference in contractual matters. The Apex Court summarized the principles as follows:

“(i) If there are essential conditions the same must be adhered to:

(ii) If there is no power of general relaxation, ordinarily the same shall not be exercised and the principle of strict compliance would be applied where it is possible for all the parties to comply with all such conditions fully:

(iii) If, however, a deviation is made in relation to all the parties in regard to any of such conditions, ordinarily again a power of relaxation may be held to be existing:

(iv) The parties who have taken the benefit of such relaxation should not ordinarily be allowed to take a different stand in relation to compliance of another part of tender contract, particularly when he was also not in a position to comply with all the conditions of tender fully, unless the court otherwise finds relaxation of a condition which being essential in nature could not be relaxed and thus the same was wholly illegal and without jurisdiction.

(v) When a decision is taken by the appropriate authority upon due consideration of the tender document submitted by all the tenderers on their own merits and if it is ultimately found that successful bidders had in fact substantially complied with the purport and object for which essential conditions were laid down, the same may not ordinarily be interfered with.

(vi) The contractors cannot form a cartel. If despite the same their bids are considered and they are given an offer to match with the rates quoted by the lowest tenderer, public interest would be given priority.

(vii) Where a decision has been taken purely on public interest, the Court ordinarily should exercise judicial restraint.”

36. In *Jagdish Mandal v. State of Orissa and Others*, 2007 (8) SCJ 359, the Apex Court opined that the power of judicial review in administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and malafides. It was further opined that when exercising the power of judicial review in the matters relating to tender or award of contract, certain special features

should be kept in mind regard being had to the fact that a contract is a commercial transaction. Emphasis was laid on the fact that it is essential to consider whether the process adopted or the decision taken is so arbitrary or irrational that it could be said with certitude that no responsible authority acting reasonably and in accordance with the relevant law would have reached such a conclusion. In the said decision, the concept of public interest was reiterated.

37. In *Reliance Energy Ltd. and another v. Maharashtra State Road Development Corpn. & Ors.*, (2007) 8 SCC 1, their Lordships laid emphasis on level playing field to all bidders and the reasonableness of the State action.

38. In *Siemens Public Communication Networks Pvt. Ltd.* (supra), it has been held as under:

“..... A contract is a commercial transaction and evaluating tenders and awarding contracts are essentially commercial functions. In such cases principles of equity and natural justice stay at a distance. If the decisions relating to award of contracts is bonafide and is in public interest, Courts will not exercise the power of judicial review and interfere even if it is accepted for the sake of argument that there is a procedural lacuna.”

39. In *Sorath Builders v. Shreejkrupa Buildcon Limited & Anr.*, (2009) 11 SCC 9, it was laid down that it was obligatory on the part of the bidder to submit his pre-qualification documents within the time schedule.

40. In *Meerut Development Authority vs. Association of Management Studies*, (2009) 6 SCC 171, it has been held as follows:

“27. The bidders participating in the tender process have no other right except the right to equality and fair treatment in the matter of evaluation of competitive bids offered by interested persons in response to notice inviting tenders in a transparent manner and free from hidden agenda. One cannot challenge the terms and conditions of the tender except on the above stated ground, the reason being the terms of the invitation to tender are in the realm of the contract. No bidder is entitled as a matter of right to insist the Authority inviting tenders to enter into further negotiations unless the terms and conditions of notice so provided for such negotiations.”

41. In *Triveni Engineering & Industries Ltd. v. D.J.B. & Anr.*, 2009 (5) AD Delhi 265, the necessity to satisfy the essential pre-condition of the minimum eligibility requirement to participate in the tender and the nature of the necessity was dealt with and the Bench expressed the view that the nature of the project needed work experience and the petitioner had not satisfied the mandatory

minimum eligibility criteria in respect of the work experience and was, therefore, not entitled to be considered.

42. Regard being had to the aforesaid decisions, we shall proceed to produce at what places there were blank spaces and whether leaving the space blank makes the bid non-responsive. To have a holistic approach, we produce the excerpts from the pricing table:

EXCERPTS FROM THE PRICING TABLE

S. No.	Items	Qty.	TATA Power Strategic Electronics Division (LEAD CONSORTIUM MEMBER)				NELCO (CONSORTIUM MEMBER)		
			Price in INR	Price in USD	Price in EURO	Price in UKP			
1	Unit Costs applicable to:								
a)	Supply of Systems & Equipment at one representative airfield, consisting of following systems/equipment:		-----	-----	-----	-----	-----	-----	-----
	i) Civil works, Integration, Project Management and associated work inclusive of supply of Trucks, Tata Sumos and Bush Cutters	30	218,13,39,344	2,54,780	-----	-----	-----	-----	-----
	ii) Cat II Air field lighting system	30	116,22,25,000	0	1,02,48,383	0	-----	-----	-----
	Installation & Commissioning		30,00,00,000	0	0	0	-----	-----	-----
	iii) Automated Air Traffic Management System	30	60,00,00,000	77,57,961	18,750	10,15,470	-----	-----	-----
	Installation & Commissioning		3,00,00,000	0	0	0	-----	-----	-----
	iv) NavAids Deliverables (Total Price)		0	0	0	0	90,00,00,000	2,19,26,000	2,06,25,000

	-- ILS	30	0	0	0	0	0	0	0
	--DME(LP)	30	0	0	0	0	0	0	0
	--DME (HP)	31	0	0	0	0	0	0	0
	--DVOR	31	0	0	0	0	0	0	0
	--TACAN	30	0	0	0	0	0	0	0
	--RVR	30	0	0	0	0	0	0	0
	Nav Aids Installation, Comissioning	30	0	0	0	0	62,40,30,740	26,20,600	8,13,000
7	Cost of recommended period of training in India excluding the cost of travel, boarding and lodging. Details at Enclosure 3	----	0	0	0	0	0	0	0
	ATM, Mobile ATC		Included in Main Eqpt	0	0	0	0	0	0
	NavAids			0	0	0	4,00,25,217	2,92,774	43,512
8	Cost of Training Aggregates/Aids. Details at Enclosure 3		0	0	0	0	0	0	0
	ATM, Mobile ATC		Included in Main Eqpt	0	0	0	0	0	0
	NavAids			0	0	0	5,25,50,630	9,45,814	283,881
9	Cost of Technical Literature. Details at Enclosure 4.	----		0	0	0	0	0	0
	ATM, Mobile ATC, AFLS, Mobile AFLS		Included in Main Eqpt	0	0	0	0	0	0
	NavAids						9,83,640	1,01,791	95,452
	Total Cost.		472,73,77,700	1,26,40,265	1,11,57,376	10,22,570	165,98,87,140	2,99,91,393	2,37,49,686
10	Cost of MTOT for D level repair	----	Depot level maintenance will be carried out by the SELLER						
11	Cost of Optional Equipment	---	-----	-----	-----	-----	-----	-----	-----
12	Amount for :								
	Excise Duty*	Rs	46,71,95,989						
	Sales Tax/VAT**	Rs	46,33,08,089						
	Service Tax***	Rs	12,61,43,972						
	Service Tax**** (for Civil construction)	Rs	8,76,83,144						
	Freight and Transit insurance cost	Included in the main equipment price							
	Octroi/Entry Tax	Extra, as applicable							

43. On a perusal of the above table, it is luculent that costs in the price table which have not been specifically mentioned by the third Respondent are either attached separately as enclosures or are included in the main equipment they are :

- (i) Cost of Recommended period of training in India excluding the cost of travel, boarding and lodging.
- (ii) Cost of Training Aggregates/Aids.
- (iii) Cost of Technical Literature.
- (iv) Freight and Transit insurance cost.

44. We have produced the aforesaid tabular charge from the original file to appreciate what has been left blank and what has been mentioned by the third Respondent. The question that emanates for consideration whether leaving the space blank really makes the bid non-responsive. On a proper scrutiny, it is discernable that the cost of MTOT for 'D' level maintenance was not specifically mentioned as it had been undertaken that said maintenance will be carried out by the seller. In this regard, it is imperative to appreciate what is the duty of the court, conditions of the contract or entering into contract. In this regard, we may profitably refer to the decision rendered in *Union of India v. The Central India*

Machinery Manufacturing Co. Ltd. and others, AIR 1977 SC 1537, their

Lordships, while dealing with the construction of a contract, expressed thus-

“29..... A correct construction, in turn, depends on a reading of the Standard and Special conditions as a whole. It would not be proper to cull out a sentence here or a sub-clause there and read the same in isolation. What is required is not a fragmentary examination in parts but an overall view and understanding of the whole. Again, it is the substance of the documents constituting the contract, and not merely the Form which has to be looked into.

30. The real intention of the contracting parties is primarily to be sought within the four corners of the documents containing Standard and Special Conditions of the Contract.....”

[emphasis supplied]

45. In ***M/s Hindustan Shipyard Ltd. V. State of Andhra Pradesh, AIR 2000 SC 2411***, the Apex Court has also emphasized the need of looking into the substance and not merely the factum of the contract. Their lordships also stated that the terms and conditions of the contract should be read as a whole.

46. In ***Ramdev Food Products Pvt. Ltd. v. Arvindbhai Rambhai Patel & Ors., AIR 2006 SC 3304*** their Lordships expressed thus-

“31. In *Delta International Ltd. v. Shyam Sundar Ganeriwalla* [(1999) 4 SCC 545], this Court noticed:

“17. For construction of contracts between the parties and for the interpretation of such document, learned Senior Counsel, Mr. Desai has rightly relied upon some paragraphs from The Interpretation of Contracts by Kim Lewison, Q.C. as under:-

“1.03 for the purpose of the construction of contracts, the intention of the parties is the meaning of the words they have used. There is no intention independent of that meaning.

6.09 Where the words of a contract are capable of two meanings, one of which is lawful and the other unlawful, the former construction should be preferred.

Sir Edward Coke [Co. Litt. 42a] expressed the proposition thus:

‘It is a general rule, that whensoever the words of a deed, or of one of the parties without deed, may have a double intendment and the one standeth with law and right, and the other is wrongful and against law, the intendment that standeth with law shall be taken.’ ”

32. It is further stated:

“For that purpose, he referred to the following observations of Buckley, J. from the paragraphs which are sought to be relied upon from The Interpretation of Contracts by Kim Lewison, Q.C.: “My first duty is to construe the contract, and for the purpose of arriving at the true construction of the contract, I must disregard what would be the legal consequences of construing it one way or the other way”.”

33. Moreover, the document is to be read as a whole. It is equally well settled that the deed has to be construed keeping in view the existing law.

34. It is now a well-settled principle of law that a document must be construed having regard to the terms and conditions as well as the

nature thereof. [Union of India v. M/s Millenium Mumbai Broadcast Pvt. Ltd. 2006 (5) SCALE 44]”

47. Tested on the touchstone of the enunciation of law laid down in the aforesaid decisions, the bid really does not become non-responsive. The blanks do not really affect. It is not a mercurial bid. It is not specious. It has no riders. It is not postulated by conditions. It is clear, scrutinisable, discernible and all comprehensive. If the tender document is read as a whole, it will be clear as day that the Respondent No.3 had really not left out anything which could remotely be called substantial to make the bid non-responsive. It has been categorically stipulated that MTOT would be borne by the seller which clearly conveys that no additional expenditure is involved. By appreciating the tender document in entirety, it cannot be said that there has been non-adherence to the norms or the Rules. In fact, there has been no deviation. Needless to say, while exercising jurisdiction under Article 226 of the Constitution of India in a matter relating to award of tender, the Court would not ordinarily interfere unless it finds that the authorities have acted in a totally arbitrary or a perverse manner or, for that matter, the ultimate determination in awarding the contract is wholly unreasonable and cannot be conceived by a prudent man. There cannot be any dispute that certain amount of play in the joints has to be given to the State authorities as they are in

the best position to judge the nature of the contract, the capabilities and various other concomitant factors. Being of this view, we hold that the bid of the Respondent No.3 cannot be treated as a non-responsive bid deserving non-consideration.

48. Learned counsel for the petitioner, as we have indicated hereinbefore, has submitted that the authorities could not have discussed with the Respondent No.3. The said submission, though on a first blush looks quite attractive, yet on a keener scrutiny, has to pale into insignificance. The respondent authorities had not negotiated with the Respondent No.3. The clarification sought was with regard to the rate by way of abundant caution. It was in the realm of fiscal interest. In our considered opinion, this would come in the allowance of a play in the joints. Thus, no exception can be taken to the same.

49. Keeping in view the aforesaid facts, it is also to be seen whether the decision is so unreasonable or perverse that the same deserves to be axed in exercise of power of judicial review. In this context, we may profitably reproduce a passage from *Reliance Airport Developers (P) Ltd. v. Airports Authority of India & Ors.*, (2006) 10 SCC 1:

“67. Wednesbury principles of reasonableness to which reference has been made in almost all the decisions referred to hereinabove is contained in *Wednesbury's case*, (1948) 1 KB

223: (1947) 2 All ER 680(CA). In that case Lord Green, M.R. has held that a decision of a public authority will be liable to be quashed in judicial review proceeding where the court concludes that the decision is such that no authority properly directing itself on the relevant law and acting reasonably could have arrived at it.

xxx xxx xxx

77. Expression of different views and discussions in different meetings really lead to a transparent process and transparency in the decision-making process. In the realms of contract, various choices were available. Comparison of the respective merits, offers of choice and whether that choice has been properly exercised are the deciding factors in the judicial review.”

Be it noted, in the said case, in the concurring judgment, S.H. Kapadia, J. (as his Lordship then was), had stated thus:

“110. In the scoring system objectivity has an important role to play (clause 5.4). In the scoring system the identification of factors (including sub-factors), allocation of marks to each of these factors (including sub-factors) and giving of marks are three distinct and different stages. Clause 5.4 dealt with assessment of technical pre-qualifications. Under that clause a scoring system was to be applied based on the assessment of the terms of the offer against the technical pre-qualification criteria. It further stipulated that assessment shall be on absolute basis and not relative as between the offers. Under the said system, each factor had to be allocated certain marks. Objectivity had to be provided in the allocation of marks (and not in giving of marks) to each factor (including sub-factors). This was not done. For example, RFP required certain marks to be allocated for absorption of existing staff. Greater the absorption, higher the marks to be given. In the present case, EC changed the factor, namely, "absorption of employees" to the overall

approach. This led to change in priority. Similarly, in RFP, the factor earmarked was "property development" which EC compared to "infrastructure development". Experience in property development is different from experience in infrastructure development. Similarly, RFP had given weightage to aeronautical revenue whereas in allocation of marks, EC obliterated the difference between aeronautical and non-aeronautical revenues. The above examples are given only to show that objectivity which was the underlying principle underlying Clause 5.4 is completely lost either by expanding the enumerated factors like aeronautical revenue, overall capability vis-a-vis capacity to absorb existing work force and comparison of property development with infrastructure development or by allocating uneven marks to sub-factors. In my view, EC had no business to expand or narrow down the scope of any of the above factors as it was beyond its authority and contrary to the scoring system.”

50. Presently, we shall advert to the comparative costs of the commercial offers of the bidders as produced in the original file are as follows:

Sl. No.	Vendor	Cost of Commercial Proposal (Rs.)
1.	M/s Tata Power	1094, 79, 64, 039.00
2.	M/s Selex SI	1141, 86, 01, 780.00
3.	M/s BEL	1315, 28, 82, 034.00
4.	M/s Jupiter Strategic Technologies	1959, 41, 43, 065.00
5.	M/s Terma	1959, 41, 43, 065.00
6.	M/s PET Aviation	2235, 17, 43, 053.00

51. From the aforesaid chart, it is clearly demonstrable that the proposal of Respondent No.3 is the lowest at Rs.1094.79 Crores as against the commercial proposal of the Petitioner being 4% higher at Rs.1141.86 Crores. After taking into account the dimensions of each airfield and the per-meter cost-rates given in the commercial proposal, the final total project cost of Respondent No.3 works out to Rs.1219.99 Crores. Thus, the final negotiated cost of the Petitioner's proposal is Rs.66.21 Crores higher than that of Respondent No.3. Ergo, the public interest lies in ensuring that procurement is effected at the lowest possible cost to the State exchequer.

52. *Ex consequenti*, we are of the opinion that taking into account the parameters stipulated in the RFP and pre bid for determination of lowest tenderer, the decision of Union of India cannot be flawed. Resultantly, the writ petition, being sans merit, stands dismissed without any order as to costs.

CHIEF JUSTICE

SANJAY KISHAN KAUL, J.

MANMOHAN, J.

SEPTEMBER 30, 2011

Pk/dk

WP(C) No.13478/2009