



IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 2ND DAY OF JULY, 2026

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

WRIT PETITION NO. 10374 OF 2026 (GM-TEN)

BETWEEN:

PEPS INDUSTRIES PRIVATE LIMITED
HAVING ITS MANUFACTURING UNIT
AT NO. N-16 AND 17, SIDCO INDUSTRIAL ESTATE,
PHASE-III, HOSUR 635126,
REPRESENTED BY ITS AUTHORISED SIGNATORY,
(MANAGING DIRECTOR)
MR. KISHORE MVRK

...PETITIONER

(BY SRI. PRABHULING K. NAVADGI., SR COUNSEL A/W
SRI. ABHISHEK K., ADVOCATE &
SRI. KEETHI KRISHNA REDDY., ADVOCATE)

AND:

1. THE STATE OF KARNATAKA
DEPARTMENT OF SOCIAL WELFARE,
REPRESENTED BY ITS PRINCIPAL SECRETARY,
M.S. BUILDING,
BENGALURU 560001.
2. THE SECRETARY,
SOCIAL WELFARE DEPARTMENT,
VIKASA SOUDHA,
BENGALURU 560001
3. THE COMMISSIONER,
SOCIAL WELFARE DEPARTMENT,
5TH FLOOR, M.S. BUILDING,
DR. AMBEDKAR VEEDHI,
BENGALURU - 560001.
4. POPPY MATTRESS PRIVATE LIMITED,

Digitally signed
by SHWETHA
RAGHAVENDRA
Location: HIGH
COURT OF
KARNATAKA



HAVING ITS REGISTERED OFFICE AT
S.F. NO. 283/1B
SUKKAMPATTI MANAL MEDU
THALAPPATTI POST
KARUR-639003 TAMIL NADU
REPRESENTED BY ITS AUTHORISED SIGNATORY,

5. CENTURY FIBRE PLATES PRIVATE LIMITED
1ST FLOOR, IDEAL TOWERS
SURVEY NO 115, AKBAR ROAD, TARBUND
SECUNDERABAD - 500009
TELANGANA
OPP BHEL ENCLAVE,
REPRESENTED BY ITS AUTHORISED SIGNATORY
(MANAGING DIRECTOR)

(R5 DELETED AS PER COURT ORDER DATED 05.06.2026)

...RESPONDENTS

(BY SRI. REUBEN JACOB., AAG A/W
SMT. SARITHA KULKARNI., AGA FOR R1 TO R3;
SRI. K. PRASAD HEGDE., FOR C/R4)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA PRAYING TO ISSUE A WRIT OF CERTIORARI OR ANY OTHER APPROPRIATE WRIT OR ORDER QUASHING THE REJECTION OF APPEAL NO. SAKAE/142/PAKAVI/2026 BY THE RESPONDENT NO.2 VIDE ORDER DATED 24.03.2026 VIDE ANNEXURE-A AND ETC.

THIS WRIT PETITION, COMING ON FOR PRELIMINARY HEARING IN 'B' GROUP HEARING, THIS DAY, ORDER WAS MADE THEREIN AS UNDER:

CORAM: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

ORAL ORDER

1. The Petitioner is before this Court seeking for the following reliefs:

a. Issue a writ of certiorari or any other appropriate writ or order quashing the rejection of Appeal No.



SAKAE/142/PAKAVI/2026 by the Respondent No.2 vide order dated 24.03.2026 vide ANNEXURE-A.

b. Issue a writ of certiorari or any other appropriate writ or order quashing Corrigendum-1 dated 31.12.2025 issued by Respondent No.2, insofar as it introduces a new eligibility condition at the final stage of the tender without reasonable accommodation vide ANNEXURE-D & D 1.

c. Issue a writ of certiorari or any other appropriate writ or order quashing the Tender Nos. SWD/2025-26/IND0352/CALL-2 and SWD/2025-26/IND0353/CALL-2 dated 19.12.2025 and to declare that any other proceedings subsequent in pursuance to the above Tender stands cancelled vide ANNEXURE-B & ANNEXURE-C.

d. Grant such other reliefs as this Hon'ble Court may deem fit in the facts and circumstances of the case, in the interest of justice and equity.

2. Respondents no.2 and 3 had issued tender dated 30.10.2025 bearing No.SWD/2025-26/IND0352/CALL-2 for supply of coir mattresses with polyester pillows to hostels situated in Bengaluru and Mysuru Revenue Divisions and another tender dated 29.10.2025 bearing No.SWD/2025-26/IND0353/CALL-2 had been issued for supply of identical items to hostels situated in the Belagavi and Kalaburagi Revenue Divisions. It is stated that, though the supply was segregated, both tenders are identical in their scope of work, eligibility criteria, technical specification, financial thresholds and evaluation methodology.



3. The petitioner participated in both the tenders. The last date for submission of the tender being 03.01.2026. During the pre-bid meeting, there were various issues raised by the proposed participants. Hence, a Corrigendum came to be issued on 31.12.2025 amending Clause 9 relating to eligibility criteria, which reads as under:

Sl	Terms	Amended to read as
7	The bidder should have ISO 9001-2015 NABCB certificate or IS 13489:2000 or IS13489:2025 certifications for the product manufactured by them issued by Bureau of Indian Standards. Documents to be submitted Copy of ISO 9001-2015 NABCB certificate or IS 13489:2000 or IS 13489:2025 certifications shall be submitted.	1) The bidder should have ISO 9001-2015 NABCB certificate and IS BIS13489:2025 certifications for the product manufactured by them issued by Bureau of Indian Standards. 2) The bidder should have Zed Gold Certificate - the highest tier in India's MSME Sustainable (ZED) Certification Scheme, launched by the Ministry of Micro, Small & Medium Enterprises (MSME) Documents to be submitted Copy of ISO 9001-2015 NABCB certificate and BIS13489:2025 and Zed Gold certifications shall be submitted.

4. Pursuant to the aforesaid amendment, the last date for submission of bids was extended to 06.01.2026. The petitioner, however, was unable to submit the ZED Gold Certificate on or before the extended deadline, though the certificate was obtained and submitted subsequently.



Since the said certificate was not taken into consideration by the respondents, the petitioner's bid came to be rejected at the stage of technical evaluation, while the bid submitted by respondent No. 4 was accepted.

5. Aggrieved by the rejection of his bid and the acceptance of the bid of respondent No. 4, the petitioner preferred an appeal before the appellate authority. It was contended before the appellate authority that the ZED Gold Certificate, having become available prior to the evaluation of the bids, ought to have been taken into consideration by the respondents and that the petitioner's bid ought not to have been rejected merely because the certificate had not been uploaded on or before the prescribed date. It was further contended that respondent No. 4 itself was ineligible to be awarded the tender, inasmuch as its net worth did not satisfy the requirement stipulated under sub-clause (3) of Clause 9 relating to the eligibility criteria contained in the tender notification. The said provision is extracted hereinbelow for ready reference:

<i>The bidder should produce NET WORTH equivalent to half of the total estimated value of the tender amount as on 31st March 2024.</i>	<i>Certificate of verification issued by the Chartered Accountant in support of the same in the prescribed format at Annexure-B</i>
<i>Note: The bidder can submit the net worth value for the year ending 31st March 2025 if the Statutory Audit for the year 2024-25 is completed</i>	<i>Note: The bidder can submit the net worth Certificate for the year ending 31st March 2025 if the Statutory Audit for the year 2024-25 is completed</i>



6. The appellate authority rejected the petitioner's appeal holding that, as on the last date prescribed for submission of the bid documents, namely, 06.01.2026, the petitioner did not possess the ZED Gold Certificate. Since the certificate had been issued only on 09.01.2026, after the expiry of the stipulated deadline, it could not be taken into consideration during the process of technical scrutiny. On that basis, the appellate authority upheld the rejection of the petitioner's technical bid.
7. Insofar as the contention relating to the eligibility of respondent No. 4 is concerned, the appellate authority accepted the Chartered Accountant's certificate produced by respondent No. 4 as sufficient proof of its net worth and concluded that respondent No. 4 satisfied the financial eligibility criterion prescribed under the tender conditions. Consequently, the challenge to the eligibility of respondent No. 4 was also rejected. Aggrieved by the said order passed by the appellate authority, the petitioner has approached this Court by way of the present writ petition.
8. Sri Prabhuling Navadgi, learned Senior Counsel appearing for the petitioner would firstly submit that:
 - 8.1. Learned Senior Counsel submitted that the requirement of furnishing a ZED Gold Certificate was introduced only on 31.12.2025 by way of an amendment to the tender conditions, leaving the



bidders with a very limited period to obtain the certification before the last date for submission of bids. He submitted that, on 06.01.2026, the petitioner had specifically informed the respondents that an application for the ZED Gold Certification had already been made, that the certificate was expected shortly, and that an affidavit to that effect had been uploaded along with the bid documents. According to him, although the certificate was issued after the last date for submission of bids, it had been obtained prior to the scrutiny and evaluation of the technical bids. Therefore, the respondents ought to have taken the subsequently issued certificate into consideration instead of rejecting the petitioner's bid solely on the ground that the certificate had not been available on the last date prescribed for submission of bids.

- 8.2. Insofar as the issue of net worth is concerned, learned Senior Counsel submitted that Clause 9(3) of the tender conditions mandated that a bidder should possess a net worth equivalent to at least one-half of the estimated tender value as on 31.03.2024. Since the estimated value of the tender was ₹10 crores, the minimum prescribed net worth was ₹5 crores. The only relaxation provided under the tender conditions, according to him, was that where the accounts had been audited, the



audited net worth as on 31.03.2025 could be taken into consideration.

8.3. Learned Senior Counsel relied upon the Annual Return filed by respondent No. 4 before the Registrar of Companies and, by drawing attention to Item No. V thereof, submitted that the net worth of respondent No. 4 had been disclosed as ₹4,32,84,294.65, which was below the minimum prescribed requirement of ₹5 crores. On that basis, he contended that respondent No. 4 was ineligible to participate in the tender.

8.4. Learned Senior Counsel further submitted that the appellate authority had erroneously accepted the Chartered Accountant's certificate produced by respondent No. 4, wherein the Chartered Accountant had computed the net worth by aggregating the share capital, reserves and surplus, and loans advanced by the directors. According to him, loans received from directors could not form part of the computation of "net worth" under the Companies Act, 2013. In support of this submission, he relied upon the opinion of a Company Secretary produced as Annexure-N, wherein it is opined that, having regard to Section 2(57) of the Companies Act, 2013, loans cannot be included while determining the net worth of a



company. Consequently, it was submitted that respondent No. 4 did not satisfy the prescribed eligibility criterion relating to net worth and its bid ought to have been rejected.

- 8.5. He relied on subsection (57) of Section 2 of the Companies Act, 2013 which is reproduced hereunder for easy reference:

2(57) "net worth" means the aggregate value of the paid-up share capital and all reserves created out of the profits [, securities premium account and debit or credit balance of profit and loss account, Subs. by Act 1 of 2018, s.2, for "and securities premium account" (w.e.f. 9-2-2018)] 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;

- 8.6. By relying on subsection (57) of Section 2 he submitted that the Chartered Accountant's certificate produced by respondent No. 4 was contrary to the provisions of Section 2(57) of the Companies Act, 2013. According to him, the Chartered Accountant had erroneously included loans and advances made by the directors to the company while computing its net worth, even though such amounts do not form part of the statutory definition of "net worth". He submitted that this discrepancy had been specifically brought



to the notice of the appellate authority. Notwithstanding the same, the appellate authority disregarded the statutory definition and accepted the Chartered Accountant's certificate to hold that respondent No. 4 possessed the requisite net worth of more than ₹5 crores. It was therefore contended that the appellate authority had proceeded on an erroneous basis by taking into consideration amounts which could not legally be included in the computation of net worth.

8.7. On the aforesaid grounds, learned Senior Counsel submitted that both the rejection of the petitioner's bid and the acceptance of the bid submitted by respondent No. 4 are arbitrary, contrary to the tender conditions and the provisions of the Companies Act, 2013, and consequently liable to be quashed.

9. Sri. Reuben Jacob Learned Additional Advocate General appearing for the State would submit that:

9.1. The timelines stipulated in the tender notification are sacrosanct and are required to be adhered to strictly by every bidder. He contended that the last date prescribed for submission of bids was 06.01.2026 and, therefore, the petitioner was required to possess and furnish the ZED Gold Certificate on or before the said date. Admittedly,



the petitioner obtained the certificate only on 09.01.2026, after the expiry of the prescribed deadline. Merely because the certificate had been produced before the scrutiny of the technical bids would not entitle the petitioner to have the same considered, since it constituted a document that was not in existence or available with the petitioner on the last date fixed for submission of bids. Acceptance of such a document, according to him, would amount to permitting a bidder to improve its eligibility after the closure of the bidding process, which is impermissible in law.

9.2. Insofar as the issue relating to the net worth of respondent No. 4 is concerned, learned counsel submitted that, apart from the Chartered Accountant's certificate already produced, a further clarification dated 12.01.2026 had also been issued by the Chartered Accountant. In the said clarification, it has been specifically stated that the amounts advanced by the directors were treated as quasi-capital, having regard to the intention behind such advances and their utilisation towards the long-term capital requirements and operational growth of the company. It was further clarified that the authorised and paid-up share capital of the company had subsequently been increased and the corresponding allotment of shares had also been



effected. Consequently, the amounts initially advanced by the directors did not continue to retain the character of loans but stood converted into the share capital of the company. On that basis, it was submitted that the computation of the net worth by the Chartered Accountant was proper and that respondent No. 4 fully satisfied the financial eligibility criteria prescribed under the tender conditions.

- 9.3. In this regard, he relies upon the decision of the Hon'ble Delhi High Court in the case of **TEQ Green Power XIII Private Limited vs. REMC Limited**¹ more particularly paras 21, 23, 24, 25 and 26, which are reproduced hereunder for easy reference:

21. *It has been stated before us, on affidavit, that the preference shares in question are preference shares redeemable at the instance of the issuer without any fixed term or tenure attached to these shares. A perusal simpliciter of the aforestated provisions makes it amply clear that such shares would form part of paid-up share capital which in turn is a component of net worth. We are therefore of the opinion that the shares in question can form a part of the net worth within the scheme and mandate of the Companies Act.*

23. *It is pertinent to mention here that Section 2 (40) of the Companies Act which defines the "financial statement" in relation to a company includes a balance sheet which is to be prepared in accordance with Section 129 of the Companies Act and Section 129 refers to*

¹ WP(C) No.17599/2022 & CM Appl.56263/2022 dated 21.3.2023



Schedule III of the Companies Act. *As stated in JK Industries (supra), it does not deal with net worth of a company. Calculation of net worth and drawing up of a balance sheet are therefore separate concepts. It is well settled that if the preference shares are not redeemed, the holder of the preference shares does not assume the status of a creditor. Even if O2 Power SG PTE. LTD is governed by the Indian Companies Act (which is actually not as it is a company incorporated in Singapore and is governed by the laws of Singapore), the preference shares issued by O2 Power SG PTE. LTD are not redeemable at the option of shareholders, and therefore, cannot be categorized as a debt.*

24. *A perusal of the above would show that the mode of calculation of net worth which has been adopted by the Respondents to exclude the Petitioner from further stages of the tendering process is contrary to the Sections of the Companies Act. Clause 4.3.1(c) of the NIT does not exclude preference shares from the definition of net-worth rather it states that net-worth is to be considered for this clause shall be the total net worth as calculated in accordance with the Companies Act, 2013, then the net-worth has to be calculated as per the Companies Act, 2013 and no other method can be permitted to be adopted. There is no reason as to why the tender must exclude preference shares while calculating the net-worth. Respondents cannot be permitted to adopt a method which runs contrary to the provisions. Even though there are no allegation of mala fides or that the method has been calculated to favour any particular party, since the decision has been arrived at in violation of the statute, this Court cannot be a party to uphold any decision which is contrary to the plain reading of the statute.*

25. *As stated before, balance sheet is not an indicator of the true net worth of a company.*



Balance sheet reflects the share capital of a company and its treatment as an asset or liability to the company on the date of preparation of the balance sheet. It is not disputed that balance sheets are to be prepared in accordance with extant accounting standards. Even if it were the case that the legality of the Impugned Decision was to be tested within directions laid down by Accounting Standard 32, it has been correctly pointed out by Mr. Mehta that in terms of AG 25 of the standards, the preference shares in question would be treated as a liability only in certain circumstances and not always. AG 25 states as under: -

"AG 25 Preference shares may be issued with various rights. In determining whether a preference share is a financial liability or an equity instrument, an issuer assesses the particular rights attaching to the share to determine whether it exhibits the fundamental characteristic of a financial liability. For example, a preference share that provides for redemption on a specific date or at the option of the holder contains a financial liability because the issuer has an obligation to transfer financial assets to the holder of the share. The potential inability of an issuer to satisfy an obligation to redeem a preference share when contractually required to do so, whether because of a lack of funds, a statutory restriction or insufficient profits or reserves, does not negate the obligation. An option of the issuer to redeem the shares for cash does not satisfy the definition of a financial liability because the issuer does not have a present obligation to transfer financial assets to the shareholders. In this case, redemption of the shares is solely at the discretion of the issuer. An obligation may arise, however, when the issuer of the shares exercises its option, usually by formally notifying the shareholders of an intention to redeem the shares."

(emphasis supplied)



26. *The Apex Court in a catena of Judgments has held that the scope of interference by the Courts in exercising jurisdiction under Article 226 of the Constitution of India in contractual matters is extremely limited. The Court interferes in contractual matters only when the decision making process is faulty or that the decision arrived at by tenderer is calculated to favour somebody or that the decision is so irrational that no man of prudence would have come to that conclusion. In the facts of the present case, it cannot be said that the decision that has been arrived at by the Respondent is to favour somebody yet the method adopted by the Respondent for calculating net worth is contrary to the definition of net worth given under the Companies Act. Reliance placed by the Respondent on the Judgment of GKC Projects (Supra) is not apt for the reason that in that case the tenderer had decided not to include only reserves arising out of the revenue profits alone while calculating the net worth which is not contrary to the statute. However, in the facts of the present case, the tenderer has decided to exclude preference shares from the definition of net worth on a wrong notion that preference shares is a liability which is contrary to the Sections in Companies Act. Only when the preference shares are redeemable at the instance of the shareholders then only the preference shares can be called as a liability and not in all cases. Preference shares are redeemed out of profits or out of a fresh issue meant for the purpose and not from the existing share capital. Since the entire basis of calculating net worth by the Respondent is contrary to the provisions of the statute, this Court has no other option but to hold that the decision of the tenderer to exclude preference shares from the calculation of net worth is arbitrary and irrational. In view of the above, the challenge of the Petitioner to its exclusion from the tendering process has to be accepted. The Respondent is directed to re-work the net-worth of the Petitioner herein by including the*



preference shares while calculating its net-worth and take a decision as to whether the Petitioner's financial bid can be considered or not.

- 9.4. By relying on **TEQ Green Power**, his submission is that preferential shares would have to be treated as capital. In the present matter, the loan which has been advanced as regards which share have been allotted can also be treated as the capital of the company and it is in pursuance thereof that the certification issued by the Chartered Accountant has been considered.
10. Sri. Prasad Hegde, learned counsel for respondent no.4 would reiterate the submission of learned Additional Advocate General and states that the Zed Gold certificate which had been produced by the petitioner was subsequent to the cut-off date. He also submits that the amounts had been advanced by directors 3 years ago. Due to various reasons, the allotment of shares could not be completed, but was completed subsequently and now forms part of the share capital and as such, the appellate authority has rightly accepted the said certification issued by the Chartered Accountant.
11. Heard Sri.Prabhuling Navadgi, learned Senior Counsel appearing for the petitioner, Sri.Reuben Jacob, learned Additional Advocate General for the State and Sri.Prasad



Hegde, learned counsel for respondent no.4 and perused papers.

12. **The short question that arises for consideration is whether the timelines stipulated in the tender notification are sacrosanct and, if so, whether the Tender Accepting Authority and the Appellate Authority have uniformly applied those timelines while considering the eligibility of the petitioner and respondent No. 4.**
13. The present case presents an unusual situation where both the petitioner and respondent No. 4 invoke the sanctity of the prescribed dates against each other. There is, in fact, no dispute between the parties that the timelines stipulated under the tender conditions are mandatory and require strict adherence.
14. Respondent No. 4 contends that the petitioner's ZED Gold Certificate, having been issued only on 09.01.2026, was admittedly not available on the last date prescribed for submission of bids, namely, 06.01.2026. Consequently, the Tender Accepting Authority was justified in rejecting the petitioner's bid at the stage of technical evaluation.
15. The petitioner, on the other hand, contends that respondent No. 4 did not possess the prescribed minimum net worth of ₹5 crores either as on 31.03.2024 or, alternatively, as on 31.03.2025. Though it was argued



that the audited financial statements for the year ending 31.03.2025 were available, the petitioner submits that the eligibility criterion was nevertheless not satisfied on the relevant cut-off date.

16. Thus, both parties accept that the dates prescribed under the tender conditions are sacrosanct. The dispute is not with regard to the mandatory nature of the timelines, but with regard to their application. Consequently, this Court is not required to examine whether the stipulated dates are mandatory; the only issue requiring determination is whether either of the parties has failed to satisfy the eligibility conditions as on the prescribed dates.
17. The question that therefore falls for consideration is whether the petitioner or respondent No. 4 has violated the mandatory cut-off dates prescribed under the tender conditions and, if so, the legal consequences thereof.
18. Insofar as the petitioner is concerned, there is no dispute that the petitioner did not possess or furnish the ZED Gold Certificate on or before 06.01.2026, the last date prescribed for submission of bids. The certificate was admittedly issued only on 09.01.2026 and was furnished to the Tender Evaluation Authority thereafter on 12.01.2026. Thus, the petitioner sought to rely upon a document which was neither available nor uploaded on or before the prescribed deadline.



19. The submission that the certificate had been produced prior to the scrutiny of the technical bids cannot be accepted. Eligibility has to be determined with reference to the last date stipulated in the tender notification and not with reference to the date of scrutiny or evaluation. Acceptance of documents obtained subsequent to the cut-off date would amount to permitting a bidder to cure an eligibility defect after the bidding process had closed, thereby compromising the fairness and integrity of the tender process.
20. Accordingly, this Court finds no infirmity in the rejection of the petitioner's bid at the stage of technical evaluation.
21. The position, however, stands on a different footing insofar as respondent No. 4 is concerned. The bid of respondent No. 4 was accepted on the ground that it emerged as the lowest (L1) bidder. Nevertheless, such acceptance could have been sustained only if respondent No. 4 satisfied all the eligibility conditions prescribed under the tender notification, including the requirement relating to minimum net worth under sub-clause (3) of Clause 9.
22. The tender conditions require the bidder to possess a minimum net worth equivalent to 50% of the estimated tender value. Since the estimated value of the present tender is ₹10 crores, the bidder was required to establish



a minimum net worth of ₹5 crores as on the relevant cut-off date.

23. The balance sheet of respondent No. 4 discloses its net worth as ₹4,32,84,294.65 as on 31.03.2025. The Chartered Accountant's certificate, however, certifies the net worth as ₹7,14,12,350 by aggregating the paid-up share capital, reserves and surplus, and loans advanced by the directors.
24. Subsection 57 of Section 2 of the Companies Act, 2013, extracted hereinabove, defines "net worth" with specificity. The statutory definition includes paid-up share capital, reserves created out of profits, securities premium account, and the debit or credit balance of the profit and loss account, after making the prescribed deductions. The definition does not contemplate inclusion of loans advanced by directors while computing the net worth of a company. A loan is always a debt and would have to be deducted from the net worth and not added to it.
25. Even assuming that the clarification subsequently issued by the Chartered Accountant on 12.01.2026 is taken into consideration, the said clarification itself states that the formal allotment of shares against the funds advanced by the directors had not been completed as on 31.03.2025. Thus, as on the relevant cut-off date, the amounts



continued to retain the character of loans. Merely describing such loans as "quasi-capital" cannot alter their legal character in the absence of a completed allotment of shares prior to the cut-off date.

26. The Chartered Accountant's subsequent explanation that the loans were intended to meet long-term capital requirements or that they were eventually converted into share capital cannot assist respondent No. 4. Eligibility has to be established with reference to the prescribed cut-off date. Events occurring subsequent thereto cannot retrospectively confer eligibility.
27. Therefore, as on the relevant date, respondent No. 4 had not established the prescribed minimum net worth of ₹5 crores. The acceptance of the Chartered Accountant's certificate by the Appellate Authority, despite the statutory definition contained in Subsection 57 of Section 2 of the Companies Act, 2013 and the clarification issued by the Chartered Accountant himself, is legally unsustainable. Consequently, respondent No. 4 did not satisfy the financial eligibility criterion prescribed under the tender conditions and was not entitled to be considered for award of the contract.
28. The remaining submission advanced by Sri Prasad Hegde is that, even if respondent No. 4 is held to be ineligible, the petitioner cannot derive any benefit therefrom, since



the petitioner's bid had itself been rejected at the technical evaluation stage. According to learned counsel, only the bidder placed immediately next to respondent No. 4, namely the L2 bidder, could question the award of the contract to the L1 bidder.

29. This submission cannot be accepted. The Finance Department of the State Government has issued a Circular dated 11.05.2022 which specifically provides that where the successful L1 bidder is found to be ineligible or stands disqualified, the tender process is not to proceed by automatically awarding the contract to the next eligible bidder. Instead, the entire tender process is required to be cancelled and a fresh tender invited.
30. Thus, the consequence of the disqualification of respondent No. 4 is not the award of the contract to the petitioner or to the L2 bidder, but the cancellation of the tender itself. The petitioner, being an unsuccessful participant in the tender process, is nevertheless entitled to challenge the illegal acceptance of the bid of an ineligible bidder, since such challenge goes to the legality and fairness of the tender process itself.
31. In that view of the matter, this Court passes the following:



ORDER

- i) The Writ Petition is ***partly allowed***, the reliefs are moulded.
- ii) The rejection of the petitioner's bid on the ground that the ZED Gold Certificate was not furnished on or before the last date prescribed for submission of bids is upheld.
- iii) The acceptance of the bid of respondent No.4 and the consequential order passed by the Appellate Authority, insofar as it holds that respondent No.4 satisfied the prescribed net worth criterion under Clause 9(3) of the tender conditions, are hereby quashed.
- iv) It is declared that respondent No.4 did not satisfy the financial eligibility criterion relating to minimum net worth as on the prescribed cut-off date and was, therefore, ineligible for consideration under the tender notification.
- v) In view of the Circular dated 11.05.2022 issued by the Finance Department of the State Government, the respondents shall treat the tender process as having failed and shall cancel the tender in accordance with the said Circular.
- vi) Liberty is reserved to the respondents to initiate a fresh tender process.

**Sd/-
(SURAJ GOVINDARAJ)
JUDGE**

PRS
List No.: 2 Sl No.: 7