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

% Date of Decision: 12.08.2021.

+ W.P.(C) 8076/2021

GAUTAM SOLAR PVT. LTD.

..... Petitioner

Through: Mr. Rohit Rathi, Adv.

versus

ENERGY EFFICIENCY SERVICES LIMITED

..... Respondents

Through: Mr. Samdarshi Sanjay, Advocate with
Mr. Prakash Jha, GM (Legal),
Mr. Kumar Saurabh, AGM (SCM) &
Mr. Nikhil Bhandari AM (SCM) for
respondent/EESL.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE JASMEET SINGH

J U D G M E N T (O R A L)

1) The writ petition has been filed seeking the following substantive prayer:

“a. Quash and set aside the impugned communication dated 20.07.2021 issued by the Respondent to the Petitioner insofar it states that the bid became non-responsive owing to “Not meeting Qualification requirements Av. Annual Turnover criteria (considering last three financial years and on the basis of audited balance sheets provided by you from for all 4 years)

b. Direct the Respondent to include the Petitioner in the list of successful bidders.

c. Quash and set aside the impugned communication dated 20.05.2021 issued by the Respondent insofar it fails to include the Petitioner in the 'Envelope Name: Price Bid'."

2) The Petitioner claims to be a company dealing in Solar PV installation and services and other allied solar-technology related services.

3) The Respondent is Energy Efficiency Services Limited (EESL) and is a Super Energy Service Company (ESCO), which enables consumers, industries and governments to effectively manage their energy needs through energy efficient technologies. EESL was founded in 2009, promoted by Ministry of Power, Government of India as a Joint Venture of four reputed public-sector undertakings namely:

- a) NTPC Limited
- b) Power Finance Corporation Limited
- c) REC Limited
- d) POWERGRID Corporation of India Limited.

4) On 14.01.2021, the Respondent issued a Detailed Invitation for Bids (IFB) for design, manufacture, supply transport, installation, testing and commissioning of Off Grid Solar Photovoltaic Water Pumping Systems of 1-10 HP in Selected States on PAN India basis, including complete system warranty and its repair and maintenance for 5 Years under MNRE KUSUM scheme Component-B.

- 5) The Respondent invited e-bids from eligible bidders for the aforesaid work under Single-stage Three-envelope bidding process through E-tendering.
- 6) Pursuant to the IFB dated 14.01.2021, the Petitioner submitted its bid with the relevant documents vide the E-tendering process, as per the format prescribed by the Respondent.
- 7) On 03.03.2021, the Technical Qualification bids were opened by the Respondent and the Petitioner's bid was rejected, inasmuch as, the Petitioner was not included in the 'Envelope Name: Price Bid'. Vide communication dated 20.05.2021, the Petitioner learnt that its Technical Bid had been rejected.
- 8) A communication dated 20.07.2021 was issued by the Respondent to the Petitioner stating that the bid of the Petitioner was held '*non- responsive*' owing to the reason that "*Not meeting Qualification requirements Av. Annual Turnover Criteria (considering last three financial years and on the basis of audited balance sheets provided by you from all 4 years)*".
- 9) The Petitioner, on 22.07.2021, replied to the said communication of the Respondent, thereby explaining in detail, how the Petitioner was compliant with the aforesaid clause. However no response was received to the said later. Aggrieved by the reasons provided by the Respondent for the rejection of their bid, the Petitioner has filed the present writ petition.
- 10) When the matter came up before this Court on 09.08.2021, this Court directed the respondent to file their counter-affidavit.

11) Pursuant to our order of 09.08.2021, the Respondent has filed a counter-affidavit and the reason for rejection has been stated in Para 4, which reads as under:

“(i) Rejection due to Financial Criteria: The Petitioner participated in 3 clusters (States), the requirement of cumulative turnover was Rs. 173.12 Crores (approx.). As per the tender conditions the Petitioner was required to submit "Duly authorized copy of audited annual report/balance sheet for any three consecutive financial years out of last four years i.e., 2016-17, 2017-18, 2018-19, 2019- 20 is to be submitted by respondent along with CA certificate. In case of proprietorship, ITR along with management signed accounts to be submitted if audited is not required. ATO means revenue from operations. Profitability means profit after tax.

(ii) As per Format 1 Annexure III, the details of Annual Turn Over of any 3 of the last four financial years have to be submitted, whereas the Petitioner incorrectly submitted for 4 years and made the calculation on addition of ATO of All 4 years. Committee did not get any indicative idea from the bid to consider which 3 years.

(iii) It is however, submitted that the Respondent made the calculation on the basis of Average Annual Turnover of latest 3 years and the average turnover comes to 166.30 Crores (approx.) hence the Bid was rejected.

(iv) Respondent made the calculation on the basis of Average Annual Turnover of latest 3 years and the average turnover comes to 166.30 Crores (approx.) hence the Bid was rejected. Calculation is as below:

Bidder Name	GAUTAM SOLAR PVT LTD
Category	General
Lots Applied	2, 3 & 5
Consortium partner	NA
ATO Requirement (In Cr.)	173.12

CERTIFICATE	FIN 1	FIN 2	FIN 3
Submitted			
	<i>Turnover</i>	<i>Profitability</i>	<i>Paid up Share Capital</i>
2016-17	1,63,02,30,000		4,62,73,830
2017-18	1,80,34,01,886	14,57,31,114	<i>Net Worth</i>
2018-19	1,93,94,10,283	17,46,46,315	82,35,93,235
2019-20	1,24,62,71,054	6,41,57,545	
Average Turnover	166,30,27,741/- (Last 3 years)		
ATO in Crs	166.30		
Status	Not Qualified		
Remarks	Not meeting ATO criteria		

12) It is further stated by the Respondent, that vide their responses dated 07.07.21 and 22.07.21, they provided the Petitioner with reasons for rejection of their bid as not fulfilling the ATO criteria. On subsequent requests by the Petitioner, the Respondent re-examined the bid and found that the Petitioner did not satisfy the Technical Evaluation Criteria too. The Respondent states in Para 6 of their counter affidavit:

“It is submitted that as per Qualifying Requirement 6, Column II, the Petitioner was required to give a Declaration as under:

“As per RfP (Given in Column 2 of Qualifying criteria point 6): It is given that "submit an undertaking that if the details

provided by the bidders are in deviation with the provision of the scheme, it will call for disqualification. If considered necessary, a team of SIA officials may visit the facilities of the bidders for verification".

Upon further evaluation, it was found that the undertaking furnished by Petitioner at Page 580 of the Petition is not as required in QR 6, Column II."

13) We have heard the learned counsels for the parties and gone through the record before us. It will be relevant to reproduce the extract of the Qualification Requirement in **Annexure-II**, which reads as under:

“Annexure II

QUALIFYING REQUIREMENT(QR)

In addition to the satisfactory fulfilment of-requirements stipulated under section ITB, the following shall also apply:

Sr. No. (A)	Criteria (B)	Documents to be submitted (C)	Particulars in brief of the Documents submitted by the Bidder on Covering Letter (D)
1.			
2.			
3.	Bidders should have Average Annual Turnover (ATO) as per Table 2 below for any 3 years out of the last 4 years i.e. 2016-17, 2017-2018, 2018-	Duly authorised copy of audited annual report/ Balance Sheet for any three financial years out of last four years (i.e. 2016-17, 2017-18, 2018-19 and 2019-20) is to be submitted by respondent along with CA certificate.	M/s 2016-17: 2017-18: 2018-19: 2019-20

	2019 and 2019- 2020.	Turnover means operating income. Profitability means: Profit after tax.	<i>Refer Format-1 in Annexure-III</i>
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14) The document to be submitted by the bidder, to establish the Qualification Requirement, was to be as per Format 1 in Annexure-III which reads as under:

“ANNEXURE-III

Format 1

Information on Average Annual Turnover

[To be printed on the Letterhead of the bidder including full postal address, telephone, faxes and e-mail address]

Annual Turnover Data for the last 3 years

<i>Year</i>	<i>Net Worth (in INR)</i>	<i>Annual Turnover (in INR)</i>
2019-20		
2018-19		
2017-18		
2016-17		
<i>Annual Average</i>		

(This format should be certified by the practicing CA's of the Bidder)”

15) Learned Counsel for the Respondent has argued that since “*Annual Turnover Data for the Last 3 Years*” has been mentioned in Format 1 of Annexure III, the Petitioner was required to give only, and the Respondent

was required to consider only, the Annual Turnover Data for the latest 3 years, namely, 2019-20, 2018-19 and 2017-18. The petitioner had not given data for only the three years that it desired the respondent to consider. Thus, the respondent was not aware, which three years data should be considered. Accordingly, the respondent considered the last three years data i.e. for the years 2017-18, 2018-19 and 2019-20.

16) A bare perusal of the Row 3 of the Table in Annexure II, read in conjunction with Annexure- III, Format 1, clearly demonstrates that the bidder – to be qualified, had to demonstrate the requisite Average Annual Turnover, by taking into consideration the Turnover of “*any 3 years out of the last 4 years i.e. 2016-17, 2017-18, 2018-19 and 2019-20*”. If the intention of the Respondent was to consider the data of only the last the 3 years i.e. 2017-18, 2018-19 and 2019-20, then there was no need for the Respondent to mention “*any 3 years out of the last 4 years i.e. 2016-17, 2017-18, 2018-19 and 2019-20*” in Annexure II of the Qualifying Requirements. The substantive provision/clause on Qualifying Requirements is the one contained in Annexure III extracted above. It refers to Format 1 in Annexure III. Therefore, even if there is any conflict or ambiguity between what is stated in the Qualifying Requirements, and what is stated in the Format 1 in Annexure III, it is the Qualifying Requirements, which would rule, and not what is stated in the tabulation in Format 1 in Annexure III. It is also pertinent to note that even Format 1 in Annexure III permits the Bidders to provide the Annual Turnover data for four years i.e 2016-17, 2017-18, 2018-19 and 2019-20. This is in consonance with the Qualification Requirements contained in Annexure II. The mere use of the

words “*Annual Turnover Data for the last 3 years*” in Format I is neither here, nor there. The same has to be read and understood as referring to the data of three financial years which the bidder seeks to rely upon to claim eligibility in terms of the Qualifying Requirements.

17) Since the Format I in Annexure III, provided four rows to provide the turnover data for the four years aforesaid, no fault can be found with the bidder for providing the turnover data for all the four years. It does not follow that this action of the bidder gives an option, or an opportunity, to the respondent to disqualify the bidder by ignoring the Turnover figures of the year which, if taken into consideration, would qualify the bidder.

18) Had it been the intention of the Respondent to consider the turnover data of the last 3 years only, the word ‘any’ would not have been used in the Qualifying Requirements. The year 2016-17 would not have been specifically mentioned either. The said word cannot be rendered redundant. There is absolutely no ambiguity in the relevant clause in the Qualifying Requirements. It clearly permits the bidder to calculate the Average Annual Turnover by considering the Annual Turnover for “any” three years out of the four years specifically mentioned i.e. 2016-17, 2017-18, 2018-19 and 2019-20. The words “any” and the mention of four years, including the year 2016-17 would have to be ignored from the Qualifying Requirements, if the interpretation of the respondents were to be accepted. Even Format 1 in Annexure III provides one row for each 2016-17, 2017-18, 2018-19 and 2019-20. If only the last three years Turnover data were relevant, and if only those figures could be considered, there was no purpose of calling for or providing space in the said tabulation to provide the turnover data for

2016-17. An interpretation which gives meaning to the words used in the Tender Document has to be preferred over one which renders its substantive terms redundant. Where the plain English reading conveys a particular meaning, it is not open to Respondent to ignore the words to convey a different meaning.

19) In ***Central Coalfields Limited & Anr. V. SLL-SML (Joint Venture Consortium) & Ors.*** (2016) 8 SCC 622, the Supreme Court observed:

“33. In Ramana Dayaram Shetty v. International Airport Authority of India this Court held that the words used in a document are not superfluous or redundant but must be given some meaning and weightage:

7. It is a well-settled rule of interpretation applicable alike to documents as to statutes that, save for compelling necessity, the Court should not be prompt to ascribe superfluity to the language of a document “and should be rather at the outset inclined to suppose every word intended to have some effect or be of some use.” To reject words as insensible should be the last resort of judicial interpretation, for it is an elementary rule based on common sense that no author of a formal document intended to be acted upon by the others should be presumed to use words without a meaning. The court must, as far as possible, avoid a construction which would render the words used by the author of the document meaningless and futile or reduce to silence any part of the document and make it altogether inapplicable.” (emphasis supplied)

20) It appears to us that the respondents found the simple task of working out the Average Annual Turnover by picking out the three best years, out of the four years i.e. 2016-17, 2017-18, 2018-19 and 2019-20, too difficult or complicated. This approach of the respondents shows utter lack of application of mind, failure and reluctance on the part of the respondent in discharging its responsibility of assessing the technical bids of the Bidders.

21) The process of evaluation of Bids submitted in response to a Public Tender is a serious exercise, which the tender inviting authority must undertake with diligence and efficiency. It cannot be seen to be acting mindlessly, mechanically, and in complete ignorance of, or contrary to the terms of the tender. The manner in which the respondents have dealt with the petitioner's bid, demonstrates an utterly laid back attitude by the respondents during the process of its evaluation of the petitioner's bid. Bid evaluation is not a mechanical process. It is undertaken by human beings having, or, at least, expected to have, reasonable intelligence and common sense.

22) In ***Macpower Cnc Machines Limited V. Union of India, Through Development Commissioner Ministry of Micro Small and Medium Enterprises (MSME), W.P. (C) 3942/2020***, decided on 24.12.2020, a Division Bench of this court, while dealing with a challenge to disqualification of the Petitioner in the bidding process, inter alia, observed as follows :

“81. The entire process of inviting bids in respect of a public tender is an expensive and time consuming process. The whole process, even in the present case, started way back in July, 2019 and the respondents sought to reject, inter alia, the

petitioner's bids for Lots 4,5 and 6 in June, 2020. Substantial expenditure would have been incurred not only by the Government in the process of inviting the bids, but also by all the bidders in meeting the terms and conditions of the bid, preparing their bids, and submitting their bids. They had to shell out substantial monies towards earnest money deposit. The respondents cannot treat their bids lightly. They have a right to fair examination of their bids. If the respondents are allowed to conduct themselves in arbitrary and whimsical manner in the matter of examination of the bids, the public bidding process would lose its credibility, which would be detrimental to public interest. The respondents are accountable to the bidders, and merely because they have a right to reject any bid, and the discretion whether, or not, to call for clarification, it does not mean that the said powers can be exercised in an arbitrary and whimsical manner. The exercise of any discretion by a public authority has to be guided by the object and purpose for such powers being vested in the authority in the first place. Thus, in our view, even if the respondents genuinely entertained any doubt with regard to the technical bids submitted by the petitioner and other bidders, the respondents could not have lightly and casually rejected all the bids as technically disqualified, and that too on the basis of an unfounded and whimsical assumption as noted hereinabove, and they should have given a chance to the bidders to clarify the doubts, if any. Pertinently, the TEC called for clarification in numerous instances, but denied this opportunity to the petitioner unfairly."

23) In our view, there is no doubt or ambiguity in the relevant clause discussed hereinabove as contained in the Qualifying Requirements contained in Annexure II. However, even if there was any doubt, we would invoke the Doctrine of '*verba chartarum fortius accipiuntur contra proferentem*.' The Respondent in the present case was the author of the terms and conditions of the tender. If the Respondent had intended to

consider the Annual Turnover of only the last three years, it would neither have used the word “any 3 years”, nor specifically mentioned the four years, including 2016-17. The wordings of the Annexures would have been different from those as framed herein.

24) As observed in ***Industrial Promotion & Investment Corporation of Orissa Ltd. v. New India Assurance Co. Ltd. And Anr, (2016) 15 SCC 315:***

“10. ..The Common Law rule of construction “*verba chartarum fortius accipiuntur contra proferentem*” means that ambiguity in the wording of the policy is to be resolved against the party who prepared it. MacGillivray on Insurance Law deals with the rule of *contra proferentem* as follows:

“The *contra proferentem* rule of construction arises only where there is a wording employed by those drafting the clause which leaves the court unable to decide by ordinary principles of interpretation which of two meanings is the right one. “One must not use the rule to create the ambiguity – one must find the ambiguity first.” The words should receive their ordinary and natural meaning unless that is displaced by a real ambiguity either appearing on the face of the policy or, possibly, by extrinsic evidence of surrounding circumstances....”

25) The said principle of ‘*verba chartarum fortius accipiuntur contra proferentem*’ has also been applied by the Supreme court in the case of ***Bank of India and Anr. v. K. Mohandas and Ors, (2009) 5 SCC 313*** wherein the court observed thus:

“32. The fundamental position is that it is the banks who were responsible for formulation of the terms in the contractual Scheme that the optees of voluntary retirement under that Scheme will be eligible to pension under the Pension Regulations, 1995, and, therefore, they bear the risk of lack of clarity, if any. It is a well-known principle of construction of a contract that if the terms applied by one party are unclear, an interpretation against that party is preferred (verba chartarum fortius accipiuntur contra proferentem).”

26) As regards the second objection of the Respondent – being that the Petitioner has failed to give an undertaking as required as per Qualifying Requirement, (Annexure II, Clause 6), it will be relevant to reproduce the format of the declaration required as per the Bid Document :

“Declaration of sourcing/ manufacturing of components, clearly specifying as being indigenously manufactured. Details of the manufacturing/ sourcing firm/ facility, including Company Profile, to be provided accordingly.

AND

The bidder should submit the list and pictures of the manufacturing and testing facilities and submit an undertaking that if the details provided by the bidders are in deviation with the provision of the scheme, it will call for disqualification. If considered necessary, a team of SIA officials may visit the facilities of the bidders for verification.....”

27) As compared to the above, the undertaking given by the Petitioner is reproduced as under :

We M/s Gautam Solar Private Limited, hereby undertake that, if the details provided by the bidders are in deviation with the provision of the scheme, it will call for disqualification. If considered necessary, a team of EESL officials may visit the facilities of the bidders for verification.

28) A bare perusal of the requirement and the undertaking submitted by the Petitioner show that the only difference is that in place of “*team of SIA officials*”, the Petitioner has written “*team of EESL officials*”. SIA means State Implementing Agency, whereas EESL means the Respondent herein i.e Energy Efficiency Services Limited. Thus, the question that arises for our consideration is whether the change of the word ‘SIA’ with ‘EESL’ constitutes a breach of an essential condition, so as to declare the bid of the Petitioner technically non-responsive.

29) The whole purpose of the clause is that the team of the officers of, or on behalf of, the Respondent, may visit for verification, to check the infrastructure of the bidders. The Petitioner has duly bound itself by giving the undertaking that the officials of the Respondent may visit the facility of the Petitioner for verification. The statement of the petitioner cannot be understood as a refusal by the petitioner to allow the team of ‘SIA’ to visit and inspect its facility.

30) The respondents have neither stated, nor argued before us, as to who are the “*SIA officials*”. In fact, the petitioner has gone a step further and undertaken that even a team of EESL officials, may visit the facility for verification. The Respondent EESL is a larger body being a joint venture of four reputed public-sector undertakings: NTPC Limited, Power Finance

Corporation Limited, REC Limited and POWERGRID Corporation of India Limited.

31) We are of the view that the deviation in using the words “EESL officials” in place of “SIA officials” in the undertaking is not a breach of an essential condition, which makes the bid of the Petitioner technically non-responsive. In ***Poddar Steel Corpn v. Ganesh Engg. Works*** [(1991) 3 SCC 273] it has been observed as :

“6. 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.”

32) The error in the undertaking furnished by the petitioner is merely typographical and inconsequential. The respondent cannot resort to hair splitting while examining the bids. The respondent could have easily called upon the petitioner to provide its clarification to this typographical error and correction of the same would not have had any bearing on the bid of the petitioner. The ITB enables the respondent to call for clarifications from the

bidders, precisely to deal with such like situations in Clause 4.2 of the ITB, which reads as follows:

“4.2 Clarification of Bids

During bid evaluation, the EESL may, at its discretion ask the bidder for a clarification of its bid. The request for clarification and the response shall be in writing, and no change in the price or substance of the bid shall be sought, offered or permitted. The address for communication will be same as ITB Clause 1.2.”

33) The respondent did not invoke the said procedure prescribed in Clause 4.2 of the ITB. Even this failure is reflective of a mechanical, mindless, casual and laid back approach on the part of the respondent. The respondent cannot seek to disqualify bidders on hyper technicalities and reduce competition which would not serve any public interest. The whole purpose of inviting public auction and tenders is to increase competition amongst those qualified, and not to curtail it by resort to nitpicking. This court had occasion to deal with a similar situation in ***Siemens Healthcare Private Limited & Ors. v. Directorate General of Health Services, Central Procurement Agency & Ors.***, decided on 19.01.2021. The petitioner’s technical bid was rejected on the ground that the undertaking submitted by it was not verified/ notarised as per the tender requirement. The undertaking submitted by the petitioner had been notarised, but not on every page. This Court, while allowing the writ petition, relied upon Clause 27 of the tender conditions in that case, which provided:

“27. Minor Infirmary/Irregularity/Non-Conformity

27.1 If during the evaluation, the TIA found any minor informality (ie. which has no material deviation and financial impact on the bid and also do not prejudice or affect the

ranking order of the tenders) and/or irregularity and/or nonconformity in a tender, the TIA may convey its observation on such 'minor' issues to the bidder by e-mail asking the bidder to respond by a specified date, which shall not ordinarily be more than seven working days (except in unavoidable circumstances). If the bidder does not reply by the specified date or gives evasive reply without clarifying the point at issue in clear terms, that tender will be liable to be ignored."

34) The Court went on to observe as follows:

"16. In any event of the matter, Clause 27 of the Tender Conditions taken note of hereinabove, was incorporated precisely to deal with such like situations. Thus, in our view, non-affixation of the stamp and signature of the Notary Public on pages 2 and 3 of the document Annexure U, at the highest, was a minor non-conformity, or irregularity, or infirmity. The intention of the petitioner to submit the undertaking as per Annexure U with due attestation is clear from the fact that the document as submitted by it bears the attestation of the Notary Public, though only at the first page. Even if the Evaluation Committee of the respondents felt that the undertaking in Annexure U Format should bear the attestation on all the pages, they could and should have called upon the petitioner to make good the said so-called deficiency or infirmity.

17. In our view, the respondents have resorted to hairsplitting, and taken a hyper technical view of the matter to non-suit the petitioner. The approach of the respondents cannot be described as either fair or reasonable. The respondent cannot sit with a magnifying glass while examining the bid document, with the objective of disqualifying the bidders on some or the other ground, howsoever petty or whimsical it may be. If there is a clear non-compliance of a mandatory condition, the Tender Evaluation Committee would be justified in rejecting the bid. At the same time, it cannot adopt an approach to unreasonably disqualify an otherwise qualified bidder. The purpose of scrutiny of a tender document submitted by a bidder should not be to non-suit the bidder on such hyper technical issues. Such exclusion on hyper technical approach

would not be in public interest as it would curtail competition. The whole purpose of procuring goods and services by public authorities through the process of tender/ auction is to get the most competitive bids for the best product offered. Pertinently, in the present case, apart from the bidder, there was only one other tenderer, and exclusion of the petitioner was certainly not in public interest, since the said exclusion was founded upon completely unjustified grounds.

18. Reliance placed by Mr. Narayan on the Manual for Procurement of Goods, 2017 is neither here nor there, as the same does not deal with the issue at hand. In our view, the undertaking Annexure U, as submitted, firstly is duly notarized and, secondly, the minor infirmity therein, if any, warranted the invocation of Clause 27 by the respondents.”

35) The observations in **Macpower Cnc Machines Limited** (supra) are also germane in the aforesaid context. Moreover, this was not even a ground taken by the respondents when they initially rejected the petitioner's Technical Bid on the ground of the petitioner not meeting the turnover criteria. This has, only subsequently, been picked up as a red herring.

36) We, therefore, reject the second ground taken by the respondent for rejection of the technical bid of the petitioner.

37) In this view of the matter, it is clear that the Respondents have only taken Average Turnover of the years 2017-18, 2018-19 and 2019-2020 to arrive at figure of 166.30 Crores (approx.) as Average Turnover for the last 3 years. However as per the case argued by the Petitioner, if the Annual Turnover is taken for the years 2016-17, 2017-18 and 2018-19 i.e. 3 out of the last 4 years, the Petitioner will cross the threshold requirement of 173.12 Crores (approx.).

38) We, accordingly, quash the communications dated 20.05.2021 and 20.07.2021 issued by the respondent, and direct the Respondent to recalculate the the Average Annual Turnover of the Petitioner by taking into account the Turnover for the years 2016-17, 2017-18, 2018-19 and proceed to examine the petitioner's responsiveness for Technical Evaluation. The Respondent shall proceed to process the bid of the petitioner in accordance with the prescribed procedure while dealing with the petitioner's bid.

39) With these observations, the above Writ Petition is allowed. Parties are left to bear their respective costs.

VIPIN SANGHI, J

JASMEET SINGH, J

AUGUST 12, 2021