



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

Date of decision: 17th AUGUST, 2022

IN THE MATTER OF:

+ **W.P.(C) 9183/2022 & C.M. No. 27586/2022**

ADANI WELSPUN EXPLORATION LIMITED Petitioner

Through: Mr. Rajiv Nayar, Sr. Advocate with
Mr. Rishi Agrawala, Mr. Karan
Luthra, Ms. Aarushi Tikku, Mr.
Shravan Nirajan and Ms. Ananya
Pratap Singh, Advocates.

versus

UNION OF INDIA

..... Respondent

Through: Mr. Sanjay Jain, Additional Solicitor
General and Mr. Apoorv Kurup,
CGSC with Ms. Nidhi Mittal,
Mr. Ojaswa Pathak, Mr. Sahaj Garg,
Mr. Nishank Tripathi, Ms. Ashima
Gupta and Ms. Aparna Arun,
Advocates.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

SUBRAMONIUM PRASAD, J.

1. The instant writ petition has been filed under Article 226 seeking directions to the Respondent to process and open the Petitioner's bid already available with the Respondent with respect to the Notice Inviting Offer (NIO) dated 10.06.2021 issued by the Respondent for "*The Development of*



Small Oil & Gas Fields in India under Discovered Small Field Policy”, Bid Round-III (2021).

2. The facts, in brief, leading to the instant petition are as under:

- a) It is stated that an NIO was issued on 10.06.2021 by the Respondent with respect to “*The Development of Small Oil & Gas Fields in India under Discovered Small Field Policy*”, Bid Round-III (2021). The original date of bid submission was 29.10.2021 at 12:00 hours, but the same was extended and revised to 31.05.2022 at 12:00 hours. As the bid was to be submitted in a single-stage two-envelope methodology, the technical bid (comprising of bidder information) was to be submitted both online as well as with a hard copy (as per Section 3, point XII of the NIO), and the financial bid was to be submitted only via the online portal.
- b) Clause IV of the NIO lays down the Bid Qualifying Criteria. The same has been reproduced as under:

“IV. BID QUALIFYING CRITERIA

- 1. Payment of Tender Fees must be made, by bidding company or any member of the consortium, by way of purchase of the requisite Information Docket for Onshore and /or Offshore Contract Areas to be bid as the case may be, on or before bid closing date. (Please refer Price List).*
- 2. The bidder must be a company singly or in association with other companies, through an unincorporated or incorporated venture.*
- 3. The net worth of the bidding company(s) should be equal to or more than its Participating Interest value of the Work Programme commitment, provided that every company should have a minimum net worth of US \$ 1 million. The net worth will be calculated in accordance*



with the method given in the ‘FORMAT FOR SUBMISSION OF BIDS’. If a bidding company either bidding alone or in a consortium is a domestic company and does not have adequate net worth as mentioned above or its networth is negative, it may submit a bank guarantee (BG) to fulfil its net worth requirement as above, along with the bid in the format prescribed in Annexure-I. The validity of BG shall be One (01) year from date of bid closing. The BG can be submitted for the whole networth requirement or in partial fulfilment of the same. In such cases, the negative networth will not be considered. The bank guarantee of unsuccessful bidders will be released on signing of contract with the successful bidder for the Contract Area. The BG for successful bidders will be released upon submission of the BG against Liquidated Damages (LD) as per Article 27 of MRSC.

4. The annual report including the audited annual accounts for the latest completed year and a Certificate of net-worth from company’s statutory auditor(s) based on the audited annual accounts for the latest completed year certifying the net-worth of the bidding company should be submitted. In case the parent company provides financial and performance guarantee, the annual report, annual accounts and networth certificate in respect of parent company should be submitted and the financial capability of the parent company shall be considered for evaluating the financial capability of a bidding company. In such cases, the parent company of the successful bidder will be required to provide the financial and performance guarantee as per the provisions of MRSC.” (emphasis supplied)

- c) Certain parameters have also been laid down with regard to evaluation of the bids in Clause VI of the NIO. They are listed as under:



“VI. BID EVALUATION CRITERIA

The following main parameters will be considered while evaluating the bids:

1. The bidding companies should have adequate net worth. The net worth will be calculated in accordance with the method given in the “FORMAT FOR SUBMISSION OF BIDS”. The net worth of every participating company should be equal to or more than every company’s participating interest in the Biddable Work Programme, provided that the every company should have a minimum net worth of US \$ 1 million. In case the parent company’s financial and performance guarantee is provided, the annual report, audited accounts and certificate of net worth should be furnished in respect of the parent company. If a bidding company either bidding alone or in a consortium is a domestic company and does not have adequate net worth as mentioned above or its networth is negative, it may submit a bank guarantee (BG) to fulfil its net worth requirement as above, along with the bid in the format prescribed in Annexure-I. The BG can be submitted for the whole networth requirement or in partial fulfilment of the same. In such cases, the negative networth will not be considered. The bank guarantee of unsuccessful bidders will be released on signing of contract with the successful bidder for the Contract Area.

2. In case a bidding company, either bidding alone or as a consortium, happens to be the best ranked bidder for two or more contract area, the net worth of the company



shall be required to be equal to or more than its Participating Interest (PI) in the value of Biddable Work Programme for all such Contract Area. In case of 'Nil' Biddable Work Programme, while evaluating the bids, where a bidding company or a consortium happen to be best rank bidder for two or more Contract Area, the net worth of the company/ each company of the consortium shall be in proportion to their Participating Interest, which in aggregate, for each Contract Area, will be equal to an amount of US \$ 0.15 million, US \$ 0.23 million and US \$ 0.30 million for Onland blocks, Shallow water and Deepwater Contract Areas respectively. In case, the company's networth is less than its Participating Interest in the value of Biddable Work Programme for all such Contract Areas, the bids will be considered in order of priority given by that company in their bids.

3. The bids will be evaluated on the basis of Biddable Work Programme and Biddable share of Government Revenue. The bids will be evaluated and ranked in accordance with the evaluation criteria provided herein. The points for each criterion shall be as under:

<i>CRITERIA POINTS</i>	<i>POINTS (ON A SCALE OF 100)</i>
<i>(A) Biddable Work Programme</i>	<i>20</i>
<i>(B) Biddable government share of revenue</i>	<i>80</i>

(A) EVALUATION OF BIDDABLE WORK PROGRAMME:

Only the biddable number of Appraisal / Development Well, proposed to be drilled as part of bid submission will be considered for evaluation purposes. Any



contingent/ conditional Work Program will not be considered, while evaluating the bids.

WORK PROGRAM	POINTS
<i>Appraisal / Development Well</i>	<i>Bidder with highest total number of wells (nos.) bid will be assigned 20 points and other bidders will be assigned points on pro-rata basis</i>

(B) EVALUATION OF BIDDABLE GOVERNMENT SHARE OF REVENUE:

i. The Revenue share offered to Government by the bidder at the Lower Revenue Point (LRP) and at the Higher Revenue Point (HRP) will be considered for evaluation as under:

ii. The Net Present Value (NPV) of Revenue share offered to Government by applying ten percent (10%) discount rate will be computed under four scenarios taking into account four notional revenue profile scenarios. The assumed revenue profiles to be used for fiscal bid evaluation are given at Annexure-II. Bidders are advised to carefully go through these assumptions while formulating the bid(s). It is clarified that the revenue profiles are assumed numbers to be used exclusively for fiscal evaluation and do not constitute any indication of the field or revenue potential or future performance. A simple average of the four figures of NPV of Government share arrived under the four scenarios will be used for evaluation.

iii. The bid with the highest Government NPV (Net Present Value) will be given the maximum 80 points and other bids will get points proportionately computed with



reference to the Government NPV computed for the higher bid.

4. In case of identical bids, the bids will be evaluated based on the total net worth of competing bidders.”
(emphasis supplied)

- d) The terms of the NIT indicate that a BG was to be submitted by the bidder, if the bidder did not meet the networth requirement. It is the submission of the Petitioner that it was not required to submit any BG as it had sufficiently fulfilled the networth requirement as stipulated in the NIO. Accordingly, the Petitioner submitted a networth certificate of its parent company, i.e. Adani Enterprises, worth Rs. 561.59 million.
- e) It is stated that on 31.05.2022, around 10:00 hours, the Petitioner submitted the physical copies of 11 documents at DGH Noida, as stipulated by the NIO and the same was done before the bid submission deadline. It is stated that at 11:30 hours, the Petitioner attempted to open the e-bidding portal (<https://ebidding.dghindia.gov.in>) to submit the financial bid, however, due to slow functioning of the e-bidding portal, the Petitioner was only able to reach the Bid Parameters Page (final page) at 11:52 hours, i.e. merely eight minutes before the deadline.
- f) It is stated that after entering the parameters of the bid, the Petitioner clicked on the “Submit” button, however, an error message appeared, stating that “BG (Bank Guarantee) had not been submitted”, despite the Petitioner having satisfied the



minimum networth value and not being required to file a BG. On contacting the official of the Respondent at 11:54 hours regarding the technical glitch, the Petitioner was informed that either a BG should be uploaded or in lieu of the same, the Petitioner should upload some blank pages.

- g) It is stated that due to the technical glitch, the bid of the Petitioner remained unprocessed prior to the deadline and the e-bidding portal closed. The Petitioner not only sent a mail to the Respondent on 31.05.2022 at 13:16 hours, informing them about the technical glitch, but the Petitioner also couriered a hard copy of the financial bid to the Respondent on 13:30 hours on the same day. A letter dated 31.05.2022 was also delivered by hand by the Petitioner to the Respondent.
- h) Due to lack of response on behalf of the Respondent, the Petitioner has now approached this Court by way of the instant writ petition.

3. Mr. Rajiv Nayar, learned Senior Counsel for the Petitioner, at the outset, relies upon an Affidavit filed by one Arvind Hareendran to submit that the bid submission window had been extended several times, and as per the final extension, bid submission was to start on 20.04.2022 and end on 31.05.2022 at 12 PM IST. He states that all the requisite documents, except for the BG, had been successfully uploaded on the e-bidding portal on 29.05.2022 by 23:00 hours, and that during this process, several rounds of discussion had taken place with personnel from M-Junction and at no point during the submission, did any error message pop up. As per the Affidavit, Mr. Nayar states that the last step was filling up of bid parameters.



Accordingly, on 31.05.2022, at 11:30 hours, the Petitioner attempted to open the e-bidding portal to submit the financial bids, however, the same was very slow. It is only after persistent effort that they were able to reach the final page with the “Submit” button at 11:52 hours. However, on pressing the “Submit” button, an error message appeared, stating that the BG had not been submitted, despite the Petitioner not being required to file one.

4. The learned Senior Counsel submits that after this error popped up, at 11.53 hours, the Petitioner contacted one Mr. Shabir Khan of M-Junction to avail his help, however, he was not available. Thereafter, at 11:54 hours, the Petitioner spoke to one Mr. Pradeep of M-Junction who advised the Petitioner to go back to the document submission page and upload the BG. On being told that BG was not applicable to the Petitioner, Mr. Pradeep advised the Petitioner to upload any blank page or any other document in place of BG. As every step of the submission required entering of DSC requirements, when the Petitioner finally entered and submitted the financial bid parameters, it was already 12:00 hours and the bid of the Petitioner was not accepted.

5. Mr. Nayar submits that the action of the Respondent is arbitrary and unreasonable in nature, and violates the Petitioner’s rights under Article 14 and Article 19(1)(g) of the Constitution of India. He states that the Petitioner should not be made to suffer solely because of technical glitches on the online portal. He submits that the NIO categorically noted that BG was to be uploaded in lieu of shortfall of networth, and as the Petitioner had satisfied this bid criteria, the uploading of a BG was not applicable to the Petitioner. Mr. Nayar further submits that the instruction rendered by the person manning the helpline is outside the scope of the NIO as nowhere has it been



stated in the manual that a blank document is to be uploaded in case a certain document is not applicable to the bidder.

6. The learned Senior Counsel for the Petitioner informs this Court that the Respondent had outsourced the tendering to a company called “M-Junction, and that the “*Add Bank Guarantee*” page contained in the manual for submission of bids would not have allowed for the Petitioner to simply upload a blank page or a self-declaration as the page indicates that the bidder would have been required to enter various other details such as BG number, Bank name, amount, BG date, etc. Mr. Nayar argues that despite the clarifications issued by the Respondent from time to time, no clarity was furnished on this issue regarding the requirement of uploading a plain sheet mentioning that BG was not applicable. He further relies upon an email dated 27.05.2022 sent by the Respondent to the Petitioner to state that the Respondent was already aware of the networth of the Petitioner, and therefore, no BG should have been needed by the Respondent. The learned Senior Counsel for the Petitioner further adds that as a result of the technical glitch in the e-bidding portal, the Petitioner had sent the hard copies of the bid documents to the office of the Respondent, but the same was not accepted. Mr. Nayar submits that the additional affidavit of the Respondent notes that 37 bidders had uploaded their bids on the last day and that doing so was common practice, and therefore, the Petitioner could not be faulted for doing so as well.

7. *Per contra*, Mr. Sanjay Jain, learned ASG for the Respondent, submits that the Helpdesk of M-Junction was at the full disposal of the Petitioner, as has been exemplified by the fact that the Petitioner had repeatedly sought for assistance, till the very last moment before the



deadline of the bid submission, and had received the same. He states that M-Junction official had informed the Petitioner that if the BG was not applicable to the bidder, then a self-declaration stating “this is not applicable to us” could be uploaded, and that no suggestion had been made to the Petitioner to upload a blank paper. The learned ASG further contends that it was imperative for all bidders who were not supposed to submit the BG to state so at the appropriate stage as it would have otherwise not been known to the e-portal till such time that the bid was actually uploaded. He states that, in this context as well as from the perusal of the e-bidding portal, the BG was a mandatory document, and the Petitioner’s contention that hard copies of the bid documents had been submitted would be of no consequence as a QR number is generated if a paper bid is submitted.

8. Mr. Jain further submits that the submission of the bid had been extended from time to time, and that the last extension stipulated that the bid submission for DSF Bid Round-III would start on 20.04.2022 and end on 31.05.2022. He states that this is a matter of common prudence and common sense as the Petitioner had 42 days to seek the relevant clarifications and make the bid submission, and that the Petitioner could not now take advantage of its own wrong of having missed the bus, i.e. waiting till the eleventh hour to submit the bid. He submits that various efforts were made by the Respondent to ensure that the prospective bidders were well-versed with the process of bidding, and that this was simply a case of negligence on the part of the Petitioner. Mr. Jain further submits that the tender process is not meant for the common man; it is meant for a player in the industry and that there is a responsible officer in the organization who deals with the



same, and on this ground, the Petitioner cannot raise the bogey of being unaware of the implied terms and conditions of the NIO.

9. The learned ASG further submits that the final bid submission started taking place as early as 27.05.2022, and 37 bids were received from 27.05.2022 to 30.05.2022; further, 69 bids were received on the last day, i.e. 31.05.2022 itself, and that this demonstrates that the e-bidding portal was working properly till the very last moment. With regard to the email dated 27.05.2022, the learned ASG submits that the phrasing of the said email is incorrect and should not be taken into consideration.

10. Mr. Sanjay Jain, the learned ASG relies upon Air India Ltd. v. Cochin International Airport Ltd.,(2000) 2 SCC 617, to submit that the award of a contract is essentially a commercial transaction and that the State can choose its own method to arrive at a decision; it can fix its own terms of invitation to tender and that this is not open to judicial scrutiny. He further relies upon Silippi Constructions Contractors v. Union of India and Anr., (2020) 16 SCC 489, that judicial intervention should be minimal or avoided in contractual matters unless the decision is arbitrary or unreasonable, and that it is the authority floating the tender that is the best judge of its requirements. Reliance has also been placed on Tata Cellular v. Union of India,(1994) 6 SCC 651, to submit that decisions to accept the tender or award the contract is more often than not, made qualitatively by experts, and therefore, the terms of invitation of a tender cannot be open to judicial scrutiny.

11. Heard Mr. Rajiv Nayar, learned Senior Counsel for the Petitioner, Mr. Sanjay Jain, learned ASG for the Respondent, and perused the material on record.



12. The scope of judicial review in the matters of tenders/public auction has been explored in depth by the Supreme Court in a catena of judgements. Plausible decisions need not be overturned and, at the same time, latitude ought to be granted to the State in exercise of its executive power. However, it has been observed that allegations of illegality, irrationality and procedural impropriety would be enough grounds for Courts to assume jurisdiction and remedy such ills. Recently, in State of Punjab and Ors. v Mehar Din, (2022) 5 SCC 648, while taking into account the principles regarding judicial intervention that have been established over the years, the Supreme Court observed as under:

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

“94. The principles deducible from the above are:

(1) The modern trend points to judicial restraint in administrative action.

(2) The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.

(3) The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.



(4) The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract.

Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.

(5) The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.

(6) Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.”

(emphasis in original)

22. The exposition of law on the subject has been consistently followed by this Court even in the later decisions holding that superior courts should not interfere in the matters of tenders, unless substantial public interest was involved or the transaction was mala fide. It was consistently stressed by this Court that the need for overwhelming public interest should always be kept in mind to justify judicial intervention in contracts involving the State and its instrumentalities and while exercising power of judicial review in relation to contracts, the courts



should consider primarily the question whether there has been any infirmity in the decision-making process.

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

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



delay relief and succour to thousands and millions and may increase the project cost manifold.”

24. *This Court in a recent judgment in Silppi Constructions Contractors v. Union of India [Silppi Constructions Contractors v. Union of India, (2020) 16 SCC 489] held as under : (SCC pp. 501-02, para 20)*

“20. The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the State instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference should be minimal. The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. With this approach in mind we shall deal with the present case.”

25. *The law on the subject is settled that the courts being the custodian of fundamental rights are under an obligation to interfere where there is arbitrariness, irrationality, unreasonableness, mala fides and bias, if any, but at the same time, the courts should exercise the power of judicial review with a lot of restraint, particularly in contractual and commercial matters.”*
(emphasis supplied)



13. Therefore, there has to be a finding of irregularity or illegality that would justify the interference of a Court exercising its writ jurisdiction in contractual matters. In fact, in such circumstances, it becomes the duty of the Court to intervene and ensure that arbitrariness, irrationality, bias, *mala fides* or perversity is prevented in administrative decision-making. It was in Tata Cellular v. Union of India (supra) that the Supreme Court noted that unless substantial public interest is involved or the transaction is *mala fide*, Courts should not interfere in matters of tenders. It was yet again noted that the grounds upon which an administrative action was subject to control by judicial review were illegality, irrationality, and procedural impropriety.

14. The learned ASG's reliance on Air India Ltd. v. Cochin International Airport Ltd. (supra), Silippi Constructions Contractors v. Union of India and Anr. (supra), and Tata Cellular v. Union of India (supra) does not support the case of the Respondents as all these judgements do not wholly exclude the exercise of judicial review in the realm of contractual matters; all these judgements feature a caveat stating that while there are inherent limitations in the exercise of the power of judicial review, the same is permissible in order to avoid arbitrariness or favouritism.

15. This caveat for judicial review is that every State action needs to be informed by reason, and an act uninformed by reason is per se arbitrary. The basic requirement of Article 14 is fairness in action by the State; these actions are amenable, in the panorama of judicial review only to the extent that the State must act validly for a discernible reason, not whimsically for any ulterior motive. With regard to irrationality in matters of governmental



policy, i.e. unreasonableness in actions of the government, the might of Article 14 of the Constitution must be factored in.

16. The aforementioned line of thought was propounded by the Supreme Court in Union of India and Anr. v. International Trading Co. and Anr.,(2003) 5 SCC 437, wherein the principle of how Article 14 applies to matters of governmental policy was observed, and how the said policy or any action of the government, even in contractual matters, would be held as unconstitutional if it failed to satisfy the test of reasonableness. The relevant paragraphs stating the same have been reproduced as under:

“14. It is trite law that Article 14 of the Constitution applies also to matters of governmental policy and if the policy or any action of the Government, even in contractual matters, fails to satisfy the test of reasonableness, it would be unconstitutional.

15. While the discretion to change the policy in exercise of the executive power, when not trammelled by any statute or rule is wide enough, what is imperative and implicit in terms of Article 14 is that a change in policy must be made fairly and should not give the impression that it was so done arbitrarily or by any ulterior criteria. The wide sweep of Article 14 and the requirement of every State action qualifying for its validity on this touchstone irrespective of the field of activity of the State is an accepted tenet. The basic requirement of Article 14 is fairness in action by the State, and non-arbitrariness in essence and substance is the heartbeat of fair play. Actions are amenable, in the panorama of judicial review only to the extent that the State must act validly for a discernible reason, not whimsically for any ulterior purpose. The meaning and true import and concept of arbitrariness is more easily visualized than precisely defined. A question whether the impugned action is arbitrary or not is to be



ultimately answered on the facts and circumstances of a given case. A basic and obvious test to apply in such cases is to see whether there is any discernible principle emerging from the impugned action and if so, does it really satisfy the test of reasonableness.

16. Where a particular mode is prescribed for doing an act and there is no impediment in adopting the procedure, the deviation to act in a different manner which does not disclose any discernible principle which is reasonable itself shall be labelled as arbitrary. Every State action must be informed by reason and it follows that an act uninformed by reason is per se arbitrary.” (emphasis supplied)

17. In the instant case, Clause IV, Point 3 of the Bid Qualifying Criteria in the NIO states that if a bidding company is bidding alone or in a consortium is a domestic company and does not have adequate specified networth, then it may submit a BG to fulfil its networth requirement, along with the bid in the format prescribed in Annexure-I of the NIO. Clause VI, Point 1 of the Bid Evaluation Criteria in the NIO reiterates this requirement. Clause XIII of the NIO stipulates the documents that have to be submitted online through the e-bidding portal. The same has been reproduced as under along with the screenshot of the e-bidding portal showing the documents that are to be submitted:

***“XIII. DOCUMENTS TO BE SUBMITTED
ONLINE THROUGH E-BIDDING PORTAL***

- 1. Letter of authorisation for person bidding in online e-bidding portal*
- 2. A bid bond in the form of Term Deposit (TDR).*



3.BG in lieu of shortfall of Networth vis a vis value of Bid Work Programme, as applicable.

4. Proof of payment of tender fees by way of purchase of Field Information Docket in terms of NIO and Price List.

5. Letter of presentation and commitment from the bidding company, and / or from parent company, where ever applicable.

6. Certificate from statutory auditor of the bidding company regarding Net-worth.

7. Documents evidencing the legal existence of the bidding company (including latest Article of Association and Memorandum and certificate of incorporation /registration).

8. Ample and sufficient power-of-attorney granted to a legal representative /authorised representative of company or leader of consortium.

9. Document whereby the parent company knows and endorses the bid and the contractual obligations of its affiliate or subsidiary, where ever applicable.

10. Corporate Information and additional Corporate Information in respect of each bidding company, as per given format.

11. Declaration as per given Annexure-V.”
(emphasis supplied)



Required Attachment(s)				
Sl. No.	Document Name	Document Group	Mandatory (YES / NO)	Allow Exemption (YES / NO)
* Bid Documents				
1	Letter of authorisation for person bidding in online e-bidding portal	OTHER	YES	NO
2	A bid bond in the form of Term Deposit (TDR).	OTHER	YES	NO
3	BG in lieu of shortfall of Networth vis a vis value of Bid Work Programme, as applicable.	OTHER	YES	NO
4	Proof of payment of tender fees by way of purchase of Field Information Docket in terms of NIO and Price List.	OTHER	YES	NO
5	Letter of presentation and commitment from the bidding company, and / or from parent company, where ever applicable.	OTHER	YES	NO
6	Certificate from statutory auditor of the bidding company regarding Net-worth.	OTHER	YES	NO
7	Documents evidencing the legal existence of the bidding company (including latest Article of Association and Memorandum and certificate of incorporation / registration).	OTHER	YES	NO
8	Ample and sufficient power-of-attorney granted to a legal representative /authorised representative of company or leader of consortium.	OTHER	YES	NO
9	Document whereby the parent company knows and endorses the bid and the contractual obligations of its affiliate or subsidiary, where ever applicable.	OTHER	YES	NO
10	Corporate Information and additional Corporate Information in respect of each bidding company, as per given format.	OTHER	YES	NO
11	Declaration as per given Annexure-V of NIO	OTHER	YES	NO

18. A copy of the screenshot of the e-bidding portal also enlists the bid documents and whether or not they are mandatory. Serial No. 6 states that a “certificate from statutory auditor of the bidding company regarding net-worth” is mandatory, and Serial No. 3 states that a “BG in lieu of shortfall of Networth vis a vis value of Bid Work Programme, as applicable” needs to be submitted.

19. When the question was posed by this Court to the learned ASG with regard to the presence of a categorical instruction in the manual pertaining to uploading of a self-declaration if BG was not applicable to a bidder, the learned ASG was unable to point out any clause or instruction inferring the same. It was, in fact, submitted by the learned ASG that the said instruction was implied and that an experienced bidder would have been prudent enough to upload the same. This Court is of the opinion that this contention on behalf of the Respondent does not hold any water. In the ordinary course of bidding, it cannot be said that a bidder, who had previously not undergone



this procedure of bidding or had not experienced the allegedly implied condition, could have deduced that a blank document or a self-declaration in lieu of a BG had to be uploaded on the page for Serial No. 3. Furthermore, the learned ASG has also failed to satisfy this Court on as to why a BG would be required if uploading a Networth certificate was mandatory. Furthermore, even a reading of the requirement of Serial No.3 demonstrates that a BG only had to be uploaded if there was a shortfall in the networth of the bidder; this Court is of the opinion that there resides no ambiguity in the reading of this phrase. It is also pertinent to note that the email dated 27.05.2022, sent by the Respondent to the Petitioner, categorically states that the networth of the Petitioner had been uploaded on the DGH e-bidding portal. Therefore, it is clear that not only did the Respondent have access to the networth of the Petitioner, but that the uploading of the BG was only mandated in the event that the bidder did not fulfil the requisite networth requirement.

20. Moreover, the contention of the learned ASG that the grievance of the Petitioner is merely one of a bidder who has missed the bus due to their own negligence can, at best, be termed as a strawman argument, having no basis in the facts of the instant case. A perusal of the chart depicting all the 106 bids received for all contracts in the DSF Bid Round-III reveals that 69 bids were received on 31.05.2022 itself, i.e. the last date of bid submission, with 11 bids being submitted in the last hour before the closing of the e-bidding portal. The contention of the learned ASG that the Petitioner is a victim of his own undoing is unsupportive in law as it would amount to placing the Petitioner in a separate class which is violative of Article 14.



21. In light of the aforesaid, this Court is of the opinion that, when tested on the touchstone of Article 14, the allegedly implied instruction that a blank document or a self-declaration *had to be* uploaded by a bidder who not only possessed, but also surpassed the bid eligibility criteria with regard to the networth requirement and, therefore, was not required to furnish a BG, does not pass the test and cannot be said to be an instruction that could have been inferred or assumed by even an experienced bidder, especially in view of how the terms “*in lieu of*” and “*as applicable*” convey the non-mandatory nature of the document. This action on the part of the Respondent duly makes out a case warranting the interference of this Court exercising its power under Article 226 of the Constitution of India.

22. The Respondent is, therefore, directed to consider the bid of the Petitioner in accordance with the terms and conditions enumerated in the NIO dated 10.6.2021, and thereafter, take an appropriate decision to award the tender to the best suited bidder.

23. Accordingly, the instant petition is disposed of along with the pending application(s), if any.

SATISH CHANDRA SHARMA, C.J.

SUBRAMONIUM PRASAD, J

AUGUST 17, 2022

Rahul