IN THE HIGH COURT OF JUDICATURE AT BOMBAY, NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 6565/2022

J.P. Enterprises Engineers and Contractors, 403, Konark Shram, 156, Tardev Road, Opp. Bus Depot, Mumbai - 400 034, a partnership firm duly registered under the provisions of Indian Partnership Act, 1932 with registration No.187931 through its partner Mr.Rajan S/o Kantilal Shah, Aged about 57 years, Occu. Business, R/o Flat No.1301-A No.G-02, Rajul Apartments, 9tl Opp, Shripal Nagar Jain Temple Nepean Sea Road, Mumbai, Maharashtra – 400 006. **PETITIONER**

.....VERSUS.....

1. The State of Maharashtra, through its Secretary, Public Works Department, Mantralaya, Mumbai-400032.

2. The Chief Engineer & Project Director (EAP) through Executive Engineer, Public Works Division-2, Nagpur.

3. Abhi Engineering Corporation Pvt. Ltd. a company duly registered under the Companies Act, 2013 having its Office at Flat No.404/405, Plot No.8A, Gomati Apartment, Law College Square, Nagpur – 440010. Through its Director.

4. Superintending Engineer, Public Works, Circle Ahmednagar, Maharashtra State. **RESPONDENTS**

Shri M.G. Bhangde, Senior Advocate with Shri R.M. Bhangde and Shri S.S. Sarda, counsel for the petitioner.
Ms N.P. Mehta, Assistant Government Pleader for the respondent nos.1, 2 and 4.
Shri S.V. Manohar, Senior Advocate with Shri N.G. Moharil, counsel for the respondent no.3.

CORAM : A. S. CHANDURKAR AND MRS VRUSHALI V. JOSHI, JJ.

DATE ON WHICH ARGUMENTS WERE HEARD : JUNE 07, 2023
DATE ON WHICH JUDGMENT IS PRONOUNCED : JUNE 28, 2023

JUDGMENT (PER : A.S. CHANDURKAR, J.)

RULE. Rule made returnable forthwith and the learned counsel for the parties have been heard at length.

2. The challenge raised in this writ petition is to the communication dated 27.09.2022 issued by the respondent no.2-Principal informing the petitioner that its bid had been rejected at the stage of technical evaluation. The petitioner seeks a declaration of it being eligible at the stage of technical evaluation and consequentially a direction to open its financial bid and award the tender to the petitioner.

3. The facts relevant for considering the challenge as raised are that the Principal on 19.01.2022 floated a request for proposal with regard to the work of 'Improvement to Karanja-Bharsingi-Mowad-Bangaon Road in KM 60/00 to 67/400 (Part 62/100 to 67/380) Tahsil Narkhed, District Nagpur and Improvement to Kalmeshwar Ghorad Mohapa Telgaon Road SH 349 KM 8/00 to 12/00 (Part 9/250 to 12/223) Tahsil Kalmeshwar'. Seven bidders responded to the said tender notice. It is the case of the petitioner that it submitted its bid with all requisite documents that were indicated in the tender notice. On 26.04.2022, the Principal issued a communication to the petitioner stating therein that its documents had been evaluated and that the Scrutiny Committee required further documents. The petitioner was informed through e-mail on 28.04.2022 that its financial resources were negative as the Client Certificate for value of 'B' Projects was not provided and that the Bridge Construction Certificate was not provided. The petitioner re-submitted the requisite documents on 28.04.2022 since it is the case of the petitioner that all relevant documents had already been

submitted by it alongwith its technical bid. On 29.04.2022 the petitioner re-submitted three documents again. On 23.09.2022 the petitioner received an E-mail from the Principal that financial bids would be opened on 27.09.2022 at 11.00 a.m. On the said date, the petitioner got knowledge of BOQ summary details on the portal of the Department. The same indicated that the financial bids of five bidders had been evaluated and that the rates quoted by the respondent no.3 herein were the lowest. The petitioner received an E-mail at 12.29 hours on 27.09.2022 by which the Principal informed the petitioner that its technical bid had been found to be non-responsive. The petitioner noted that the letter dated 22.09.2022 addressed by the Superintending Engineer was disclosed on the portal of the Department without any annexures. The petitioner therefore on 04.10.2022 submitted a representation to the Principal stating therein that despite submitting all the required documents and fulfilling the tender conditions prescribed, the rejection of its technical bid was illegal. It is thereafter that on 17.10.2022 that the petitioner has filed this writ petition seeking the reliefs stated hereinabove.

4. Shri M.G. Bhangde, learned Senior Advocate for the petitioner submitted that no reasons were indicated by the Principal for rejecting the petitioner’s technical bid. The communication dated 22.09.2022 merely stated that the petitioner’s technical bid was non-responsive without indicating why it was so found to be non-responsive. This decision was

taken after about five months of opening of the technical bids. The documents supplied by the Principal indicated that the financial bids of the five bidders had been opened on 27.09.2022 between 11.00 a.m. and 12.00 noon while the rejection of the petitioner's technical bid was intimated at 12.29 hours on 27.09.2022. In other words, the rejection of the technical bid of the petitioner was displayed after opening of the financial bid. The learned Senior Advocate submitted that all the required documents being about seventy seven pages had been initially submitted alongwith the technical bid. The documents with regard to the bid capacity, performance certificate and completion certificate were re-submitted by the petitioner. Without considering these documents the bid of the petitioner was held to be non-responsive. Attention was invited to Clause 2.19 of the tender document to indicate that the Tendering Authority was to display the result of the technical evaluation on the web portal for seven days including the reason for non-responsiveness after which the financial bid was to be opened. This course was not followed by the Tendering Authority and the petitioner was not made aware of the reasons for its technical bid being held to be non-responsive. Except the E-mail dated 27.09.2022 there was no further intimation from the Tendering Authority. Reference was also made to Clause 3.1.4 which permitted the Tendering Authority to seek clarification in writing as well as Clause 3.1.5 that provided the consequences of failure to provide clarification as sought under Clause 3.1.4 within the prescribed time. It was then submitted by referring to the reply filed on behalf of the

Principal that the formula with regard to determination of the amount of work in hand/Current Contract Commitments at Serial Number 'D' as provided by the Chartered Accountant of the Principal *vide* communication dated 09.11.2022 ought to have been disclosed in the tender notice itself which would have enabled clarity in the matter of evaluation of the technical bids. Since the basis of evaluation was not made known to the bidders while assessing their financial capacity and no clarification was also sought from the petitioner, the Principal was not justified in concluding that the petitioner's technical bid was non-responsive. The method adopted by the Chartered Accountant of the Principal was not based upon any disclosed practise or any acceptable norm. It was urged that the said formula had been used with a view to hold the petitioner's bid to be non-responsive. Referring to the reply filed on behalf of the Principal it was submitted that a different stand was sought to be taken from the one that was indicated in the communication issued by the Principal. Attention was invited to the certificate dated 16.01.2023 issued by the Bank of Maharashtra to the petitioner indicating its financial credibility and that the petitioner would have been provided with overdraft/ credit facilities to the tune of Rupees Sixty Eight Crores as on 15.02.2022. Such certificate could have been supplied by the petitioner had the clarification been sought by the Principal. Contending that the financial bid of the petitioner indicated that the rates quoted by the petitioner were about 3.70 Crores less than what was quoted by the L1 bidder, it was urged that it was in public interest that this Court ought to interfere under Article 226 of the Constitution of India and grant the prayers made in the writ petition. The learned Senior Advocate placed reliance on the decisions in *Dutta Associates Pvt. Ltd. Versus Indo Merchantiles Pvt. Ltd. & Others* [**(1997) 1 SCC 53**], *Indian Railway Catering and Tourism Corporation Limited & Another Versus Doshion Veolia Water Solutions Private Limited & Others* [**(2010) 13 SCC 364**], *Reliance Energy Ltd. & Another Versus Maharashtra State Road Development Corpn. Ltd. & Others* [**(2007) 8 SCC 1**] and *Adani Gas Limited Versus Petroleum and Natural Gas Regulatory Board & Others* [**(2020) 4 SCC 529**] and urged that the petitioner was entitled for the reliefs prayed for in the writ petition.

5. Ms N.P. Mehta, learned Assistant Government Pleader for the Principal opposed the writ petition and referred to the affidavits filed on behalf of the Principal in that regard. It was submitted that the Tendering Authority after considering all the documents submitted by the petitioner found that the financial resources of the petitioner were negative. The computation of the financial resources of the petitioner had been evaluated by the Chartered Accountant appointed by the Principal and it was found that the financial resources were -35.01. This determination was on the basis of Current Contract Commitments calculated in all Engineering and Procurement Contracts - EPC's which was evident from the calculations as made. The manner in which evaluation of the bid capacity under Clause 2.2.2.1 was to be done had been indicated in the tender document itself and

reference to the EPC Projects was made therein. It was sought to be demonstrated that the determination of the financial resources of the petitioner had been rightly arrived at by the Chartered Accountant appointed by the Principal. It was denied that the financial bids of the eligible bidders were opened prior to the rejection of the petitioner's technical bid. The learned Assistant Government Pleader invited attention to the assessment of the documents of the L1 bidder to indicate that its financial bid was rightly found to be L1. Clause 3.1.4 of the tender document could not be said to be an essential condition that would vitiate the tender process if there is any breach of the same. There was no material on record to indicate that the technical bid of the petitioner had been rejected with a view to favour the L1 bidder. Reliance was placed on the decisions in *Silppi Constructions Contractors Versus Union of India & Another* [**(2020) 16 SCC 489**] and *N.G. Projects Limited Versus Vinod Kumar Jail & Others* [**(2022) 6 SCC 127**] to contend that there was no scope for interfering in the matter at the instance of the petitioner.

6. Shri S.V. Manohar, learned Senior Advocate for the L1 bidder also opposed the writ petition. According to him, there was no basis whatsoever to contend that the evaluation of the petitioner's technical bid was done after opening of the financial bids. It was only a fact as pleaded in paragraph 12 of the writ petition that the rejection of the technical bid was communicated late. The financial bid of the petitioner was never opened

since its technical bid was found to be non-responsive. Clause 2.19 of the tender document could not be held to be mandatory in nature. It had been made clear in the tender document that the formula adopted in all EPC's would be applied and it was not the case of the petitioner that the formula adopted in the present case was not utilized in all EPC's. Further there was no material whatsoever on record to show that adoption of such formula was unreasonable. When it was clear from all the documents on record that the said formula was utilized uniformly then merely because it was not specifically referred to in the tender document would not be a reason to hold that the Tendering Authority was not justified in adopting such formula. Applying the test of fairness it was clear that this formula was adopted for all the bidders and no exception therein was made. It was further submitted that the net financial worth of the petitioner was not shown to be incorrect on the basis of the said formula nor did the petitioner indicate that its net financial worth was positive by adopting any other known formula. Since the petitioner had failed to indicate that the formula applied in all EPC's was illogical or arbitrary, there would be no basis to conclude that the Tendering Authority committed an error in adopting such formula. Referring to the decision in *Agmatel India Private Limited Versus Resoursys Telecom & Others* [**(2022) 5 SCC 362**], it was submitted that the Tendering Authority was the best person to understand and appreciate its requirements and in absence of any allegation of *mala fide*s or perversity there would be no scope for interference in exercise of writ jurisdiction. It was thus submitted that the writ petition was liable to be dismissed.

7. In reply, the learned Senior Advocate for the petitioner referred to the averments in paragraph 9 of the rejoinder filed on behalf of the petitioner and submitted that since there were mistakes committed by the Chartered Accountant in determining the net financial worth of the petitioner, the calculations as made could not be relied upon. Moreover, there was no justification indicated for not publishing the results of the technical evaluation and making them available for a period of seven days as per the tender document. The respondents had failed to counter the grounds raised by the petitioner and hence the writ petition was liable to be allowed.

8. We have heard the learned counsel for the parties at length and with their assistance we have perused the documents placed on record. At the outset, it would be apposite to refer to the principles laid down by the Hon'ble Supreme Court as can be gathered from the decisions relied upon by the learned counsel for the parties. In *Dutta Associates Pvt. Ltd.* (supra), the Hon'ble Supreme Court has highlighted the aspect of fairness and transparency in a tender process conducted by the State. In *Indian Railway Catering and Tourism Corporation Limited & Another* (supra), while recognizing the right of the State or its agencies of rejecting a tender for

breach of a term or condition in the tender it has been clarified that the same is not with a view to give room to the State or its agencies to arbitrarily reject a tender even if the terms and conditions have been duly complied with. The decision in *Reliance Energy Ltd. & Another* (supra) highlights the importance of legal certainty norms and benchmarks to be indicated in the terms and conditions of the tender. In *Adani Gas Limited* (supra) the aspect of disqualifying a bidder on the basis of a criteria that was not notified to the bidders and of which they had no knowledge was held to be arbitrary constituting an infraction of Article 14 of the Constitution of India.

In *Agmatel India Private Limited* (supra), the Hon'ble Supreme Court has cautioned that the threshold of *mala fide* intention to favour someone or arbitrariness or irrationality or perversity must be met before the Court can interfere with the decision making process or the decision itself. In case of ambiguity or doubt the Court would refrain from giving its own interpretation unless the interpretation given by the Authority is shown to be perverse or *mala fide* or intended to favour someone. In *Silppi Constructions Contractors* (supra), the aspect of "fair play in the joints" being available to the Government and public sector undertakings in matters of contracts has been highlighted. It has been further observed that in contracts involving technical issues the Courts should exercise restraint while exercising the power of judicial review since the Court does not possess necessary expertise to adjudicate upon the technical issues beyond its domain. This aspect has been reiterated in *N.G. Projects Limited* (supra) and it was observed that the Court should keep in mind the aspect that it does not possess the expertise for examining the terms and conditions in the backdrop of the present day economic activities of the State. If the Court finds that there is total arbitrariness or that the tender has been granted in *mala fide* manner, still the Court should refrain from interfering in the grant of tender and must relegate the parties to seek damages for the wrongful exclusion rather than to injunct the execution of the contract.

9. It is to be noted that as per Clause 3.1.4 to facilitate the evaluation of technical bids, the Tendering Authority at its discretion could seek clarification in writing from any bidder regarding its technical bid. Such clarification was required to be provided within the time specified for the said purpose. The communication dated 26.04.2022 has been issued by the Tendering Authority to the petitioner in this context. The petitioner did provide clarifications as were sought by the Tendering Authority. Thus on the basis of the observations of the Scrutiny Committee the Tendering Authority sought clarification from the petitioner which was duly provided by it. It is thereafter on the basis of evaluation of its documents that the petitioners technical bid has been found to be non-responsive.

10. The petitioner is aggrieved by the decision of the Principal to hold its technical bid to be non-responsive. The communication dated

22.09.2022 was noted by the petitioner on 27.09.2022 as pleaded in paragraph 8 of the writ petition which according to the petitioner has been done in a manner contrary to the tender conditions. Clause 2.19 of the tender document stipulates that the Tendering Authority should display the result of technical evaluation on the web portal for seven days including reasons for non-responsiveness if any, after which the financial bids were to be opened. On 23.09.2022, all the bidders were informed that the financial bids would be opened on 27.09.2022 at 11.00 a.m. and the representatives of the bidders could remain present at the Office. On opening the financial bids of five bidders, the bid of the respondent no.3 was found to be the lowest for being accepted. The communication dated 27.09.2022 has been issued by the Tendering authority to the petitioner informing it that its bid was rejected during technical evaluation by the duly constituted Committee as being non-responsive. It is on the aforesaid factual premise that on 04.10.2022 the petitioner issued a communication to the Tendering Authority stating therein that though all relevant documents had been submitted pursuant to the communication dated 26.04.2022, its technical bid had been wrongly rejected.

On the basis of aforesaid material on record it is urged that in terms of Clause 2.19 of the tender document, the result of the technical evaluation was not displayed on the web portal for a period of seven days indicating reason for non-responsiveness. The letter dated 22.09.2022 is stated to be displayed on the portal of the Department on 27.09.2022 which was also the day when the financial bids were opened. The effect of the aforesaid would be considered a bit later.

11. To substantiate its stand that the petitioner's technical bid was non-responsive the Tendering Authority has relied upon Clauses 2.2.2.1 and 2.2.2.3 of the tender document. Clause 2.2.2.1 refers to the bid capacity of a bidder while Clause 2.2.2.3 refers to the financial capacity of a bidder. The total requirement of financial resources for the contract has been prescribed to be Rs.9.16 Crores as per Clause 2.2.2.3(iii). According to the Tendering Authority the financial resources of the petitioner have been calculated by its financial consultant as -35.01. This is the reason according to the Tendering Authority for holding the petitioner's technical bid to be non-responsive. In the affidavit filed on behalf of the Tendering Authority it has been stated that it had appointed a financial consultant named 'Shinde, Chavan, Gandhi & Company – Chartered Accountants on 17.12.2021 to assist it in such matters. The said financial consultant evaluated the petitioner's documents and determined the financial resources of the petitioner to be -35.01.

12. The grievance of the petitioner is that the basis on which the financial resources of a bidder would be evaluated had not been disclosed in the tender document and had the same been done earlier, the petitioner could have demonstrated that its financial resources were more than Rs.9.16

Crores. On the other hand according to the Tendering Authority, the evaluation of the bid capacity as well as evaluation of the financial capacity had been undertaken in accordance with what has been indicated in the tender document at Appendix IA Annexure VI.

13. Perusal of the computation of the petitioner's financial resources undertaken by the financial consultant indicates the manner in which the same has been determined. There is reference to Clause 2.2.2.3(iii) therein and with regard to Current Contract Commitments it has been stated that the same has been calculated as done in all EPC's. It is not the case of the petitioner that such method of determination/computation of the financial resources is not in accordance with the same being undertaken generally in EPC's. It is also not stated by the petitioner that such method of computation is never adopted in EPC's. The Tendering Authority has engaged the services of a financial consultant for computing the financial resources of the bidders and on the basis of the documents supplied by the petitioner that assessment has been undertaken. We do not find that the failure on the part of the Tendering Authority to indicate the basis for determining the computation of financial resources of a bidder could be a reason for holding that such evaluation undertaken by the financial consultant engaged by the Tendering Authority is either illegal or arbitrary. Determination of the financial resources is definitely a technical matter in which assistance of qualified consultants would be necessary. By taking

such assistance and applying the computation made by such financial consultant to the evaluation of all the bidders cannot be said to be arbitrary or irrational. The fact that the bid capacity as well as financial capacity of a bidder would be examined was disclosed in the tender document itself and it therefore cannot be said that the evaluation of the technical bids has been undertaken by the Tendering Authority in a manner contrary to the tender document.

14. It was also urged on behalf of the petitioner that had the Tendering Authority indicated the criteria for evaluating the financial capacity of a bidder to meet its Current Contractual Commitments, the petitioner would have been in a position to satisfy the Tendering Authority in that regard. Reference was made to the certificate dated 16.01.2023 issued by the Bank of Maharashtra stating therein that had the petitioner sought overdraft/credit facility amounting to Rupees Sixty Eight Crores as on 15.02.2022, the Bank would have sanctioned additional limit to the petitioner. There are however no allegations made by the petitioner that its technical bid was held to be non-responsive with a view to favour some other bidder or with a view to ensure that the bid of the petitioner did not continue in the tender process. While considering the aspect as to whether the Court under Article 226 of the Constitution of India ought to interfere with the decision arrived at by the Tendering Authority, the entire factual scenario in the light of the tender conditions would have to be kept in mind.

Even assuming that there has been some non-compliance on the part of the Tendering Authority with regard to Clause 2.19 of the tender document of not displaying the result of technical evaluation on its web portal alongwith reasons for non-responsiveness prior to seven days of opening of the financial bids, absence of any allegations of *mala fide*s, favouritism and arbitrariness would also be a material factor. In the present case, we find that on 26.04.2022 the Tendering Authority had called for requisite information in the form of documents from the petitioner. These documents were duly supplied by the petitioner and after evaluating the same at the hands of a financial consultant the Tendering Authority computed the financial resources of the petitioner to be not in accordance with Clause 2.2.2.3(iii) of the tender document. The formula adopted by the financial consultant for computing the financial resources has been indicated to be the formula applied in all EPC's. It is thus clear that a qualified technical consultant assessed the documents of the petitioner and determined its financial resources.

15. No doubt it was urged by the petitioner that it would have been in a position to demonstrate that its financial resources satisfied the requirement of Clause 2.2.2.3(iii) had the Tendering Authority disclosed the formula to be adopted for determining the same in the tender document itself. It however cannot be ignored that the financial capacity of all the bidders has been assessed in the same manner in which the petitioner's

financial resources have been computed. It is not that the petitioner alone has been singled out for such computation. We therefore find that the Tendering Authority was entitled to devise the modality for assessing the financial resources of a bidder and once such modality is applied to all the bidders that exercise cannot be said to be arbitrary. The Tendering Authority is entitled to 'fair play in the joints' subject to the same yardstick being applied to all the bidders. At the cost of repetition it may be stated that the petitioner does not urge that such assessment of its financial resources has been undertaken in a different manner while some other mode has been adopted for determining the financial capacity of other bidders. After considering all the documents submitted by the petitioner, its financial capacity has been determined. We therefore find that the failure on the part of the Tendering Authority in disclosing the formula on the basis of which the financial resources of the bidders would be determined is not fatal so as to warrant interference in exercise of the extraordinary jurisdiction under Article 226 of the Constitution of India. For want of expertise on these lines, the Court is unable to record a finding that the formula applied by the financial consultant indicated by the Tendering Authority is either unknown in financial matters or that said formula is so illogical that it could never have been adopted.

16. As regards failure on the part of the Tendering Authority in strictly complying with Clause 2.19 of the Tender document in the matter of

displaying the result of technical evaluation on the web portal for seven days is concerned, we find that in the facts of the present case failure on the part of the Tendering Authority to display the result of the technical evaluation strictly in accordance with Clause 2.19 cannot be the basis for interfering in the tender process itself. By communication dated 26.04.2022 the petitioner was informed of the fact that its financial resources were found to be negative since the Client Certificate for value of 'B' projects had not been provided and that the Bridge Construction Experience had also not been provided. An opportunity was thus given by the Tendering Authority by seeking clarification in terms of Clause 3.1.4 and the petitioner immediately submitted its documents on which it sought to rely. Rejection of the petitioner's technical bid is on account of computation of its financial resources not being as prescribed by Clause 2.2.2.3(iii). The deficiencies found were made known to the petitioner and it was given an opportunity to respond in the matter. It can thus be said that the petitioner was given an opportunity to submit its clarification and after considering the documents supplied by the petitioner the computation of financial assessment was undertaken. In these facts therefore we do not find that for failure to strictly comply with the requirement of Clause 2.19 of the tender document the tender process is vitiated. Similarly there is no basis to hold that the financial bids were opened prior to indicating the reasons for rejection of the petitioner's technical bid. On these counts the tender process is not vitiated.

17. We may with profit refer to paragraph 48 of the recent decision of the Hon'ble Supreme Court in *Tata Motors Limited Versus The Brihan Mumbai Electric Supply & Transport Undertaking (BEST) & Others* [**Civil Appeal No. 3897 of 2023**, decided on 19.05.2023] which reads as under :-

> "*48. This Court being the guardian of fundamental rights is duty-bound to interfere when there is arbitrariness, irrationality, mala fides and bias. However, this Court has cautioned time and again that courts should exercise a lot of restraint while exercising their powers of judicial review in contractual or commercial matters. This Court is normally loathe to interfere in contractual matters unless a clear-cut case of arbitrariness or mala fides or bias or irrationality is made out. One must remember that today many public sector undertakings compete with the private industry. The contracts entered into between private parties are not subject to scrutiny under writ jurisdiction. No doubt, the bodies which are State within the meaning of Article 12 of the Constitution are bound to act fairly and are amenable to the writ jurisdiction of superior courts but this discretionary power must be exercised with a great deal of restraint and caution. The courts must realise their limitations and the havoc which needless interference in commercial matters can cause. In contracts involving technical issues the courts should be even more reluctant because most of us in Judges' robes do not have the necessary expertise to adjudicate upon technical issues beyond our domain. The courts should not use a magnifying glass while scanning the tenders and make every small mistake appear like a big blunder. In fact, the courts must give "fair play in the joints" to the government and public sector undertakings in matters of contract. Courts must also not interfere where such interference will cause unnecessary loss to the public exchequer. (see. Silppi Constructions Contractors v. Union of India, MANU/SC/1206/2019 : (2020) 16 SCC 489).*"

18. It was also urged that the financial bid submitted by the petitioner was about Rs.3.70 Crores less than the rates quoted by the respondent no.3. That however cannot be the basis for upholding the case of the petitioner since its technical bid has been found to be non-responsive. Once it is found that the assessment of the petitioner's technical bid has been undertaken in a fair manner by adopting a similar process as was adopted for all the bidders, there would be no reason to interfere with the technical assessment of the petitioner's bid. We are satisfied that the technical bid of the petitioner has been considered in a reasonable manner and in the absence of any element of *mala fide*s, arbitrariness or favouritism there would be no scope to interfere at the behest of the petitioner. As highlighted in *Afcons Infrastructure Limited Versus Nagpur Metro Rail Corporation Limited* [**(2016) 16 SCC 818**], the Courts must defer to the understanding and the appreciation of the tender documents by the Tender Inviting Authority since the author of the tender document is the best person to understand and appreciate its requirements. In *Agmatel India Pvt. Ltd.* (supra) it has been observed that every decision of the Administrative Authority which may not appear plausible to the Court cannot be called arbitrary or whimsical where there is no case of *mala fide*s or bias alleged.

19. For aforesaid reasons, we do not find any case made out to exercise jurisdiction under Article 226 of the Constitution of India and interfere with the decision of the Tendering Authority holding the technical bid of the petitioner to be non-responsive since its financial resources were not found to be in accordance with Clause 2.2.2.3(iii) of the tender document. The writ petition thus fails. It is accordingly dismissed. Rule stands discharged with no order as to costs.

(**MRS. VRUSHALI V. JOSHI, J.**) (**A.S. CHANDURKAR, J.**)

APTE