

Shabnoor

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.12224 OF 2024

**Chennai MSW Private Limited,
11B, Level 11, Galaxy by Aurobindo,
Hitech City Road, Gachibowli,
Hyderabad; Telangana 500 081**

... Petitioner

V/s.

**SHABNOOR
AYUB
PATHAN**

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SHABNOOR AYUB
PATHAN
Date: 2024.09.10
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- 1. The State of Maharashtra,
through the Principal Secretary,
Maharashtra Urban Development
Authority, Mantralaya, Madam
Cama Road, Hutatma Rajguru
Square, Nariman Point,
Mumbai – 400 032**
- 2. Navi Mumbai Municipal Corporation,
Through its Commissioner,
Plot No.1 & 2, Kille Gaothan
Palm Beach Junction, Sector-15A,
Near C.B.D. Belapur,
Navi Mumbai – 400 614**
- 3. The Additional City Engineer,
Navi Mumbai Municipal Corporation,
Plot No.1 & 2, Kille Gaothan
Palm Beach Junction, Sector-15A,
Near C.B.D. Belapur,
Navi Mumbai – 400 614**
- 4. A.G. Enviro Infra Project Pvt. Ltd.,
having its office at A-59,
Wagle Estate Road No.10,
Thane West – 400 604**

... Respondents

Mr. Girish S. Godbole, Senior Advocate with Mr. Hitesh Soni, Ms. Vaishali H. Soni i/by M/s. Hitesh Soni & Associates for the petitioner.

Mr. P.P. Kakade, Government Pleader with Mr. O.A. Chandurkar, Additional G.P. and Mrs. G.R. Raghuwanshi, AGP for respondent No.1 – State.

Mr. Tejas Dande with Mr. Bharat Gadhavi, Ms. Mansi Dande and Mr. Pratik Sabrad i/by Tejas Dande for respondent Nos.2 and 3.

Mr. Saket Mone with Mr. Devansh Shah i/by Vidhii Partners for respondent No.4.

CORAM : DEVENDRA KUMAR UPADHYAYA, CJ & AMIT BORKAR, J.

RESERVED ON SEPTEMBER 3, 2024

PRONOUNCED ON : SEPTEMBER 10, 2024

ORAL JUDGMENT: (Per Amit Borkar, J.)

1. The present writ petition impugns the legality and propriety of the Technical Bid Evaluation Summary dated 16th August 2024, issued by Respondent No. 2, wherein the petitioner has been disqualified from further participation in the tender process for the reasons stated therein.

2. The facts and circumstances relevant for determining the petitioner's eligibility are as follows:

The petitioner is a subsidiary of M/s. Re Sustainability Limited (formerly known as M/s. Ramky Enviro Engineers Limited), a company engaged in providing services such as waste management, recycling, integrated environmental services, consultancy, facilities management, car park

management, and construction and demolition waste management. The petitioner claims to have extensive experience in executing contracts related to waste management and establishment of waste-to-energy projects.

3. Respondent No. 2 – Corporation issued a Notice Inviting Tender bearing No.NMMC/ACE/01/2023-24 dated 23rd March 2024, inviting bids from eligible and interested parties for the "Work for Collection, Transfer, and Transportation of Municipal Solid Waste and Related Allied Works" within the jurisdiction of Navi Mumbai Municipal Corporation for a period of 9 years. The tender sale and submission deadline was initially set for 13th May 2024, with an earnest money deposit of Rs. 25 crore. A pre-bid meeting was scheduled for 15th April 2024. The tender document laid down the mandatory qualifying criteria, technical bid evaluation criteria, a quality cost-based selection process, and general terms and conditions for bidders.

4. The tender document was issued on 23rd March 2024, with the last date for bid submission being 13th May 2024. Subsequently, Respondent No. 2 issued three corrigenda on 20th May 2024, 3rd June 2024, and 7th June 2024, modifying Clause 2.10 and other relevant clauses. The submission deadline was initially extended to 31st May 2024 and further to 4th July 2024.

5. On 3rd July 2024, the petitioner, as the lead member of a consortium with its associate company, M/s. Hyderabad Integrated MSW Ltd., submitted its bid, including all required

information, documents, and affidavits in the prescribed format, along with an earnest money deposit of Rs. 2.5 crore. Besides the petitioner, three other companies, including Respondent No. 4, participated in the tender process.

6. On 16th August 2024, Respondent No. 2 published the technical evaluation summary on its portal. The report indicated that the financial bids were scheduled to be opened four minutes after the publication of the technical evaluation summary. The summary further revealed that two bidders, including Respondent No. 4, were deemed technically qualified, whereas the petitioner was declared technically disqualified, as reflected in the evaluation summary, which is reproduced below:

"Sr. No.	Clauses	Remarks
1.	<i>The Bidder shall have experience in managing manpower of minimum 500 nos on their own establishment/JV/Consortium PF Deposit challan should be submitted along with ESIC registration details (Pg. No.16)</i>	<i>EPF Challan submitted for the month of Feb, Mar & Apr 2024 is only for 213 manpower. Secondly, EPF challan for the month of Sep, Oct & Nov 2020 is 4647, 3353 & 3274 manpower respectively. Therefore, 500 manpower for continuous 3 years is not complying</i>
2.	<i>Affidavit of Rs.100 for Non-Eligibility for Tendering the project/work (As per Clause 2.8) – Black listed/ Debarred/ terminated/ Convicted in a court/Detained under any Law.</i>	<i>M/s. Ramky Energy & Environment Limited which is an Associate/parent Company of M/s.Chennai MSW Pvt. Ltd. is terminated owing to poor performance by New Delhi Municipal Council (NDMC). The same</i>

*has been clarified by NDMC
vide email dated
29.06.2024.*

- | | |
|---|----------------------------------|
| 3. Labor License Certificate (Pg. no.16, 2.12) | <i>Not as Per Specification.</i> |
| 4. Sample Bins Submitted as per specifications (Corrigendum pg.no.12 & 13) – Bin Sample (Green 240) & Bin Sample (Blue 120) | <i>Document not submitted.</i> |
| 5. Either own workshop OR MOU with any other workshop in Navi Mumbai for attending the repair & maintenance of Vehicles Pg. No.19 | <i>Document not submitted.</i> |
| 6. Undertaking to investigate or Inspect the site work by NMMC (as per clause 6.4.3j)Pg.No.19 | <i>Document not submitted.</i> |
| 7. Mobile Garbage Compactors (Pg.No.19 & 20) – ISO | <i>Document not submitted.</i> |
| 8. 10,000 Bins in the past 10 years (Client List) | <i>Document not submitted.</i> |
| 9. RFID & GPS (Pg.No.19 & 20) – ISO | <i>Document not submitted.”</i> |

7. The petitioner has, therefore, filed the present writ petition on 20th August 2024, challenging the decision of Respondent No. 2 to declare him technically disqualified. During the pendency of this petition, the petitioner amended the memo to implead Respondent No. 4.

8. Mr. Godbole, learned Senior Advocate representing the petitioner, argued that the petitioner's technical bid was deemed non-responsive based on nine grounds outlined in the report of the Technical Evaluation Committee. However, he

contended that none of these grounds sufficiently justify the Committee's decision to disqualify the petitioner's bid. He further submitted that the corrigenda dated 8th June 2024 and 22nd May 2025 amended the requirement of submitting ESIC and EPF challans, replacing them with a certificate from the client. The petitioner provided a client certificate dated 21st September 2022 from the Greater Chennai Corporation, confirming that 4,905 personnel were engaged for three consecutive years. Additionally, the affidavit required under Clause 2.8 of the NIT concerning prior blacklisting, termination, or conviction was duly submitted. He argued that M/s. Ramky Energy and Environment Ltd., though an associate of the petitioner, had its contract terminated in 2014, and this issue remains sub judice before an arbitrator, rendering it too remote to cause the petitioner's disqualification.

9. Mr. Godbole further submitted that in the arbitration proceedings between M/s. Ramky Energy and Environment Ltd. and the Delhi Municipal Corporation, the termination order was not enforced. He argued that the labour license certificate, required under Clause 2.1 and the corrigendum dated 22nd May 2024, was not necessary, as later clarified in subsequent corrigenda. He also submitted that the petitioner complied with the technical specifications regarding the bins, as file No.4 submitted along with the bid, contained all necessary documents establishing compliance with Point No. 21 of the corrigendum dated 22nd May 2024. Furthermore, communications from leading OEMs such as Tata, Mahindra, Eicher, Hyva, and Bharat Benz assured full technical support,

uninterrupted supply of spares, materials, and services, fulfilling the requirement to own a workshop or have an MoU with one in Navi Mumbai for vehicle maintenance.

10. Regarding Clause 6.4.3(j), Mr. Godbole submitted that the condition requiring an undertaking to investigate or inspect the worksite was discretionary and not mandatory. He also argued that under Clause 2.6(v), there was no obligation to submit separate ISO certificates, as they were only recommendatory. The petitioner complied with Clause 2.6(iv) by submitting a work order from Otto Waste Systems Pvt. Ltd. for the supply of 15,000 mobile garbage bins over three years, and thus, no separate client list was necessary. He relied on the judgments in *Rashmi Metaliks Limited and Another vs. Kolkata Metropolitan Development Authority and Others*, (2013) 10 SCC 95, and *Poddar Steel Corporation vs. Ganesh Engineering Works and Others*, (1991) 3 SCC 273, to support his contentions.

11. Conversely, Mr. Dande, learned Advocate for Respondent Nos. 2 and 3, opposed the petition, arguing that the petitioner was disqualified for non-compliance with mandatory tender requirements. He noted that the tender, with a proposed contract period of 9 years, was evaluated 70% on technical and 30% on financial aspects. Clause 2.10 clearly stated that only bidders meeting the mandatory requirements were considered for technical evaluation. He emphasized that Clause 2.1, which outlined the technical capacity of bidders, mandated the submission of ESIC and PF challans under Clause 7 of Condition 2.10 as well as Condition 2.1.

12. Mr. Dande further argued that the affidavit submitted under Clause 2.8 was false, as M/s. Ramky Energy & Environment Ltd., an associate of the petitioner, had its contract terminated in 2014, and this termination was not stayed in any proceeding, including arbitration proceedings. He contended that the labour license certificate was a mandatory document, and Clause 6.4.3(i) was also a mandatory requirement, not an ancillary one. The petitioner failed to demonstrate compliance with Clauses 4 to 9 of the impugned communication.

13. Mr. Mone, learned Advocate for Respondent No. 4, argued that Clause 2.1 was a mandatory requirement that called for the submission of PF challans and ESIC registration details, independent of the documents required under Clause 7 of Condition 2.10. The corrigenda relied upon by the petitioner dated 22nd May 2024 and 3rd June 2024 modified Clause 2.10 but did not affect Clause 2.1. Consequently, the petitioner failed to meet this essential requirement. He further argued that the submission of a false affidavit regarding the work order termination of the petitioner's associate disqualified the petitioner from seeking any relief, as this constituted misrepresentation. He also submitted that Clause 4.6.3(j) required compliance with all conditions to establish bid responsiveness. By referring to pages 159 to 198 of the petition, Mr. Mone asserted that the petitioner failed to produce the RAL certificate. He relied on the judgments in *Adani Ports and Special Economic Zone Limited vs. Board of Trustees of Jawaharlal Nehru Port*, 2022 SCC OnLine Bom 1326, and *Adarsh Bharat Enviro Pvt. Ltd. vs. State of*

Maharashtra and Others, in WP/10230/2024, to support his contentions.

14. While evaluating merits of the submissions, it would be appropriate, at the outset to formulate the nature and extent of judicial review where a challenge is made to the decision of Technical Evaluation Committee to disqualify a bidder and the principle which must govern such cases and the extent of judicial review in contractual matters, particularly concerning the interpretation of tender conditions, which has been articulated in several landmark decisions, including ***Subodh Kumar Singh Rathour vs. Chief Executive Officer and Ors.***, (2024) SCC OnLine SC 1682. In this case the issue pertained to the interpretation of tender terms. A bidder challenged the tender process, alleging that the terms were arbitrarily interpreted, affecting fairness and transparency. The Supreme Court held that while the tendering authority has discretion in setting and interpreting tender terms, this discretion must be exercised fairly and reasonably. Courts should not interfere unless the interpretation is arbitrary, discriminatory, or violates statutory provisions.

15. In ***Michigan Rubber (India) Ltd. v. State of Karnataka***, (2012) 8 SCC 216, it was held that judicial review in tender matters should be limited. The Court should ask: (i) whether the process or decision is mala fide or irrational, and (ii) whether public interest is affected. If the answer to both is negative, interference is unwarranted.

16. The Supreme Court has emphasized judicial restraint in tender matters, allowing the tendering authority discretion while ensuring that public interest is upheld. Judicial review is necessary only to prevent arbitrary actions by public authorities. The Court balances the need for discretion with fairness and transparency, limiting intervention to cases of arbitrariness or public interest concerns.

17. The Supreme Court has consistently held that High Courts should exercise discretion under Article 226 only when public interest is affected. While public authority decisions are subject to scrutiny, they should not be interfered with unless there is clear evidence of procedural unfairness or arbitrariness.

18. In the present case, the Tender Evaluating Authority cited nine reasons for disqualifying the petitioner, the first being non-compliance with Clause 2.1. Therefore, the relevant clause is extracted below:

"2 Mandatory Qualifying Criteria

2.1 Technical Capacity

.....The Bidder shall have experience in managing manpower of minimum 500 no's on their own establishment JV/Consortium in the field of Collection & Transportation of Municipal Solid Waste for continuous period of three years. PF deposit challan should be submitted along with the ESIC registration details."

2.10 Technical Bid Evaluation Criteria:

Those who are fulfilling the Mandatory Requirement mentioned above shall proceed for marking as below (do not

enter anything in the column for points obtained, this is for NMMC purpose only):

Table 3: Technical Evaluation Bid Criteria

<i>S. No</i>	<i>Criteria Category</i>	<i>Evaluation Criteria Details</i>	<i>Max Marks</i>	<i>Supporting Documents Required</i>	<i>Max Marks</i>
<i>1 to 6</i>	---	---	---	---	---
<i>7</i>	<i>Manpower</i>	<i>Manpower deployed for SWM work (i) Minimum 500-3 marks (ii) More than 500-5 marks</i>	<i>5</i>	<i>ESIC & PF and Client Certificate</i>	

19. Upon careful examination of the aforementioned conditions, it is clear that Clause 2.1, which is stipulated as a mandatory qualifying criterion, requires the bidder to submit the PF deposit challan along with the ESIC registration details. This requirement is in addition to the documents specified in Clause 7 of Condition 2.10. The corrigenda dated 22nd May 2024 and 3rd June 2024 amended Clause 2.10, but did not alter the requirements of Clause 2.1. Furthermore, Clause 2.10 explicitly states that only bidders who meet the mandatory requirements mentioned therein shall proceed to the technical evaluation stage.

20. The documents submitted by the petitioner indicate that the EPF challans provided were for the months of February, March, and April 2024, covering 213 workers. The manpower figures of 4,647, 3,353, and 3,274 submitted by the petitioner pertain to the months of September, October, and November 2020. Clause 2.1 mandates the submission of PF deposit challans along with ESIC registration details for a continuous period of three years, a requirement that was not modified by

the corrigenda dated 22nd May 2024 and 3rd June 2024. Therefore, we conclude that the tender evaluation authority correctly concluded that the petitioner had failed to comply with Clause 2.1 of the NIT.

21. The next ground for disqualifying the petitioner was the non-compliance with Clause 2.8 of the NIT, which reads as follows:

"2.8 Non-Eligibility for Tendering the Project/ Work

The bidders, partnership firm, Private Ltd. Company, limited company or any other associates Company which have been adjudged by the Hon. Court of Law insolvent or by any GOI and GOM entity, Public Sector Undertaking or any ULB in Maharashtra or in India for any type of municipal supply, work or services is not eligible to submit any offer. In event of the cases pending in any Hon. Court of Law, the bidder should give the details of the same, failing which if disclosed at any stage, the assignment of LOI/acceptance letter, Order, contract shall be liable to be terminated.

a)

b)

c) *Bidder/its associates/parent/subsidiary should not have been blacklisted / debarred / Terminated during on or before the date of bid publication by any ULB's/Municipal corporations/Govt/Semi Govt body in the past for non-performance etc. unless it is mutually resolved, or court has given interim relief for the same.*

(d) *Bidders should submit an affidavit for the same on a stamp paper of Rs. 100/-".*

22. A reading of Clauses (c) and (d) of NIT Condition No. 2.8 clearly indicates that the bidder or its associate must not have

been blacklisted or had a contract terminated by any municipal corporation in the past for non-performance, unless the issue has been mutually resolved or a court has granted interim relief in the matter. The petitioner contends that the order dated 20th July 2016, passed by the sole arbitrator in the arbitration proceedings between NDMC and M/s. Ramky Energy and Environment Limited, constitutes interim relief. However, upon going through the order, it becomes evident that it merely clarifies that the termination of the applicant's contract shall not impede the applicant's participation in tenders floated by the South Delhi Municipal Corporation. It is undisputed that M/s. Ramky Energy and Environment Limited is an associate of the petitioner. This order cannot be considered as interim relief that would stay the termination of the contract. Accordingly, the tender evaluation authority's reasoning for declaring the petitioner ineligible requires no interference.

23. The third reason is non-compliance with Clause 2.1 of NIT Conditions which reads as under:

"2. Mandatory Qualifying Criteria

2.1 Technical Capacity

The Bidder should have a valid labour license for any contract in Maharashtra.

24. The condition in question required bidders to possess a valid labour license for any contract in Maharashtra. However, this condition was modified by the corrigendum dated 22nd May 2024, which reads as follows:

<i>"Sr. No.</i>	<i>Clause Reference</i>	<i>Existing Clauses</i>	<i>Revised Clauses (To be read as)</i>
<i>1 to 4</i>	<i>.....</i>	<i>.....</i>	<i>.....</i>
<i>5</i>	<i>Page No.16, Clause no.2.1</i>	<i>The Bidder should have a valid labour license for any contract in Maharashtra</i>	<i>The successful bidder should submit labour license of Maharashtra state before commencement of the work."</i>
<i>.....</i>	<i>.....</i>	<i>....</i>	<i>.....</i>

25. Relying on the corrigendum dated 22nd May 2024, the petitioner argued that the term "bidder" was replaced by the words "successful bidder," thereby requiring the submission of the labour license only before the commencement of work. The petitioner is, therefore, correct in asserting that this condition applied exclusively to the successful bidder.

26. The fourth reason for declaring the petitioner's bid as non-responsive was that the sample submitted by the petitioner did not conform to the specified requirements. The relevant technical specification is set forth in Clause No. 12.6.3, which reads as follows:

<i>"Sr. No.</i>	<i>Clause Reference</i>	<i>Existing Clauses</i>	<i>Revised Clauses (To be read as)</i>
<i>1 to 21</i>	<i>.....</i>	<i>.....</i>	<i>.....</i>
<i>22</i>	<i>Page No.117/118 /119, clause no.12.6.3, Technical specification</i>	<i>The bins with grey body (RAL 7021) are to be manufactured with at least 80% recycled content.</i>	<i>The bins with grey body (RAL 7021) are to be manufactured with at least 80% recycled content or HDPE Virgin Plastic."</i>
<i>.....</i>	<i>.....</i>	<i>....</i>	<i>.....</i>

27. The petitioner contends that File No. 4, submitted along with the technical bid, contains all the documents establishing the specifications of the bins offered. Relying on the documents at pages 209 and 211, the petitioner asserts that the contents of these documents serve as certification of the specifications required by the tender conditions. However, the Tender Evaluation Authority determined that the bins supplied by the petitioner did not meet the required specifications. The tender conditions mandated that the lid of the bins be RAL certified. The petitioner has not provided any evidence to demonstrate that the lid of the sample bin submitted was RAL certified. Thus, the respondent correctly disqualified the petitioner on this ground.

28. The fifth reason concerns the requirement for the bidder to submit a letter from their manufacturers in accordance with Annexure-G. Annexure-G outlines a format to be submitted to the Commissioner of respondent No. 2, stating the name of the manufacturer and providing assurance of full technical support, including the uninterrupted supply of spares, materials, and services, until the completion of the contract. Upon reviewing the certification produced by the petitioner from page 237 onwards, we are satisfied that the petitioner complied with the requirement to submit a letter from the manufacturer. Therefore, the fifth reason cited by the respondent is arbitrary.

29. The sixth reason for rejecting the petitioner's bid pertains to non-compliance with Clause 6.4.3(j). The relevant condition is extracted below:

"6.4.3 *Responsiveness of the Tender Officer*

The bids submitted by the bidders should satisfy the following conditions to establish its responsiveness.

(a) to (i). ----

(j). The bidder shall implicitly give the Navi Mumbai Municipal Corporation right to investigate or inspect the qualifying information or sites of ongoing works; an undertaking to this effect is desired with the offer."

30. According to the petitioner, the condition in question is not mandatory, and therefore, non-compliance should not lead to disqualification. However, upon reviewing Clause 6.4.3 of the tender document, it is clear that the bidder is required to meet all conditions, including sub-clause (j), to demonstrate responsiveness. The petitioner failed to submit the necessary document as required by sub-clause (j). This Court cannot declare a condition to be merely ancillary, as the tendering authority is the best judge of its own requirements and is entitled to interpret the tender document in a manner it deems appropriate, provided such interpretation is neither arbitrary nor irrational. This Court cannot substitute its own interpretation or engage in an evaluation that falls outside the permissible scope of judicial review. Therefore, the petitioner's argument that the condition is ancillary in nature cannot be accepted.

31. The seventh and ninth reasons for declaring the petitioner's bid non-responsive pertain to Clause 2.6(v), which is as follows:

"2.6 Essential Technical Backup

i. to iv. ---

v. The technology provider and manufacturer/ authorized dealer of the specified Vehicles & Equipment, in India or abroad, must have ISO 9001 & ISO 14001 or higher certification."

32. The petitioner argued that no documents were required to demonstrate compliance with the ISO certification, asserting that certificates for the mobile garbage compactor, RFID, and GPS suppliers were recommendatory. However, upon reviewing Clause 2.6(v), it is clear that the requirement is mandatory under the tender document. Therefore, the failure to provide evidence that the technology provider and manufacturer/authorized dealer held ISO 9001 and ISO 14001 or higher certification constitutes non-compliance.

33. The final reason for disqualification concerns non-compliance with Clause 2.6(iv), which is reproduced below:

"2.6 Essential Technical Backu.

i. to iii. ----

iv. The original designer and technology provider/manufacturer/authorized dealer for Mobile Garbage Bins must have 10 years of experience and must have manufactured 10,000 units of the specified Mobile Garbage Bins in the past five years, as technology provider and manufacturer. A copy of the work order should be attached."

34. The petitioner contended that the documents at pages 257 and 258 demonstrate compliance with Clause 2.6(iv), as

the Goa Waste Management Corporation had certified, by letter dated 9th February 2008, that OTTO Waste Systems Private Limited was awarded a contract for the supply of solid waste management equipment under a rate contract for three years. Upon reviewing the document, we are satisfied that the petitioner has complied with this condition.

35. For the foregoing reasons, we are convinced that the tender evaluation committee has correctly determined that the petitioner failed to comply with six conditions, rendering its bid non-responsive. Consequently, we are of the view that it would neither be appropriate nor proper for this Court to intervene in the impugned decision by exercising its writ jurisdiction under Article 226 of the Constitution of India, particularly in light of the well-established principles governing the exercise of such jurisdiction in matters concerning the award of public contracts.

36. The writ petition accordingly stands dismissed. No costs.

(AMIT BORKAR, J.)

(CHIEF JUSTICE)