



W.P.No.5177 of 2025

IN THE HIGH COURT OF JUDICATURE AT MADRAS

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DATED: 26.02.2025

CORAM :

THE HON'BLE MR.JUSTICE D.BHARATHA CHAKRAVARTHY

W.P.No.5177 of 2025
and W.M.P.Nos.5753, 5754 & 5756 of 2025

Goldair India Private Limited
81/1, Adchini, Shri Aurobindo Marg
South Delhi, India – 110 017
Through its Director
Mr.Rajeev Matta

.. **Petitioner**

Vs.

Airports Authority of India
Through Joint General Manger (Operations)
Regional Headquarters Southern Region
Operational Offices Complex
Chennai Airport, Chennai – 600 016.

.. **Respondent**

Prayer: Writ Petition filed under Article 226 of the Constitution of India seeking a Writ of Certiorarified Mandamus, calling for the records contained in email dated 11.02.2025 at 12.56 hours and all proceedings consequent thereto, including but not limited to, email dated 11.02.2025 at 2.31 pm, the e-portal notification dated 11.02.2025 at 4.15 pm and letter dated 11.02.2025 issued by



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the respondent and to quash the same as arbitrary, illegal and unjust and to consequently direct the respondent to accept the petitioner's consortium bid dated 21.11.2024 in respect of tender no.2024_AAI_212075_1 dated 21.10.2024 and pass such further or other orders.

For the Petitioner : Mr.P.S.Raman, Senior Counsel
for Mr.Arun Karthik Mohan

For the Respondent : Mr.R.Aravind

ORDER

This Writ Petition is filed seeking the records regarding the order contained in the email dated 11.02.2025 and all further proceedings consequent thereto, to quash it and consequently direct the respondents to accept the petitioner's consortium bid dated 21.11.2024 concerning tender No. 2024_AAI_212075_1 dated 21.10.2024 and for other orders.

2. The Writ Petitioner's case is that when the aforementioned tender dated 21.10.2024 was floated, the petitioner submitted a bid. The petitioner is a wholly owned subsidiary of another company named M/s Goldair Handling SA, which is also a member of the consortium. The petitioner relies on its experience and



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qualifications to qualify technically for the bid. However, after submitting the bid on 01.01.2025, the respondent informed the petitioner via email that they must upload the relevant documents due to a shortfall regarding qualification.

3. Upon reviewing the aforementioned e-mail, the petitioner was instructed to obtain a no-due certificate from the Airports Authority of India at Bagdogra and Udaipur. Consequently, the petitioner reached out to the relevant authorities. In response, the authorities stated that the petitioner, namely, Goldair India Private Limited or its consortium member, M/s Goldair Handling SA, is not a concessionaire for any project, and there is no active contract. Therefore, they indicated that they would not issue a no-due certificate upon the petitioner's request. Subsequently, when this information was presented to the respondent, following an exchange of communications, the impugned order was issued, resulting in the rejection of the petitioner's bid. The grounds on which the petitioner's bid was rejected are extracted below:

“In view of the above, we regret to inform that you are not meeting the required eligibility criteria as per the provisions contained in the RFP, hence not qualified for opening of the Financial bids, due to the following reasons



i. Undertaking with information on contracts with AAI or through contract with Airlines (Non-entities) (Appendix 9A) (S.no 23 as per Appendix -8))- The Consortium have mentioned Nil in appendix 9A submitted through technical bid. But M/s Goldair Handling S.A is part of SPV incorporated by consortium of M/s LAS ground Force Pvt. Ltd. and M/s Goldair Handling SA working at Udaipur airport and Bagdogra airport

SPV at Bagdogra and Udaipur airport is undertaking, performing the obligations and exercising the rights of the consortium ie. M/s LAS ground Force Pvt. Ltd. and M/s Goldair Handling SA The said consortium after incorporation of SPV is performing, implementing and executing the ground handling services at Udaipur and Bagdogra airport.

ii. No Dues Certificate (Appendix 9B) (S. No 24 as per Appendix -8))- M/s Goldair Handling S.A is part of SPV incorporated by consortium of M/s LAS ground Force Pvt. Ltd. and M/s Goldair Handling S.A working at Udaipur airport and Bagdogra airport and the No Dues Certificate for Udaipur airport and Bagdogra airport is not submitted

iii. Declaration with information on contracts with AAI or through contract with Airlines (Non-entities) (Appendix 10) (S.no 23 as per Appendix -8))- The Consortium have mentioned NIL in Appendix 10, submitted through technical bid. But M/s Goldair Handling S.A is part of SPV incorporated by consortium of M/s LAS ground Force Pvt. Ltd. and M/s Goldair Handling S.A working at Udaipur airport and Bagdogra airport.”

Aggrieved by the same, the petitioner has filed the Writ Petition.

4. The petitioner contends that they, as the main bidder or their consortium partner, M/s Goldair Handling SA, are neither the concessionaire nor



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do they hold a valid or subsisting contract with the Airports Authority of India at Udaipur and Bagdogra. Therefore, the denial of the issuance of the no due certificate is justified. Both the request for the no due certificate and the entries in Appendix 9A and 9B pertain to the same transaction; consequently, the respondent should not have rejected the petitioner's bid, leading them to seek relief from this Court.

5. The writ petition is contested by the respondent by filing a counter affidavit. They argue that the present consortium member, M/s Goldair Handling SA, is also in the consortium that placed bids for the contracts at both Bagdogra Airport and Udaipur Airport. After the bids were accepted and selected by the contracting parties, they established a special-purpose vehicle to execute the concession agreement. Therefore, the mere creation of a special purpose vehicle does not imply that they did not participate in the contract or that they are not directly or indirectly involved with the said airports in relation to those contracts. Thus, they ought to have disclosed this information in Appendices 9A and 9B, and they are also required to furnish a no-due certificate. Although the



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concessionaire is the special purpose vehicle, the consortium partner of the petitioner, M/s Goldair Handling SA, along with the other members of the consortium, possesses both direct and indirect control of the special purpose vehicle. Hence, for both reasons, the impugned order must be upheld, and the petitioner's bid has been rightly rejected by the respondent.

6. *Mr. P.S. Raman*, the learned Senior Counsel representing the petitioner, submits that the RFP (Request for Proposal/tender document) does not leave any ambiguity. He first relies on the definition clause to highlight that the term 'affiliate/associate' shall have the meaning prescribed under Clause 2.2.7. The learned Senior Counsel then refers to Clause 2.2.1, which relates to the eligibility of bidders. Under Clause 2.2.1 (g), bidders must obtain a no-due certificate. The details that must be provided by Appendices 9A and 9B are also specified. The learned Senior Counsel subsequently refers to Clause 2.2.7, which states that if the petitioner's consortium member, M/s Goldair Handling SA, has control over the special purpose vehicle formed for the Udaipur and Bagdogra Airports, then the no-due certificate or entries in Appendices 9A and



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9B will be mandated according to the definition in 2.2.7. To conclude, the consortium member, M/s Goldair Handling SA, to have control over the current concessionaire at the Udaipur and Bagdogra Airports, must directly or indirectly hold more than 50% of the voting shares in the special purpose vehicle.

8. The learned Senior Counsel would then draw the Court's attention to the additional set of papers filed by the petitioner to point out that the special purpose vehicle at Bagdogra Airport, the company is named LAS Goldair Handling (Bagdogra) Private Limited. The shareholding pattern, as certified by the Board of Directors as of 31.03.2022, indicates that M/s Goldair Handling SA has 87,500 shares out of 250,000 shares, which equates to 35% of the shareholding. Similarly, concerning the special purpose vehicle for Udaipur, the name of that company is LAS Goldair Handling (Udaipur) Private Limited, which has a total paid-up capital of 36,000,000, of which M/s Goldair Handling SA holds 12,500,000 shares, representing 34.7%.

9. Therefore, he would contend that neither the petitioner nor the



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consortium partner holds any direct contract or concession with the said airports.

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They are also not in control of the special-purpose vehicle that holds a concession. Consequently, they need not obtain any no-due certificate; since they are not in control, they are not required to disclose this in Appendices 9A and 9B. Thus, as stated, they have explicitly mentioned 'nil,'. There is neither suppression nor disqualification. Consequently, the exclusion of the petitioner from the tendering process is illegal.

10. *Mr. R. Aravind*, the learned counsel representing the respondent, again relying on Clause 2.2.7, submits that the purpose of this clause and the reference to 50% relates to the parties leveraging the experience and eligibility of those affiliates. However, concerning the provision of information, that same 50% should not be applied. He argues that when two parties, namely M/s Goldair Handling SA and another company, LAS Ground Force Private Limited, collaborate and, after bidding, are chosen as the successful bidder, they subsequently form a special purpose vehicle to execute the concession. It is evident that these two companies control the special purpose vehicle; therefore,



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the petitioner herein should have disclosed this under Annexures 9A and 9B and are also obligated to obtain a no-dues certificate regarding the said contract.

11. The learned counsel would point out that the phrase 'in any other capacity other than the concessionaire' has been explicitly used in relevant places. Therefore, he submits that the petitioner's actions amounted to suppression, and they are also required to produce the no-due certificate.

12. I have considered the opposing submissions from both sides and examined the case's material records.

13. The question to be decided is whether the petitioner company is liable to obtain a no-dues certificate and mention the contract related to Udaipur and Bagdogra Airports in Annexures 9A and 9B of the bid submitted by them.

(i) At the outset, the relevant clause that requires the party to obtain a no-due certificate is found in 2.2.1(g), and the entire Clause 2.2.1(g) is extracted below:



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“2.2.1.(g) If the Bidder or its Member or its Affiliates (whose experience is used for Technical and Financial Capacity) is an existing or past concessionaires or licensees of AAI or has/had worked at the AAI airport either through a direct contract with AAI or through a contract with Airlines (for example as non-entity) or any other party (in any capacity whatsoever and not being limited to as a role of a Concessionaire or license at AAI), intends to participate in response to RFP, then the Bidder or its Member or its Affiliates (whose experience is used for Technical and Financial Capacity) should have 'NIL' outstanding dues for the period up to 30.06.2024 in respect of all the units of AAI (where the participating tenderer is operating concessions/licenses or had operated concessions/licenses) as on the bid submission date. However, AAI reserves the right to cross check the outstanding dues to rule out any discrepancy and may ask the participating bidders to clear their dues, if any while seeking shortfall documents.

The outstanding dues on differential royalty (Amount payable as per royalty percentage (%) specified by AAI minus (-) Royalty amount @ 13%) in respect of NEEs shall be considered as disputed dues for participation in this GHS tender process as the matter is under adjudication before Hon'ble High Court of Madras. However, in the event of:

(a) the failure of the Writ Petitions in the Hon'ble High Court of Madras, or

(b) a decision by Hon'ble High Court of Madras to the effect to pay the disputed amount of royalty to Airports Authority of India by NEEs,

-before the award of work in the tender process for appointment of GHAS, LOI will be issued only after the recovery of disputed amount of royalty, and

-in case the decision by Hon'ble High Court of Madras comes after the award of work, the successful Agency in the Tender Process will be allowed to continue to operate and disputed amount will be recovered by AAI by du law; e pro



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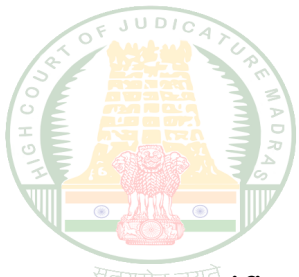
In addition, if the Bidder is a private or public limited company, Partnership Firm of Sole Proprietor and any of the Directors/Partners/Sole Proprietor of such company is also a director of any other company or partner of a concern of a Sole Proprietor having established business with AAI and has outstanding dues payable to the Authority then the Bidder shall not be allowed to participate in the bid.

a. The Bidder(s) is required to submit a No dues certificate as per Appendix A and Appendix 9B. The certificate is to be submitted at the time of bid submission. A Bid without the No dues certificate shall be rejected by the Authority as non-responsive. For avoidance of doubt, any disputed amount which is referred for Dispute Resolution/Arbitration by the Authority shall not be considered as outstanding dues.

In the event of specific order/judgement from the Judicial Court/Arbitral Tribunal staying/withholding the realization of certain dues, the adherence of the above condition will be exempted and regulated in accordance with specific orders.

b. During the intervening period i.e. after the submission of tender and before finalization of award, if any amount is found as outstanding against the Selected Bidder, the bidder shall clear such dues (undisputed ones) before award of the license for this purpose, all the bidders shall submit an undertaking along with tenders, as per Appendix 9C.”

14. Thus, it can be seen that if the bidder (the petitioner), its member (M/s Goldair Handling SA), or its affiliates (there are no other affiliates whose experience the petitioner relies upon) is an existing or past concessionaire or licensee of the Airports Authority of India, then they have to get a no-due



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certificate.
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15. Admittedly, neither the petitioner nor its members are existing concessionaires, past concessionaires, or licensees of the Airport Authority of India as of the bid date. The stance taken by the respondent authority is that, regarding Bagdogra Airport and the e-bid invitation No. 2024_AAI_212075_1 dated 21.10.2024, the member of the petitioner consortium, M/s Goldair Handling SA, along with another third-party company, LAS Ground Force Private Limited, submitted a bid and were awarded the contract. The documents produced, dated 13.04.2021, state in Clause No. 3 as follows:-

“3.Airports Authority of India ("AAT"), hereby declares the consortium of M/s LAS Ground Force Pvt. Ltd. & M/s Gold Air Handling SA. as the "Selected Bidder" (hereby now referred as You) within the meaning of the RFP document for the implementation of the Project, subject to the fulfilment of terms and conditions of the RFP document and the Concession Agreement including the obtaining of requisite security clearance as per Applicable Laws.”

16. Again in Clause No.6, the said document reads as follows:-



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“6. You shall incorporate a Special Purpose Vehicle (SPV) under the (Indian) Companies Act, 2013 (the "Concessionaire"), within 30 (thirty) days from the date of issue of LOIA The SPV is to be registered in Bagdogra, Distt. Darjeeling, West Bengal. For entering into the Concession Agreement with AAI and for performing all its obligations under the RFP document and as the Concessionaire in terms of the Concession Agreement for the Project:

(1) You shall submit for the performance of obligations hereunder no later than 45 (forty-five) days from the date of issue of LOIA or signing of the Agreement whichever is earlier, an irrevocable, unequivocal and unconditional guarantee from a scheduled commercial bank (other than cooperative scheduled bank) in India in favour of 'Airports Authority of India' Payable at Bagdogra Airport for a sum equivalent to 83 (Eighty Three) percent of the Minimum Annual Guarantee for the first year (MAG) quoted i.e Rs. 46, 12,937/- (Rupees Forty-Six Lakh Twelve Thousand Nine Hundred Thirty-Seven only) including all taxes except GST. The validity of the bank guarantee should be for a period of 18 months from the date of its issue, as per the terms and conditions of the RFP document and the Concession Agreement.

(ii) You/SPV shall obtain requisite Security Clearance as per the timelines provided in the RFP/Concession Agreement.

(ii) This LOIA shall be deemed as Letter of Award (LOA) on the date of receipt of requisite Security Clearance as per Applicable Laws.

(iv) You shall ensure the execution and delivery of the Concession Agreement through SPV within 7 (Seven) days from the LOA.

(v) The SPV shall submit one-month advance license fee of quoted MAG, ie Rs. 4,63,146/- (Rupees Four Lakh Sixty-Three Thousand One Hundred Forty-Six only) including all taxes except GST in the office of Airport Director, Bagdogra Airport, Bagdogra, Distt. Darjeeling before commencement of operation.”



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17. Therefore, the petitioner's member, M/s Goldair Handling SA, was a co-bidder whose bid was selected. However, the respondent's communication clearly uses the term 'selected bidder,' and only the special purpose vehicle will be the concessionaire.

18. In fact, it is accepted that the concession contract is entered into solely in the name of the special-purpose vehicle. If that is the case, the existing contract pertains only to the specified companies, namely LAS Groundair Handling (Bagdogra) Private Limited and LAS Goldair Handling (Udaipur) Private Limited. Furthermore, even considering that the petitioner's member is one of the consortium members with shares in the said company, whether this can be factored in for obtaining the no-due certificate must be determined according to the tender conditions. The definition of 'affiliate' / 'associate' is as follows:

“ “Affiliate” / “Associate” shall have the meaning ascribed to it in Clause 2.2.7;”

Therefore, Clause 2.2.7 reads as under:-

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“2.2.7. In computing the Technical and Financial Capacity of the Bidder/Consortium Members under Clauses 2.2.2 and 3.2, the Technical Capacity, turnover and Net worth of their respective Associates/Affiliates would also be eligible hereunder.

For purposes of this RFP, Associate means, in relation to the Bidder/Consortium member, a person who controls, is controlled by, or is under the common control with such Bidder/Consortium Member (the "Affiliates or Associate"). As used in this definition, the expression “control” means, with respect to a person company or corporation, the ownership, directly or indirectly, of more than 50% (fifty per cent) of the voting shares of such person, and with respect to a person which is not a company or corporation, the power to direct the management and policies of such person by operation of law.”

19. It can thus be seen that if the respondent has its own RFP Clause 2.2.7, which expressly lays down that a person/company would be deemed to be in control only if they directly or indirectly own more than 50% of the voting shares of such company. Therefore, in this case, said M/s. M/s Goldair Handling SA owns only 35% and 34.7% of the said special purpose vehicles. In view of this, the respondent authority would be bound by the terms of the RFP/tender document. Consequently, Clause 2.2.7 categorically states that the said special purpose vehicles can be termed as their affiliates or associates only if the petitioner or its consortium member holds more than 50% of the shares. Without this, they cannot even be termed an affiliate or associate. Furthermore, since the petitioner or its member is neither a concessionaire nor holds any valid contract



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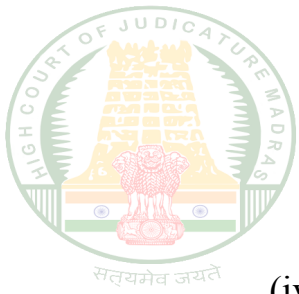
and has never entered into an agreement with the Airports Authority of India, merely because a member of the petitioner's consortium is also a member of that consortium, the RFP/ tender document does not mandate a no-due certificate or makes it mandatory mention about the same in Annexures 9A and 9B. Therefore, I answer the question in favour of the petitioner, concluding that rejecting the petitioner's bid on those grounds is erroneous in law and that the impugned proceedings are liable to be quashed.

20. In view thereof, this Writ Petition is allowed on the following terms,

(i) the impugned order dated 11.02.2025 shall stand quashed;

(ii) The petitioner's technical bid shall be considered valid if there are no other impediments it cannot be deemed invalid for the non-production of a no-due certificate or for not mentioning the stated contracts in Annexures 9A and 9B;

(iii) If the petitioner's technical bid is deemed acceptable, the petitioner will also be included in the subsequent stages of the tender process, including the opening of its financial bid;



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(iv) The learned counsel for the respondent states that the proceedings have reached a stage where the financial bids have been opened, but they have not yet been finalised.

(v) In light of this, after reviewing the petitioner's technical bid, the financial bid will also be opened, and subsequent decisions will depend on the petitioner's quote relative to the other participants;

(vi) Regarding the EMD deposit, if the concerned e-portal accepts, the petitioner will repay the amount via the e-portal. If there is no provision for making the payment again in the e-portal, the petitioner can also purchase a Demand Draft for the EMD amount and submit the same to the respondent;

(vii) The parties shall act on the web copy of this Order without waiting for the certified copy;

(viii) No costs. Consequently, the connected miscellaneous petitions are closed.

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Neutral Citation : Yes

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