

CWP-17343-2025 (O&M) .

2025:PHHC:156601-DB



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CWP-17343-2025 (O&M)
Reserved on : 17.10.2025
Pronounced on : 13.11.2025**

M/S. GAANDESH KARTIKY CONSTRUCTION PVT. LTD.

..... Petitioner(s)

Versus

UNION OF INDIA AND OTHERS

..... Respondent(s)

**CORAM:- HON'BLE MRS. JUSTICE LISA GILL.
HON'BLE MRS. JUSTICE MEENAKSHI I. MEHTA**

Argued by: Mr. Dheeraj Mahajan, Advocate (joined through V.C.) and
Mr. Nimish Gautam, Advocate, for petitioner.

Mr. Vivek Singla, Advocate, for respondents no.2 and 3.

LISA GILL, J.

1. Prayer in this writ petition is for setting aside decision dated 11.06.2025 rejecting the technical bid, submitted by petitioner pursuant to issuance of tender dated 30.04.2025.

2. Brief facts necessary for adjudication of the matter as pleaded are that petitioner submitted its tender pursuant to issuance of Tender Document dated 30.04.2025 (Annexure P-1) for the work of "Re-Carpeting of Runway at Sri Guru Ram Dass Jee International Airport, Amritsar." It was submitted that petitioner was fully eligible to participate in tender, however, its technical bid was rejected on 11.06.2025 by the Technical Evaluation Committee on the premise that it did not fulfill Pre Qualification (PQ) criteria. It was submitted that no reasons as such had been assigned for rejecting technical bid, upon which legal notice dated 12.06.2025 (Annexure

CWP-17343-2025 (O&M) .

P-4), was submitted by petitioner by way of e-mail. In reply thereto, respondent-authority responded vide communication dated 12.06.2025, (Annexure P-5) stating that petitioner's technical bid was rejected on the ground that it did not meet the criterion in Notice Inviting Tender (NIT) of minimum annual value of Rs.14556 lacs (Rs.145.56 crores) excluding GST in general construction work carried out in the last five years ending on 31.03.2024. Aggrieved therefrom present writ petition has been filed.

3. Learned counsel for petitioner vehemently argued that in terms of tender document petitioner fulfilled financial criterion of minimum annual value of Rs.14556 lacs (Rs.145.46 crores) in general construction. This is apparent from the documents attached with its bid document. Reference is made to Form-B and Form-D. It was argued that respondent-Authority failed to abide by its own terms and conditions wherein it is provided that value of executed works shall be brought to current costing level by enhancing actual value of work at simple rate of 7% per annum, calculated from the date of completion to the date of bid opening. While referring to Form-D, submitted by petitioner, it was contended that in case enhancement @ 7% had been carried out, petitioner clearly falls within requisite criteria of minimum annual value of Rs.145.56 crores. It is only because said enhancement was not carried out that petitioner has been found to be technically non-responsive on account as above. It was, thus prayed that this writ petition be allowed.

4. Learned counsel for respondents per contra refuted the arguments as raised on behalf of petitioner. A preliminary objection was raised to the effect that as tender was issued at Delhi and rejection of financial bid was also carried out at Delhi, present writ petition is not

CWP-17343-2025 (O&M) .

maintainable as no cause of action has accrued within territorial jurisdiction of this Court. Learned counsel for respondents refuted the arguments raised by petitioner on merits as well. It was submitted that the tenderer as per NIT should have achieved minimum annual value of Rs.14556 lacs (Rs.145.56 crores) in any of the last five years ending on 31.03.2024. Maximum value in any of the last five years as far as the present petitioner is concerned, is Rs.125.76 crores, which is clearly less than minimum requirement. Reference is also made to Technical Instruction No.164 dated 28.01.2025, to submit that action has been correctly taken by respondent-Authority in rejecting technical bid of petitioner. This criteria has been applied across the board to all the bidders and there is no question of any prejudice being caused to petitioner. It was thus prayed that this writ petition should be dismissed.

5. We heard learned counsel for parties at length and have perused the file carefully with their able assistance.

6. We deem it appropriate to first and foremost consider the preliminary objection raised by learned counsel for respondent in respect to jurisdiction of this Court to adjudicate upon this matter. It is the case of respondents that this tender has been issued by Airport Authority of India at Delhi. Evaluation was carried out at Delhi and rejection also done at Delhi itself. Bid Manager has his Headquarter/Office at New Delhi itself. Petitioner alongwith its bid had submitted the integrity pact which provides that place of performance and jurisdiction is the corporate headquarter/regional head quarter/office of the authority, as applicable. He relied upon judgment of Hon'ble the Supreme Court in ***Oil and Natural Gas***

CWP-17343-2025 (O&M) .

Commission Vs. Utpal Kumar Bassu, 1994(4) SCC 711, to submit that this writ petition should be dismissed on this sole ground itself.

7. Learned counsel for petitioner vehemently argued that work in question is for “Re-Carpeting of Runway at Sri Guru Ram Dass Jee International Airport” at Amritsar, which very well falls within territorial jurisdiction of this Court. Therefore, integral part of cause of action arises within the jurisdiction of this Court itself.

8. It is a matter of record that tender in question is for re-carpeting of runway at Sri Guru Ram Dass Jee International Airport, which is admittedly situated at Amritsar, which is within territorial jurisdiction of this Court. It is apparent and clear that substantial cause of action arises within jurisdiction of this Court. Decision of Hon’ble Supreme Court in *Oil and Natural Gas Commission’s* case (supra) is distinguishable inasmuch as in said case ONGC through Engineers India Ltd. called for tenders for setting up of a Kerosene Recovery Processing Unit at Hazira complex in Gujrat. Tenders containing offers were to be communicated to EIL Engineers India Ltd. at New Delhi. The entity NICCO, having its registered office in Calcutta, submitted its bid in response to said tender notice. Its bid was rejected for the reasons as were mentioned in the decision. Shorn of unnecessary details, it is to be noted that NICCO filed a petition before Calcutta High Court challenging the decision of Tender Committee of rejection of its bid and award of contract to another entity. The matter ultimately travelled to Hon’ble the Supreme Court at the instance of ONGC. It is in this factual scenario, it was held by Hon’ble the Supreme Court that execution of contract was to be carried out at Hazira in Gujrat, tenders were submitted to EIL at New Delhi and scrutinized at New Delhi with a final

CWP-17343-2025 (O&M) .

decision also taken at Delhi. Therefore, merely because NICCO had read the advertisement at Calcutta, submitted the offer from Calcutta and made representations from Calcutta, cannot constitute facts forming an integral or substantial part of cause of action. However, in the instant case it is a matter of record that work in question is to be carried out at Amritsar. It is a settled position that cause of action is a bundle of fact. The expression 'cause of action' is inexorably associated with the place where a fact or bunch of facts is borne. Doubtlessly there is no statutory definition thereof but this phrase has been interpreted in various judicial pronouncements to imply a right to sue and includes every fact necessary for a party to prove to support its case. Party in question is required to prove the material/integral facts. Question as to whether a Court has territorial jurisdiction to entertain the writ petition has to be decided on the basis of integral facts so pleaded. As long as the whole cause of action or part of it arises within territorial jurisdiction of a Court, the writ petition can be entertained. Gainful reference in this regard can be made to judgments of Hon'ble the Supreme Court in **Kusum Ingots and Alloys Ltd. vs. Union of India 2004(6) SCC 54** and **Om Parkash Srivastava vs. Union of India 2006(6) SCC 207**. In this given factual matrix, it is apparent that substantial cause of action arises within jurisdiction of this Court. It is thus held that this Court does have the jurisdiction to entertain the *lis* in the present case.

9. Having held that this Court has the jurisdiction to entertain this petition, we proceed to adjudicate on merits of the matter.

10. Issuance of tender dated 30.04.2025 (Annexure P-1) for the work of "Re-Carpeting of Runway at Sri Guru Ram Dass Jee International Airport, Amritsar" at an estimated cost of Rs.3639 lacs excluding GST with

CWP-17343-2025 (O&M) .

completion period of six months is a matter of record. Four other tenderers had submitted their bids. Three of the tenderers were found to be technically responsive. Technical bid of petitioner was rejected with the information being uploaded on 11.06.2025 (Annexure P-3). Technical bids were scrutinized by the Technical Evaluation Committee, comprising of Senior Manager (Engineering-Civil), Joint General Manager (Engineering- Civil) and were approved/recommended General Manager (Engineering- Civil). As per communication dated 12.06.2025 (Annexure P-5), petitioner did not meet the NIT criteria of minimum value of Rs.145.56 crores. Relevant portion of communication dated 12.06.2025 reads as under:-

“With reference to your bid ID 850198 for the subject work submitted through CPP Portal. Your Technical bid (Envelop-I) has been rejected by the competent authority for the reason mentioned below:

- i) You have not qualified as per the turnover criteria stipulated in Notice Inviting Tender clause 2(C)*
- (ii)/page 6 of the tender document which is appended below:*

"The tenderer should have achieved minimum annual value of Rs.14556.00 Lakhs. (excluding GST) general construction work (as certified by Chartered Accountant), and at least Rs.7278.00 Lakhs (excluding GST) of which is from Civil Engineering construction works carried out in any of the year during last five (05) years, ending 31.03.2024. The Financial information should be submitted in the given format Form-B."

As per financial data and balance sheet submitted by your good self duly certified by Chartered Accountant, annual turnover for the last five financial year is as below:

<i>FY</i>	<i>2023-24</i>	<i>2022-23</i>	<i>2021-22</i>	<i>2020-21</i>	<i>2019-20</i>
<i>Minimum annual value of General Construction work certified by Chartered Accountant (In Cr)</i>	<i>111.47</i>	<i>80.68</i>	<i>125.76</i>	<i>81.79</i>	<i>119.01</i>

Hence, your firm is not meeting the NIT criteria of minimum annual value of Rs.14556.00 Lakhs (Rs. 145.56 Cr) (Excluding GST) In

CWP-17343-2025 (O&M) .

general construction work carried out in any of the year during last five (05) years, ending 31.03.2024.

ii) The disqualification of your firm is governed by the NIT criteria of the subject work only and therefore cannot be compared to the eligibility criteria of tenders called by any other Department.”

11. At this stage, it is useful to refer to clause 2C of the tender document, which provides for qualifying requirement of contractors/tenderers:-

C. Qualifying requirements of contractors/tenderers containing the following:-

1) Tenderer should have successfully completed or substantially completed three works each of Rs. 1455.60 Lakhs or two works each of Rs. 1819.50 Lakhs or one work of Rs. 2911.20 Lakhs in single contract of similar nature of work of Rigid/Flexible Pavement works in Airfield, National Highways/Expressways, Harbour pavements, State Highways with MORTH specifications during last 07 (seven) years ending last day of month previous to the one in which tenders are invited in India.

The details of similar works completed during last seven years in the given format Form-A with supporting documents issued by the client.

Note:

1. The Experience Certificates of works completed pre GST era, Completion amount will be divided by 1.12 (to exclude pre GST taxes) to make it at par with experience certificates of post GST era but excluding GST.

2. Experience gained by executing work on back-to-back contract/Sub-contract basis is acceptable in the following conditions:

(a) Work should be actually executed by the second agency (sub-contractor) with due concurrence of the owner as tripartite agreement/written approval. It should be backed by valid agreement and experience certificate.

(b) Payments received by second agency should be reflected in TDS certificates.

~~3. Experience gained in composite works for the specialized nature of works (List of Specialized Items, as per Appendix XIV) were executed by main contractor either by in house expertise & experience or by engaging the specialized agencies with the approval of main client as per contract conditions. In such cases, main contractor as well as specialized agency both get the experience certificate for the same work from their respective client(s) i.e. main contractor for composite work along with specialized works from owner and specialized agency for specialized work(s) from the main contractor. In this situation, the~~

CWP-17343-2025 (O&M) .

~~experience certificate of either specialized agency or main agency having in-house expertise & experience, who has actually executed the specialized work(s) shall be considered for Technical /Pre-qualifying criteria in similar specialized nature of work(s)~~

4. Substantial completion shall be based on 80 (eighty) per cent (value wise) or more works completed under the contract. Substantial completion should not be defined in terms of percentage completion, rather it should be based on functional consideration.

Certificate for 'substantial completion of project/work/asset should contain two parts. Part-1 shall contain 'financial value of work done' and part-II shall contain 'certificate of functional completion of project/work/asset

The value of executed works shall be brought to current costing level by enhancing the actual value of work at simple rate of 7% per annum, calculated from the date of completion to date of bid opening (Cover-1/ Technical bid).

Client certificate for experience should show the nature of work done, the value of work, date of start, date of completion as per agreement, actual date of completion and satisfactory completion of work. Tenderers showing work experience certificate from non-government/non-PSU organizations should submit copy of tax deduction at sources (TDS) certificate(s) along with a certificate issued by registered Chartered Accountant, clearly specifying the name of work, total payment received against the work and TDS amount for the work.

Tenderer should have annualized average financial turnover of Rs.1288.21 Lakhs on construction works during last three years ending 31st March of the previous financial year. The Financial Information shall be submitted in the given format-Form-B.

The tenderer should have achieved minimum annual value of Rs. 14556.00 Lakhs. (excluding GST) general construction work (as certified by Chartered Accountant), and at least Rs. 7278.00 Lakhs (excluding GST) of which is from Civil Engineering construction works carried out in any of the year during last five (05) years, ending 31.03.2024. The Financial information should be submitted in the given format Form-B.

Tenderers showing continuous losses during the last three years in the balance sheet shall be summarily rejected

The tenderer should have a minimum net worth of Rs. 546.85 Lakhs issued by certified Chartered Accountants. The Certificate should be submitted in the given format-Form-C

Scanned copy of all the Documents of Envelope-I mentioned above shall be submitted on the CPP portal. If EMD not paid online on CPP

CWP-17343-2025 (O&M) .

Portal, Original Hard Copies of Insurance Surety Bond/BG against EMD is required to be submitted/sent to the Sr Manager (Engg-C), 0/0 ED (Engg)-NR, B-Block, 3rd Floor, Rajiv Gandhi Bhawan, Safdarjung Airport New Delhi-110023 (Bid Manager) on or before date & time mentioned in CRITICAL DATA SHEET. The tenderer, whose Insurance Surety Bond/BG against EMD are not received by the date & time mentioned in critical data sheet, then their tenders will be liable to be rejected. Any postal delay will not be entertained.

Envelope-II: The Financial e-Bid through CPP portal.

All rates shall be quoted in the format provided and no other format is acceptable. If the price bid has been given as a standard BOQ format with the tender document, then the same is to be downloaded and to be filled by all the tenderers. Tenderers are required to download the BOQ file, open it and complete the blue coloured (unprotected) cells with their respective financial quotes and other details (such as name of the tenderer). No other cells should be changed. Once the details have been completed, the tenderer should save it and submit it online, without changing the filename. If the BOQ file is found to be modified by the tenderer, the bid will be rejected.”

12. It is thus apparent that as per tender document, tenderer should have annualized average financial turnover of Rs.1288.21 lakhs on construction works during last three years ending 31st March of the previous financial year. Financial information in this respect is to be submitted in Form-B. It is further provided that tenderer should have achieved minimum annual value of Rs.14556 lakhs (excluding GST). General construction work as certified by Chartered Accountant and at least Rs.7278 lakhs (excluding GST) of which is from Civil Engineer construction works carried out in any of the year during last five years ending 31.03.2004. Information submitted by petitioner in form B is as under:-

“Financial Analysis – Details to be furnished turnover on construction works with profit/loss as per figure in balance sheet account for the last three years

CWP-17343-2025 (O&M) .

duly certified by the Chartered Accountant as submitted by the applicant to the income – Tax Department.

Fig in Lakhs Rs.

Srl. No.	Particulars	Financial Year (Last Three Years)		
		2023-24	2022-23	2021-22
1.	Gross Annual Turnover of General Construction Work	11147.13	8068.46	12576.04
2.	Turn-Over on Civil Engg. Construction Works	11147.13	8068.46	12576.04
3.	Profit/loss after Taxes	418.43	346.61	577.44”

13. Petitioner submitted financial data regarding the work done during the last five financial years as under:-

Srl. No.	Description	Financial Data for Last Five Audited Financial Years (In Crores)				
		FY2023-24	FY2022-23	2021-22	FY2020-21	FY2019-20
1.	Maximum value of Civil Engineering Works executed in any one year during the last 5 (five) years	111.47	80.68	125.76	81.79	119.01
2.	Updated Executed works to current costing level of enhancing at a simple rate of interest @ 7% per annum					160.66 (119.01 x 1.35)

14. Information supplied in Form-A is as under:-

Ref. DETAILS OF SIMILAR WORKS SUCCESSFULLY COMPLETED OR SUBSTANTIALLY COMPLETE DURING THE LAST SEVEN YEARS ENDING ON...
Page-1

S. No	Details of Work	W-1	W2	W3
i	Name of work project and Location	Construction of 4-Lane VUP at Km 34+420, Flyover at Km 35+940 & 2 No. FOB at Km 34+890 & Km 37+045 on Ambala -Chandigarh section of NH-22 (New NH-152) from Km 33+800 to 37+100 in the State of	Construction of ROB in lieu of level crossing A/12/B/2 at Km 112-113 of NH-15 (54) at Amritsar along with High Level Bridge over adjoining UBDC canal in the state of Punjab on EPC Mode.	Construction of ROB including its approaches of existing level crossing no. S-26 at KM 235.240 of NH-15 (New-54) near Kotkapura in the State of Punjab on EPC Mode.
ii	Name and Address of client	National Highways Authority of India,	Executive Engineer, Central Works	Executive Engineer, Central

CWP-17343-2025 (O&M) .

		PIU Chandigarh.	Division No.1, PWD (B&R) Amritsar	Works Division PWD (B&R) Ferozepur.
iii	Awarded Cost of of work (in Rs. Lakhs)	Rs 4770 (Rs 47.70 Crore)	Rs. 11331 (Rs 113.31 Crore)	Rs 7551 (Rs 75.51 Crore)
iv	Date of commencement as per contract	23.04.2022	05.03.2017	14.10.2016
v	Stipulated date of completion	22.10.2023	03.09.2019	13.04.2019
vi	Actual date of completion	Work In Progress Financial progress 96.01% Physical Progress 98.25%	13.12.2020	13.12.2020
vii	Completion Cost/Actual work done	Rs.6364 (Rs 63.64 Cr.) out of which Road work cost Rs.53.11 Cr. (excluding GST)	Rs 13836 (Rs 138.36 Crore) out of which roadwork cost = Rs.28 Cr. (including GST) Cost excluding GST = 28/1.12 = Rs 25 Cr. Updation factored Cost = 25 x 1.28 = Rs. 32 Cr.	Rs 8843 (Rs 88.43 Crore) out of which Road work cost = Rs 25.01 Cr. (including GST) Cost excluding GST=25.01/1.12 Rs 22.33 Cr. Updation factored Cos t= 22.33 x 1.28 = Rs. 28.58 Cr.
viii	Whether the work was done on back to back basis Yes/No	No	Yes	Yes

15. Learned counsel for petitioner had vehemently argued that an ambiguity has crept in the tender document or there is a typographical omission in tender notice whereby Form-B has been used twice instead of asking for the information regarding minimum annual value of five years in Form-D. The provisions cannot be reconciled, therefore, entire technical evaluation done by authorities is completely vitiated and arbitrary, hence, should be set aside. However, we do not find any merit in such argument. There is a clear cut requirement as per tender document. Sole argument raised that petitioner has been prejudiced by not applying the factor of enhancement of 7% as mentioned in Form-D of financial data and rejecting

CWP-17343-2025 (O&M) .

technical bid is devoid of any merit. At the first instance, it is to be noted that no such objection has been raised by petitioner regarding ambiguity, if any, in the tender document before submitting its bids. We take note of Technical Instruction No.164, issued by Airports Authority of India regarding modification in pre-qualification criteria for procurement of engineering works. Perusal of said instructions clearly reveals that in the experience of said authority, it came to be observed that performance of agencies associated with Airports Authority of India projects had gone down and was not meeting expectations of management and pressing need for timely accomplishment of projects pre-qualification criteria of engineering works was required. Modification of pre-qualification criteria of engineering works was required to attract more capable agencies. Guidelines in respect to bidding capacity of tenderer were thus issued as under:-

“Modification in the Pre-Qualification criteria for procurement of engineering works

Note: The experience of similar nature of work executed in India shall only be considered for pre-qualification in AAI engineering works except for BHS and PBB

Sr. No.	Reference	Existing Provision	Modified Provision
1.	xxxxx	xxxxx	xxxxx
2.	Bidding Capacity of tenderer	<u>Para – 33.6</u> In case of works costing more than Rs. 50 Cr. NIT approving authority may specify in the NIT that bidding capacity of tenderer shall be additional criterion for pre-qualification of the contractor. The bidding capacity of tenderer shall be worked out from the following formula. $B = 1.5 * N * T - A$ Where B – is the Bidding Capacity	<u>Para – 33.6</u> (Note: The bid capacity shall be applicable for the work costing more than Rs. 50 Cr.) For works costing more than Rs. 50 Cr. bidding capacity of tenderer shall be additional criterion for pre-qualification of the contractor. The bidding capacity of tenderer shall be worked out from the following formula. $B = 2 * N * T - A$ Where B – is the Bidding Capacity

CWP-17343-2025 (O&M) .

3.	xxxxxx	xxxxxx	xxxxxx
4.	xxxxxx	xxxxxx	xxxxxx
5.	Financial Capacity	<u>Average Annual Financial Turnover</u> The applicant should have Average Annual Financial Turnover of the bidders during the last three years ending 31st March of the previous financial year should be at least 30% of the estimated cost. <u>Minimum Annual Value of General Construction Work</u> No existing provision <u>Minimum Net Worth</u> The applicant should have a minimum net worth of at least 15% of the estimated cost as on last financial year. Net Worth of the company shall not be eroded by more than 30% in last three financial years.	The applicant should have Average Annual Financial Turnover of the bidders during the last three years ending 31st March of the previous financial year should be at least 30% of the <u>1.18 times</u> of the estimated cost (excluding GST). The applicant should have achieved minimum annual value of general construction work (as certified by Chartered Accountant, and at least 50 (fifty) percent of which is from Engineering (Civil/ Electrical/Mechanical as relevant to the work being procured) construction works) carried out in any of the year during last five (05) years, ending 31st March of previous year, calculated by applying a multiplier of 2 for the project costing upto Rs. 1500 Crores and 1.5 for the projects costing more than Rs. 1500 Crores to the projected annual construction expenditure on the subject contract. No change

16. We take note of the fact that this criterion has been applied across board to all the tenderers, therefore, there is no question of any prejudice being caused to petitioner. It has been stated in the writ petition that technical evaluation carried out is actuated by *malafides* but there is no specific averment to this effect or any material to substantiate such averment and neither was it agitated as such at the time of arguments. It is a settled position that interference by Courts in matters like the present should be minimal and interference should be caused only in clear-cut cases of

CWP-17343-2025 (O&M) .

arbitrariness, *malafides*, bias or irrationality. Gainful reference in this regard can be made to judgments of Hon'ble the Supreme Court in ***Jagdish Mandal Vs. State of Orissa, 2007(14) SCC 517*** and ***Association of Registration Plates Vs. Union of India and another 2005(1) SCC 679***.

17. Learned counsel for petitioner was unable to point out any such arbitrariness, irrationality or capricious exercise of power in the rejection of technical bid of petitioner, which calls for interference by this Court in exercise of jurisdiction under Article 226 of the Constitution of India.

18. No other argument was addressed.

19. This writ petition is accordingly dismissed.

(LISA GILL)
JUDGE

(MEENAKSHI I. MEHTA)
JUDGE

13.11.2025
Sunil

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No