



2025:DHC:3333-DB



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

% Judgment reserved on: 25.04.2025
Judgment delivered on: 06.05.2025

+ **W.P.(C) 2010/2025 & CM APPL Nos.9469-71/2025**

MANJEET PLASTIC INDUSTRIES & ANR ...Petitioners

Through: Mr. Dayan Krishnan, Senior Advocate with Mr. Shiv Mangal Sharma, Mr. Shashank Khurana, Ms. Sonali Gaur and Mr. Chaitanya, Advocates.

versus

UNION OF INDIA & ANRRespondents

Through: Mr. Chetan Sharma, ASG, Mr. Sanat Kumar, Senior Advocate, Mr. Anurag Ahluwalia, Senior Advocate, Mr. Vikram Jetly, CGSC, Mr. Nishant Gautam, CGSC, Ms. Rukmini Bobde, CGSC with Mr. Amit Gupta, Mr. Saurabh Tripathi, Ms. Shreya Jetly, Mr. Tushar Jain, Mr. Vinayak Aren and Ms. Kanika Gupta, Advocates with Mr. Rudra Paliwal and Mr. Amit Acharya, GP for UoI/NSIC.

Mr. Milind Ramteka, Director, PM Vishwakarna, Ministry of MSMEs, GOI.

Mr. Kartikeya Tanton, Director, Planning and Marketing, NSIC.

Mr. Rajesh Jain, Chief General Manager, NSIC.

+ **W.P.(C) 1981/2025, CM APPL. 9277-79/2025**

MANJEET PLASTIC INDUSTRIES & ANR ...Petitioners

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Through: Mr. Shiv Mangal Sharma, Mr. Shashank Khurana, Ms. Sonali Gaur and Mr. Chaitanya Sharma, Advocates.

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Mr. Rajesh Jain, Chief General Manager, NSIC.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

J U D G M E N T

TUSHAR RAO GEDELA, J.

1. Since the facts and issues are similar and intertwined, we are disposing of these writ petitions together.

W.P.(C) 2010/2025 & CM APPL Nos.9469-71/2025

2. Present writ petition has been filed under Article 226 of the



Constitution of India seeking quashing of the notice for disqualification dated 25.01.2025 whereby the petitioner has been disqualified at the stage of Technical Bid itself as well as the notification dated 31.01.2025 publishing the List of the Sellers whose Financial Bids were accepted; and the communication dated 28.01.2025 rejecting the representation of the petitioner. A further prayer has been made for a direction to respondent no.2/The National Small Industries Corporation Limited (NSICL) to re-consider and re-evaluate the Technical Bid of the petitioner.

3. The National Small Scale Industries Corporation Limited (A Government of India Enterprise) (hereinafter referred to as “*the Corporation*”), on 05.12.2024, issued a Request for Proposal (hereinafter referred to as “*the RFP*”) (on behalf of Ministry of MSME) bearing Reference No.NSIC/PMV/2023-24/Potter/10/(R4) for Selection of Vendor for supplying Tool Kits for Potter under the Prime Minister Vishwakarma Scheme. The Corporation subsequently issued 3 Corrigendum amending/correcting certain clauses of the RFP.

4. It is the case of the petitioner that on 11.01.2025, the petitioner no.1 herein participated in the RFP by submitting its bid and providing all the required details and furnishing all the information/documents as per the terms and conditions of RFP. However, when the Technical Bid was opened on 25.01.2025, the Corporation, without giving any opportunity of hearing, disqualified the petitioner no.1 on the alleged ground that “*institutional experience reflected under retail sale without supporting documents*”.

5. Aggrieved thereof, the petitioner made a representation on 27.01.2025 to the Corporation stating that the sale, distribution or delivery



of a commodity even to an individual can be termed as “*retail sale*”. However, considering the objections so raised, the petitioner re-filed the documents under the head of Private/Institutional Sale and requested the Corporation to re-evaluate the Technical Bid of the petitioner in terms of the re-filed documents. On 28.01.2025, the petitioner made another representation informing the Corporation about its previous participation in the Tender Process for supply of tool kits for Garland Makers (Malakaar) under the same Scheme. The petitioner also attached the Supply Experience CA Certificate of Malakaar and also the Supply Experience CA Certificate for Potter, and requested Corporation to re-evaluate the Technical Bid of the petitioner no.1 in terms of the re-filed documents. However, the representation of the petitioner was rejected by the Corporation on 28.01.2025, stating that “*New documents submitted along with representation are not acceptable. Hence disqualified*”.

6. Thereafter, on 31.01.2025, the Corporation published the impugned List of Sellers which had qualified under the Financial Bid. Aggrieved by the same, the present writ petition has been filed.

7. During the pendency of the present writ petition, an application bearing CM APPL.11244/2025 was moved by the petitioner with the prayer to stay the notice dated 21.02.2025 issued by the Corporation for invocation of the Bank Guarantee issued by the bank in its favour on behalf of the petitioner. *Vide* order dated 24.02.2025, this Court, while noting that no Show Cause Notice was issued to the petitioner before taking an action under Clause 6 of the RFP, had provided that the invocation of Bank Guarantee pursuant to the notice dated 21.02.2025 shall not come in the way of the petitioner in case it succeeds in the writ petition. On the



apprehension expressed by the petitioner, learned counsel representing the respondents, in presence of the officers of respondent no.2, had stated that till the next date of hearing, no other punitive/coercive measures such as blacklisting or debarment from future participation shall be taken against the petitioner. The said assurance has continued till date.

CONTENTIONS OF THE PETITIONER (in W.P.(C) 2010/2025):-

8. Opening for the petitioner, Mr. Dayan Krishnan, learned senior counsel briefly adumbrated the background facts and events leading to the filing of present writ petition. He stated that the petitioner had previously participated in a similar tender process in respect of supply of tool kits for Garland Maker (Malakaar) under the same Scheme and under similar tender conditions, and was awarded the contract. Learned senior counsel argued that the petitioner had received a query on GeM portal during scrutiny of Malakar tender and it was given 48 hours to reply. The petitioner had duly replied and filed requisite documents with the Corporation and after being satisfied, the petitioner no.1 was declared technically qualified. It was stated that in the present case as well, had the respondents issued a query or sought any clarification, the same would have been duly provided by the petitioner.

9. Coming to the present writ petition, learned senior counsel drew attention of this Court to Clause 4.4 of the RFP respecting “*Experience and Past Performance*”, particularly the 2nd part of sub-clause (a) which provides that the bidder or OEM(s) should have sold atleast 25,000 number of each tools/items for which Manufacturer Authorisation Form (hereinafter referred to as “*the MAF*”) is required as specified in the RFP to Central/ State Government/ CPSUs/ SPSUs/ Private/ Retail/ any other



Institution in any one of the last five Financial Years or in current Financial Year upto the date of publishing of RFP. He also referred to sub-clause (b) of Clause 4.4 which provided the nature of documents to be submitted for establishing experience and past performance, particularly Private/Institutional Sales specified in part (ii) and Retail Sales specified in part (iii) of sub-clause (b) of Clause 4.4 of the RFP. While referring to the aforesaid provisions therein, learned senior counsel forcefully contended that neither “*Private/Institutional Sales*” nor “*Retail Sales*” are defined in the RFP, nor has it specified as to what would be the nature of such consideration. Learned senior counsel contended that the RFP also did not define the number of sales which would qualify a bidder before it is considered as falling within the head of Retail Sales. Similarly, Private/Institutional Sale also was not clearly defined.

10. He submitted that it is this confusion which prevailed over the petitioner and it furnished the requisite information under the head “Retail Sales” and the requisite CA Certificate dated 20.12.2024 in support thereof. It was only when the Corporation rejected the Technical Bid of the petitioner on 25.01.2025 that the petitioner came to realize the purport of “*Retail Sale*” which was never made clear by the Corporation in the RFP.

11. It was further submitted by the learned senior counsel that after being technically disqualified, the petitioner had made a representation to the Corporation on 27.01.2025, explaining that the sale, distribution or delivery of a commodity even to an individual can be termed as “*Retail Sale*”. To substantiate his stand, Mr. Krishnan placed reliance on the definition of “*Retail Sale*” under Rule 2(1) of the Legal Metrology (Packaged Commodity) Rules, 2011 to submit that a Retail Sale is not defined by the



quantity of vendors but by supply to end consumer for consumption which may be an individual or individuals.

12. Mr. Krishnan further contended that despite this explanation provided by the petitioner in its representation, considering the objections so raised, the petitioner had re-filed the documents under Private/Institutional Sales head and requested the Corporation to re-evaluate the Technical Bid of the petitioner. Learned senior counsel submitted that instead of examining the fresh documents furnished on its merits, the Corporation rejected the same sans any reason on the flimsy pretext of "*New documents submitted along with the representation are not acceptable. Hence disqualified*". He contended that the Corporation is under an obligation to respond with reasons as to why the fresh documents, which according to him, accord with the Private/Institutional Sales requirement, were overlooked. Drawing attention to Clauses 7.3.4 and 7.3.5 of the Manual for Procurement of Goods, 2017 of the Central Government, he submitted that the same mandated that during preliminary examination of the bids, the tender inviting authority is required to provide an opportunity to the bidders to rectify/make good the short fall of requisite documents apart from seeking clarification from the bidders. Learned senior counsel vociferously argued that the Corporation could not have rejected the Technical Bid of the petitioner without taking recourse to the aforesaid clauses which are mandatory in nature and thus, the said rejection is liable to be set aside. He forcefully contended that it is trite that in public procurement involving government largesse, fairness and transparency in procedure is *sine qua non* for such procurement to withstand judicial review.



13. Learned senior counsel vehemently attacked the forfeiture of the Bank Guarantee (hereinafter referred to as “*the BG*”) by the Corporation post disqualification. It was stated that despite providing clarification as well as filing fresh documents, the request for re-evaluation of the bid of the petitioner was rejected, and on 31.01.2025, the Corporation published the List of Sellers who had qualified under the Financial Bid. Thus, as on 31.01.2025, neither was the bid of the petitioner no.1 under consideration nor was it selected as a vendor. However, new (alleged) facts came into light after the Corporation filed its counter affidavit, wherein it was stated that an alleged communication *vide* email dated 04.02.2025 was issued by the proprietor of Planet Mechanics withdrawing the Manufacturer Authorization Form (MAF) issued by it to petitioner no.1 as its Original Equipment Manufacturer (OEM). It was further contended that opposed to what is alleged by the Corporation, the said communication only stated that, “*MAF/Experience certificate for Electric Potter Wheel under Pottery Trade was issued by some of our representative under confusion which was not meant for Manjeet Plastic Industries*”. On this, learned senior counsel contended that there was no allegation of fraud or forgery by Planet Mechanics (OEM) against the petitioner.

14. Dilating further on the above submission, learned senior counsel vociferously argued that despite the fact that the petitioner’s bid was not under consideration, as also that the present writ petition came to filed on 14.02.2025 and an oral assurance was given by the respondents on 17.02.2025 that no further action shall be taken by the respondents till the next date, the Corporation, without any reason whatsoever, invoked punitive measures under Clause 6 of the RFP and forfeited the BG



furnished by the petitioner. The said action was based on the email dated 19.02.2025 sent by the OEM in reply to the clarification sought by the Corporation with regard to the Experience Certificate issued to the petitioner. In the said email dated 19.02.2025, the OEM has stated that, *“The contents of certificate attached by you are correct but the same is not issued by us”*.

15. Learned senior counsel stressed upon the interim order dated 24.02.2025 passed by this Court in CM APPL.11244/2025 moved by the petitioner which was necessitated due to the invocation of Bank Guarantee by the Corporation. He contended that there was no occasion for the Corporation to invoke punitive measure under Clause 6 of the RFP, that too without issuance of a Show Cause Notice, as the correspondence with the OEM so filed were admittedly outside the purview of consideration of Corporation on that date. It was argued that the petitioner was not even in the consideration zone at the time and is being unnecessarily scrutinized by the Corporation.

16. Learned senior counsel further submitted that in the email dated 04.02.2025, the OEM/Planet Mechanics though stated that it had nothing to do with the petitioner, yet had not denied issuance of the MAF to petitioner no.1. However, it is inexplicable as to why the OEM, on its own, wrote to the Corporation without any reason. He contended that even the Corporation admittedly did not seek any clarification from the OEM in this regard before disqualifying the Technical Bid of the petitioner. Moreover, the said email clearly indicated that it was on account of confusion on the part of the representative of the OEM itself that the MAF had been issued to the petitioner. He urged that reading of the entire email harmoniously



does not raise any suspicion regarding any fraud or fabrication of documents by the petitioner. Therefore, the allegation of fraud raised by the Corporation to invoke Bank Guarantee is without any basis and ought to be set aside.

CONTENTIONS OF THE RESPONDENT CORPORATION
(in W.P.(C) 2010/2025):-

17. Mr. Anurag Ahluwalia, learned senior counsel submitted at the outset that the petitioner has deliberately not impleaded the successful bidder as a party respondent in the present writ petition in stark violation of the settled law that in contractual matters, all parties who may or would get adversely impacted ought to be impleaded. It appears that the error is not innocent but motivated. He urged that an draw adverse inference against the petitioner be drawn on that count.

18. Learned senior counsel referred to Clause 4.4 of the RFP to submit that the requirements for establishing experience and past performance of the bidder are clearly specified and there is neither any ambiguity nor any confusion as has been sought to be projected by the petitioner. The second part of sub-clause (a) of Clause 4.4 mandates that the bidder or OEM should have sold atleast 25,000 number of tools/items, for which MAF is required, to Private/Institutional or Retail or any other institution in any one of the last five financial years. He submitted that to substantiate the experience and past performance in order to evaluate the technical eligibility, part (ii) of sub-clause (b) of Clause 4.4 stipulates the documents required to demonstrate eligibility by way of sales to Private/Institutions and CA certificate as per Annexure V(B) duly filled in details of work orders/contract agreements/purchase orders/LOAs/LOIs etc. Under the



Retail Sales head, in part (iii) of the said sub-clause, the documents required to demonstrate eligibility, is the CA certificate as per Annexure V(B) and duly filled in details of Bill/Voucher No. and date, quantity, unit, amount etc. Thus, according to learned senior counsel, there was no confusion as to the nature of documents that were required to be submitted under the head of either Private/Institutional Sale or Retail Sale.

19. Further, he submitted that the petitioner had furnished, along with its bid, the Work Experience Certificate showing Retail Sale of FY 2021-22 and FY 2024-25, whereas according to the requirement in Clause 4.4 of the RFP, work experience only in respect of one financial year was to be considered. He dilated on the aforesaid aspect by demonstrating that for the FY 2021-22, the total sales were only 261 which obviously did not fall within the eligibility criteria. So far as the FY 2024-25 is concerned, the CA Certificate though indicated a sale made on 14.11.2024 against bill no.423 for a quantity of 27,500 items, the same was to only one single entity, whereas the requirement under the head of Retail Sales obviously indicates sales to more than one entity. Thus, the CA Certificate indicating experience to a single entity under the head of Retail Sales was found to be unacceptable, and resulted in the petitioner being technically disqualified on the ground that *“institutional experience reflected under retail sale without supporting documents”*.

20. Learned senior counsel stated that the petitioner in Annexure-V(B) under the head Retail Sales had incorporated the institutional experience, as the invoice reflect supply to one vendor only which is invalid as “retail experience” and further no supporting documents were submitted for Private/Institutional Sales. Further to the above, he contended that the



petitioner, without any context of the definition of “Retail Sales” used in the Legal Metrology (Packaged Commodity) Rules, 2011, has tried to draw a direct inference with the Retail Sale requirement under the present RFP. He stoutly contended that the said definition provided under the said Rules can have no application in the present situation.

21. So far as the fresh CA Certificate furnished by the petitioner along with its representation dated 27.01.2025 is concerned, learned senior counsel submits that though the said certificate referred to Private/Institutional Sale of the same quantity of products, however since it was furnished after being technically disqualified, the same was rejected *vide* reply dated 28.01.2025 clearly specifying that “*new documents submitted along with representation are not acceptable. Hence, disqualified*”. He also stoutly contended that no such document could have been entertained by the Corporation not only on the ground that the petitioner stood technically disqualified as on 25.01.2025, but also that the Corporation was not under any obligation to consider any such documents after such disqualification. Additionally, he stated that it would not only be unfair to other similarly situated bidders who may have been declared technically disqualified, but would also jeopardise the RFP/Bid Process.

22. To the submission of the petitioner regarding non-consideration of the representation post disqualification of the Technical Bid, on the anvil of purported violation of Clauses 7.3.4 and 7.3.5 of the Manual for Procurement of Goods, 2017, Mr. Ahluwalia, learned senior counsel countered by submitting that the comparison drawn by the petitioner of the present RFP with the previous RFP regarding Malakaar is unsustainable. He stated that the only reason for seeking clarification from the petitioner



in the previous RFP in respect of Malakaar, was due to the minor discrepancy of lack of signature of the OEM on each page of the OEM Certificate as submitted by the petitioner. Whereas in the present case, there was no such minor discrepancy. Rather, the OEM Certificate itself was found to be unacceptable on account of the fact that the Retail Sale as shown comprised of sale to a single entity/institution without supporting documents, tantamounting to non-compliance with the eligibility criteria. That apart, post disqualification, the petitioner attempted to rectify its defect by filing a fresh OEM Certificate issued by the CA under the head of Private/Institutional Sales, which was also found to be unacceptable by the respondents. He thus forcefully contended that the aforesaid lacunae does not get covered under Clauses 7.3.4 or 7.3.5 of the Manual for Procurement of Goods, 2017 since the discrepancy is not minor.

23. Mr. Ahluwalia, learned senior counsel submitted that the other issue which gathers relevance is the email dated 04.02.2025 issued by the OEM/Planet Mechanics. By the said email, the OEM informed the Corporation that the Experience Certificate/MAF was issued to the petitioner under some confusion which has since been withdrawn and that they were not interested in doing any business transaction with the petitioner. On this basis, learned senior counsel contended that since the supplier/OEM of the petitioner has withdrawn the MAF and all support, and that being the essential eligibility condition, there survives no claim of the petitioner on merits either.

24. He further submitted that the Corporation by its email dated 19.02.2025 sought further clarification with regard to the authenticity of the Experience Certificate filed by the petitioner. By the return email dated



19.02.2025, the OEM/Planet Mechanics informed the Corporation that the contents of the certificate were correct but it was not issued by the OEM, while reiterating that they have withdrawn all support and the MAF given to petitioner. On further clarification sought by the respondents, by the email dated 28.02.2025, the OEM categorically stated that the Work Completion Letter and the Purchase Order were never issued by the OEM to the petitioner and in fact were actually issued to Vindhya Telelink Ltd. which is another bidder in the same RFP. On this basis, the Corporation had come to the conclusion that the petitioner has furnished forged and fabricated documents, warranting application of Clause 5(ii) of the RFP, leading to punitive measures under Clause 6 of the RFP including but not limited to forfeiture of encashment of the bid security. Premised on the above, he contended that the Bank Guarantee has rightly been forfeited by the Corporation under Clause 6 of the RFP. Thus, learned senior counsel prayed that the present petition be dismissed.

REJOINDER OF THE PETITIONER (in W.P.(C) 2010/2025):-

25. In rejoinder, Mr. Dayan Krishnan, learned senior counsel vehemently contended that if the Corporation is of the opinion that post disqualification on 25.01.2025, no representation or any document emanating from the petitioner could have been taken into consideration, there is equally no reason or justification for the Corporation to take into account or consider a suspicious email dated 04.02.2025 alleged to be issued by the OEM/Planet Mechanics. According to the learned senior counsel, the Corporation cannot be permitted to approbate and reprobate at the same time. In that, though the Corporation refused to consider the representation and the documents furnished by the petitioner on the ground of being filed



subsequent to its technical disqualification, yet, assumed to not only have the authority or jurisdiction to take into account an email dated 04.02.2025 sent by the OEM which too is post such disqualification, but also to seek clarifications from the OEM even when the petitioner is not in the zone of consideration. In other words, learned senior counsel stated that what is good for the geese is good for the gander.

26. He equally and strongly opposes any such action taken by the Corporation by virtue whereof the Bank Guarantee furnished by the petitioner has been forfeited by the Corporation, on the aforesaid ground. According to him, no such punitive action under Clause 6 of the RFP could at all have been initiated unilaterally by the Corporation without first issuing a Show Cause Notice to the petitioner, putting it to caution as to why such action be not contemplated against it. Having regard to the fact that no Show Cause Notice worth its name has at all been issued, the forfeiture of Bank Guarantee is *ex facie* illegal, unlawful and arbitrary which should be quashed and the Corporation be directed to refund the amount furnished in the Bank Guarantee, which has been forfeited.

ANALYSIS AND CONCLUSION (in W.P.(C) 2010/2025):-

27. Having heard the learned senior counsel for the parties and meticulously perusing the documents on record, we are not inclined to interfere in the present writ petition for the following reasons.

28. The argument of Mr. Dayan Krishnan in respect of reference to the previous RFP regarding Malakaar and the submission that the petitioner on the previous occasion was granted an opportunity to give clarification, in contradistinction to the deprivation of such opportunity in the present RFP, appears to be very attractive, though on a deeper scrutiny are untenable.



This is for the reason that Mr. Ahluwalia, learned senior counsel had categorically submitted that the OEM Certificate and other relatable documents furnished for previous RFP did not contain the signatures of the OEM on every page, prompting the Corporation to seek clarification being minor error/discrepancy. Whereas, the OEM Certificate furnished in the present RFP is stated to not meet the eligibility criteria at all and that the documents itself are unacceptable. A perusal of Clauses 7.3.4 and 7.3.5 of the Manual for Procurement of Goods 2017 appears to indicate that if there are any minor error/discrepancies or non-submission of copies of certain documents, the tender issuing authority may, if it so desires, seek clarification from the bidders who would have a right to furnish clarification or if need be, the requisite documents in order to satisfy the tender issuing authority. For clarification, Clauses 7.3.4 and 7.3.5 of the Manual for Procurement of Goods, 2017 read thus:

“7.3.4 Minor Infirmary/Irregularity/Non-conformity

During the preliminary examination, some minor infirmity and/or irregularity and/or nonconformity may also be found in some tenders. Such minor issues could be a missing pages/attachment or illegibility in a submitted document; non-submission of requisite number of copies of a document. There have been also cases where the bidder submitted the amendment Bank Guarantee, but omitted to submit the main portion of Bid Document. The court ruled that this is a minor irregularity. Such minor issues may be waived provided they do not constitute any material deviation (please refer to Para 7.4.1 (iv)) and financial impact and, also, do not prejudice or affect the ranking order of the tenderers. Wherever necessary, observations on such ‘minor’ issues (as mentioned above) may be conveyed to the tenderer by registered letter/speed post, and so on, asking him to respond by a specified date also mentioning therein that, if the tenderer does not conform Procuring Entity’s view or respond by that specified date, his tender will be liable to be rejected. Depending on the outcome, such tenders are to be ignored or considered further.

7.3.5 Clarification of Bids/Shortfall Documents

During evaluation and comparison of bids, the purchaser may, at his discretion, ask the bidder for clarifications on the bid. The request for clarification shall be given in writing by registered/speed post, asking the



tenderer to respond by a specified date, and also mentioning therein that, if the tenderer does not comply or respond by the date, his tender will be liable to be rejected. Depending on the outcome, such tenders are to be ignored or considered further. No change in prices or substance of the bid shall be sought, offered or permitted. No postbid clarification at the initiative of the bidder shall be entertained. The shortfall information/documents should be sought only in case of historical documents which pre-existed at the time of the tender opening and which have not undergone change since then. These should be called only on basis of the recommendations of the TC. (Example: if the Permanent Account Number, registration with sales tax/VAT has been asked to be submitted and the tenderer has not provided them, these documents may be asked for with a target date as above). So far as the submission of documents is concerned with regard to qualification criteria, after submission of the tender, only related shortfall documents should be asked for and considered. For example, if the bidder has submitted a supply order without its completion/performance certificate, the certificate can be asked for and considered. However, no new supply order should be asked for so as to qualify the bidder.”

Nothing in either of the clauses of the Manual for Procurement of Goods, 2017 appear to indicate that a bidder whose document has been found to be lacking in merit/substance, can be permitted subsequently to, by way of clarification, replace such document which was essential as per the eligibility criteria and not furnished initially in accordance with the requirements of the RFP. Essentially, such clauses clearly appear to come to the rescue of the genuine bidders who may have made inadvertent minor errors of the nature specified therein, to rectify or clarify only such minor discrepancies. Simultaneously, the said clauses would surely not aid a bidder whose document, furnished in respect of an essential eligibility criteria, itself is found to be lacking in substance. Applying this to the facts of the present case, it is observed that the CA Certificate dated 20.12.2024 furnished by the petitioner along with its bid, under the Retail Sales head did not fulfil the criteria specified in sub-clause (b) of Clause 4.4 predicated whereon, the petitioner was declared technically disqualified.



Subsequently, post such disqualification, by way of a representation dated 27.01.2025, the petitioner enclosed therewith a fresh CA Certificate showing sales under the Private/Institutional Sales head, attempting to shift the category itself under which it applied. These are two different certificates indicating two separate categories, which cannot be said to be a minor mistake or a discrepancy which could be subsequently rectified or clarified. No doubt, had the representation been submitted at the preliminary inquiry stage, possibly, the petitioner's submission would have some force in it. That having not been done in time, the said submission relying upon Clauses 7.3.4 and 7.3.5 of the Manual for Procurement of Goods, 2017 is unmerited.

29. Apart from the above, we have also perused the CA Certificate dated 20.12.2024 furnished by the petitioner alongwith its bid indicating Retail Sales for the FY 2024-25. It clearly indicates sale only to one entity comprising 27,500 units of the offered product. The interpretation of the Corporation that the Retail Sale would take within its ambit sale transactions to multiple customer/consumers or even multiple entities not restricted only to a single entity, appeals to us in view of the requirement specified under the Retail Sales head. The Retail Sales as mentioned in part (iii) of sub-clause (b) of Clause 4.4 of the RFP regarding experience and past performance required the bidders to provide a CA Certificate as per Annexure V(B) duly filled with details of Bill/Voucher No. and date, quantity, unit, amount etc. This, when compared with the requirements of documents in support of Private/Institutional Sales, clearly shows the distinction. In part (ii) of sub-clause (b) of Clause 4.4 of the RFP regarding Private/Institutional Sales, what is required is a CA Certificate as per



Annexure V(B) duly filled with details of work orders/contract agreements/purchase orders/LOAs/LOIs along with certificate for successful completion/execution. If one were to compare part (ii) with part (iii), it would bring to fore that Retail Sales would take within its ambit transactions/sales to multiple customers or even multiple entities unlike Private/Institutional Sales which could or may be only to a single entity and yet would fulfil the eligibility criteria. The reason is not far to see. In a Private/Institutional Sale, the ultimate object appears to be twofold, one for internal or home consumption or bulk sale to individual consumer(s) or organization(s) and two, for further retail sale. Whereas, the Retail Sale could be to either multiple customers or to multiple entities. This appears to be the most plausible reason to draw distinction between Private/Institutional Sale and Retail Sale. Otherwise, there would be no distinction and it would be otiose to have two separate and distinct heads for the same experience and past performance. The Black's Law Dictionary defines "*Retail*" as under:-

"The sales of goods or commodities to ultimate consumers, as opposed to the sale for further distribution or processing."

The petitioner relied upon the definition of "*Retail Sale*" contained in Rule 2(1) of the Legal Metrology (Package Commodity) Rules, 2011 which reads thus:

"2. Definitions

(1) "retail sale", in relation to a commodity, means the sale, distribution or delivery of such commodity through retail sales shops agencies or other instrumentalities for consumption by an individual or group of individuals or any other consumer."

Rather than finding any distinction as has been attempted to be projected by the learned senior counsel for the petitioner, we find the



definition of “*Retail*” as contained in the Black’s Law Dictionary not distinctive from the one contained in Rule 2(l) of the Legal Metrology (Package Commodity) Rules, 2011. In fact, the said Rule also clearly refers to Retail Sales through shops, agencies or other instrumentalities for consumption by an individual or group of individuals or any other consumer. Meaning thereby, it refers to sales to more than one individual or entity. Thus, the submission of learned senior counsel for the petitioner on the aforesaid is found to be unpersuasive and unmerited.

30. Mr. Dayan Krishnan had vehemently argued that once the petitioner was declared technically disqualified and the list of successful bidders published by the Corporation on 31.01.2025, there was neither any occasion nor any reason as to why the Corporation would seek any clarification from the OEM/Planet Mechanics regarding the Experience Certificate, particularly when the petitioner fell out of the zone of consideration. According to him, post 31.01.2025, the petitioner was out of the race and no action could have been initiated, much less a punitive action under Clause 6 of the RFP could have been initiated against the petitioner. He stoutly argued that the action of forfeiture of BG without issuance of a Show Cause Notice is stark and blatant violation of the principles of natural justice and consequently, such forfeiture of BG should be held to be illegal and quashed and the Bank Guarantee amount be refunded to the petitioner.

31. We find force in the aforesaid argument of the learned senior counsel for the petitioner in respect of the forfeiture of BG. However, we are not required to render any opinion in that regard, in view of the statement tendered by Mr. Chetan Sharma, learned Additional Solicitor General who



appeared for respondents. Learned ASG, under instructions, had stated that without prejudice to the rights of the respondents or the petitioner, the amount forfeited, shall be remitted to an escrow account which would be a neutral account, consequent where to the respondents would take or initiate action in accordance with law and the conditions stipulated in the RFP. He further stated that depending on the consequence of such action, the amount held in the escrow account would be released either to the petitioner or to the respondents.

32. Having heard the learned ASG, we are of the opinion that since such punitive action could not have been initiated without a Show Cause Notice being issued to the petitioner in the first instance, an order in the nature of *status quo ante* needs to be passed to restore fair play and transparency in action. Thus, without prejudice to the rights and contentions of both the parties, we direct that the respondents shall refund the amount forfeited of the BG within two weeks from today into the account of the petitioner whereafter, the respondents would be at liberty to initiate any action in accordance with law, *albeit*, by issuing a proper Show Cause Notice to the petitioner.

33. In view of the above, we do not find any merit in the writ petition which is dismissed, along with the pending applications, except for the directions passed in regard to the refund of Bank Guarantee and subsequent action.

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34. This writ petition is being taken up for consideration and disposal alongwith W.P.(C) 2010/2025, having regard to the similarity of identity of



the parties, commonality of facts and the arguments addressed on behalf of the parties.

35. The present case pertains to Request for Proposal (RFP) bearing Reference No. NSIC/PMV/2023-24/WASHERMAN/07/(R3) for selection of vendor for supplying tool kits for Washerman (Dhobi) under the Prime Minister Vishwakarma Scheme, issued by respondent no.2.

36. Grievance of the petitioner in the present case arises from the notice dated 26.01.2025 issued by the respondents, technically disqualifying the petitioner from the bid process on the ground that, *“In Annexure V(B) - Under Retail Experience submitted by Bidder, all invoices reflect supply to one vendor only which is not valid as retail experience. Further, no supporting documents are submitted for private/institutional sale.”*

37. Aggrieved by the said disqualification, the petitioner submitted representations to the Corporation on 27.01.2025 and 28.01.2025 explaining its stand. However, considering the objections so raised, the petitioner re-filed the fresh documents in proof of Private/Institutional Sale alongwith the representation and requested the Corporation to re-evaluate the Technical Bid of the petitioner. By the communication dated 31.01.2025, the Corporation rejected the representation of the petitioner stating that, *“New documents submitted with the representation are not acceptable”*. On the same day, the Corporation published the List of Sellers which had qualified financially, constraining the petitioner to approach this Court by filing the present writ petition.

38. Though, we are not required to revisit the arguments addressed by Mr. Dayan Krishnan, learned senior counsel which are common to W.P.(C) 2010/2025 and W.P.(C) 1981/2025, yet those arguments which learned



senior counsel had addressed in respect of the present writ petition on 17.02.2025, are being noted hereunder for the sake of clarification and continuity.

CONTENTIONS OF THE PETITIONER (in W.P.(C) 1981/2025):-

39. Learned counsel drew attention to Clause 4.4 of the RFP respecting “*Experience and Past Performance*”, particularly the 2nd part of sub-para (a) which provides that the bidder or OEM(s) should have sold atleast 15,000 numbers of each tools/items for which MAF is required as specified in the RFP to Central/State Government/CPSUs/SPSUs/Private/Retail/any other Institution, in any one of the last five Financial Years or in current Financial Year upto the date of publishing of RFP. He also referred to the nature of documents to be submitted for establishing experience and past performance, particularly Private/Institutional Sales specified in part (ii) and Retail Sales specified in part (iii) of Clause 4.4(b). While referring to the aforesaid clauses therein, learned counsel forcefully contended that neither “*Private/Institutional Sales*” nor “*Retail Sales*” are defined in the RFP, nor is it specified as to what would be the nature of such consideration. Learned counsel contended that the RFP did not define the number of sales which would qualify a bidder before it is considered as falling within the head of Retail Sales. Similarly, Private/Institutional Sale also was not clearly defined.

40. He submitted that it is this confusion which prevailed over the petitioner and it furnished the requisite information under the head “*Retail Sales*”, relating to sale made of 54,909 washing machines and the requisite CA Certificate dated 03.09.2024 in support thereof. It was only when the Corporation rejected the bid of the petitioner on 26.01.2025 on the ground



that, “*In Annexure V(B) - Under Retail Experience submitted by Bidder, all invoices reflect supply to one vendor only which is not valid as retail experience. Further, no supporting documents are submitted for private/institutional sale.*”, that the petitioner came to realize the purport of Retail Sale, which was never made clear by the Corporation in the RFP. He submitted that immediately after such disqualification of its Technical Bid, the petitioner communicated its representation alongwith the documents specifying supply made under the head Private/Institutional Sales with the requisite documents and requested for re-evaluation of its bid.

41. Learned counsel submitted that instead of examining the fresh documents furnished on its merits, the Corporation rejected the same sans any reason on the flimsy pretext of “*New documents submitted with representation are not acceptable*”. He contended that the Corporation is under an obligation to respond with reasons as to why the fresh documents, which according to him, accord with the Private/Institutional Sales requirement, were overlooked. Drawing attention to Clauses 7.3.4 and 7.3.5 of the Manual for Procurement of Goods, 2017 of the central government, he submitted that the same mandated that during preliminary examination of the bids, the tender inviting authority is required to provide an opportunity to the bidders to rectify/make good the short fall of requisite documents apart from seeking clarification from the bidders. Learned counsel vociferously argued that the Corporation could not have rejected the bid of the petitioner without taking recourse to the aforesaid clauses which are mandatory in nature and thus, the rejection is liable to be set aside. Learned counsel also referred to the opportunity of providing clarification granted to the petitioner in the earlier tender process in respect



of supply of tool kits for Garland Maker (Malakaar) under the same Scheme and under similar tender conditions, and was awarded the contract, and contended that the same opportunity ought to have been provided in the present case as well before disqualifying the Technical Bid of the petitioner.

42. Subsequently, on 21.04.2025, when this Court took up this writ petition for hearing, Mr. Shashank Khurana, learned counsel appearing for the petitioner submitted that he adopts the arguments addressed by Mr. Dayan Krishnan, learned senior counsel who appeared in W.P.(C) 2010/2025 and sought liberty to raise further additional arguments or grounds in rejoinder if need be depending on the arguments addressed on behalf of the Corporation, which we permitted.

**CONTENTIONS OF THE RESPONDENT CORPORATION
(in W.P.(C) 1981/2025):-**

43. Mr. Anurag Singh Ahluwalia, learned senior counsel appearing for the Corporation submits that in so far as the submissions of Mr. Dayan Krishnan, learned senior counsel who appeared for the petitioner in W.P.(C) 2010/2025 regarding Retail Sales and Private/Institutional Sales and the resulting disqualification; eligibility of the petitioner who was declared as a successful bidder in the previous RFP regarding offered products for Malakaar wherein an opportunity for offering clarification was provided to the petitioner; reliance on Clauses 7.3.4 and 7.3.5 of Manual for Procurement of Goods, 2017 and the arguments in respect of the Work Experience Certificate and Purchase Order issued by the OEM being forged having already been rebutted, shall not be repeated herein for the sake of brevity. He however submits that there are additional facts which need to be brought to the notice of this Court as to why the petitioner is ineligible



to be considered for the RFP and has rightly been disqualified in the Technical Bid.

44. Mr. Anurag Ahluwalia drew attention of this Court to Page 403 of the paperbook which is a Work Completion Letter dated 31.03.2023 issued by M/s Daenyx International Pvt. Ltd. to submit that this document is a replica of the forged document uploaded by the petitioner in the RFP Bid pertaining to the products to be procured for Potters. He submitted that it could not be a coincidence that two unrelated consumers of two OEMs use the same language and the same font to issue identical experience certificates. According to him, forgery and fabrication is writ large which disentitles the petitioner from seeking any discretionary relief from this Court.

45. Choosing to compare the CA Certificate in respect of details under the head of Retail Sales for FY 2022-23, he submitted that the sale indicated therein was made to a single entity namely, Daenyx International Pvt. Ltd. for a total quantity of 54,909 units. He argued that on a close observation, under the head "*Product Description*", model name of the washing machine is "*Daenyx 6.5 Glory*" which establishes that the OEM i.e., Sun Home Appliances Pvt. Ltd. and the Client i.e., Daenyx International Pvt. Ltd., are run by the same person but with different names. He contended that an online search clearly established that both the aforesaid companies had two Directors namely Ms. Gurmeet Kaur Kalra and Mr. Jasraj Singh Kalra, who are common to both. Premised on the aforesaid, learned senior counsel submitted that this would violate Clause 4.4 (iv) of the RFP which categorically bars a "transfer" to be considered as sales for the purpose of meeting the technical criteria. Learned senior



counsel was at great pains to explain that this transaction, if the veil is lifted, would establish itself as not a sale but a pure case of inter-company transfer. Thus, not fulfilling the technical criteria entailing disqualification of the Technical Bid of the petitioner.

46. In view of the aforesaid additional argument and the submissions already rendered on behalf of the Corporation in W.P.(C) 2010/2025, Mr. Ahluwalia, learned senior counsel prays that the present writ petition be dismissed with costs.

REJOINDER OF THE PETITIONER (in W.P.(C) 1981/2025):-

47. In rejoinder, Mr. Shashank Khurana, learned counsel invites attention of this Court to para 24 to 27 of the rejoinder, in rebuttal to the aforesaid argument regarding inter-company transfer.

48. Learned counsel for the petitioner vociferously submitted that even if the Directors are common, the provisions of the Indian Companies Act, 1956 or the Act of 2013 and the jurisprudence evolved thereon treats two separate companies as two independent juristic entities for all practical purposes. Thus, merely because the Directors of the two companies are common, it could not, *ipso facto*, be inferred or established that sale of certain goods by one company to another company is “transfer”. According to him, the sale between these two companies is not a case of stock transfer but actual sales. He further submitted that the said entity has also been selling the offered products to other companies and entities as well.

49. In order to buttress the aforesaid argument, learned counsel forcefully contended that the sales of 54,909 units were completed throughout the year and much before publishing of the RFP in question and, therefore, it could not be contended that the figures have been



manipulated merely to show experience in supply for the purpose of eligibility criteria required in the present RFP. In other words, learned counsel contended that the Work Experience Certificate is not a forged document as alleged by the Corporation in view of the fact that these transactions were executed and completed prior in time to the issuance of notification of the present RFP. Furthermore, he stated that in view of the aforesaid explanation, it is clear that the submissions of the Corporation in this regard are based merely on presumptions and assumptions and on surmises and conjectures and ought not to be taken into consideration. He submitted that the fresh documents ought to have been considered and the rejection on the ground that the documents are unacceptable is neither here nor there. He prays that Technical Bid of the petitioner may be re-evaluated in accordance with the provisions of the RFP.

ANALYSIS AND CONCLUSION (in W.P.(C) 1981/2025):-

50. Having heard learned counsel for the petitioner and Mr. Ahluwalia, learned senior counsel for the respondent, we are of the considered opinion that barring the additional arguments noted hereinabove, on other relevant issues, we have already rendered our opinion in W.P.(C) 2010/2025 hereinabove and need not repeat the same findings for the sake of brevity. However, with respect to the additional arguments, we render the following opinion.

51. In law, there is no quarrel with the proposition that companies are recognized as juristic entities and even if two companies have common Directors, they would ordinarily be treated as two separate and independent juristic entities. The Corporation has not placed on record any document to substantiate that the transaction would amount to transfer leading to



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disqualification under Clause 4.4 providing for eligibility criteria for participating in the RFP. In the absence of any such document, we are not inclined to accept the arguments addressed on behalf of the Corporation which appears to be based on inferential reasoning. However, that said, having regard to the analysis and conclusion reached by us in W.P.(C) 2010/2025 on merits, we do not think that this issue would have any bearing on the merits of the matter or would propel us to change our opinion reached in WP (C) No.2010/2025. Thus, whether the transaction referred to above, is “actual sale” or “transfer”, would be irrelevant to render an opinion on, given the facts and circumstances of the case.

52. Thus, in view of the above, we find no reasons to interfere or interdict with the action taken by the Corporation in technically disqualifying the petitioner and find no merits in the writ petition which is dismissed alongwith the pending applications.

TUSHAR RAO GEDELA, J

DEVENDRA KUMAR UPADHYAYA, CJ

MAY 06, 2025/rl