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ORISSA HIGH COURT : CUTTACK

W.P.(C) No.22483 of 2025

In the matter of an Application under Articles 226 & 227
of the Constitution of India, 1950

* * *

Konkan Railway Corporation Ltd.
(A Government of India Undertaking)
Corporate Office: Belapur Bhavan
Plot No.6, Sector 11, CBD, Belapur
Navi Mumbai – 400 614
Represented through
Sri Upendra Shridhar Shendye
Aged about 57 years
Son of Shridhar Vinayak Shendye
the Authorised Signatory for the petitioner
presently working as
Chief Project Manager-Mechanical
in the Petitioner company. ... Petitioner

-VERSUS-

- 1.** East Coast Railway
Represented by
General Manager
At: Samanta Vihar
Bhubaneswar – 751 017
Odisha.
- 2.** Chief Administrative Officer (Con)
East Coast Railway
At: Samanta Vihar
Bhubaneswar – 751 017, Odisha.
- 3.** Chief Engineer (Con)/II/BBS
Office of Chief Administrative Officer (Con)



East Coast Railway
At: Samanta Vihar
Bhubaneswar – 751 017
Odisha.

4. M/s. IRCON-JPWIPL JV (JV)
Bid submitted by Authorised Signatory
IRCON International Ltd.
At: C-4, District Centre, Saket
New Delhi – 110 017.

5. M/s. URC - Taikisha JV (JV)
Bid Submitted by Authorised Signatory
URC Construction Pvt Ltd.
At: 119, Power House Road, Erode
Tamil Nadu – 638 001.

... Opposite Parties

Counsel appeared for the parties:

For the Petitioner : Mr. Rudra Prasad Kar,
Senior Advocate
Assisted by
M/s. Ipsit Aurobindo Acharya and
C.K. Rout, Advocates.

For the Opposite Party : Mr. Prasanna Kumar Parhi,
Nos.1 to 3 Deputy Solicitor General of India
for High Court of Orissa
Assisted by
Mr. Satya Sindhu Kashyap
Senior Panel Counsel.

For the Opposite Party : Mr. Bijoy Krushna Mahanty,
No.4 Senior Advocate
Assisted by
M/s. Abinash Barik and
Adhiraj Mohanty, Advocates.



P R E S E N T:

**HONOURABLE CHIEF JUSTICE
MR. HARISH TANDON**

AND

**HONOURABLE JUSTICE
MR. MURAHARI SRI RAMAN**

Dates of Hearing : 20.02.2026 and 23.02.2026

::

Date of Judgment: 31.03.2026

JUDGMENT

MURAHARI SRI RAMAN, J.—

Questioning the propriety in declaring IRCON-JPWIPL (JV), the opposite party No.4, a successful bidder upon evaluating the Financial Bid on 08.08.2025 *vide* Tabulation Statement of Financial Bids (Annexure-5) and assailing the legality of action of the Authority concerned (hereinafter be referred to as “Tendering Authority”) in rejecting the Bid of the petitioner on 08.08.2025 (Annexure-4) on the ground “Extract of Board Resolution not attached” at the technical evaluation stage, the instant writ petition beseeching to invoke power of judicial review under Article 226 of the Constitution of India, reliefs are claimed with the following prayers:

“In the circumstances stated above, it is humbly prayed that this Hon’ble Court may graciously be pleased to



issue a Rule NISI in the nature of mandamus and/or any other appropriate writ/ writs, call for the records, call upon the opposite parties to show cause as to why—

- (1) The rejection dated 08.08.2025 vide Annexure-4 of the petitioner's technical bid shall not be quashed;*
- (2) The status assigned to the opposite party Nos.4 & 5 as L-1 and L-2 respectively pursuant to opening of financial bids vide Annexure-5 shall not be quashed;*
- (3) The petitioner shall not be declared the L-1 bidder for awarding the work under RfP dated 18.01.2025.*

And if the opposite parties fail to show cause or show insufficient cause, make the said Rule Nisi absolute;

And further be pleased to pass any other appropriate order/orders as may be deemed fit and proper;

And allow this Writ Petition;

And for this act of kindness, the Petitioner shall as in duty bound ever pray."

Facts:

- 2.** The petitioner, a Government of India Undertaking functioning under the Ministry of Railways having excellent track record in executing railway works, participated in Request for Proposal ("RfP", for brevity) dated 18.01.2025 issued by the opposite party Nos.1 to 3, East Coast Railway (Construction Organisation), inviting prospective bids for 'Setting up of Infrastructure facilities for Vande Bharat Express Major Maintenance



Depot at Malatipatpur of Khurda Road Division of East Coast Railway'

- 2.1. Though the documents as per specifications and requirements in the RfP the Bid was submitted, without any further intimation seeking clarification from the petitioner the same has been rejected on the ground that *"Extract of Board Resolution not attached"* vide Rejection Status uploaded on 08.08.2025.
- 2.2. It is affirmed by the petitioner that to furnish extract of Board Resolution is not at all a document asked for as essential condition of the RfP, dated 18.01.2025, i.e. documents comprising Technical and Financial Bids. The petitioner asserted that Clause 2.11(b) of the RfP requires a person having Power of Attorney for signing the Bid in the format given at Appendix-II to upload. The said Clause 2.11(b) refers to Appendix-II, which provides that the Power of Attorney should be executed by the person authorised by the Board Resolution of the Company. However, there is no mention that such Board Resolution should also be annexed along with the tender documents of the bidder. Therefore, the petitioner alleges that rejection of the Bid on 08.08.2025 is untenable, illogical and illegal and the basis of rejection on the ground/the reason stated above is not available in the RfP dated 18.01.2025.



2.3. It is submitted that in absence of any notice or grant of opportunity to explain, gross illegality as well as violation of principles of natural justice has been committed by the Tendering Authority in rejecting the Bid on the ground other than the tender conditions. It is further affirmed that the Tendering Authority never called upon the petitioner to supply the Board Resolution before rejecting the techno-commercial bid on 08.08.2025. The petitioner submitted that the Power of Attorney submitted by the petitioner-Company in its Bid has been executed by the Chairman and Managing Director of the petitioner-Company, who is authorised as per the Meeting dated 29.05.2024 of the Board of Directors of the petitioner-Company approving the Delegation of Power to the Chairman and Managing Director *vide* Board Resolution Item No.23/181/2024 to execute the said Power of Attorney.

2.4. The price bids of the two technically qualified bidders were opened on 08.08.2025, wherein the L-1 price came out at Rs.375.49 Crore against the estimated cost of work at Rs.291.78 Crore, whereas the price quoted by the petitioner-Company is Rs.333.15 Crore, which is much less compared to the present L-1 price of Rs.375.49 Crore as also the estimated price.

2.5. *Albeit* a request for review was placed on 10.08.2025 before the Chief Engineer (Con)/II/BBS in the Office of



Chief Administrative Officer (Con), East Coast Railway, Rail Sadan, Samanta Vihar, Bhubaneswar *via* e-mail from Upendra Shendye cpmmech@krcl.co.in to “cecon2econrbbs” cecon2ecorbbs@gmail.com, indicating frivolous reason ascribed to for rejecting the Bid of the petitioner, nothing tangible came to fore. Hence, laying challenge against such arbitrary and illegal rejection of the petitioner’s Bid on 08.08.2025 (Annexure-4) and also against the assignment of L-1 status in favour of the opposite party No.4 (Annexure-5), thereby causing huge revenue loss to the exchequer, the petitioner has approached this Court for showing indulgence in the decision making process of the Tendering Authority.

Counter affidavit filed by the opposite parties:

3. The opposite party Nos. 1 to 3 filed counter affidavit putting forth their stand justifying the ground for rejection of the Bid at technical evaluation stage.

3.1. The process of tender involved two-stage mechanism. The first stage is the technical bid which was finalized on 07.08.2025 *i.e.* strictly in accordance with the terms and conditions stipulated in the RfP dated 18.01.2025, issued by the East Coast Railway under Tender Notice No. EPCCECONIIBBS2024041. The second-stage, *i.e.*, financial bid was opened on 08.08.2025 with respect to those bidders who were qualified in the technical bid as



per the terms and conditions set forth in the RfP dated 18.01.2025. As per Clause 3.1.6.1 of the RfP, the bidder is mandatorily required to furnish a list of documents, *inter alia*, including a duly executed Power of Attorney, failing which the bid would be treated as non-responsive. This requirement is further reiterated under Clause 2.11 of the RfP, which categorically emphasized the necessity of submitting the requisite documents for both the Technical and the Financial Bids. Paragraph 2 of Clause 2.11.1 explicitly provides that the bidder shall apply for the RfP through the portal <https://ireps.gov.in> by uploading the specified documents along with “supporting documents”, which collectively constitute the Technical Bid. The prescribed format under Appendix-II specifically requires the Power of Attorney to be executed by a person duly authorized by a Board Resolution (in the case of a Firm/Company). It is, therefore, concomitant condition for the bidder to establish that the person executing the Power of Attorney is duly authorized to do so. It is mandatory requirement under Clause 2.1.4 and Clause 2.1.5 that proper procedure was to be followed and necessary documents were to be filed as per format specified in Appendix-II and as per Clause 2.1.7, “*any condition or qualification or any other stipulation contained in the Bid*”



shall render the Bid liable to rejection as a non-responsive Bid¹.

3.2. The Notes appended to for specified at Appendix-II stipulated that “wherever required” the Bidder should submit for verification the charter documents evidencing the authority vested in the signatory of the Bid. Therefore, as in the present case the petitioner has not submitted Board Resolution from which it would have been verified the delegation of authority being granted in favour of the executant of the Bid on behalf of the company-bidder.

3.3. It is affirmed by way of the counter affidavit that Board Resolution is a supporting document to establish the validity of execution of the Power of Attorney in conformity with the format given at Appendix-II. It

¹ Relevant portion of Section 3 dealing with “EVALUATION OF TECHNICAL BIDS AND OPENING AND EVALUATION OF FINANCIAL BIDS” reads thus:

“3.1. Evaluation of Technical Bids.—

3.1.6. Tests of responsiveness:

3.1.6.1 As a first step towards evaluation of Technical Bids, the Authority shall determine whether each Technical Bid is responsive to the requirements of this RFP. A Technical Bid shall be considered responsive only if:

- (a) The Bid is received online as per the format at Appendix-IA including Annexure I, II, III, IV, V, VI, VII and Appendix-IB;
- (b) All Documents listed at clause 2.11.2 are received physically within time as mentioned in clause 1.3;
- (c) Technical Bid is accompanied by the Bid Security as specified in Clause 1.2.4 and 2.20;
- (d) The Power of Attorney is uploaded on e-procurement portal as specified in Clauses 2.1.5;
- (e) Technical Bid is accompanied by Power of Attorney for Lead Member of Consortium/Joint Venture and the Joint Bidding Agreement as specified in Clause 2.1.6, if so required;
- (f) Technical Bid contains all the information (complete in all respects);
- (g) Technical Bid does not contain any condition or qualification.”



would, therefore, be necessary to verify the sanctity of the document with respect to delegation of power or sub-delegation, if any. The petitioner by furnishing documents along with Bid was required to establish the sanctity of such document being executed as per Article of Association.

3.4. Such vital omission(s) while filing the Bid, being perceived as fatal and found to be non-responsive, there was justification in rejecting the Bid of the petitioner.

Counter affidavit filed by the opposite party No.4:

4. The opposite party No.4, a Joint venture (JV) of IRCON International Limited and JPW Infratech Private Limited, collectively referred to as IRCON-JPWIPL (JV)/opposite party No.4, being found eligible in the technical evaluation of the Bid stage, its Financial Bid was qualified for evaluation along with others, namely the opposite party No.5. This opposite party-IRCON-JPWIPL (JV) having quoted the less price as against the opposite party No.5, with the lowest bid it was declared as L-1.

4.1. The writ petition is not maintainable inasmuch as the petitioner had the occasion to avail the benefit of the Administrative Mechanism for Resolution of Disputes (AMRD) formulated *vide* Office Memorandum dated 31.03.2020 issued by the Department of Legal Affairs, Ministry of Law and Justice, Government of India, which



governs inter-ministerial and Central Public Sector Enterprises-related disputes.

4.2. Failure to submit the mandatory document, specifically the extract of the Board Resolution authorizing the individual executing the Power of Attorney on behalf of the Bidder, as expressly required under the terms of RfP entailed rejection of the Bid of the petitioner at technical round of evaluation. The eligibility of bidders for further consideration could be available to be examined only if bidder is found technically qualified and its bid would proceed to the next stage of the tender process. The decision-making process being just and proper does not warrant intervention of this Court in the garb of judicial review.

4.3. The opposite party No.4 submitted that the bid evaluation process was carried out in a transparent manner in two stages: technical and financial. Only those applicants/bidders found to be qualified in the first stage (Technical Bid Evaluation), they were considered eligible for being considered for evaluation of the Financial Bid. The petitioner's bid was rejected in the technical evaluation round, as it failed to meet the requisite eligibility, and therefore, its Financial Bid remained unopened, which is consistent with the tender conditions. The opposite party No.4 was considered as L-1 based on merit evaluation in both the Technical



Evaluation of the Bid and the Financial Evaluation of the Bid. Being adjudged successful in terms of its eligibility at the technical evaluation stage, and being the Lowest Bidder at the stage of opening of the Financial Bid Evaluation, no arbitrariness or bias or *mala fide* could be attributed to the Tendering Authority as the process was transparent and fair.

Hearing:

5. As the pleadings are completed, the matter was taken up for final hearing on different dates on the consent of the counsel for the respective parties.
 - 5.1. Heard Sri Rudra Prasad Kar, learned Senior Advocate being assisted by Sri Ipsit Aurobindo Acharya, learned Advocate for the petitioner; Sri Prasanna Kumar Parhi, learned Deputy Solicitor General of India along with Sri Satya Sindhu Kashyap, learned Senior Panel Counsel for the opposite party Nos.1 to 3; and Sri Bijoy Krushna Mahanty, learned Senior Advocate assisted by M/s. Abinash Barik and Adhiraj Mohanty, learned Advocates for the opposite party No.4.
 - 5.2. Hearing being concluded, the matter was reserved for preparation and pronouncement of Judgment.

Consideration of arguments on the plea of alternative remedy:



6. At the outset it is felt prudent to take up the issue of objection as to maintainability of the writ petition as raised by the opposite parties on the plea of non-availing of the mechanism for settlement of disputes provided in the Office Memorandum dated 31.03.2020.

6.1. The Office Memorandum dated 31.03.2020 enclosed as Annexure-B/1 with the counter affidavit of the opposite party Nos.1 to 3 reads as follows:

*“No.334774/DoLA/AMRD/2019
Government of India
Ministry of Law & Justice
Department of Legal Affairs*

*Shastri Bhawan,
Rajendra Prasad Road,
New Delhi – 110 001.
Dated the 31st March, 2020*

OFFICE MEMORANDUM

Subject: Settlement of disputes other than taxation between Government Ministries/Departments inter se and between Government Ministries/Departments and other Ministries/Departments/Organisation(s)— Administrative Mechanism for Resolution of Disputes (AMRD).

Instructions have been issued to Ministries / Departments of the Governments of India, in the past to avoid inter-departmental litigations in any Court of law, including by all



CPSEs/ Boards/ Authorities, etc., under their Administrative control and to resolve the same amicably or through Arbitration.

2. *In order to provide for an institutionalized mechanism for resolution of such disputes. Secretary, Department of Legal Affairs has vide DO letter No. 332619/338367/LS/2019 dated 28th February, 2020 (copy enclosed) advised all Secretaries to the Government of India that the existing Administrative Mechanism for Resolution of Commercial Disputes(AMRCD), currently applicable to commercial disputes between CPSEs inter se and also between CPSEs and Government Departments/ Organisations, shall stand extended for resolution of disputes other than taxation, between Ministries/Departments inter se and between Ministries/Departments and other Government Ministries/Departments/Subordinate/Attached Offices/Autonomous and Statutory Bodies under their administrative supervision/control. Details of the new mechanism, namely. Administrative Mechanism for Resolution of Disputes (AMRD), are hereby outlined for guidance.*

3. *Applicability*

AMRD shall apply to any/all dispute(s), other than those related to taxation, between Central Government Ministries/Departments inter se and between Central Government Ministries/Departments and other Ministries/Departments/Organisation(s)/Subordinate/Attached Offices/Autonomous and Statutory Bodies, etc., under their administrative supervision/control.



4. Structure

- (i) *Disputes, other than taxation, shall be referred at the First level (tier), to a Committee comprising of Secretaries of the Administrative Ministries/ Departments to which the disputing Parties belong and Secretary, D/o Legal Affairs;*
- (ii) *The Joint Secretaries (JSs)/ Financial Advisors (FAs) (for commercial disputes) of the two concerned Administrative Ministries/ Departments may represent the issues, related to the dispute in question, before the Committee.*
- (iii) *In case the two disputing parties belong to the same Ministry/ Department, the above Committee may comprise of the Secretary of the administrative Ministry/ Department concerned and Secretary, D/o Legal Affairs. Secretary, Department of Public Enterprises may be invited in case the dispute pertains to a CPSE.*
- (iv) *The resolution of such disputes shall be by unanimous decision of the Committee.*
- (v) *In case the dispute remains unresolved after consideration by the Committee, it will be referred at the Second level (tier), to the Cabinet Secretary, whose decision will be final and binding on all concerned.*

5. Procedure

- (i) *At the First level (tier), the claiming party (Claimant) may be represented, before the Committee, by the JS/FA of the administrative Ministry/ Department. The Secretary of administrative Ministry/*



Department of claiming party will inform in writing the details of the dispute, to the Secretary of administrative Ministry/Department of responding party (Respondent) and Secretary, D/o Legal Affairs and request for convening a meeting. Thereafter meetings may be held to examine the facts and resolve the dispute on merit. The JSs/FAs of the concerned administrative Ministries/Departments will represent the issues, related to the dispute in question, before the above Committee. After the Committee arrives at a decision, it shall be signed by the members of the Committee. A copy of the decision will be communicated by the Secretary of the administrative Ministry/Department of the claiming party to members of the Committee and to each party to the dispute for implementation.

- (ii) The Committee of Secretaries at the First level (tier) shall finalise its decision within 3 months after having received the reference/notice in writing regarding the dispute from the concerned aggrieved party.*

6. Appeal

Any party aggrieved with the decision of the Committee at the First level (tier) may prefer an appeal before the Cabinet Secretary at the Second level (tier) within 15 days from the date of receipt of decision of the Committee at the First level, whose decision will be final and binding on all concerned.

- 7. All administrative Ministries/Departments are requested to bring these guidelines to the notice of all Authorities/Boards/Subordinate/Attached Offices/Autonomous and Statutory Bodies, etc.,*



under their administrative supervision/control for strict compliance.

8. *This issues with the approval of the Competent Authority.*

*(DR. Rajiv Mani)
Joint Secretary & Legal Adviser
Tel. 23384836*

*Anoop Kumar Mendiratta, Secretary
Department of Legal Affairs
Ministry of Law and Justice
Government of India*

*No. 332619/338367/LS/2019
Dated 28th February 2020*

Dear Secretary,

In a meeting of Committee of Secretaries (CoS) chaired by Cabinet Secretary on 23.01 2020 the issues relating to instruction to all Government Ministries/Departments for the effective implementation of the existing Administrative Mechanism for Resolution of CPSES Disputes (AMRCD) and extension of its applicability to all the Government Departments/Ministries and CPSES for resolution of disputes, other than taxation disputes were discussed The CoS inter-alia recommended that the existing AMRCD mechanism be made applicable to disputes other than those related to taxation, and extended to all Ministries/Departments.

2. *It has been the constant efforts of this Department to reduce Government litigation in courts so that*



valuable court time is spent in resolving other pending cases. It has also been an endeavour of the Government to see that disputes between various Ministries/Departments/CPSEs/Boards/Authorities under the administrative control of the various Ministries/Departments do not go to the Court. In that direction, presently AMRCD is functioning through the Department of Public Enterprises which deals with the dispute resolution of CPSEs but **excludes** its applicability to the disputes relating to **Railways**, Income Tax Customs and Excise Departments. Similarly, in-house mechanism is working in some other Departments of the Government. The mechanism includes Arbitration and other Alternate Dispute Resolutions Mechanism. In spite of these instructions, Departments/CPSEs still resort to court proceedings for settlement of disputes either with the Government Departments or with other PSUs.

3. To give effect to the decision taken at the CoS meeting as per minutes dated 27.01.2020, all the Ministries/Departments are requested to resolve the inter-se disputes of various Ministries/Departments/CPSEs other than those related to taxation, through existing AMRCD mechanism. The Ministries/Departments are also requested that when any such dispute is referred for resolution through AMRCD mechanism, a copy of the same shall also be endorsed to this Department and further updates shall be intimated immediately. Ministries/Departments shall accordingly issue necessary instructions in this regard, to all CPSEs/Boards/Authorities under their administrative control.



Further, the timelines in the laid down process of AMRCD be also adhered to and complied with.

Warm regards

Yours sincerely,

Sd/-

(Anoop Kumar Mendiratta)”

6.2. The opposite party Nos.1 to 3 in counter affidavit at paragraph 18 have raised an issue with respect to approaching Alternative Mechanism for Resolution of Disputes (“AMRD”, for short) by highlighting Office Memorandum dated 31.03.2020 issued by the Government of India. Sri Rudra Prasad Kar, learned Senior Advocate strongly opposing such a proposition as emphasised by Sri Prasanna Kumar Parhi, learned Deputy Solicitor General of India submitted that the said opposite parties having not disposed of representation of the petitioner though the same was filed before the appropriate authority on 10.08.2025, it is inconceivable that taking recourse to the AMRD would stop them from proceeding with the award of the work in favour of the alleged successful bidder (L-1). It is submitted that the power of judicial review can pervade to put fetter on the injustice and unfairness in the process of decision making in rejecting the Bid of the petitioner.

6.3. To fortify his stand, Sri Rudra Prasad Kar, learned Senior Advocate referred to Revised Guidelines dated 14.12.2022 issued by Government of India, Ministry of



Finance, Department of Public Enterprises (Annexure-7 enclosed with the rejoinder affidavit of the petitioner), relevant portion of which reads as follows:

*“No.05/0003/2019/FTS/10937
Government of India
Ministry of Finance
Department of Public Enterprises*

*Public Enterprises Bhawan,
Block No.14, CGO Complex,
Lodhi Road, New Delhi – 110 003.
Dated the 14th December, 2022*

OFFICE MEMORANDUM

Subject: Settlement of commercial disputes between Central Public Sector Enterprises (CPSEs) inter se and CPSE(s) and Government Department(s)/ Organisation(s)— Administrative Mechanism for Resolution of CPSEs Disputes (AMRCD).

Whereas guidelines for resolution of commercial disputes between Central Public Sector Enterprises (CPSEs) inter se and also between CPSEs and Government Departments/Organizations were issued vide DPE OM No.4(1)/2013-DPE(GM)/FTS-1835 dated 22nd May, 2018 followed by clarification dated 4th July, 2018 and 11th July, 2018. These guidelines were further amended vide DPE OM No. DPE-GM-05/0003/2019-FTS-10937 dated 20.02.2020.



2. *And whereas a need has been felt to streamline the existing guidelines with a view to consolidate them and institutionalise a better monitoring mechanism for faster resolution of disputes.*

Now therefore the Revised Guidelines (in supersession of the aforesaid notifications/Office Memoranda) shall be as follows:

3. *Replacement of PMA and Applicability:*
 - 3.1 *Permanent Machinery of Arbitration (PMA) stands wound up from the date of issue of DPE OM dated 22-05-2018. All pending cases with Sole Arbitrator, PMA and Appellate Authority stand transferred to concerned administrative Ministries/Departments.*
 - 3.2 *A decentralised 'Administrative Mechanism for Resolution of CPSES Disputes' (AMRCD) having two level (tier) structures shall replace the erstwhile Permanent Machinery of Arbitration (PMA) mechanism of DPE.*
 - 3.3 *Any dispute or difference relating to the interpretation and application of the provisions of commercial contract(s) between Central Public Sector Enterprises (CPSEs)/Port Trusts inter se and also between CPSEs and Government Departments/Organizations (**excluding** disputes relating to **Railways**, Income Tax, Customs & Excise Departments), shall be taken up by either party for its resolution through AMRCD only.*
 - 3.4 *No appeals are to be made to Cabinet Secretary in such matters, including those in which Sole Arbitrator has passed order before the date of notification of AMRCD, unless the resolution of the*



disputes has been considered at the level of Administrative Ministry/Department as per procedure prescribed below.

***”

6.4. It may also be noteworthy that the counsel for the opposite party No.4 has furnished copy of Office Memorandum bearing No.DPE-05/0002/2023—AMRCD, dated 25.07.2024 issued by the Government of India, Ministry of Finance, Department of Public Enterprises under the caption “*Settlement of commercial disputes between Central Public Sector Enterprises (CPSEs) inter se CPSE(s) and Government Departments/ Organisation(s)— Administrative Mechanism for Resolution of CPSE’s Disputes (AMRCD)*”, which indicates as follows:

*“Para 3.3 of the said OM specified the applicability of AMRCD Guidelines and stated that any disputes or difference relating to interpretation and application of the provisions of commercial contract(s) between Central Public Sector Enterprises (CPSEs)/ Port Trusts inter se and also between CPSE(s) and Government Department(s)/ Organisation(s) **(excluding disputes relating to Railways, Income Tax, Customs and Excise Departments)** shall be taken up by either party for its resolution through AMRCDS only.”*

6.5. The above paragraph is also reflected in the Office Memorandum bearing No.DPE-02/0001/2023—AMRCD/FTS-13578, dated 17.12.2024 issued by the



Government of India, Ministry of Finance, Department of Public Enterprises. *Vide* Office Memorandum No. 2024/RS(G)/ 779/5, dated 03.01.2025 issued by the Government of India, Ministry of Railways (Railway Board) it has been clarified as follows:

*“The AMRCD mechanism was further streamlined through the OM dated 14.12.2022 [ref.(iii)], which consolidated the existing guidelines and introduced an enhanced monitoring system to expedite dispute resolution. This OM superseded previous instructions and **reiterated the exclusion of disputes involving Railways**, Income Tax, Customs, or Excise Departments. This exclusion was further affirmed in the OM dated 25.07.2024 [ref. (v)] and 17.12.2024 [ref.(vi)].”*

- 6.6. Notwithstanding such Office Memorandum specifying exclusion of Railways from AMRCD mechanism, Sri Abinash Barik, learned Advocate attempted to misguide this Court by placing reliance on an Order dated 01.02.2023 passed by the Hon’ble Supreme Court of India in the pending case being Civil Appeal No.1400-1438 of 2017 [*Rashtriya Ispat Nigam Ltd. Vrs. Union of India*], wherein it has been observed that:

“Having heard learned senior counsel for the petitioner as also learned Additional Solicitor General appearing on behalf of the Union of India, we find it appropriate that in a matter of the present nature where the petitioner is a Public Sector Undertaking and the respondent is Western Railways is under the Union of India, we expect that a situation of this nature should be discussed amongst



themselves and a procedure be laid down so that the matter could be resolved and disputes in future also could be avoided. For doing so, they may also discuss with regard to the present claim which has been made and for an amicable settlement. To know the initiation made in this regard, list after four weeks.”

6.7. Visiting the web-portal of the Hon’ble Gujarat High Court in order to verify the genesis of the said case relating to above civil appeal before the Hon’ble Supreme Court of India, it could be noticed that in the case of *Rashtriya Ispat Nigam Ltd. Vrs. Union of India, First Appeal No.3658 of 2014 to First Appeal No.3696 of 2014*, the Hon’ble Gujarat High Court rendered a Judgment on 06.07.2015, wherein the first paragraph reflects that the case emanates from rejection of claims for refund of undercharges recovered by the Western Railway for consignments loaded as Steel (Rounds) booked from Visakhapatnam to Kankaria, Ahmedabad under Section 16 of the Railway Claims Tribunal Act, 1987. There is no semblance of parity of facts so as to consider applicability of the observation of the Hon’ble Supreme Court of India *vide* Order dated 01.02.2023, cited by Sri Abinash Barik, learned Advocate, to the present set of factual matrix.

6.8. Nevertheless, no reply could be given with respect to exclusion of “Railway” from the purview of the Office Memorandum dated 31.03.2020 read with Letter dated



28.02.2020 and Revised Guidelines of the Ministry of Finance *vide* Office Memorandum dated 14.12.2022 and also subsequent clarificatory letters. The counsel for the opposite party No.4 could not even explain whether the petitioner would come within the fold of Letter bearing No.2024/RS(G)/709/25, date 17.03.2025 issued by the Government of India, Ministry of Railways (Railway Board).

6.9. This Court is reminded of the principle enunciated by the Hon'ble Supreme Court in *Union of India Vrs. Arulmozhi Iniarasu*, (2011) 7 SCC 397 with respect to application of a decision cited or relied upon in particular fact-situation. It may be pertinent to quote the following observation contained in the said reported judgment:

"14. Before examining the first limb of the question, formulated above, it would be instructive to note, as a preface, the well-settled principle of law in the matter of applying precedents that the Court should not place reliance on decisions without discussing as to how the fact situation of the case before it fits in with the fact situation of the decision on which reliance is placed. The observations of the courts are neither to be read as Euclid's theorems nor as provisions of statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Disposal of cases by blindly placing reliance on a decision is not proper because one additional or



different fact may make a world of difference between conclusions in two cases. [Ref. Bharat Petroleum Corpn. Ltd. Vrs. N.R. Vairamani, (2004) 8 SCC 579; Sarva Shramik Sanghatana (KV) Vrs. State of Maharashtra, (2008) 1 SCC 494 and Bhuwalka Steel Industries Ltd. Vrs. Bombay Iron & Steel Labour Board, (2010) 2 SCC 273.]”

6.10. Examining the document relating to AMRD as reproduced hereinabove, it is vividly indicated in the Office Memorandum dated 31.03.2020 at paragraph 2 that it is formulated in tune with DO Letter No.332619/338367/LS/2019, dated 28.02.2020. Said Letter dated 28.02.2020 clearly envisaged that

“In that direction, presently AMRCD [Alternative Mechanism for Resolution of Central Public Sector Enterprises] but excludes its applicability to the disputes relating to Railways, Income Tax, Customs and Excise Departments of the Government”.

6.11. From a reading of the contents of Paragraph 3 of the Office Memorandum dated 31.03.2020 dealing with “Applicability” read in juxtaposition with the Letter dated 28.02.2020 it is evident that AMRD is applicable in connection with any disputes between the Central Government Ministries/Departments *inter se* and between Central Government Ministries/Departments or other Ministries/Departments/Organisations/Subordinate/Attached Offices/Authorities and Statutory Bodies, etc. “under their administrative



supervision/control”. The dispute as sought to be agitated here in this case by the petitioner-Konkan Railway Corporation Limited does not come within the purview of said Office Memorandum read with the Letter. Such being the position, it is misconceived and misdirected on the part of the learned Deputy Solicitor General of India as also the learned Senior Advocate for the opposite parties to contend that the petitioner should not have knocked the doors of the writ Court directly instead of approaching the authorities to avail remedy under the AMRCD/AMRD mechanism.

6.12. Since in terms of the Revised Guidelines dated 14.12.2022 of the Ministry of Finance disputes relating to “Railway” is kept out of the purview of the AMRD/AMRCD, the objection as to maintainability of writ petition questioning the decision making process of the Tendering Authority is overruled.

6.13. With respect to entertainment of the writ petition involving contractual matters, this Court in *Jalaram Transport Vrs. Mahanadi Coalfields Limited*, W.P.(C) No.37718 of 2023, vide Judgment dated 04.02.2026 made the following observation holding that judicial review is maintainable:

“A plea of demur was taken that the writ petition raising an issue in relation to a contract is not maintainable which does not appear to be an absolute fetter in view of



the judgment rendered by the apex Court in M.P. Power Management Company Limited Vrs. Sky Power Southeast Solar India Private Limited, (2023) 2 SCC 703 in the following:

“82. We may cull out our conclusions in regard to the points, which we have framed:

82.1. It is, undoubtedly, true that the writ jurisdiction is a public law remedy. A matter, which lies entirely within a private realm of affairs of public body, may not lend itself for being dealt with under the writ jurisdiction of the Court.

82.2. The principle laid down in Bareilly Development Authority Vrs. Ajai Pal Singh, (1989) 2 SCC 116 that in the case of a non-statutory contract the rights are governed only by the terms of the contract and the decisions, which are purported to be followed, including Radhakrishna Agarwal Vrs. State of Bihar, (1977) 3 SCC 457, may not continue to hold good, in the light of what has been laid down in ABL International Ltd. Vrs. Export Credit Guarantee Corpn. Of India Ltd., (2004) 3 SCC 553 and as followed in the recent judgment in State of U.P. Vrs. Sudhir Kumar Singh, (2021) 19 SCC 706 = 2020 SCC OnLine SC 847.

82.3. The mere fact that relief is sought under a contract which is not statutory, will not entitle the respondent State in a case by itself to ward off scrutiny of its action or inaction under the contract, if the complaining party is able to establish that the action/inaction is, per se, arbitrary.



82.4. *An action will lie, undoubtedly, when the State purports to award any largesse and, undoubtedly, this relates to the stage prior to the contract being entered into (see Ramana Dayaram Shetty [Ramana Dayaram Shetty Vrs. International Airport Authority of India, (1979) 3 SCC 489]. This scrutiny, no doubt, would be undertaken within the nature of the judicial review, which has been declared in the decision in Tata Cellular Vrs. Union of India, (1994) 6 SCC 651.*

82.5. *After the contract is entered into, there can be a variety of circumstances, which may provide a cause of action to a party to the contract with the State, to seek relief by filing a writ petition.*

82.6. *Without intending to be exhaustive, it may include the relief of seeking payment of amounts due to the aggrieved party from the State. The State can, indeed, be called upon to honour its obligations of making payment, unless it be that there is a serious and genuine dispute raised relating to the liability of the State to make the payment. Such dispute, ordinarily, would include the contention that the aggrieved party has not fulfilled its obligations and the Court finds that such a contention by the State is not a mere ruse or a pretence.*

82.7. *The existence of an alternate remedy, is, undoubtedly, a matter to be borne in mind in declining relief in a writ petition in a contractual matter. Again, the question as to whether the writ petitioner must be told off the gates, would depend upon the nature of the claim and relief sought by the petitioner, the questions, which would have to be decided, and, most importantly, whether there are*



disputed questions of fact, resolution of which is necessary, as an indispensable prelude to the grant of the relief sought. Undoubtedly, while there is no prohibition, in the writ court even deciding disputed questions of fact, particularly when the dispute surrounds demystifying of documents only, the Court may relegate the party to the remedy by way of a civil suit.

82.8. *The existence of a provision for arbitration, which is a forum intended to quicken the pace of dispute resolution, is viewed as a near bar to the entertainment of a writ petition [see in this regard, the view of this Court even in ABL International Ltd. Vrs. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553 explaining how it distinguished the decision of this Court in State of U.P. Vrs. Bridge & Roof Co. (India) Ltd., (1996) 6 SCC 22, by its observations in SCC para 14 in ABL International Ltd. Vrs. Export Credit Guarantee Corpn. Of India Ltd., (2004) 3 SCC 553].*

82.9. *The need to deal with disputed questions of fact, cannot be made a smokescreen to guillotine a genuine claim raised in a writ petition, when actually the resolution of a disputed question of fact is unnecessary to grant relief to a writ applicant.*

82.10. ***The reach of Article 14 enables a writ court to deal with arbitrary State action even after a contract is entered into by the State. A wide variety of circumstances can generate causes of action for invoking Article 14. The Court's approach in dealing with the same, would be guided by, undoubtedly, the overwhelming need to obviate arbitrary State***



action, in cases where the writ remedy provides an effective and fair means of preventing miscarriage of justice arising from palpably unreasonable action by the State.

82.11. Termination of contract can again arise in a wide variety of situations. If for instance, a contract is terminated, by a person, who is demonstrated, without any need for any argument, to be the person, who is completely unauthorised to cancel the contract, there may not be any necessity to drive the party to the unnecessary ordeal of a prolix and avoidable round of litigation. The intervention by the High Court, in such a case, where there is no dispute to be resolved, would also be conducive in public interest, apart from ensuring the fundamental right of the petitioner under Article 14 of the Constitution of India. When it comes to a challenge to the termination of a contract by the State, which is a non-statutory body, which is acting in purported exercise of the powers/rights under such a contract, it would be over simplifying a complex issue to lay down any inflexible rule in favour of the Court turning away the petitioner to alternate fora. Ordinarily, the cases of termination of contract by the State, acting within its contractual domain, may not lend itself for appropriate redress by the writ court. This is, undoubtedly, so if the Court is duty bound to arrive at findings, which involve untying knots, which are presented by disputed questions of facts. Undoubtedly, in view of *ABL International Ltd. Vrs. Export Credit Guarantee Corpn. of India Ltd.*, (2004) 3 SCC 553, if resolving the dispute, in a case of repudiation of a contract, involves only appreciating the true scope of documentary material



in the light of pleadings, the Court may still grant relief to an applicant. We must enter a caveat. The Courts are today reeling under the weight of a docket explosion, which is truly alarming. If a case involves a large body of documents and the Court is called upon to enter upon findings of facts and involves merely the construction of the document, it may not be an unsound discretion to relegate the party to the alternate remedy. This is not to deprive the Court of its constitutional power as laid down in ABL International Ltd. Vrs. Export Credit Guarantee Corpn. of India Ltd., (2004) 3 SCC 553. It all depends upon the facts of each case as to whether, having regard to the scope of the dispute to be resolved, whether the Court will still entertain the petition.

82.12. *In a case the State is a party to the contract and a breach of a contract is alleged against the State, a civil action in the appropriate forum is, undoubtedly, maintainable. But this is not the end of the matter. Having regard to the position of the State and its duty to act fairly and to eschew arbitrariness in all its actions, resort to the constitutional remedy on the cause of action, that the action is arbitrary, is permissible (see in this regard Shrilekha Vidyarthi Vrs. State of U.P., (1991) 1 SCC 212). However, it must be made clear that every case involving breach of contract by the State, cannot be dressed up and disguised as a case of arbitrary State action. While the concept of an arbitrary action or inaction cannot be cribbed or confined to any immutable mantra, and must be laid bare, with reference to the facts of each case, it cannot be a mere allegation of breach of contract that would suffice. What must be involved*



in the case must be action/inaction, which must be palpably unreasonable or absolutely irrational and bereft of any principle. An action, which is completely mala fide, can hardly be described as a fair action and may, depending on the facts, amount to arbitrary action. The question must be posed and answered by the Court and all we intend to lay down is that there is a discretion available to the Court to grant relief in appropriate cases.

82.13. *A lodestar, which may illumine the path of the Court, would be the dimension of public interest subserved by the Court interfering in the matter, rather than relegating the matter to the alternate forum.*

82.14. *Another relevant criteria is, if the Court has entertained the matter, then, while it is not tabooed that the Court should not relegate the party at a later stage, ordinarily, it would be a germane consideration, which may persuade the Court to complete what it had started, provided it is otherwise a sound exercise of jurisdiction to decide the matter on merits in the writ petition itself.*

82.15. *Violation of natural justice has been recognised as a ground signifying the presence of a public law element and can found a cause of action premised on breach of Article 14. (See State of U.P. Vrs. Sudhir Kumar Singh, (2021) 19 SCC 706)."*

6.14. Having referred to said reported case in *N.P. Power Management Company Ltd. (Supra)* and many other case laws on the scope of exercise of power of judicial review in contractual matters, the Hon'ble Supreme Court of



India in the case of *Subodh Kumar Singh Rathour Vs. The Chief Executive Officer*, (2024) 7 SCR 532 stated that:

“58. Thus, the demarcation between a private law element and public law element in the context of contractual disputes if any, may be assessed by ascertaining whether the dispute or the controversy pertains to the consensual aspect of the contract or tender in question or not. Judicial review is permissible to prevent arbitrariness of public authorities and to ensure that they do not exceed or abuse their powers in contractual transactions and requires overseeing the administrative power of public authorities to award or cancel contracts or any of its stipulations.

59. ***Therefore, what can be culled out from the above is that although disputes arising purely out of contracts are not amenable to writ jurisdiction yet keeping in mind the obligation of the State to act fairly and not arbitrarily or capriciously, it is now well settled that when contractual power is being used for public purpose, it is certainly amenable to judicial review.***”

6.15. The Office Memorandum dated 31.03.2020 read with Letter dated 28.02.2020 juxtaposed with the Revised Guidelines contained in the Office Memorandum dated 14.12.2022 as referred to above along with subsequent Office Memoranda without any ambiguity reveals that the disputes *qua* Railway *vis-à-vis* the present nature is sought be kept outside the purview of “Administrative



Mechanism for Resolution of Disputes”. Therefore, the present writ petition questioning the decision making process in assigning arbitrary reason is maintainable. In such view of the matter, this Court is convinced that the writ petition is maintainable in the instant case to consider whether the rejection of the Bid of the petitioner by the Tendering Authority is tainted with arbitrariness and unfairness.

Consideration of arguments advanced with respect to authorisation of the petitioner to submit Bid on behalf of the company:

7. In paragraphs 7 and 8 of the counter affidavit filed by the opposite party Nos.1 to 3, it is pleaded that the petitioner having failed to submit the “supporting document” evincing that the executant of the Power of Attorney was duly authorised by a valid Board Resolution, the decision for rejection of the Bid of the petitioner cannot be faulted with. *Quoad ultra*, it is argued by Sri Rudra Prasad Kar, learned Senior Advocate that there is no requirement to submit the said document along with the Bid, unless the same is asked for at a subsequent date if need be.

7.1. “Extract of Board Resolution not attached” is the impugned reason for rejection of the Bid of the petitioner as is manifested from Annexure-4.



7.2. Upon scrutiny of papers enclosed to the writ petition it is transpired that:

- a. Board of Directors of Konkan Railway Corporation Ltd., a Government of India Undertaking under Section 2(45) of the Companies Act, 2013, in its Meeting held on 29.05.2024 (Annexure-3) delegated powers to Sri Santosh Kumar Jha, Chairman and Managing Director, which *inter alia* reflects as follows:

“31. Lastly the Corporation hereby expressly declares that this Power of Attorney and the powers and authorities hereby given shall remain in full force and effect until notice of the revocation of these presents shall be received by the Attorney.

*The Board of Directors unanimously given authority to the Chairman to decide the matters out of the above matters that could be delegated to the Managing Director and the Chairman will convey the decision at the earliest to the Managing Director and the same would be placed for information of the directors in the forthcoming Board meeting. **Further the Board of Directors authorized Managing Director to sub-delegate any of the powers so entrusted to him to any officer or officers of the company as per the article 68(2) of the Articles of Association.**”*



- b. Having thus vested with the power of sub-delegation, “Power of Attorney for signing of Bid” was executed by said Chairman and Managing Director, Konkan Railway Corporation Ltd., in favour of Sri Upendra Shridhar Shendye on 21.02.2025, which is available with the Bid document at Annexure-2.
- c. Being thus authorised Sri Upendra Shridhar Shendye is stated to have signed the Bid and submitted for and on behalf of the petitioner-Company.

7.3. To examine whether there was any necessity to furnish the “Extract of Board Resolution” along with the Bid document, reference can be had to relevant clause of Section 2 of the RfP dealing with “Instructions to Bidders”, which reads as follows:

*“Section 2
Instructions to Bidders*

A. *GENERAL*

2.1. *General terms of Bidding*

2.1.4 ***The Bid shall be furnished in the format exactly as per Appendix-IA & IB i.e. Technical Bid as per Appendix IA and Financial Bid as per Appendix IB and it shall be signed by the Bidder's authorised signatory. The Bid Price shall***



be quoted online at the e-procurement platform of the Authority at [<https://www.ireps.gov.in> (the 'IREPS Website')]. In the event of any difference between figures and words, the amount indicated in words shall be taken into account.

2.1.5 The Bidder should submit a Power of Attorney as per the format at Appendix-II, authorising the signatory of the Bid to commit the Bidder.

2.1.6 In case the Bidder is a Consortium/Joint Venture, the Members thereof should furnish a Power of Attorney in favour of the Lead Member in the format at Appendix III and Joint Bidding Agreement in the format at Appendix-IV.

2.1.7 Any condition or qualification or any other stipulation contained in the Bid shall render the Bid liable to rejection as a non-responsive Bid.

2.1.8 The Bid and all communications in relation to or concerning the Bidding Documents and the Bid shall be in English language."

7.4. It is not disputed by the opposite parties that as per Clause 2.1.5 as stated above, the petitioner submitted Power of Attorney as specified in the format given at Appendix-II, authorising the signatory of the Bid to commit the Bidder. The format of Power of Attorney for signing the Bid *vide* Appendix-II is as follows:

*"Appendix-II
Format for Power of Attorney for signing of Bid
(Refer Clause 2.1.5)*

Know all men by these presents,



We (name of the firm and address of the registered office) do hereby irrevocably constitute, nominate, appoint and authorize Mr./Ms. (name), son/daughter/wife of and presently residing at, who is presently employed with us/the Lead Member of our {Consortium/Joint Venture} and holding the position of, as our true and lawful attorney (hereinafter referred to as the "Attorney") to do in our name and on our behalf, all such acts, deeds and things as are necessary or required in connection with or incidental to submission of our Bid for the Project proposed or being developed by the [Railways] (the 'Authority') including but not limited to signing and submission of all Bids and other documents and writings, participate in Pre-Bid and other conferences and providing information/responses to the Authority, representing us in all matters before the Authority, signing and execution of all contracts including the EPC agreement and undertakings consequent to acceptance of our Bid, and generally dealing with the Authority in all matters in connection with or relating to or arising out of our Bid for the said Project and/or upon award thereof to us and/or until the entering into of the EPC Contract with the Authority.

AND we hereby agree to ratify and confirm and do hereby ratify and confirm all acts, deeds and things done or caused to be done by our said Attorney pursuant to and in exercise of the powers conferred by this Power of Attorney and that all acts, deeds and things done by our said Attorney in exercise of the powers hereby conferred shall and shall always be deemed to have been done by us.



IN WITNESS WHEREOF we, the above named principal have executed this Power of Attorney on this day of2.....

*For
(Signature, name, designation and address)
of person authorized by Board Resolution
(in case of Firm/ Company)/
partner in case of Partnership Firm*

Witnesses:

- 1.*
- 2.*

Accepted

.....

(Signature)

(Name, Title and Address of the Attorney)

(Notarized)

*Person identified by me/
personally appeared before me/
Attested/ Authenticated**

*(*Notary to specify as applicable)
(Signature Name and Address of the Notary)*

*Seal of the Notary
Registration No. of the Notary
Date:*

Notes:

- The mode of execution of the Power of Attorney should be in accordance with the procedure, if any,*



laid down by the applicable law and the charter documents of the executant(s) and when it is so required, the same should be under common seal affixed in accordance with the required procedure.

- ***Wherever required, the Bidder should submit for verification the extract of the charter documents and documents such as a board or shareholders' resolution/power of attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder.***
- *For a Power of Attorney executed and issued overseas, the document will also have to be legalized by the Indian Embassy and notarized in the jurisdiction where the Power of Attorney is being issued. However, the Power of Attorney provided by Bidders from countries that have signed the Hague Legislation Convention 1961 are not required to be legalized by the Indian Embassy if it carries a conforming Appostille certificate.*

Note: Paragraphs in curly parenthesis may be omitted by the Bidder, if not applicable to it, and 'Deleted' may be indicated there."

7.5. It may be highlighted that second point of Note appended to said Appendix-II employed the words "*Wherever required*" which is of significance. Black's Law Dictionary, Revised Fourth Edition, 1968, St. Paul, Minn., West Publishing Co. gives the meaning of "wherever" as "As often as. *Moore Vrs. Johnson*, 85". In



the said dictionary, the word “required” is given to understand as follows:

“To direct, order, demand, instruct, command, claim, compel, request, need, exact. Beakey Vrs. Knutson, 90 Or. 574, 174 P. 1149, 1150. Union Mut. Ins. Co. Vrs. Page, 65 Okl. 101, 164 P. 116, 117, L.R.A.1918C, 1; State ex rel. Frohmiller Vrs. Hendrix, 59 Ariz. 184, 124 P.2d 768, 773.”

7.6. The expression “wherever required” in the context of Bid document is, thus, a conditional one. In the above perspective, said expression would mean as a “contingency clause”; implying thereby that the submission of charter documents, Board Resolution or Powers of Attorney is not a *sine qua non* for uploading along with the submission of Bid, but the same would be required to be furnished at the time of demand or request being made for its production if it is required for verification.

7.7. Such a perception is fortified by looking at other clauses forming part of the RfP. In Section 2 of the RfP the following are the requirements:

“2.11 Documents comprising Technical and Financial Bid.—

2.11.1 The Bidder shall first upload all the project details including Technical Capacity, Financial Capacity, Net Worth details, turnover details, and all other details required in this RFP for technical qualification. The Bidder shall ensure that all the



details are updated as on the due date of submission of this Bid.

The Bidder shall then apply for the RfP on the website [https:// ireos.gov.in](https://ireos.gov.in) by submitting the documents mentioned below along with the supporting documents which shall comprise of the Technical Bid on the e-portal:

- (a) **Appendix-IA including Annexure I-VII and supporting certificates/documents.**
- (b) **Power of Attorney for signing the Bid as per the format at Appendix-II;**
- (c) if applicable, Power of Attorney for Lead Member of Consortium/Joint Venture as per the format at Appendix-III;
- (d) if applicable. Joint Bidding Agreement for Consortium/Joint Venture as per the format at Appendix-IV;
- (e) **An undertaking from the person having Power of Attorney referred to in sub-clause (b) above that they agree and abide by the Bid Documents uploaded by Authority and amendments uploaded, if any; and**
- (f) copy of Memorandum and Articles of Association, if the Bidder is a body corporate, and if a partnership then a copy of its partnership deed.
- (g) Copies of duly audited complete annual accounts of the Bidder or of each member (in case of Joint Venture/Consortium) for preceding 5 years.



- (h) *Appendix-IB shall be submitted online through e-procurement portal on or before 12:00.hrs 1ST on*

2.11.2 *The Bidder shall submit the following documents physically within time as mentioned in Clause 1.3:*

- (a) *Original Power of Attorney for signing the Bid as per format at Appendix-II;*
- (b) *if applicable, Original Power of Attorney for Lead Member of Consortium/Joint Venture as per the format at Appendix-III;*
- (c) *if applicable, Original Joint Bidding Agreement for Consortium/Joint Venture as per the format at Appendix-IV;*
- (d) *Bid Security, if submitted as Bank Guarantee, in the format at Appendix-VII from a Bank."*

7.8. It is patent from the above clauses that "supporting certificates/documents" of Appendix-IA including Annexure-I-VII are required to be submitted while uploading the Bid document. However, the same does not include furnishing of extract of Board Resolution relating to the Power of Attorney for signing the Bid. The bidder is supposed to furnish "*an undertaking from the person having Power of Attorney referred to in sub-clause (b) above that they agree and abide by the Bid Documents uploaded by Authority and amendments uploaded*". In addition to this, Power of Attorney for signing the Bid "*as per the format at Appendix-II*" is only the requirement



for submission, which the petitioner had enclosed to the Bid. The Bidder is required to submit document “physically” “within the time as mentioned in clause 1.3”. This clause read along side Note appended to the Appendix-II gives impression that in the event it is required/demanded/requested/ordered/directed the document is required to be submitted. Hence, save and except Power of Attorney for signing the Bid “as per the format at Appendix-II” there is no requirement anywhere to attach the Board Resolution to the Bid document.

7.9. From the discussion made in the foregoing paragraphs, it is, therefore, perceived that the Bid document being signed by the duly authorised person, the same could not have been rejected on the specious plea assigned at Annexure-4. Hence the reason that “Extract of Board Resolution not attached” is *de hors* tender condition and the Tendering Authority transgressed its power in taking decision to reject the Bid of the petitioner at technical evaluation stage.

7.10. The learned Deputy Solicitor General of India and the learned Senior Advocate and the learned Advocate for the respective opposite parties made valiant attempt to justify the rejection of the Bid of the petitioner by referring to paragraphs 7 and 14 of the counter affidavit that “*the bidder should submit for verification the extract of the charter documents and documents such as a Board*



or Shareholders' Resolution/Power of Attorney in favour of the person executing this Power of Attorney for the delegation of power hereunder on behalf of the Bidder, evidencing the authority vested in the signatory of the said Power of Attorney". From the narration of factual matrix of the case in the foregoing paragraphs it is discernible that the signatory of the Bid documents had the competence to sign and he was duly authorised to sign the Bid document. However, such is not the reason assigned for rejection of Bid. Only reason which is assigned is "Extract of Board Resolution not attached". It is strenuously argued by Sri Rudra Prasad Kar, learned Senior Advocate, to which this Court subscribes, that additional grounds/reasons not specified in the RfP cannot be subsequently pressed into service to justify rejection of Bid. A new objection has been set out to justify the action for rejection of the Bid, which is impermissible in the eye of law.

7.11. In this regard, regard may be had to a Judgment dated 04.02.2026 rendered by this Court in *Jalaram Transport Vrs. Mahanadi Coalfields Limited*, W.P.(C) No.37718 of 2023, wherein at paragraph 8.4 the following is stated:

"Apart from the same, we notice that the impugned demand does not reflect any grounds while imposing the penalty except the shortfall amount required to be recovered. It has been highlighted in the Constitution Bench decision rendered in Mohinder Singh Gill Vrs. The



Chief Election Commissioner, New Delhi, (1978) 1 SCC 405 that it is not open to the authorities to take a different route, to what has not been taken in the administrative order nor can be improved by filing a counter affidavit before Court. The authority cannot wriggle out of the grounds taken in the impugned action and ultimately taking a different route to justify such action was deprecated.”

7.12. In *Kimberley Club Vrs. Krishi Utpadan Mandi Parishad*, 2025 SCC OnLine SC 2323, it is stated thus:

“Given these circumstances, we are loathe to permit the 1st respondent-Mandi Parishad to justify the rejection of appellant’s technical bid on such additional ground belatedly taken in the counter affidavit. There is no cavil that an order of rejection must be sustained on grounds stated therein and additional grounds cannot be subsequently pressed into service to justify such rejection. Mohinder Singh Gill Vrs. The Chief Election Commissioner, New Delhi, (1978) 1 SCC 405 [Para 8]”

7.13. Apart from the above, in the case of *Gayatri-DLF Consortium Vrs. National Highways Authority*, 2011 SCC OnLine Del 1247 it is held as follows:

“8. In the aforesaid factual matrix two questions arise for consideration:

- i. Whether the Power of Attorney submitted by the petitioners was defective and/or alleged defect was of such a nature which could be termed as a technical irregularity or was it fatal to the bid?; and*



- ii. Whether respondent No. 1 were entitled to encash the bank guarantee for the bid security amount treating the bid of the petitioner as non-responsive and/or whether the clauses contained in the RFP in this behalf can be said to be unconscionable or penal?

16. The Power of Attorney submitted with the bid of the petitioners has been placed on record. **There is no dispute that it is in the proper format as per Appendix IV. It is also relevant to note that as per Clause 2.1.10 if the bidder is a consortium the members thereof are required to furnish a Power of Attorney “in favour of the Lead Member” as per Appendix-IV.** The manner of wording of the Power of Attorney also shows that other members of the consortium whose description are given and are collectively called as the ‘Principals’ irrevocably designate, nominate, constitute, appoint and authorize one of the members of the consortium whose description is given therein as the Lead Member to be true and lawful attorney. Thus, it is in the nature of a unilateral document by one set of consortium members in favour of the Lead Member. In the present case the Lead Member is petitioner No. 2. The Power of Attorney was executed by petitioner No. 3 in favour of petitioner No. 2, there being only two members of the consortium. At the designated place where Executants have to sign the expression used is “(Executants) (To be executed by all the Members of the Consortium)”.



24. ***We have to also keep in mind the notes given at the base of the format of the Power of Attorney which prescribe that the mode of execution of the Power of Attorney should be in accordance with the procedure, if any, laid down by the applicable law. It is in this context that the Power of Attorney Act has been referred to aforesaid.***

28. We may notice that in *Poddar Steel Corporation Vrs. Ganesh Engineering Works*, (1991) 3 SCC 273 it was held that ***deviations from non-essential or ancillary/ subsidiary requirement being a minor technical irregularity can be waived.*** In the present case, however, there is not even a minor technical irregularity which can be stated to arise.
29. The declaration of the bid of the petitioners as non-responsive on the aforesaid ground is, thus, completely illegal and set aside. However, the petitioners did not claim a right to award of the contract on the first date of hearing itself. Thus, the only question is the ramification of the same on the demand of 5 per cent of the Bid Security Amount on account of the bid of the petitioners having been declared as non-responsive which would certainly not arise in view of our finding that the bid is responsive.”

7.14. Since it is held that there was no necessity to attach “Extract of Board Resolution” to the Bid, this Court desists from addressing the additional ground by way of contention set out by the opposite parties that “the



petitioner failed to submit any supporting document evidencing that the executant of Power of Attorney submitted under Appendix-II was duly authorised by a valid Board Resolution” and there was failure “to establish that the executant of the Power of Attorney possessed the requisite authority to execute the same”.

7.15. The reason that failure to attach the “Extract of Board Resolution” cannot be fatal for consideration of the technical bid of the petitioner inasmuch as the signatory to the Bid had furnished the Power of Attorney as per the format specified in Appendix-II. It is not the requirement to attach such document. The Bid of the petitioner, therefore, cannot be said to be non-responsive.

7.16. Clause 2.16 of Section 2 of the RfP (Instructions to Bidders) deals with “*Rejection of Bids*” in the following terms:

“2.16 *Rejection of Bids.—*

2.16.1 *Notwithstanding anything contained in this RFP, the Authority reserves the right to reject any Bid and to annul the Bidding Process and reject all Bids at any time without any liability or any obligation for such acceptance, rejection or annulment, and without assigning any reasons thereof. In the event that the Authority rejects or annuls all the Bids, it may, in its*



discretion, invite all eligible Bidders to submit fresh Bids hereunder.

2.16.2 *The Authority reserves the right not to proceed with the Bidding Process at any time, without notice or liability, and to reject any Bid without assigning any reasons.*

2.17 ***

2.18 ***

2.19 *Correspondence with the Bidder.—*

Save and except as provided in this RFP, the Authority shall not entertain any correspondence with any Bidder in relation to acceptance or rejection of any Bid.”

7.17.Clause 2.1.7 read with Clause 2.16 makes it abundantly clear that in the event of non-furnishing of “supporting documents” and the Power of Attorney is not in specified format as given at Appendix-II, in terms of Clause 2.15, it would invite the Bid to be declared non-responsive and thereby it would entail rejection of the Bid. Nevertheless, it is not the case of the opposite party Nos.1 to 3 that the petitioner did not furnish the Power of Attorney in the format specified at Appendix-II.

7.18.Referring to Clause 2.19 extracted *supra* Sri Rudra Prasad Kar, learned Senior Advocate submitted that it would not be in the imagination of any bidder to assume what was in the minds of the Tendering Authority.



Having submitted the requisite documents as required under the conditions stipulated in the RfP, such a clause would not come to assist the case of the opposite parties; rather had the case been improper documents being detected, such a clause could be invoked by the authority concerned. Requirement to submit “supporting documents” is restricted to Appendix-IA and Annexures-I-VII, but it cannot be said to have extended to a document submitted in consonance with format specified in Appendix-II. This Court, as discussed above, finds force in such submission and would wish to have regard to the following observation of the Hon’ble Supreme Court of India rendered in the case of *Maha Mineral Mining & Beneficiation Pvt. Ltd. Vrs. Madhya Pradesh Power Generating Co. Ltd.*, (2025) 9 SCR 528:

“3. As *NN Global Mercantile Pvt. Ltd.* could not furnish earnest money deposit, only the appellant and the 2nd respondent remained in the fray. On 04.07.2024, the Tender Evaluation Committee while referring to Clause 5(D)² of the NIT rejected the appellant’s technical bid holding as follows–

²

Clause 5(D):

“Past Experience: Copies of successfully executed orders (including part executed) in the name of bidder for same or similar work {similar work means coal lifting from mines of CIL subsidiaries or SCCL area, coal beneficiation (through wet process), movement of washed coal by road from washery to railway siding and movement of washed coal through Railways with experience in liaisoning with Railways/ CIL subsidiaries or SCCL area, i.e., arranging rakes, dispatches coal from own or leased Private siding or Goods shed Railways siding by loading of washed coal into railway wagons through own arrangement with monitoring the rake movement etc. up to the destination Power house}. Bidder is allowed to use past experience of their previous Consortium or JV (proportionate to its share in that consortium if defined in the Consortium Agreement, otherwise, lead partner if



‘As per Clause No. 5(D) “Past experience criteria” of NIT, bidder is allowed to use past experience of their previous Consortium or JV (proportionate to its share in that consortium if defined in the Consortium Agreement, otherwise, lead partner if not defined in the Consortium) to meet out the past experience criteria of the tender. The firm has used the credentials of their consortium M/s Hind-Maha-Mineral LLP for meeting out the past experience criteria. However, Agreement of the Consortium/ JV is not submitted to substantiate the share of the bidder in that consortium. Bidder is disqualified due to non-submission of credentials as per Clause No. (5)D of the NIT.’

14. *First, let us consider whether the decision of the High Court to uphold the appellant’s disqualification under Clause 5(D) for not furnishing JV agreement is justified or not?*
15. *Clause 5(D) of the NIT required the bidders to furnish documents relating to past-experience in similar work. The clause further provided that “bidder is allowed to use past experience of their previous*

not defined in the Consortium) to meet out the past experience criteria of the tender. The order copies should indicate the above work for 4 Lakh MT (4,00,000 MT) quantity or more in state Owned Power Generating Companies or Other Captive Power Utilities of PSU or NTPC or Govt. Industries / Departments or Semi Govt. Industries / Departments or PSUs or Nodal Agency of any PSUs in India executed in last five years ending with initial date of opening of bid are to be uploaded. This order execution should be within a period of twelve (12) months. It may be through single or multiple orders (in parallel), but in case of multiple orders; these should be within a single span of time period of twelve (12) months.

1. *The work execution certificate by the customers along-with self-attested un-priced copies of aforesaid work order(s) should be submitted.*
2. *For Past performance certificates - If worked with MPEB/ MPSEB/ MPPGCL in past for similar work, then it is mandatory to provide Satisfactory Performance Certificate for the same. Failing this, the offer shall not be considered.”*



Consortium or JV (proportionate to its share in that consortium if defined in the Consortium Agreement, otherwise, lead partner if not defined in the Consortium) to meet out the past experience criteria of the tender.” Sub-clause 1 and 2 of the said clause stated the following documents are to be submitted:

- ‘1. The work execution certificate by the customers along-with self-attested un-priced copies of aforesaid work order(s) should be submitted.*
- 2. For Past performance certificates - If worked with MPEB/ MPSEB/ MPPGCL in past for similar work, then it is mandatory to provide Satisfactory Performance Certificate for the same. Failing this, the offer shall not be considered.’*

*Appellants had submitted a work execution certificate from MSMC along with its bid to support its past-experience as a 45% proportionate member of a consortium/JV for similar work executed at WCL in the last five years. The relevant portion of the certificate reads as follows:****

- 16. The aforesaid certificate clearly demonstrates that the appellant had 45% share in a JV consortium namely M/s Hind Maha Mineral LLP and had successfully executed work of similar nature as required by Clause 5(D) of the NIT*

- 18. Though the submission of a JV agreement has not been expressly stated in the aforesaid clause, the respondents argue that the proportionate share of a bidder in a consortium/JV can only be established*



through production of the JV agreement itself and the words used in the contract/tender document must be read in a purposive manner so that no part of the document is rendered superfluous. Respondents further contend appellant had submitted its bid on the last day and it was open to the appellant during the previous calls to seek clarification whether submission of JV agreement was mandatory. Appellant did not do so and intentionally suppressed the JV agreement while submitting its bid to avoid disclosure of inconvenient clauses in the JV agreement. This is evident from the appellant's conduct as it had after submission of bid, emailed a purported JV agreement dated 06.09.2019, whereas the JV agreement mentioned in the certificate was a different one. Be that as it may, the subsequent submission of a JV agreement could not have been considered in light of Clause 8.1 read with circular dated 29.11.2023.

19. *We are unable to accept such arguments for the following reasons:*

- (i) Clause 5(D) merely states the appellant would be entitled to use the past-experience of a previous consortium/JV in the event its proportionate share is defined in the JV agreement failing which the past-experience shall be attributed to the lead partner. The clause does not mandate the submission of the JV agreement itself to satisfy such criteria. Appellant had relied on the work execution certificate issued by MSMC which in no uncertain terms states the appellant had 45% share in the JV consortium named M/s Hind Maha Mineral LLP and successfully executed*



similar work of a volume larger than required under the clause. The certificate also mentioned the JV agreement had been submitted and was in the custody of MSMC.

- (ii) It is nobody's case that the 1st respondent had doubted the authenticity of the certificate but had disqualified the appellant on the ground that Clause 5(D) mandated furnishing of the JV agreement alone and nothing else to prove proportionate share in a previous JV in order to use such experience.*
- (iii) Conditions in a NIT must be clear and unambiguous. In the event the tendering authority insisted on furnishing of the JV agreement alone and no other document as proof of the proportionate share of the bidder to avail previous JV experience as prior qualification, it should have been spelt out clearly in the NIT. Having not done so, the 1st respondent cannot thrust the responsibility on the appellant to seek clarification and submit such document. As Clause 5(D) does not require submission of JV agreement itself to establish proportionate share in the JV whose past-experience the bidder is seeking to use, nonsubmission of such JV cannot be a ground to disqualify the bidder for submission of incomplete documents in terms of Clause 8.1 of NIT. Admittedly, the appellant had submitted the work execution certificate, as required under clause 5(D), which also unequivocally sets out its proportionate share in the JV agreement whose prior experience it had relied on.*



20. *In these circumstances, we are inclined to hold the 1st respondent acted contrary to the terms of the NIT and unfairly rejected the appellant's bid for non-production of JV agreement although Clause 5(D) did not prescribe production of such agreement as mandatory to rely on past-experience of such consortium in which the bidder had a defined proportionate share.*
21. *Accordingly, decision of the Committee, upheld by the High Court as per Clause 5(D) is liable to be set aside."*

7.19. The Hon'ble Supreme Court of India having followed above decision in *Kimberley Club Vrs. Krishi Utpadan Mandi Parishad*, 2025 SCC OnLine SC 2323, the argument of learned Senior Advocate proceeded further to indicate that if the authority wanted any document(s) to be uploaded or furnished/submitted, it ought to have said so in unequivocal terms.

7.20. Conjoint reading of above clauses with Clause 2.11.1, Clause 2.11.2 and Clause 1.3 would unambiguously lead to conclude that except Appendix-IA including Annexure-I-VII, nothing is forthcoming to suggest that "supporting document" showing "Power of Attorney for signing the Bid" is to be submitted while uploading the Bid; nonetheless, said document is to be submitted in the specified format as given at Appendix-II. It remained uncontroverted by the opposite parties that the



petitioner has submitted such Power of Attorney in the specified format. Had the document like Board Resolution been required for “verification” by the Tendering Authority, the same could have been asked for production “physically within the time as mentioned in Clause 1.3” by adhering to Clause 2.11.2 of the RfP. The “Original Power of Attorney for signing the Bid as per format at Appendix-II” is to be submitted “physically within the time as mentioned in Clause 1.3”. Clear intention of the authority is *ex facie* manifest from the Notes appended to the Appendix-II. The words “wherever required” used therein is to be understood in the said context. Save and except such manner of presenting the documents, nowhere it is made mandatory for attachment of “Extract of Board Resolution” to the Bid. The decision of the authority is inexplicable and the rejection of Bid at technical evaluation stage on the ground stated at Annexure-4 cannot withstand judicial scrutiny. The contention of learned Senior Advocate for the petitioner that submission of Resolution of Board is not a *sine qua non* condition deserves to be acceded to.

Revenue loss:

8. Much stress is laid by the opposite party Nos.1 to 3 on the contents of paragraph 28 of counter affidavit. It is submitted that delay is caused for commencement of the work on account of the petitioner, a Government of India



Undertaking, in pursuing the matter before this Court; thereby heavy revenue loss would ensue. Apropos such contention Sri Rudra Prasad Kar, learned Senior Advocate would submit that the arbitrary decision and illogical reason assigning non-attachment of “Extract of Board Resolution” which is not contemplated under the RfP are the causes for the delay attributable to the Tendering Authority. In furtherance to such plea, he would urge that the petitioner has quoted around Rs.42 crores less than the estimated cost of around Rs.291 crores. He has taken this Court to have a glance at Tabulation Statement of Financial Bids (Annexure-5 enclosed with writ petition).

- 8.1. A bare perusal of said document would reveal that the opposite party No.4-IRCON-JPWIPL JV (declared as “L-1”) quoted the Bid Amount at Rs.375,49,16,820.00. In the representation dated 10.08.2025 (Annexure-6) the petitioner while requesting the authority to review the decision of rejecting its Technical Bid on 07.08.2025, clarified that it quoted Bid value at Rs.333.15 crores. It is thus emphasised that having expertise in the field, and quoted much less price than the estimated cost as well as the price quoted by L-1 bidder, the contention of the learned Deputy Solicitor General of India would be contrary to material on record. By not considering the Financial Bid of the petitioner and rejecting the Bid on a



non-existing ground at technical evaluation stage would demonstrate that the revenue loss has been caused by such arbitrary action and unsolicited decision of the Tendering Authority.

Conclusion:

9. Having discussed the gamut of the factual matrix obtained in the case coupled with legal perspective on the subject-matter, it is held that:

- i.* The writ Court is not prevented or interdicted from exercising the power of judicial review in the matters relating to tenders *qua* Government and Public Sector Undertakings/Government of India Enterprises.
- ii.* To require a document to be furnished as a supporting evidence, the Tendering Authority is required to spell out the same in specific unequivocal terms; in absence of which failure to enclose such document would not entail rejection of Bid;
- iii.* Mandatory conditions are required to be explicitly specified in the RfP;
- iv.* The reason assigned to reject the Bid cannot supported with the additional explanation by the opposite parties;



v. The reason ascribed for rejection of the Bid should be a ground mentioned in the RfP. While examining the propriety of decision making process of the Tendering Authority, it is impermissible to travel beyond the reasons given to disqualify the bidder (petitioner).

9.1. In the instant case there is no iota of evidence to suggest that in absence of non-furnishing of Extract of Board Resolution would lead to rejection of the Bid at technical evaluation stage. Since there is nothing placed on record by the opposite party Nos.1 to 3 to demonstrate that the petitioner failed to furnish Power of Attorney authorising him to sign the Bid in the format specified in Appendix-II with reference to Clause 2.1.5 of RfP, the reason for rejection of Bid that "Extract of Board Resolution not attached" cannot be sustained.

9.2. Having adverted to each point of argument advanced by the counsel for the respective parties, this Court is of the considered view that the decision making process of the Tendering Authority is tainted with arbitrariness and without due application of conscientious mind. Therefore, the decision of the Tendering Authority concerned on 08.08.2025 (Annexure-4) rejecting the Bid of the petitioner at technical evaluation stage is set aside.



- 9.3. Having set aside the decision to reject the Bid of the petitioner (Annexure-4), the matter is, therefore, remitted to the Tendering Authority by restoring it to technical evaluation stage and the process shall now continue from there.
- 9.4. The authority considering the Bid of the petitioner shall evaluate the Bid along with others and take a decision thereon within a period of six weeks from date.
- 10.** With the aforesaid observations and directions, this writ petition is disposed of and pending interlocutory application(s), if any, is disposed of accordingly, but in the circumstances, there shall be no order as to costs.

I agree.

(HARISH TANDON)
CHIEF JUSTICE

(MURAHARI SRI RAMAN)
JUDGE

Signature Not
Verified
Digitally Signed
Signed by: ASWINI KUMAR BETHY
Designation: Personal Assistant
(Secretary-in-charge)
Reason: Authentication
Location: ORISSA HIGH COURT,
CUTTACK
Date: 31-Mar-2026 19:54:15

High Court of Orissa, Cuttack
The 31st March, 2026/Bichi/MRS