IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 10537 OF 2025

Thakur Infraprojects Private Limited
1st Floor, Om Sadnika Building, Plot No.256/1,
Panvel Uran Road, Panvel,
Navi Mumbai – 410206 … Petitioner

Versus

1. State of Maharashtra Through
Directorate of Industries
New Administrative Building,
2nd Floor, Madame Cama Road,
Opp. Mantralaya, Mumbai – 400032
didci@maharashtra.gov.in

2. City and Industrial Development
Corporation of Maharashtra
Through its Vice-Chairman and
Managing Director
CIDCO Bhavan, CBD-Belapur,
Navi Mumbai – 400614
ee.naina@cidcoindia.com

3. OJSC Euro Asian Construction
Corporation "EVRASCON"
402, Geetanjali Sujay, Plot no.08,
Sector 34 C, Kharghar
Navi Mumbai – 410210

4. M/s. PNC - Aakshya Joint Venture
Having its office at PNC Tower,
3/22-D, Civil Lines,
Bypass Road, NH-2,
Agra, Uttar Pradesh – 282008

5. State of Maharashtra Through
Urban Development Department
Madam Kama, Hutatma Rajguru
Chouk, Mantralaya,
Mumbai – 400032

6. Union of India through Ministry of
Home Affairs
Ministry of Home Affairs, North
Block, New Delhi – 110001 … Respondents

WITH
INTERIM APPLICATION (ST) NO. 35929 OF 2025
IN
WRIT PETITION NO. 10537 OF 2025

Thakur Infraprojects Private Limited
1st Floor, Om Sadnika Building, Plot No.256/1,
Panvel Uran Road, Panvel,
Navi Mumbai – 410206 … Applicant

IN THE MATTER OF :

Thakur Infraprojects Private Limited
1st Floor, Om Sadnika Building, Plot No.256/1,
Panvel Uran Road, Panvel,
Navi Mumbai – 410206 … Petitioner

Versus

1. State of Maharashtra Through
Directorate of Industries
New Administrative Building,
2nd Floor, Madame Cama Road,
Opp. Mantralaya, Mumbai – 400032
didci@maharashtra.gov.in

2. City and Industrial Development
Corporation of Maharashtra
Through its Vice-Chairman and
Managing Director
CIDCO Bhavan, CBD-Belapur,
Navi Mumbai – 400614
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3. OJSC Euro Asian Construction
Corporation "EVRASCON"
402, Geetanjali Sujay, Plot no.08,
Sector 34 C, Kharghar
Navi Mumbai – 410210

4. M/s. PNC - Aakshya Joint Venture
Having its office at PNC Tower,
3/22-D, Civil Lines,
Bypass Road, NH-2,
Agra, Uttar Pradesh – 282008

WITH
REVIEW PETITION NO. 130 OF 2025
IN
WRIT PETITION NO. 13976 OF 2024

M/s. PNC - Aakshya Joint Venture
Having its office at PNC Tower,
3/22-D, Civil Lines,
Bypass Road, NH-2,
Agra Uttar Pradesh – 282008 … Petitioner

IN THE MATTER OF :

Thakur Infraprojects Private Limited
1st Floor, Om Sadnika Building, Plot No.265/1,
Panvel Uran Road, Panvel,
Navi Mumbai – 410206 … Original Petitioner

Versus

1. State of Maharashtra
Through its Government Pleader
Civil Appellate Side,
Bombay High Court

2. City and Industrial Development
Corporation of Maharashtra Ltd,
Through its Chairman
CIDCO Bhavan, CBD - Belapur,
Navi Mumbai – 400 614

3. M/s. PNC - Aakshya Joint Venture
Having its office at PNC Tower,
3/22-D, Civil Lines,
Bypass Road, NH-2,
Agra Uttar Pradesh – 282008

4. M/s. Ashoka – Aakshya Joint Venture
Having its office at Sr No.861,

Ashoka House, Ashoka Marg,
Ashoka Nagar, Vadala, Nashik-422011
Maharashtra, India … Respondents

Shri C. A. Sundaram, Senior Advocate a/w Shri Zal Andhyarujina, Senior Advocate, Adv. Dhrupad Vaghani, Adv. Gayatri Mohite, Adv. Rohini Musa, Adv. Shivaji Jadhav, Adv. Akanksha Agarwal, Adv. Aswath Reddy, Adv. Radhika Kabra i/b. Anchorstone Legal, for the petitioner in WP No.10537 of 2025 and original petitioner in RPW No.130 of 2025.

Shri Chetan Kapadia, Senior Advocate a/w Adv. Rahul Sinha, Adv. Soham Bhalerao, Adv. Harshit Tyagi, Adv. Yuvraj Singh i/b DSK Legal, for the respondent - CIDCO.

Shri Vikas Singh, Senior Advocate a/w Shri Ashish Kamat, Senior Advocate a/w Adv. Chirag Shah, Adv. Utsav Trivedi, Adv. Deepeika Kalia, Adv. Jay Sanklecha, Adv. Harsh Moorjani, Adv. Aman Saraf, Adv. Ekta Dalvi, Adv. Bhavya Shah i/b Adv. Ekta Dalvi, for the respondent No. 4 and petitioner in RPW.

Shri Anil Singh, Additional Solicitor General a/w Adv. Aditya Thakkar, Adv. Shruti Vyas, Adv. D. P. Singh, Adv. Dhaval Sethia, Adv. Rama Gupta, Adv. Sachit Bhogle, for the respondent No. 6-UOI .

Mrs. Neha Bhide, GP a/w Mr. O. A. Chandurkar, Addl. GP, Mrs. G. R. Raghuwanshi, AGP, Mrs. Apurva Thipsay, 'B' Panel, for the respondent-State.

CORAM : M.S. KARNIK &

SHARMILA U. DESHMUKH, JJ.

RESERVED ON : 5th MARCH, 2026

PRONOUNCED ON : 7th MARCH, 2026

JUDGMENT (PER M. S. KARNIK, J.) :

(A) THE CHALLENGE.

1. Since common issues are involved and as the issues are interconnected, the Writ Petition and Review Petition are heard together. For ease of reference we refer to the facts as set out in the Writ Petition.

2. The present Writ Petition is filed by the petitioner - Thakur Infraprojects Private Limited under Article 226 of the Constitution of India as the lead partner of M/s. Thakur- EVRASCON JV inter alia challenging the action of respondent No.2-City and Industrial Development Corporation of Maharashtra ("CIDCO", for short) in seeking security clearance from the respondent No.6-Union of India through the Ministry of Home Affairs ("Union of India", for short). The security clearance is sought after M/s. Thakur- EVRASCON JV has been declared as the lowest bidder in respect of 2 (two) tenders, which is alleged to be contrary to the Notice Inviting Bids ("NIB", for short) dated 23rd July 2024. The petitioner - Thakur Infraprojects also seeks to set aside the letters dated 16th June 2025 and 2nd July 2025 issued by CIDCO which seek documents from the petitioner for obtaining security clearance pursuant to the NIB.

3. During the pendency of this Writ Petition, CIDCO addressed a letter dated 10th November 2025 informing the petitioner that the Competent Authority of the Government of India had denied security clearance to respondent No.3 ("EVRASCON", for short). In view thereof, the petitioner amended the Writ Petition by adding respondent No.5 (Urban Development Department, State of

Maharashtra) and Union of India as parties thereto. The petitioner also sought further reliefs in the nature of restraining CIDCO from taking any coercive steps against the petitioner on the ground of denial of the security clearance in respect of EVRASCON, to call upon the State of Maharashtra and Union of India to disclose the reasons and grounds for denial of security clearance, and to call for all the records pertaining to the denial of the security clearance to EVRASCON and after examining the legality of the same to quash and set aside the said denial of the security clearance.

4. The following tenders form the subject matter of the present Writ Petition :-

(a) Notice inviting bids for Integrated Infrastructure Development of 20M and above wide Roads, Construction of Various Major and Minor Structures (viz. Flyover, Minor Bridges, VUPS, PUPs etc.) and Allied Electrical Works (Street Light) in TPS 10 and 11 ("Tender 1");

(b) Notice inviting bids for Integrated Infrastructure Development of 20M and above wide Roads, Construction of Various Major and Minor Structures (viz. Flyover, Minor Bridges, VUPS, PUPs etc.) and Allied Electrical Works (Street Light) in TPS 8, 9 and 12 ("Tender 2").

(B) **<u>THE MATERIAL FACTS.</u>**

5. The brief facts are that on 23rd July 2024 , CIDCO issued NIB for Tender 1 and Tender 2 for Town Planning Schemes (“TPS”, for short)

TPS 8, 9, 10, 11 and 12 -

(i) TPS 10 and 11 vide Tender 1 amounting to Rs.1568,86,38,074.87 (Excluding GST) ; and

(ii) TPS 8, 9 and 12 vide Tender 2 amounting to Rs.1908, 83,17,416.79 (Excluding GST).

6. The petitioner submitted its bid in Tender 1 and Tender 2 on 9th September 2024. The CIDCO rejected the technical bid of the petitioner on 8th October 2024. The petitioner therefore filed the Writ Petition No.13976 of 2024 in this Court on 9th October 2024 challenging the rejection of its technical bid by CIDCO. CIDCO opened the financial bids in Tender 1 and Tender 2 on 9th October 2024. Respondent No.4 - M/s. PNC-Aakshya Joint Venture ("PNC Aakshya JV", for short) was declared as the successful bidder in Tender 2. By an interim order dated 10th October 2024 this Court stated that "In the meantime, it is provided that in case any work order is issued pursuant to the subject tender, the same shall be subject to further orders which may be passed on this Writ Petition. This Court allowed the intervention of respondent No.4 - PNC Aakshya JV in Writ Petition No. 13976 of 2024 on 22nd October 2024. PNC Aakshya JV filed online RTI on 19th March 2025 seeking information on the rejection of the security clearance of EVRASCON in a tender invited by National Highways Authority of India ("NHAI", for short) in Kanpur, Uttar Pradesh. The

NHAI in its reply dated 17th April 2025 to the RTI informed PNC Aakshya JV that the security clearance of EVRASCON was denied by the Ministry of Road, Transport and Highways ("MoRTH") vide its letter dated 12th March 2025 based on national security and public interest perspectives.

7. This Court vide order dated 6th May 2025 declared the petitioner as technically eligible, and directed CIDCO to consider the petitioner's financial bid along with the other eligible bidders and take a decision afresh to award the contracts in the subject tenders. PNC Aakshya JV filed SLP(C) No.13562 of 2025 before the Hon'ble Supreme Court on 8th May 2025 challenging the order of this Court dated 6th May 2025. CIDCO reopened the financial bid of the petitioner along with the other bidders on 9th May 2025. The petitioner's bid was declared as the lowest (L1) bidder among all bidders in Tender 1 and Tender 2. The Hon'ble Supreme Court vide its order dated 14th May 2025 stated that they were not inclined to interfere with the order dated 6th May 2025 passed by this Court in Writ Petition No.13976 of 2024. The order dated 14th May 2025 has a significant bearing and therefore needs to be reproduced, which reads thus :-

> "1. While we were not inclined to interfere with the order passed by the High Court, Dr. Abhishek Manu Singhvi and Mr. Gaurav Agarwal, learned Senior Advocates appearing for the petitioner have submitted that as the High Court has not considered their submission based on the applicability of Clause

> 3(T) of the Tender document coupled with the letter dated 12.03.2025, they will approach the High Court invoking its review jurisdiction. While we have not expressed any opinion on this submission of the learned counsels, we permit them to withdraw the Special Leave Petition.
>
> 2. Special Leave Petition is dismissed as withdrawn with liberty to approach this Court against the main as well as the review order if any and if so advised."

8. The National Highways and Infrastructure Development Corporation Limited issued a letter dated 6th June 2025 denying the security clearance of EVRASCON in respect of the Construction of Intermediate Lane Road with Hard Shoulder from Km 0+000 to Km 13+080 of Tuting-Zido Section on NH-913 (Frontier Highway) in Arunachal Pradesh. The denial of security clearance to EVRASCON in the submission of Shri Sundaram, learned Senior Advocate for the petitioner was in the context of the project being located in a strategically sensitive border area, as is expressly recorded in the said order itself.

9. On 16th June 2025 CIDCO addressed a letter requesting the petitioner to share details of its foreign JV partner, EVRASCON to obtain the security clearance certificate from the Government of India as per Clause 3(t) of the NIB. Clause 3(t) of the NIB reads thus :-

> "**Clause 3(t) of the NIB**
>
> In case of JV Partner is foreign company, the Govt. of India Security Clearance certificate shall be considered as mandatory requirement during bid evaluation. For those bidders, who become eligible for evaluation, **of Technical Packet B as**

> **specified under ITB clause 43** the Employer/CIDCO shall apply to the Govt. of India for such clearance certificate to the concerned department. Such bidders shall submit all necessary information and documents to CIDCO for obtaining security clearance.
>
> The Employer shall not be responsible if the Govt. of India and/or any of its departments or agencies do not accord security clearance to the bidder and shall have right to reject such bid/bidders."

10. There is a debate in respect of the highlighted portion which according to CIDCO is inadvertently a part of Clause 3(t) of the NIB which we shall advert to later. The petitioner relied upon Clause 43 of the Instructions To Bidders ("ITB", for short) which reads thus :-

> "**Clause 43 of the ITB**
>
> 43. e-Tender Submission Opening
>
> 43.1. In case of a foreign bidder (Bidder not of Indian origin) the Bidder should submit the security clearance from central government before award of the work. If the foreign Bidder has already been awarded/executing any project (either as a single entity or as a JV partner) in India for any Govt/Semi-govt/ Public undertaking, then the Security Clearance is not required. The clearance should be obtained before opening of packet C. CIDCO shall assist for getting security clearance from Government of India."

11. Shri Sundaram, learned Senior Advocate for the petitioner laid much emphasis on Clause 43 of the ITB to contend that the said clause carves out a specific exemption where such foreign bidder has already been awarded or is presently executing, any project in India (either as a single entity or as a JV partner) for any Government, Semi-Government body, or Public Sector Undertaking, in which case, the requirement of obtaining a security clearance stands waived.

12. CIDCO again addressed a follow up letters to the petitioner on 16th June 2025 and 20th June 2025. The petitioner responded to the aforesaid letter on 23rd June 2025, submitting that Clause 3(t) of the NIB makes security clearance a mandatory requirement only at the stage of bid evaluation. Furthermore, the petitioner pointed out that (i) this Court vide its order dated 6th May 2025 had already declared the petitioner's JV as technically eligible and (ii) upon opening of the financial bids, the petitioner's JV emerged as the lowest (L1) bidder in both Tender 1 and Tender 2. Therefore, the bid process stood concluded, and Clause 3(t) had no applicability at this belated stage.

13. By a letter dated 23rd June 2025 CIDCO informed M/s. Ashoka-Aakshya Joint Venture that pursuant to the order dated 6th May 2025, this Court had quashed and set aside the Letter of Acceptance dated 10th October 2024 in Tender 1. CIDCO informed PNC Aakshya JV that pursuant to the order dated 6th May 2025, this Court quashed and set aside the Letter of Acceptance dated 10th October 2024, and the Work Order dated 15th October 2024 in Tender 2.

14. By the impugned letter dated 2nd July 2025 CIDCO rejected the petitioner's submissions and reiterated its demand for documents relating to EVRASCON. By a letter dated 7th July 2025 addressed by the petitioner to CIDCO, the petitioner sought an extension to obtain legal advice. The CIDCO addressed a letter dated 8th July 2025 to the State of Maharashtra seeking security clearance of EVRASCON and requested to forward the proposal to the Union of India for issuance of security clearance. The petitioner sought clarification from CIDCO regarding the applicability of Clause 43 of the ITB, which was referred to in Clause 3(t) of the NIB vide it's letter dated 11th July 2025.

15. Shri Sundaram, learned Senior Advocate submitted that it was always the case of the petitioner that Clause 43 of the ITB is not a part of Tender 1 or Tender 2. Clause 43 of the ITB is a part of NIB for the Design, Construction and Commissioning of Kharghar -Turbhe Tunnel Road (KTLR) for Direct Connectivity to International Corporate Park (ICP) at Kharghar, Navi Mumbai. The petitioner addressed a letter dated 22nd July 2025 to CIDCO reiterating that obtaining a security clearance certificate at this belated stage is *ex facia* contrary to the terms of the NIB. Further, the petitioner submitted that EVRASCON has already been awarded projects in India for various governments and public sector undertakings. Therefore, there is no requirement for a fresh security clearance certificate as per the terms of the tender, especially the exemption contemplated under Clause 43 of the ITB.

16. As an alternative, the petitioner submitted that Clause 3(o) of the NIB stipulates that the constitution of the JV may be changed at the sole discretion of CIDCO. The clause stipulates that any such modifications shall be at the sole discretion of CIDCO and shall not be permitted for post bid submission, except in circumstances where the change becomes inevitable, such as in matters arising from succession laws, etc provided further that the minimum eligibility criteria remain satisfied and the lead member continues to act in that capacity.

17. The petitioner filed the present Writ Petition on 29th July 2025 being aggrieved by the actions of CIDCO in unilaterally initiating the process of security clearance without consideration of the petitioner's letter dated 22nd July 2025. The State of Maharashtra on 30th July 2025 addressed a letter to the Union of India requesting to examine the issue of granting the security clearance in favour of EVRASCON.

18. PNC Aakshya JV filed Interim Application (L) No.26489 of 2025 on 31st July 2025 in the present Writ Petition seeking intervention and impleadment. By an order dated 31st July 2025 this Court tagged the present Writ Petition and the Review Petition filed by PNC Aakshya JV. The Review Petition is filed by PNC Aakshya JV for review of the order dated 6th May 2025 passed by this Court in Writ Petition No.13976 of 2024 pursuant to the liberty granted by the Hon'ble Supreme Court vide order dated 14th May 2025 quoted hereinbefore. By an order dated 25th August 2025, this Court allowed the intervention application and directed impleadment of PNC-Aakshya JV as respondent No.4 to this Writ Petition. On 7th November 2025, CIDCO informed this Court that a TOP SECRET communication had been received from the State of Maharashtra/Union of India informing that the security clearance of EVRASCON was denied by the Union of India. CIDCO was directed by this Court to communicate the denial of security clearance of EVRASCON to the petitioner and that the petitioner was to take appropriate steps in furtherance thereof.

19. By the impugned letter addressed by CIDCO to the petitioner on 10th November 2025, CIDCO informed the petitioner that the security clearance of EVRASCON was denied by the Union of India. The petitioner therefore filed the application for amendment which came to be allowed.

(C) THE SUBMISSIONS OF SHRI SUNDARAM, LEARNED SENIOR ADVOCATE FOR THE PETITIONER.

20. Article 77 of the Constitution of India governs the conduct of the business of the Government of India. Under Article 77(3) of the Constitution of India, the President is empowered to make rules for the more convenient transaction of the business of the Government and for allocation of such business among the Ministers. In pursuance thereof, the Government of India (Transaction of Business) Rules, 1961 (“Rules of Business”) have been framed. Rule 4 thereof provides that where the subject matter of a case concerns more than one department, no decision shall be taken or order issued unless all such departments have concurred, or in the absence of such concurrence, the matter has been decided by or under the authority of the Cabinet. Rule 6 further provides for the constitution of Standing Committees of the Cabinet as set out in the First Schedule to the Rules of Business. The First Schedule inter alia provides for the constitution of the Cabinet Committee on Security, which is entrusted with the matters relating to defence, law and order, internal security, and policy matters concerning foreign affairs having internal or external security implications, including issues pertaining to agreements with foreign countries on security-related matters.

21. The present case involves multiple departments of the Government of India, including inter alia the Ministry of Home Affairs, Ministry of External Affairs, Ministry of Road Transport and Highways, and the Ministry of Finance. Therefore, any decision relating to the grant or denial of security clearance ought to have been taken only after obtaining the concurrence of all the concerned departments in accordance with Rule 4 of the Rules of Business.

22. It is well settled that the Rule of Business framed under Article 77(3) of the Constitution of India are mandatory in nature and not merely directory. Non-compliance with the said Rules vitiates the decision taken in violation thereof. In the absence of compliance with the mandatory requirement of consultation and concurrence of the concerned Departments, the denial of security clearance cannot be said to be a decision taken in accordance with law. The impugned action of denial of security clearance is therefore vitiated for failure to adhere to the mandatory procedure prescribed under Article 77 of the Constitution of India and Rule of Business.

23. Union of India has submitted that the issue of security clearance is a matter of policy and not a question of law. However, no such policy has been placed on record to justify the denial of security clearance in the present case. On the contrary, State of Maharashtra has stated in its Affidavit in Reply that Union of India, by its letter dated 25th September 2025, merely opined that "considering Azerbaijan's stance on the Kashmir issue and its strategic alliance with Pakistan and Turkey, it may not be prudent from a security point of view to get this strategic project executed through a joint venture that has EVRASCON as a partner." The denial of security clearance to EVRASCON is thus founded on the opinion expressed in the said letter and is not shown to be based on any policy or decision taken after consultation with, or concurrence of, the relevant departments of the Government as required under the aforesaid Rules.

24. The bilateral relations between the Republic of India and the Republic of Azerbaijan are not shown to be strained, and commercial and trade relations between the two countries continue to subsist. There is no policy decision, notification, circular, or directive placed on record indicating that the participation of entities from the Republic of Azerbaijan in infrastructure or strategic projects in India is prohibited or restricted. In the absence of any such policy framework, the impugned denial of the security clearance appears to be founded solely on the opinion expressed in the letter dated 25th September 2025. There is nothing on record to demonstrate that such a decision was taken after consultation with, or with the concurrence of, the relevant Departments of the Government of India as mandated under Rule 4 of the Rules of Business. The impugned action is therefore contrary to the procedure prescribed under Article 77 of the Constitution and is liable to be set aside on this ground alone.

25. The denial of security clearance to EVRASCON cannot be justified as a policy decision of the Government of India. It is settled law that while matters of policy ordinarily fall within the domain of the executive, the existence of such policy must be demonstrable from the record. In the present case, Union of India has not placed on record any policy, notification, circular, guideline or decision of the Government of India indicating that the entities from the Republic of Azerbaijan, or joint ventures involving such entities, are prohibited or restricted from participating in infrastructure or strategic projects in India. On the contrary, the material placed on record indicates that the denial of security clearance is founded solely on the contents of the letter dated 25th September 2025. The expression of such an opinion, in the absence of any declared policy framework or decision taken in accordance with the applicable Rules of Business, cannot be equated with a policy decision of the Government of India.

26. Clause 3(t) of the NIB makes a cross reference to ITB Clause 43. The said clause does not independently stipulate any requirement for obtaining a fresh security clearance but only refers to the provisions contained in the ITB. CIDCO vide Letter dated 2nd July 2025 reproduced Clause 3(t) of the NIB and accordingly, requested for submissions of the documents. However, the said communication did not clarify the scope, applicability or the precise requirement under the ITB Clause 43. In view of the ambiguity in the aforesaid communication, the Petitioner vide Letter dated 11th July 2025, requested for a copy of the relevant ITB Clause 43 mentioned in Clause 3(t) of the NIB.

27. CIDCO failed to provide any clarification regarding the applicability of ITB Clause 43. The Petitioner after identifying the relevant ITB Clause 43 vide Letter dated 22nd July 2025 submitted that there was no requirement for obtaining a fresh security clearance in lieu of the provision because EVRASCON was already executing projects in India for Govt./Semi-Govt./Public undertakings. The insistence on a fresh security clearance is wholly misconceived and contrary to the terms of the NIB read with the ITB.

28. CIDCO, for the first time in its Affidavit in Reply, has sought to contend that the reference to ITB Clause 43 in Clause 3(t) of the NIB was a typographical error. Such a contention is clearly an afterthought and is wholly untenable, particularly at this stage, considering the magnitude and value of the projects involved in the present tender. CIDCO cannot now conveniently disown or disclaim the reference to ITB Clause 43 contained in the NIB.

29. The Petitioner vide its Letter dated 22nd July 2025 in order to avoid any delay in the execution of the said project and to ensure that the work progressed without any impediment, and particularly in light of the geopolitical tensions with Republic of Azerbaijan at the relevant time, expressed its willingness to substitute EVRASCON in terms of Clause 3(o) of the NIB. The said proposal was made bonafide and without prejudice to the Petitioner's contention that the tender conditions did not mandate any fresh security clearance. The Petitioner proposed such substitution purely as a measure to address any concerns that may have arisen and to ensure the timely execution of the project in the larger public interest. However, CIDCO failed to consider the said proposal for substitution. The Petitioner has further undertaken that it will execute the project itself; that no manpower under the direct or indirect control of EVRASCON will be deployed for the purpose of the project. The Petitioner has also stated that there will be no transfer of technology from the Petitioner to EVRASCON and that no services or technical resources or support of any nature will be sourced or imported from Azerbaijan.

30. In view of the above undertakings, there existed no impediment for Respondent No. 2 to consider the Petitioner's proposal for substitution in terms of Clause 3 (o) of the NIB.

31. Clauses 3(k), 3(l) and 3(s) of the NIB require a joint venture/consortium to declare the Lead Partner in the MoU and to identify the person authorized to sign the bid and the contract. The Lead Partner is designated as the single point of contact on behalf of the joint venture and is responsible for all communication in relation to the bid process. Accordingly, all related communications, which are to be addressed to the authorized member of the joint venture. This Court, by its Order dated 6th May 2025, has already considered and decided the issue of the Petitioner's locus standi. This Court held that the tender conditions expressly permit authorization on behalf of the joint venture and that the Petitioner, being the Lead Member, is duly authorized to submit the bid on behalf of the joint venture. It was further held that the present Petition has been filed by the Petitioner on behalf of the joint venture. The said Order was affirmed by the

Hon'ble Supreme Court on 14th May 2025, thus attaining finality.

32. A mere invocation of "national security" does not itself exclude the applicability of the principles of natural justice. Union of India has contended that this Court ought not to entertain the present Petition solely because the issues raised therein concern the national security of the country.

33. It is well settled that where the State seeks to withhold disclosure of material on the ground of national security, it must nevertheless satisfy the Court that there exists sufficient material which justifies such non-disclosure. The State is required to demonstrate, at the very least before the Court, that the decision is founded on relevant material and that the claim of privilege is bona fide and not a device to avoid judicial scrutiny.

34. In this regard, the Hon'ble Supreme Court in **Madhyamam Broadcasting Limited vs. Union of India and Others**[1] and **Manohar Lal Sharma vs. Union of India and Others**[2] has held that while considerations of national security may justify limited non-disclosure of sensitive material, the State must nevertheless place sufficient material before the Court so that the Court may satisfy itself that the decision making process is not arbitrary, mala fide, or based on irrelevant considerations.

1 (2023) 13 SCC 401
2 (2023) 11 SCC 401

35. Accordingly, Union of India must satisfy this Court that there existed sufficient material which warranted non-disclosure and that the claim of national security is legitimately attracted in the facts of the present case. Mere reliance on the phrase “national security”, without demonstrating the underlying basis before the Court, cannot be permitted to defeat judicial review.

36. EVRASCON is presently executing a project with Respondent No. 2, inter alia, the Kharghar-Turbhe Tunnel Road Project (“Kharghar Project”) after having been granted the requisite security clearance. The Kharghar Project is valued at approx. Rs.2000 Crores and is situated in close proximity to the Navi Mumbai International Airport (“NMIA”).

37. The Affidavit in Reply filed by State of Maharashtra, records that Union of India, vide its letter dated 25th September 2025, opined that it would not be prudent, from a security standpoint, to have the subject “strategic” project executed through a joint venture involving an Azerbaijani partner, particularly in view of Azerbaijan’s stance on the Kashmir issue.

38. Union of India has thus denied security clearance to EVRASCON in the present tender on the purported ground that the project is “strategic” and situated near the NMIA. However, the present project is situated at a far greater distance from the NMIA than the

Kharghar Project which is presently being executed by EVRASCON with the knowledge and approval of the Respondents. The denial of security clearance in the present case is therefore manifestly inconsistent with the Respondent’s own conduct in permitting EVRASCON to execute the Kharghar Project. The impugned decision is therefore arbitrary and suffers the non-application of mind.

39. The inconsistent treatment meted out to EVRASCON in respect of two projects involving the same authority and similar security considerations demonstrates that the decision to deny security clearance in the present case is neither based on any cogent material nor guided by any discernible principle.

40. Reliance is placed on the following decisions in support :-

(1) Ashoka Smokless Coal India (P) Ltd. and Ors vs. Union of India & Ors.[3]

(2) Union of India and Ors. vs. Agricas LLP and Ors.[4]

(3) Delhi International Airport Limited vs. International Lease Finance Corporation and Others[5].

(D) <u>Submissions of Shri Anil Singh, learned Additional Solicitor General.</u>

41. Shri Anil Singh, learned Additional Solicitor General appeared on behalf of the Union of India, Ministry of Home Affairs and

3 (2007) 2 SCC 640
4 (2021) 14 SCC 341
5 (2015) 8 SCC 446

made submissions justifying the denial of the security clearance. The project for which the tenders are issued is of considerable strategic importance. The proposal for security clearance was denied by the Ministry of Home Affairs in respect of EVRASCON and the same was conveyed to the Government of Maharashtra vide MHA OM dated 25th September 2025. The Ministry of Home Affairs examine such proposals in the interest of national security. The denial of security clearance is based on inputs which are secret and sensitive in nature. The Union of India undertakes to produce the confidential records in sealed cover, if so desired by the Court. However, in the matter of denial of security clearance, the Ministry of Home Affairs claims privilege to the confidential reports which are sensitive in nature. This Court may not allow argument over the reasons for denial of security clearance as the Ministry of Home Affairs examines such proposals in the interest of security of State and it's establishment. The denial of security clearance is based on intelligence inputs. Reliance is placed upon the press communication to submit that policy guidelines have been framed by the Ministry of Home Affairs in the matter of consideration of grant of security clearance and therefore the argument of Shri Sundaram, learned Senior Advocate that such security clearance is in breach of Article 77 of the Constitution of India is without any substance.

(E) <u>SUBMISSIONS OF SHRI CHETAN KAPADIA, LEARNED SENIOR ADVOCATE FOR CIDCO.</u>

42. The security clearance in the matters of such strategic importance is mandatory. Our attention is invited to the detailed affidavit-in-reply filed on behalf of CIDCO while justifying it's stand that since the petitioner did not take any steps to seek security clearance, it is CIDCO who had to make an application to the Union of India through the State of Maharashtra seeking security clearance. It is stated that the orders impugned in this Writ Petition are in terms of the mandate of law and the conditions of the tender documents.

(F) <u>SUBMISSIONS OF SHRI VIKAS SINGH, LEARNED SENIOR ADVOCATE FOR THE PNC-AAKSHYA JV.</u>

43. The Review Petition has been filed pursuant to the liberty granted by the Hon'ble Supreme Court. It is open for the PNC- Aakshya JV to seek a review on all permissible grounds. The petitioner has misconstrued the order of the Hon'ble Supreme Court to mean that only on the aspect of Clause 3(t) in its application to the security clearance having been denied to EVRASCON in respect of other projects, that the review could be sought. This Court has committed an error apparent on the face of record while allowing the Writ Petition earlier filed completely ignoring the vital aspect that the security clearance in respect of two other projects with EVRASCON as a partner has been refused. The security clearance of EVRASCON was already refused in respect of other tenders, on the self same ground the Writ Petition filed by EVRASCON ought to have been dismissed by this Court and therefore, the Review Petition is filed. Extensive submissions are made on lines similar to those advanced by Shri Anil Singh and Shri Chetal Kapadia.

44. Learned Additional Solicitor General and learned Senior Advocates for CIDCO, PNC-Aakshya relied upon the following decisions in support of their submissions :-

(1) Ex. Armymen's protections Services P. Ltd. Vs. Union of India and Others[6].

(2) SCOD 18 Networking Pvt. Ltd. Vs. Ministry of Information & Broadcasting and Others[7].

(3) DIGI Cable Network (India) Private Limited vs. Union of India and Ors.[8]

(4) Akbar Travel of India (Pvt) Ltd. vs. Union of India and Ors.[9]

(5) JMC Projects (India) Limited and Others vs. National Highways Authority of India and Others[10].

(6) Indo-China Steam Navigation Co. Ltd. vs. Additional

6 [2014] 3 S.C.R. 359
7 2015 SCC OnLine Bom 6570
8 (2019) 4 SCC 451
9 Writ Petition (L) No.656 of 2009 decided on 10th June 2009.
10 2022 SCC OnLine Del 353

Collection of Customs, Calcutta and Others[11].

(7) Narangs International Hotels Private Limited and Another vs. Union of India and Others[12].

(8) Bycell Telecommunications India Pvt. Ltd. and Anr. vs. Union of India and Ors.[13]

(9) Coastal Marine Construction & Engineering Limited and Anr. vs. Bharat Petroleum Corporation Ltd. and Ors.[14]

(10) Celebi Airport Services India Private Limited vs. Union of India and Others[15].

(11) JMC Projects (India) Ltd. and Another vs. National Highways Authority of India and Others[16].

(12) Madhyamam Broadcasting Ltd. (supra)

(13) Ex-Armymen's Protection Services Private Limited vs. Union of India and others[17].

(14) Alankit Assignments Ltd. vs. Union of India and another[18].

(15) Poddar Steel Corporation vs. Ganesh Engineering Works and others[19].

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11 1964 SCC OnLine SC 42
12 2011 SCC OnLine Bom 727
13 2011 SCC OnLine Del 5295
14 Writ Petition (L) No.6003 of 2025 decided on 22nd April 2025.
15 2025 SCC OnLine Del 4755
16 2022 SCC OnLine Del 4798
17 (2014) 5 SCC 409
18 2023 SCC OnLine Del 8696
19 (1991) 3 SCC 273

(16) Vidharbha Irrigation Development Corporation and others vs. Anoj Kumar Agarwala and others[20].

(17) The Zamora[21]

(18) Secretary of State for the Home Department vs. Rehman[22].

(19) Afcons Infrastructure Limited vs. Nagpur Metro Rail Corporation Limited and another[23].

(20) Agamatel India Private Limited vs. Resoursys Telecom and Others[24].

(21) Prakash Asphaltings and Toll Highways (India) Limited vs. Mandeepa Enterprises and Others[25].

(22) Tata Motors Limited vs. Brihan Mumbai Electric Supply & Transport Undertaking (BEST) and others[26].

(23) Union of India and another vs. International Trading Co. and another[27]

45. We have heard learned counsel for the parties. We have perused the memo of the Writ Petition, the Review Petition, the relevant exhibits relied upon by the learned counsel and the materials

20 (2020) 17 SCC 577
21 [1916] 2 AC 77 (PC)
22 (2003) 1 AC 153 [UK House of Lords]
23 (2016) 16 SCC 818
24 (2022) 5 SCC 362
25 2025 SCC OnLine SC 1959
26 2023 SCC OnLine SC 671
27 (2003) 5 SCC 437

on record.

(G) CONSIDERATION.

The Tender 1 and 2 for which the parties bid

46. Tenders 1 and 2 pertain to publicly critical and vital infrastructure works for the Navi Mumbai Airport Influence Notified Area ("NAINA", for short). These tenders pertain to infrastructural works which are critical for the development of the NAINA area and for which the State foresees a heavy outlay of over Rs.3400 crores. NAINA enjoys proximity of Navi Mumbai and has influence of Navi Mumbai International Airport, Jawaharlal Nehru Port Trust and proposed transport corridors viz. Multi-Modal corridor, Mumbai Trans Harbour Link, dedicated freight corridor, Spur etc.

47. Even the petitioner has in paragraph 52 of the Writ Petition set out the fact that the estimated value of the two tenders demonstrates the scale and strategic relevance of the project. The works contemplated are central to the development and operationalization of the NAINA region, and any delay, arbitrariness, or irregularity in the tendering process directly compromises the urban planning, connectivity, and socio-economic upliftment of the area. It is further relevant to refer to paragraph 53 of the Writ Petition where the petitioner submits that the project forms the backbone of civic mobility and infrastructure in one of the fastest growing urban corridors in the State of Maharashtra, any procedural impropriety, discrimination, or lack of transparency in the awarding of these tenders will not only result in severe financial implications but also cause irreparable harm to public interest. It is thus the petitioner's case that the delay or derailment of such an essential infrastructure initiative, due to arbitrary rejection of eligible bidders in awarding contracts, will adversely affect thousands of residents, stakeholders, and commuters.

48. The petitioner participated in the tendering process through consortium with EVRASCON, a company from Azerbaijan. Both the bids submitted by the petitioner's consortium were assessed on the qualification of the consortium. In the earlier round of litigation filed in this Court by the petitioner, this Court vide order dated 6th May 2025 directed CIDCO to consider the financial bid of the petitioner's JV, PNC-Aakshya JV, M/s. Ashoka-Aakshya Joint Venture as well as other eligible bidders and take a fresh decision to award the contract in question. In furtherance of the said order, the financial bid was opened on 9th May 2025 wherein the petitioner JV came out as the lowest bidder. The petitioner JV was found eligible subject to it being in compliance of the mandatory eligibility criteria that is subject to security clearance being obtained for its JV partner EVRASCON.

49. Shri Sundaram, learned Senior Advocate heavily relied on Clause 3(t) of the NIB in support of the petitioner's case. According to

Shri Chetan Kapadia, learned Senior Advocate for CIDCO, the highlighted portion in Clause 3(t) is an inadvertent inclusion, since the actual tender document contains no such clause. Shri Kapadia submits that moreover, there is no technical “B Packet” in the tenders concerning the present Petition.

50. Shri Sundaram, learned Senior Advocate was at pains to point out that CIDCO is required to apply to the Government for security clearance certificate only for bidders to become eligible for valuation of the technical Packet B as specified under Clause 43 of the ITB. The argument of Shri Sundaram is that there is no need for a security clearance in case of EVRASCON, since EVRASCON as a JV partner is already executing several projects of importance in India. Our attention is invited to the averments made in the Writ Petition.

51. Clause 43 of the ITB did not form part of the NIB and tender documents made available to the petitioner and that the same is from the tender documents relating to a project which involved a construction of tunnel road for Direct Connectivity to International Corporate Park at Kharghar, Navi Mumbai which is relating to a project not concerned with the subject tenders. It is thus the submission of CIDCO that the petitioner cannot be allowed to interpret a typographical remnant of a certain Clause 43 from an unrelated bid documents/ITB to the subject tenders and seek exemptions/benefits arising therefrom.

52. We find substance in the submission of learned Senior Advocate for CIDCO that the petitioner is placing reliance on a certain Clause 43 from an unrelated bid document, that is the ITB, and claiming that the petitioner is entitled to be exempted from the strict requirement of Clause 3(t) of the NIB.

53. Moreover, the tenders pertain to works under NAINA project. The project work pertains to areas where vital installations and infrastructure related to a new airport are constructed or would be constructed. It is not possible for us to ignore the submission of Shri Anil Singh, learned Additional Solicitor General and the learned Senior Advocate for CIDCO that there are impelling geopolitical considerations impinging upon the safety of the Country that are also involved. Thus, we find substance in the submission of CIDCO that the bid documents/NIB concerning this project is a complete document with mandatory requirements and conditions and the same is a separate document distinct from the other ITB relied upon by the petitioner. Clause 43 of ITB relied upon by Shri Sundaram is not applicable to the subject tenders.

54. Learned Senior Advocates appearing for the contesting respondents made exhaustive submissions that the petitioner has no locus to challenge the decision of rejection of security clearance taken by the competent authority of the Central Government with respect to EVRASCON. It is the submission that the decision is pertaining to EVRASCON only and not to the petitioner. It is therefore urged that only EVRASCON has a right or locus, if at all, to challenge the decision.

55. The issue of locus need not detain us for long. Even in the earlier round of litigation viz. Writ Petition No.13976 of 2024, the same was filed by the very same petitioner viz. Thakur Infraprojects Private Limited. An objection was raised that the JV had not challenged the validity of the tender conditions. The Writ Petition was entertained at the instance of the petitioner being a lead partner upon analysis of the relevant clauses of the tender document. This Court in paragraph 30 observed that it is evident that the same permit authorisation of one of the members of the JV to deal with the bid, sign the agreement or enter into contract in respect of the said bid etc. It is further observed that a member of the JV can also be authorised to act as single point contact and be responsible on behalf of the JV. We therefore are not impressed with the objection to the locus of the petitioner to maintain the present Writ Petition and the same is stated to be rejected.

56. The most important issue to be decided in this Writ Petition is the aspect of security clearance certificate from the Union of India. To deal with this issue it is necessary to repeat a few relevant facts for considering this issue in proper perspective. As indicated earlier, this

Court by the order dated 6th May 2025 in Writ Petition No.13976 of 2024 allowed the Writ Petition filed by the petitioner. Accordingly, the decision dated 8th October 2024 of the Tender Committee of the CIDCO was quashed and set aside; work order dated 15th October 2024 issued in favour of PNC-Aakshya JV for Tender 2 was quashed and set aside; the action of approval of financial bid of M/s. Ashoka – Aakshya Joint Venture for Tender 1 was quashed and set aside; CIDCO was directed to consider the financial bids for M/s. Thakur- EVRASCON JV, PNC-Aakshya JV and M/s. Ashoka – Aakshya Joint Venture as well as other eligible bidders and take decision afresh to award the contracts in question.

57. PNC-Aakshya JV filed SLP before the Hon'ble Supreme Court challenging the order dated 6th May 2025. On 7th May 2025 Azerbaijan issued a stern statement opposing India in India's war with Pakistan and stood in solidarity with Pakistan. On record is an Article dated 7th May 2025 published by Caliber (An Azerbaijan based publisher) criticizing India's military response of Operation Sindoor.

58. During the pendency of the SLP, CIDCO in compliance of the directions given by this Court, re-opened the financial bids of all eligible bidders in Tender 1 and Tender 2 on 9th May 2025. M/s. Thakur-EVRASCON JV stood as lowest (L1) bidder for Tender 1 and Tender 2. The Hon'ble Supreme Court vide order dated 14th May 2025, in the SLP filed by PNC-Aakshya JV challenging this Court's order dismissed the SLP as withdrawn. In view of the observations made by the Hon'ble Supreme Court, PNC-Aakshya JV filed the Review Petition in this Court on 15th May 2025 which is tagged along with this Writ Petition.

59. In compliance of the order passed by this Court, CIDCO on 16th June 2025 requested the petitioner to submit certain documents pertaining to EVRASCON in connection with obtaining a security clearance certificate from Government of India as per Clause 3(t) of the NIB. CIDCO on 20th June 2025 called upon the petitioner to submit the said documents by 23rd June 2025, failing which CIDCO would initiate the process of obtaining security clearance directly from Government of India.

60. The petitioner took a stand vide letter dated 23rd June 2025 addressed to CIDCO that as the bid evaluation process had already concluded and hence, Clause 3(t) had no applicability at this belated stage. By a communication dated 2nd July 2025 CIDCO rejected the petitioner's submissions that security clearance was not necessary and reiterated its demand for documents relating to EVRASCON. Vide letter dated 7th July 2025 the petitioner sought extension from CIDCO to obtain legal advice and conveyed its intent to submit a comprehensive reply within the week.

61. CIDCO by a letter dated 8th July 2025 forwarded a request with available bid documents to the State Government for seeking security clearance of EVRASCON through the Government of Maharashtra. By the letter dated 11th July 2025 the petitioner sought clarification from CIDCO regarding applicability of Clause 43 of ITB, which was referred to in Clause 3(t) of NIB. Vide letter dated 22nd July 2025 the petitioner requested CIDCO to consider and accord its approval for the proposed reconstitution of the JV in accordance with Clause 3(o) of NIB.

62. The Government of Maharashtra issued a letter dated 30th July 2025 to the Ministry of Home Affairs seeking issuance of security clearance for EVRASCON. The Ministry of Home Affairs denied security clearance in respect of EVRASCON by stating "...considering Azerbaijan's stance on the Kashmir issue and its strategic alliance with Pakistan and Turkey, it may not be prudent from a security point of view to get this strategic project executed through a joint venture that has EVRASCON as a partner".

63. Shri Sundaram was at pains to point out that EVRASCON has nothing to do with the diplomatic relationship between India and Azerbaijan. EVRASCON is a commercial entity carrying out various infrastructure projects in different countries. It is his further submission that assuming the relationship between these two countries are strained is no reason to prohibit EVRASCON executing an infrastructure project in India. Shri Sundaram submitted that in any case the trade between India and Azerbaijan is ongoing and presently the relations are normalised. It is further submitted that there is no policy in place governing the issue of security clearance and therefore the decision rejecting the security clearance falls foul of Article 77 of the Constitution of India.

64. In our considered opinion, and from the materials on record, we have no hesitation in observing that the tenders pertain to publicly critical and vital infrastructure works for NAINA. The security clearance has to be regarded as a mandatory requirement. We have carefully examined the decisions relied by learned Senior Advocates. The concept of national interest occupies a central place in governance. The States bears the primary responsibility of safeguarding the sovereignty, security and stability of the nation. The decisions relating to national security are therefore accorded the highest importance, as they directly concern the safety and welfare of the country and its citizens. In matters involving national interest, the protection of the nation is the paramount consideration. We find favour with the submissions of Shri Anil Singh, learned Additional Solicitor General that national security assessment frequently involve complex evaluations based upon intelligence inputs, strategic considerations and confidential information available to the executive authorities. Such matters require specialised knowledge, continuous monitoring of potential risks, and access to sensitive material which is ordinarily not available in the public domain. For this reason, the executive branch of the Union of India is considered best equipped to assess such concerns and take appropriate decisions in the larger public interest.

65. Security evaluations undertaken by the Government often rely upon inputs gathered from specialised intelligence and security agencies such as the Intelligence Bureau and the Research and Analysis Wing. These agencies operate within a confidential framework and frequently rely upon classified material, diplomatic communications and strategic assessments which cannot be publicly disclosed without jeopardising national interests. Consequently, the decision-making process in such matters is necessarily founded upon sensitive information and strategic considerations that cannot be open to judicial scrutiny.

66. In projects of strategic or infrastructural importance, the Government is free to adopt such measures as it considers necessary to safeguard national security. Even where commercial interests are involved, considerations of national security must take precedence. Economic gains or contractual expectations cannot override concerns relating to the safety and integrity of the Nation. The larger interest of the country must prevail over private or commercial considerations. In matters of such nature, this Court would ordinarily refrain from examining the merits of security related decisions taken by the Union of India. We have no hesitation in following the principle of judicial restraint since we are satisfied that present is a case which would be exclusively within the domain of the Union of India having regard to the vital ramifications regarding national security, strategic policy and diplomatic relations. The stand of the Union of India is on record. We must bear in mind the doctrine of separation of powers propounded by the Constitution of India allowing the Union Executive to operate without judicial encroachment in these critical areas.

67. It is equally well settled that issues concerning foreign relations and diplomatic posture fall within the domain of executive policy. The evaluation of the relationship between sovereign States, including the assessment of whether a particular country maintains association or cooperation with entities inimical/hostile to India's security interests, is fundamentally a matter within the domain of the executive government. The Government while assessing the security risks may take into account the geopolitical alignments and strategic conduct of foreign nations such as Azerbaijan and their interactions with countries like Pakistan. Such evaluations may not always be reflected in publicly declared policies or formal designations of hostility. Nonetheless, the absence of an express declaration does not preclude the Government from forming a security perception based on intelligence inputs and diplomatic assessments. The scope of judicial review in matters touching upon national security is therefore limited. Courts do not ordinarily substitute their own opinion for that of the executive in matters involving strategic, security or diplomatic considerations. Judicial review may extend only to examining whether the decision-making process is vitiated by mala fides, arbitrariness or gross illegality. It is not open for this Court to undertake a substantive re-evaluation of the intelligence inputs or security assessments forming the basis of the decision, for such an exercise would require the Court to enter into the domain of the executive which has the capacity and the expertise to form such an opinion.

68. No doubt this Court has to perform its constitutional duty in ensuring that the governmental action confirms to the constitution and the rule of law. Intervention may be warranted in exceptional circumstances where the action is shown to be arbitrary, mala fide, irrational or contrary to law. Beyond this limited scrutiny, courts ordinarily refrain from examining the sufficiency or adequacy of the materials on the basis of which the Government forms its opinion. The scope of judicial review further narrows down when it comes to examining the decisions pertaining to national security.

69. In national interest the executive always has the latitude to take timely and effective measures in the interest of national security. Thus, in matters concerning national security and the larger public interest, the interest of the nation remains the highest consideration. Undoubtedly it is the duty of the constitutional Court to preserve the rule of law while respecting the constitutional domain of the executive in areas where security considerations require informed and sensitive decision-making.

70. Several decisions have been relied upon by learned Senior Advocate on this aspect of National Security. In *Ex. Armymen's protections Services P. Ltd.* (supra), Their Lordships in paragraph 16 observed that what is in the interest of national security is not a question of law. It is a matter of policy. It is not for the court to decide whether something is in the interest of State or not. It should be left to the Executive. The decision whether something is or is not in the interest of national security are not a matter for judicial decision. They are entrusted to the executive. Depending on the facts of the particular case, it will however be open to the court to satisfy itself whether there were justifiable facts, and in that regard, the court is entitled to call for the files and see whether it is a case where the interest of national security is involved. Once the Union of India has taken the stand that the issue of national security is involved, it is not necessary to disclose the reasons to the affected party.

71. We have also gone through the decision of the Delhi High Court in *Celebi Airport Services India Private Limited* (supra). His Lordship has in depth discussed the law regarding the security clearance in national interest. Learned Single Judge of the Delhi High Court in *JMC Projects (India) Limited and Others* (supra) has held that security clearance is a mandatory and independent pre-condition for participation in, for award of, a public contract, and a bidder cannot claim such clearance as a matter of right. Its grant or denial depends on security and contemporaneous security and international relations considerations. Prior clearances on ongoing contract do not create any entitlement to automatic clearance for subsequent projects. The view of the learned Single Judge in *JMC Projects (India) Limited and Others* (supra) has been upheld by the Division Bench of the Delhi High Court in *JMC Projects (India) Limited and Others.*

72. In *Celebi Airport Services India Private Limited* (supra) it is held that once national security clearance has been cancelled/revoked, it is not for the Court to "second-guess the same". No doubt, the principles of natural justice are sacrosanct; however, national security will take precedence over enjoyment of commercial rights. Prior clearances on ongoing contracts do not create any entitlement to automatic clearance for subsequent projects.

73. Shri Sundaram, learned Senior Advocate submitted that there is no policy governing grant of security clearance and therefore the same falls for foul of Article 77 of the Constitution of India. Article 77 of the Constitution of India reads thus :-

> "**77. Conduct of business of the Government of India.**
>
> (1) All executive actions of the Government of India shall be expressed to be taken in the name of the President.
>
> (2) Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules to be made by the President, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President.
>
> (3) The President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business."

74. Shri Anil Singh, learned Additional Solicitor General submitted that the argument relating to Article 77 of the Constitution of India is raised for the first time by way of a rejoinder and a specific case is not pleaded in the Petition. Shri Sundaram, learned Senior Advocate in response submitted that the case is pleaded by the petitioner that the decision rejecting the security clearance is arbitrary and in support of this submission the relevant provisions of law are being relied upon which exercise is permissible.

75. In our opinion, the issue of national security is a dynamic concept. It may not be possible to foresee a situation as to what act constitute a threat to the national security. The executive must have the latitude and necessary flexibility to take decisions which are in national interest. We do not intend to put fetters on the decision-making by the executive by going into the dispute as to whether the denial of security clearance was a policy mandating compliance of Article 77 of the Constitution of India in the peculiar facts of this case. In any case Shri Anil Singh, learned Additional Solicitor General has placed on record a press communication dated 27th December 2017 which reads thus :-

> "MHA has formulated detailed policy guidelines for assessment of proposals received from various ministries from the perspective of national security. Based on the inputs received from the agencies, MHA takes decision to grant or deny security clearance with reference to core national security i.e. unity, integrity and sovereignty of the country. MHA has not delegated the decision of granting/denying the security clearance that affect core parameters of national security i.e. unity, integrity and sovereignty of the country. However, other inputs are shared with the concerned administrative ministries to enable them to take appropriate decision, as deemed fit, in accordance with their rules, policy, procedure, guidelines, tender/contract conditions etc.
>
> This was stated by the Minister of State for Home Affairs, Shri Hansraj Gangaram Ahir in a written reply to question in the Rajya Sabha today."
>
> (emphasis supplied by us)

76. We therefore do not find any merit in the submission of Shri Sundaram, learned Senior Advocate on the decision-making process of refusing security clearance.

77. Shri Sundaram, learned Senior Advocate then urged that since a decision has been taken referring security clearance and informed to the petitioner, this Court should call for the concerned files and satisfy itself that the decision is based on tangible materials. Shri Anil Singh, learned Additional Solicitor General opposed such a course and submitted that in cases of such a nature involving foreign policy and diplomatic relations between the countries, this Court should not call for the files which are confidential documents. The Union of India claims privilege. However, in all fairness to the Additional Solicitor General and considering the stance of the Union of India in the affidavit-in-reply, it is submitted that should the Court call for the files, the Union of India has no hesitation in presenting the same in a sealed cover for the perusal of this Court. Without laying down any precedent, considering the stand taken in the affidavit-in-reply and the willingness on the part of the Union of India to produce the files for perusal of this Court, for our satisfaction we have gone through the confidential file. Suffice it to observe that we are satisfied with the stand of the Union of India in rejecting the security clearance.

78. Thus, our task in the exercise of powers under Article 226 of the Constitution of India is to balance a private commercial interest of EVRASCON, a foreign entity, a JV partner of the petitioner; as against the safety and security of the entire country; so also a private commercial interest of the petitioner as against relations of India with other countries in the context of the national security. It is well settled that Union of India is a domain expert when it comes to aspect of national security and security of the nation. The matters of national security have been judicially recognised as the matters of policy. It is trite that this Court would not normally interfere in the matters of policy especially where it concerns the safety and security of the nation. This Court cannot examine or sit in appeal over the reasons for rejection of the security clearance. Judicial review is extremely limited and in a narrow domain considering that these matters are best left to the Union of India which has the expertise and best equipped to deal with such matters of national security.

79. The Union of India in its affidavit-in-reply which is on record has specifically taken a stance that the denial of security clearance is based on intelligence inputs and that the same is based on inputs which are stated as sensitive in nature. The State of Maharashtra in its affidavit-in-reply has stated that "considering Azerbaijan's stance on the Kashmir issue and its strategic alliance with Pakistan and Turkey, it may not be prudent from a security point of view to get this strategic project executed through a joint venture that has EVRASCON as a partner."

80. Security and threat perceptions are dynamic in nature. The timing of the clearance sought, the nature of project for which the clearance has been sought, the location of the project for which the clearance has been sought are all crucial and paramount factors which would arise for consideration while taking a decision.

81. The argument of Shri Sundaram is that since EVRASCON has been granted security clearance in the past and it is already executing infrastructure projects in India, there is no need for fresh security clearance. The further submission is that once the petitioner JV has been found to be the L1 bidder, the stage of getting the security clearance is over and therefore, it is not necessary to get a security clearance. This is an argument which can only be stated to be rejected. It is not possible for us to interpret Clause 3(t) of the tender document in the manner learned Senior Advocate for the petitioner wants us to construe. We have no hesitation in coming to the conclusion that CIDCO was justified in insisting for a security clearance. That the petitioner JV is L1 bidder is no ground to do away with the mandatory requirement of security clearance insisted upon by CIDCO.

82. We are in agreement with the submission of Shri Anil Singh, learned Additional Solicitor General that grant of security clearance to a foreign entity depends on various factors including international relations at the relevant time with the country concerned, which keeps changing from time to time. There cannot be a straight-jacket formula that because the foreign entity is executing a project in India would result in automatic clearance in every project. These are matters best left to the authorities in charge of the security of the nation. The agencies act in public interest and when no malafides are alleged against them, it is not possible for us to interfere with the impugned decision. The persuasive submission of Shri Sundaram that denial of security clearance to EVRASCON only because the company is based in Azerbaijan with whom India has strained relations, and hence such perception is arbitrary, does not commend us. These matters of perception are best left to the executive. It is not possible for us to substitute our opinion for that of the Union Executive.

83. Thus, we have no hesitation in holding that the contention of Shri Sundaram that Clause 3(t) of the bid document/NIB shall not be applicable to the petitioner as it only pertains to requirements during "bid evaluation" whereas the petitioner JV's bid has crossed the stage of "bid evaluation" since the order of this Court has already declared the petitioner JV to be technically eligible, is without any merit.

84. We are inclined to agree with the submission of Shri Chetan Kapadia, learned Senior Advocate for CIDCO that "bid evaluation" is a continuous long drawn process and can only be completed after issuance of the allotment letter in favour of the lowest bidder. The term "bid evaluation" cannot be interpreted to mean that the tendering authority i.e. CIDCO is injuncted from raising bid document requirements after a specific date/stage. The evaluation of the technical bid and financial bid are only parts of the overall "bid evaluation". In terms of Clause 3(t), CIDCO had every right to raise the requirement pertaining to security clearance certificate even after deeming the petitioner to be technically eligible. The order passed by this Court dated 6th May 2025 is very clear in as much as the challenge was to the rejection of the bid of the petitioner on technical grounds which this Court interfered with. The security clearance is "Mandatory Eligibility Criterion" which the CIDCO rightly insisted the petitioner JV to comply. Upon reading of the order dated 6th May 2025 passed by this Court, it is not possible for us to conclude that the findings rendered in the context of eligibility of the petitioner amounted to waiving of the requirement of the mandatory eligibility criterion of security clearance altogether.

85. Now let us consider the submission of Shri Sundaram as regards considering the proposal dated 22nd July 2025 for substitution of EVRASCON in terms of clause 3(o) of NIB. For the facility of convenience, clause 3(o) of the NIB is extracted, which reads thus:-

> "(o) Approval for change of constitution of JV firm shall be at the sole discretion of the CIDCO. The constitution of the JV form shall not be allowed to be modified after submission of the bid by the JV firm except when modification become inevitable due to succession laws etc. and in any case the minimum eligibility criteria should not get vitiated. In any case, the Lead Member should continue to be the Lead Member of the JV firm. Failure to observe this requirement would render the offer invalid."

86. From a bare perusal of clause 3(o) it is obvious that any approval pertaining to change of constitution cannot be allowed after submission of the bid. Only exception is when the modification becomes inevitable due to succession laws etc. and in any case the minimum eligibility criteria should not get vitiated. Thus, the scope of the said Clause 3(o) is restricted to allowing changes only in specific scenario of re-submission of bid. The petitioner was declared as L-1 bidder. The tenders are at an advanced stage of bid evaluation/allotment i.e. post submission of the bid. The request made by the petitioner, therefore, does not fall within the ambit of the first criterion i.e. modification of the petitioner JV before the submission of the bid.

87. Further, the modification sought to be made is not because it has become inevitable due to succession laws. The petitioner wants a complete new entity to replace EVRASCON as a partner of the JV. We are therefore in agreement with the submission of learned Senior Advocate for CIDCO that if the parameters of Clause 3(o) of the bid document/NIB are disregarded on the basis of the petitioner's plea, the same would give rise to a situation wherein the CIDCO shall then have to re-evaluate the bid of the petitioner in its entirety. The CIDCO would then be required to scrutinize the JV partner of the petitioner proposed to be substituted and all ancillary requirements surrounding the same. There is definitely substance in the submission of learned

Senior Advocate for CIDCO that the petitioner's prayer for substitution is accepted, the same advantage would have to be given to all other bidders to maintain parity and CIDCO, being a State entity, will have to undertake an extensive exercise of assessing the eligibility of every bidder and co-relate the same with the requirements of the tender documents before any bid is confirmed. This would be also unfair to other bidders who may have chosen to avail the same route as the petitioner i.e. to reconstitute the JV after submissions of bid. The prayer made by the petitioner for substituting EVRASCON with another entity, therefore, deserves to be rejected.

88. We now briefly refer to the decisions relied upon by Shri Sundaram in support of his submissions. *Ashoka Smokeless Coal India (P) Ltd.* (supra) is a case where the validity and or legality of a scheme framed by Coal India Ltd. for sale of coal by electronic auction (E-auction) was in question. Their Lordships held in paragraph 163 that, "E-Auction is not a policy decision of the Central Government. Such a policy decision on the part of the executive of the Central Government must be strictly construed in terms of Article 77 the Constitution of India." We find that the decision in *Ashoka Smokeless Coal India (P) Ltd.* (supra) is distinguishable in facts, as the question of national security was not involved.

89. Again the decision relied upon in *Delhi International Airport*

Ltd. (supra) and in *Union of India & Ors. Vs. Agricas LLP & Ors.* (supra) is not in the context of national security. Hence, distinguishable on facts. Shri Sundaram then placed reliance on the decision in *Madhyamam Broadcasting Limited Vs. Union of India & Ors.* (supra) where the law regarding the scope of administrative action has been summarised. The Hon'ble Supreme Court observed that confidentiality and national security are legitimate goals recognised by the Constitution for the purpose of limiting procedural rights and that the burden is on the State to prove through cogent material that confidentiality and national security concerns to protect national interest, would be served by non-disclosure. It is held that the Court must determine if the purpose is legitimate in the light of constitutional values and dynamic socio-political context. The Hon'ble Supreme Court held that reports of Intelligence agency impact decision on life, liberty and profession and absolute immunity from disclosure would be antithetical to transparency and accountability. Document claimed to be related to state affairs must be disclosed, if on a preliminary inquiry court opines that it does not relate to affairs of state.

90. In the facts of the case, the Supreme Court was of the view that the denial of security clearance to operate a news channel is a restriction on the freedom of press, and such restriction is constitutionally permissible only on the grounds stipulated in Article

19(2) of the Constitution. Their Lordships have observed that the expression national security does not have a fixed meaning, but the Courts do not resort to a hands-off approach when it is claimed that national security implications are involved. It is imperative for the State to prove through the submission of cogent material that non-disclosure is in the interest of national security. It is the Court's duty to assess if there is sufficient material for forming such an opinion. A claim cannot be made out of thin air without material backing for such a conclusion. The Court must determine if the State makes the claim in a bona fide manner. The Court must assess the validity of the claim by determining (i) whether there is material to conclude that the non-disclosure of the information is in the interest of national security; and (ii) whether a reasonable prudent person would arrive at the same conclusion based on the material. The reasonable prudent person standard which is one of the lowest standards to test the reasonableness of an action is used to test national security claims by courts across jurisdictions because of their deferential perception towards such claims. This is because courts recognise that the Union of India is best placed to decide if the interest of national security would be served. The court allows due deference to the Union of India to form its opinion but reviews the opinion on limited grounds of whether there is nexus between the material and the conclusion. The Court cannot second-guess the judgment of the Union of India that the purpose identified would violate India's national security. It is the executive wing and not the judicial wing that has the knowledge of India's geopolitical relationships to assess if an action is in the interest of India's national security.

91. The stand of the Union of India for refusing the security clearance in the present case is considering Azerbaijan's stance on the Kashmir issue and its strategic alliance with Pakistan and Turkey and hence it may not be prudent from a security point of view to get this strategic project executed through a joint venture that has EVRASCON as a partner. We see no reason to interfere with the impugned decision. Consequently, we do not find any merit in the Writ Petition. The Writ Petition is dismissed.

92. So far as the Review Petition is concerned, since the issues are interrelated, the Review Petition was heard along with the present Writ Petition. We do not find any error apparent on the face of the record in the Order dated 6th May 2025 of this Court to warrant interference in the exercise of the review jurisdiction of this Court. While dealing with the present Writ Petition, we have already held that the Security Clearance Certificate is required of bid evaluation, not just technical and financial evaluation. The security clearance to EVRASCON has been refused by the Union of India. In view of the observations made in the Writ Petition, nothing further survives for consideration in the Review Petition on the aspect of security clearance. The Review Petition is rejected.

93. All Interim Applications are disposed of.

[SHARMILA U. DESHMUKH, J.] **[M.S. KARNIK, J.]**

94. After the judgment is pronounced, a request for stay of this order is made. In the facts and circumstances of the present case, we refuse to grant such a request. The request is rejected.

[SHARMILA U. DESHMUKH, J.] **[M.S. KARNIK, J.]**