



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH AT NAGPUR

WRIT PETITION NO. 7883 OF 2025

1. Aryavarta Mining
A Partnership Firm constituted
under the partnership Act, 1932,
2/1, Nandi Stree, Kolkata – 700019,
West Bengal, through its
Constituted Attorney
Mr. Debashis Sinha

2. BLA Projects Private Limited,
a registered company under
the Companies Act, 1956,
having registered office at Indicom
Viva, 53A, Leela Roy Sarani,
Kolkata 700019, through its
Constituted Attorney,
Mr. Debashis Sinha

3. BLA Infrastructure Private Limited,
a registered company under the
Companies Act, 1956, having
registered office at Indicon
Viva, 53A, Leena Roy Sarani,
Kolkata 700019, through its
Constituted Attorney,
Mr. Debashis Sinha.

.....PETITIONERS

..V E R S U S..

1. Western Coalfields Limited,
Coal Estate, Civil Lines, Nagpur 440 001,
through its the Chairman
cum Managing Director.

2. The Tender Committee,
Western Coalfields Limited,
Coal Estate, Civil Lines,
Nagpur 440 001, through
the General Manager (CMC),
Western Coalfields Limited,
Coal Estate, Civil Lines,

Belkhede, PS

Nagpur 440 001

3. Hanumant Construction Private Limited, a registered company under the Companies Act, 1956, Parwani Complex, Ground Floor, Opp. District Judge Bungalow, Civil Lines, Raipur, Chhattisgarh 492 001.

.....RESPONDENTS

Dr. Renuka S. Sirpurkar, Advocate for petitioners.
Mr. Nachiket Moharir, Advocate for respondent No.1.
Mr. Abhijit Pandey, Advocate for respondent No.2.
Mr. Shyam Dewani, Advocate for respondent No. 3.

CORAM:- ANIL S. KILOR, &
RAJNISH R. VYAS, JJ.

CLOSED ON : 24.12.2025
PRONOUNCED ON : 07.01.2026

JUDGMENT (PER : RAJNISH R. VYAS)

Heard learned respective counsels for the parties and perused record of the case.

2. Shorn of unnecessary details, challenge in this petition is to the action on the part of respondent Nos. 1 and 2 in rejecting the technical bid of the petitioner, for the following reasons:

“TC noted that as per Clause 3.1(c) of the NIT, only that experience can be considered which has been earned by the bidder in its capacity as a partner in the executing Partnership/JV, and only to the extent of its participation share. Since the bidder firm (ARYAVARTA MINING) did not exist as a partner at the time when the cited works were executed, the experience claimed by bidder Aryavarta Mining does not meet the requirement of work experience criteria as per Clause 3.1.(c) of ATC/NIT, therefore, cannot be considered for work experience eligibility

criteria as per NIT and is not eligible for opening of their price bid”.

3. Since, in the aforesaid reasons, the respondent authorities have relied upon clause 3.1.(c) of the notice inviting tender. It is necessary to reproduce it.

Work Experience : Bidder must have experience of works (includes completed/ongoing) of similar nature (Excavation & transportation of coal/soil/overburden/shale/Ore/minerals etc by mechanized means (as applicable) valuing 50% of the annualized estimated value of the work put to tender (for period of completion over 1 year)/50% of the estimated value of the work (for completion period up to one year) put to Tender in any year (consecutive 365 days) during last 7(seven) years ending last day of month previous to the one in which bid applications are invited.

“Annualized value” of the work shall be calculated as the “(Estimated value/period of completion in days)x365”.

The value of executed works shall be given a simple weightage to bring them at current price level by adding 7% for each completed year (total number of days/365) after the end date of experience till the last day of month previous to one in which e-Tender has been invite.

[In case of JV/Consortium, Work Experience shall be met collectively by all the members]

Thus, the question is whether the experience of the persons, who later on formed the partnership firm can be taken into consideration as an experience of partnership firm under the terms and conditions of the tender document.

4. Dr. Sirpurkar, learned counsel for petitioners submitted that the tender notice was published by respondent Nos. 1 and 2 on 8.8.2025, for the work of Handling, Transport and Other Mining Services. The period of contract was six years. The petitioner Nos. 2 and 3, in pursuance with the tender notice since intending to participate in the process, formed partnership firm i.e. petitioner No. 1. According to learned counsel for petitioners, the partnership firm satisfies the work experience criteria but surprisingly, though the clauses mentioned in the reasons for rejection of technical bid, were not enough to reject the technical bid of the petitioners, same has been done by the respondents.

5. Learned counsel submitted that the work experience of respondent Nos. 1 and 2 and consequently of the partnership firm should have been taken into consideration by the respondents and just because the partnership firm was formed subsequently, the technical bid should not have been rejected. Learned counsel for petitioners, further submitted that in fact, the condition 3.1.(c) clearly states that bidder

must have experience of work. She further submitted that if clause 2 (page 44), more particularly, clause 2.1 is perused, which speaks about eligible bidders, it would clearly reveal that the respondents have stated that the invitation for bid is open to all bidders including an individual, proprietorship firm, partnership firm, company registered. She further relied upon clause 2.2.(ii) and submitted that the qualifying criteria parameters i.e. experience, financial resources (of the relevant period) and the equipment – flit strength of individual vendor of the firm, consortium will be added together and total criteria should not be less than as spelt out. Taking her argument further she submits that the experience of respondent Nos. 2 and 3, being partners of respondent No. 1, ought to have been taken into consideration.

6. Per contra, learned counsel for respondent Nos. 1 and 2 submitted that the technical bid was rightly rejected since the partnership firm was formed, subsequently and the partnership firm of its own had no work experience. In short, it is the case of respondent Nos. 1 and 2 that experience of petitioner Nos. 2 and 3 cannot be counted as an experience of petitioner No. 1 which is partnership firm,

since the partnership firm was formed after floating of tender. He further submitted that after formation of petitioner No. 1 firm, it had obtained Permanent Account Number and also applied for obtaining Goods and Service Tax number for petitioner No.1 firm. The petitioner No. 1 had also obtained certificate under the relevant provisions of Micro, Small and Medium Enterprises (Development) Act, 2006. The respondent Nos. 1 and 2 contended that it was noticed that the petitioner No. 1 had applied as a partner having its legal status and was also qualified for the benefits as per Public Procurement Policy for MSME's, thereby exempting the petitioner No.1 from deposit of earnest money deposit.

7. However, it was noticed that work experience submitted by petitioner No.1 had not been obtained by petitioner No.1 bidder and had been gained before the petitioner No.1 had come into existence. He submitted that clause 3.1.(c)(viii) of the notice inviting tenders specifically requires that experience is to be earned by the bidder i.e. petitioner No. 1 as an individual or as a partner in joint venture consortium/partnership firm.

8. Thus, in brief, it is his contention that work experience of petitioner Nos. 2 and 3 cannot be counted as work experience of petitioner No.1. He further submitted that only in order to qualify the petitioner No.1 for earnest money deposit exemption and benefits (as per Public Procurement Policy for MSME's Order 2012, procurement from (Micro and Small Enterprise) shall be applicable for service tenders in accordance with the Notifications of Government of India and including its Amendments as notified by GOI), the petitioner No.1 had applied as a partnership firm. He contended that if petitioner No. 1 participated as a joint venture/consortium, the benefits (as per Public Procurement Policy for MSME Order 2012 could not have been made applicable to it. He therefore, submitted that the petition be dismissed.

9. Mr. Dewani, learned counsel for the respondent No. 3 has contended that the technical bid of the petitioner was rightly rejected since the petitioner No.1 partnership firm was formed by two joint companies i.e. respondent No. 2 and 3, who are not eligible as MSE units. He submitted that stand alone turnover of the petitioner No. 2 for financial year 2023-24 is Rs. 326.75 Crores and of petitioner No. 3

for financial year 2024-25 is Rs. 122.41 Crores and therefore, according to MSME Notification, the turnover is on higher side and therefore, the petitioners cannot be held to be eligible under the tender document. He further submits that various clauses of tender document, more particularly, 3.1.(d), (f) and (h) would reveal that different sets of documents were sought from joint venture/consortium as compared to partnership firm. According to him, neither the petitioner No. 2 nor 3 could have directly availed MSE benefits under the present tender due to the turnover limits and therefore, they had created the partnership firm. He states that the partnership firm was formed after the tender was floated only with a view to defeat clause 2.2(xvii) of the tender document. Thus, the petitioner wants to claim benefit under MSE policy which otherwise they were not entitled to. He further contended that for joint venture/consortium on the one hand and for partnership firm on the other totally different terms and conditions are mentioned in the tender document and therefore, the experience of petitioner Nos. 2 and 3 cannot be treated as experience of petitioner No.1. According to him, this court while exercising jurisdiction under Article 226 of Constitution of India cannot rewrite, dilute or re-interpret the terms

and conditions of the tender document. In short, it is his contention that what cannot be done directly cannot be done indirectly.

10. The rival contentions fall for consideration. Admittedly, petitioner Nos. 2 and 3 have formed the partnership firm after floating of tender. It is also not in dispute that the experience of petitioner No. 2 and 3 which would be experience of petitioner No. 1, which satisfies the criteria of work experience as mentioned in tender. The tender document produced on record clearly shows that under the head of eligible bidders, it is stated that the invitation for bid is open to all bidders including an individual, proprietorship firm, partnership firm.

11. We could not find any clause in a tender agreement which restricts formation of partnership firm after floating of tender. Further just because benefits regarding exemption of earnest money deposit are obtained under Public Procurement Polity for MSE's Order 2012, it cannot be said that the petitioner's technical bid cannot be accepted. It is not even the case that the petitioner No.1 was not entitled for the earnest money deposit exemption benefit under the said policy. Even otherwise, there is no production in tender document in claiming such

exemption.

12. Learned counsel for petitioners has relied upon the law laid down by the Hon'ble Apex Court in case of ***New Horizons Ltd v. Union of India***, reported in ***(1995)1 SCC 478***, in order to support her case and more particularly, following paragraphs:

“23. Even if it be assumed that the requirement regarding experience as set out in the advertisement dated 22-4-1993 inviting tenders is a condition about eligibility for consideration of the tender, though we find no basis for the same, the said requirement regarding experience cannot be construed to mean that the said experience should be of the tenderer in his name only. It is possible to visualise a situation where a person having past experience has entered into a partnership and the tender has been submitted in the name of the partnership firm which may not have any past experience in its own name. That does not mean that the earlier experience of one of the partners of the firm cannot be taken into consideration. Similarly, a company incorporated under the [Companies Act](#) having past experience may undergo reorganisation as a result of merger or amalgamation with another company which may have no such past experience and the tender is submitted in the name of the reorganised company. It could not be the purport of the requirement about experience that the experience of the company which has merged into the reorganised company cannot be taken into consideration because the tender has not been submitted in its name and has been submitted in the name of the reorganised company which does not have experience in its name. Conversely there may be a split in a company and persons looking after a particular field of the business of the company form a new company after leaving it. The new company, though having persons with experience in the

field, has no experience in its name while the original company having experience in its name lacks persons with experience. The requirement regarding experience does not mean that the offer of the original company must be considered because it has experience in its name though it does not have experienced persons with it and ignore the offer of the new company because it does not have experience in its name though it has persons having experience in the field. While considering the requirement regarding experience it has to be borne in mind that the said requirement is contained in a document inviting offers for a commercial transaction. The terms and conditions of such a document have to be construed from the standpoint of a prudent businessman. When a businessman enters into a contract whereunder some work is to be performed he seeks to assure himself about the credentials of the person who is to be entrusted with the performance of the work. Such credentials are to be examined from a commercial point of view which means that if the contract is to be entered with a company he will look into the background of the company and the persons who are in control of the same and their capacity to execute the work. He would go not by the name of the company but by the persons behind the company. While keeping in view the past experience he would also take note of the present state of affairs and the equipment and resources at the disposal of the company.

13. From the aforesaid observation of the Hon'ble Apex Court it would be crystal clear that experience of partners can be taken into consideration. Even clause 3.1.(c) which speaks about work experience states that "bidder" must have experience of work. Thus, holistic reading of clauses 2.1 and 2.1.(c) clearly reveal that the work experience of the partner can be taken into consideration as a work experience of

partnership firm, though constituted subsequently. The contention of learned counsel for respondent No. 3 that respondent No. 2 and 3, who are large corporate entities, are not eligible as MSE units, ignores the fact that they have formed the partnership firm ie respondent No.1. Nothing has been brought on record either by way of document or by way of arguments by the respondent that formation of partnership firm by respondent No. 2 is not permissible. The consequences which may flow from formation of partnership, which according to the petitioner, was not permissible, is without any substance. There is absolutely no quarrel that different terms and conditions of the tender document deals with joint venture/consortium on the one hand and partnership firm on other but perusal of clause 2.1(page 44) clearly shows that under the category of “eligible bidders”, even partnership firm is also included.

14. At this juncture, it is necessary to note that Hon’ble Apex Court in case of *Sagar Lookouts Vs. Maharashtra Housing Area Development Authority and Others*, reported in *2022 SCC OnLine Bombay 1483*, has observed as under:

“The argument of Dr. Milind Sathe and Mr. Ram Apte that considering the experience of the partner of Sagar Lookouts in Urja would tantamount to bid being submitted by consortium does not also commend to us. We have to bear in mind that tender condition required bidder to have an experience of erecting and handling 40 hoardings each of minimum 450 SqFt in corporation/authority area. From the stand point of MHADB, the credentials of the person who is interested with performance of work viz..... The background of the firm and the person who are in control of the same and their capacity to execute the work has to be seen. The tendering authority will not go by the name of the firm but the persons behind it. We have no hesitation in concluding that the committee completely erred in disregarding / ignoring the documents relating to experience of partner of the bidder firm.....”

15. In the aforesaid background, we come to conclusion that technical bid of the petitioners should not have been rejected by respondent Nos. 1 and 2, as the reasons advanced, were not in consonance with the terms and conditions of the tender document. The clauses were not correctly interpreted by the respondent Nos. 1 and 2. Just because petitioner No. 2 and 3 could not have directly availed MSE benefit due to turnover limits, it does not mean that same principle can be made applicable to respondent No.1 which is a partnership firm with the partners i.e. respondent Nos. 2 and 3.

16. In the aforesaid background, the condition of work experience will have to be interpreted. The law laid down by the judgments referred supra cannot thus be disputed.

In that view of the matter, we allow the petition. The impugned order dated 6.12.2025, passed by respondent No. 2 is hereby set aside. The petitioner No.1 will have an opportunity to participate in tender process. Consequent action be taken by respondents.

(RAJNISH R. VYAS, J.)

(ANIL S. KILOR, J.)