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

% Judgment reserved on: 16.12.2025
Judgment delivered on: 13.01.2026

W.P.(C) 8397/2025, CM APPL. 36537/2025 & CM APPL. 57457/2025

BOTHRA SHIPPING SERVICES PVT LTD .....Petitioner

versus

UNION OF INDIA & ORS. .....Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Vikas Singh, Senior Advocate withMr. Zoheb Hossain, Mr. Himanshu Sachdeva, Mr. Namanveer Singh, Mr. Sachin Sharma, Mr. Pranjal Tripathi, Mr. Satyam, Ms. Deepika Kalia, Ms.Vasudha Singh, Mr. Sudeep Chandraand Mr. Khushi, Advocates.

For the Respondents : Mr. Chetan Sharma, ASG with Mr. Rakesh Kumar, Senior Panel Counsel and Mr. Sunil Advocate for UOI.
Mr. Anurag Ahluwalia, Senior Advocate with Ms. Rukhmini Bobde, Mr. Amit Gupta, Mr. R.V. Prabhat, Mr. Shubham Sharma, Mr. Vikramaditya Singh, Mr. Yash Wardhan Sharma, Mr. Naman, Mr. Amlaan Kumar, Mr. Jatin Dhamija, Mr. Vinayak Aren, Mr. Rajesh Jain, Mr. Dhirender, Advocates and Mr. K.G.S. Moorty, Officer for R-2.
Ms. Shweta Bharti, Ms. Tejaswini Chandrasekhar and Ms. Sanskruti Jinwal, Advocates for R-3 (GeM).
Ms. Jasleen Kaur, Advocate for R-4.
Ms. Rashi Suri, Advocate for-5.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J.

1. Present writ petition has been filed under Article 226 of the Constitution of India, 1950, seeking quashing of the rejection order dated 30.05.2025 (hereafter referred to as *"impugned rejection order"*) passed by the respondent no.2/National Small Industries Corporation Limited (hereafter referred to as *"NSIC"*) in respect of the subject Request for Proposal bearing No.NSIC/PMV/2023-24/TAILOR/01(R4) dated 10.01.2025 (hereafter referred to as *"RFP"*). Petitioner further seeks a direction to NSIC to not proceed with the award of the tender/issuance of Letter of Intent in favour of respondent no.4/National Cooperative Consumers' Federation or respondent no.5/Central Government Employees Consumer Cooperative Society, and to consider and accept the Chartered Accountant (CA) certified GST invoices, purchase orders, delivery reports and other documents submitted by the petitioner through clarification dated 12.02.2025, and representation dated 22.04.2025 as relevant documents for work completion. The petitioner also seeks a direction to the NSIC to declare it technically qualified in the subject RFP.

2. Facts in brief are as under:

a) It is stated that the NSIC invited bid applications pursuant to an RFP for the supply of "Tool Kits" for tailors under the PM Vishwakarma Scheme. It is further stated that the selected bidder would be obliged to supply approximately 8,00,000 tool Kits to artisans across India.

The bidders were required to be enrolled on the Government e-Marketplace (GeM)/respondent no.3 portal for the purpose of submitting their bids. As per Clause 4.4 of the RFP, the bidder or the Original Equipment Manufacturer (hereafter referred to as *"OEM"*) was required to have sold atleast 2,40,000 units of sewing machines in any of the last financial years commencing FY 2020-21. In cases where bidders had conducted Private/Retail/Institutional Sales, they were required to furnish a CA Certificate to be eligible for the bid.

b) On 01.02.2025, the petitioner submitted its technical as well as financial bid in conformity with the terms and conditions of the RFP and bid document. It is stated that on 07.02.2025, NSIC sought clarifications from the petitioner in respect of its proposal, including issues relating to Manufacturer's Authorization Form (MAF), the Board Resolution, supporting documents evidencing experience criteria under Private/Institutional sales as per Annexure V, and a complete set of legible financial statements and audit reports of the relevant financial years. In response thereto, the petitioner, by its reply dated 12.02.2025, submitted the clarifications as sought. It is claimed that the said documents established that the petitioner had supplied products not only to M/s Usha International Private Limited but also to several other entities in the market. It is further emphasized that the authenticity of the said documents was corroborated by a certificate issued by a CA.

c) It is claimed that by the communication dated 22.04.2025, NSIC arbitrarily disqualified the petitioner's bid on the grounds of non-submission of copies of relevant letters of acceptance/award (hereafter referred to as *"LoA"*) or Work Completion Certificate (hereafter referred to as *"WCC"*) in respect of Private/Institutional sales. Petitioner claims to have re-submitted all the relevant documents on 23.04.2025 in response to the letter dated 24.04.2025. It is claimed that the NSIC arbitrarily rejected the petitioner's bid without assigning any specific reason on 24.04.2025 cryptically, *inter alia* stating that, "*representation submitted by the bidder including the new document submitted are not acceptable*".

d) Aggrieved by the rejection, the petitioner submitted a detailed representation dated 02.05.2025 to the NSIC. Since there was no response to the said representation, the petitioner preferred a writ petition bearing W.P.(C) No.6013/2025 before this Court. The petition was listed before this Court on 06.05.2025 which was disposed of directing NSIC to dispose of the representation dated 02.05.2025 by passing a reasoned and speaking order. It was also directed that till such representation is decided, the LoA/letter of intent shall not be issued.

e) It is claimed that the petitioner was informed to appear in person for a meeting with Bid Evaluation Committee of NSIC on 23.05.2025 wherein the petitioner gave its detailed reasons in support of its representations. Consequent upon such hearing *vide* the impugned rejection order dated 30.05.2025, NSIC rejected such representation.

f) It is this rejection order dated 30.05.2025 that the petitioner has challenged by way of the present writ petition.

CONTENTIONS OF THE PETITIONER

3. Opening for the petitioner Mr. Vikas Singh, learned Senior Counsel stated that the impugned rejection order dated 30.05.2025 by the NSIC of the representation submitted by the petitioner is not only arbitrary and prejudicial but also suffers from complete non-application of mind. In that regard, he submitted that the rejection of the petitioner's bid on the basis of non-submission of LoA/WCC and the alleged insufficiency of sales of unbranded or own-branded sewing machines is not only violative of but also contrary to the sub-clause (ii) of Clause 4.4 of the RFP. He emphasized that the petitioner had otherwise fulfilled all the requisite eligibility criteria as stipulated under the RFP.

4. While referring to Clause 4.4 of the RFP, particularly sub-clause (ii), learned senior counsel forcefully contended that the performance of a bidder was to be evaluated in the form of a CA certificate which was required to be submitted as per Annexure V of the RFP. Dilating further, he emphasized that the provisions of sub-clause (ii) required only a CA certificate, and the supporting documents were to be maintained by the bidder for verification at any stage for the tendering authority to satisfy itself. Other than that, according to him, the requirement of a bidder to furnish LoAs/WCC was not stipulated at all. He also emphasized that the provisions of sub-clause (ii) did not envisage uploading of either the LoAs or the WCC alongwith the bid document. In that view of the matter, learned senior counsel would stoutly submit that the rejection on the basis of non-submission of LoA/WCC is not only misplaced but also contrary to the

requirement of the RFP.

5. So far as the capability, and the compliance with Make in India requirement as stipulated in Clauses 4.5 and 4.6 respectively of the RFP are concerned, he would contend that the petitioner has placed on record all the invoices and financial transaction documents to substantiate that the petitioner has sold more than 4,00,000 units of sewing machines, which is clearly over and above 2,40,000 units of sewing machines to be sold in any one of the last five financial years for a bidder to be eligible and qualified as per Clause 4.4 of the RFP.

6. In order to emphasize that the petitioner was fully compliant with the requirements of Clause 4.4 of the RFP, learned senior counsel drew attention to the CA certificate dated 08.02.2025 at page 703 of the Paper Book to submit that the CA, after minutely examining all the tax invoices, and other financial statements of the petitioner, had issued such CA certificate. He emphasized that apart from the CA certificate, the petitioner had also submitted alongwith its bid all the relevant invoices and financial documents which form part of the record commencing from page no.705 to page no.2149. He submitted that once the petitioner had submitted the requisite CA certificate alongwith the supporting documents, there is no way the NSIC could declare the petitioner as non-compliant or ineligible on the basis of non-submission of only LoAs/WCC. He laid great emphasis on the aspect that in Institutional sales, the purchaser may or may not issue either a LoA or even a WCC. However, the lack of LoA or WCC is fulfilled purely by the tax invoices, the bank statements, and the CA certificate and as such the petitioner could not be stated to be non-complaint with the

eligibility conditions specified in Clause 4.4 of the RFP. According to him, the rejection on the basis of non-submission of LoA/WCC is not even a requirement in the subject RFP.

7. In order to emphasize the distinction between the sales made to institutions and the Central or State Governments or their PSUs, learned senior counsel drew attention to sub-clause (i) of Clause 4.4 of the RFP in comparison to the requirement under sub-clause (ii) of the said Clause. He submitted that in contradistinction to the specification in sub-clause (ii), sub-clause (i) clearly required the bidders to submit copies of relevant work orders/contract agreements/purchase orders/LoAs/LoIs alongwith WCC. Emphasizing on the distinction, learned senior counsel would contend that the RFP clearly stipulated two separate conditions for two different types of bidders, in that, one set of bidders who had made supplies to Central/State Governments/CPSUs/SPSUs, and the other set of bidders who had made Private/Retail/Institutional sales. According to him, sub-clause (ii) did envisage situation where bidders falling in that category may or may not possess LoAs/LoIs or even WCCs. If not read in the manner as emphasized, learned senior counsel would contend that there would be no distinction at all between sub-clause (i) and sub-clause (ii) of the Clause 4.4 of the RFP.

8. He further laid emphasis on the GST invoices, purchase orders and other relevant records to state that the OEM of the petitioner had not only supplied to M/s Usha International Private Limited (MAF provider of respondent no.4), but also to several other entities in the market. He would urge that in such compelling facts as obtained in the present matter, the NSIC did not have any basis for declaring the petitioner non-compliant.

CONTENTIONS OF THE RESPONDENT NO.2/NSIC:

9. Mr. Anurag Ahluwalia, learned senior counsel appearing for NSIC invited attention to the impugned rejection order dated 30.05.2025 and read the same in detail. While referring to the detailed manner in which the representation of the petitioner was considered and rejected, he submitted that apparently there is no arbitrariness or capriciousness in the manner in which the competent authority dealt with the representation of the petitioner. By emphasizing the reasons rendered in para 10 onwards to para 23 of the impugned order, learned senior counsel would contend that every issue and ground raised in the representation was decided on merits, *qua* which the petitioner has been unable to urge any sustainable grounds. He emphasized that not only was the petitioner unable to produce any LoAs/WCCs alongwith the bid documents, but also failed to submit any such relevant and requisite document even alongwith the representation or with the present writ petition. He stoutly contended that the requirement of LoA/WCC was mandatory, and also an essential document to be submitted by a bidder alongwith its bid as per Clause 4.4 read with the instructions in Annexure V of the RFP. Apart from that, learned senior counsel also demonstrated from the impugned rejection order that the petitioner, even otherwise, was not eligible, since the essential condition of having manufactured or supplied 2,40,000 sewing machines in any of the past five financial years was also taken note of and its bid was rejected.

10. Contrary to the submission of the petitioner that sub-clause (ii) of Clause 4.4 did not specify LoA or WCC, and its uploading alongwith the bid as a mandatory criteria for eligibility, learned senior counsel contended

that the requirement specified in Notes 2 and 3 of Annexure V indicated otherwise. Inviting attention to Annexure V, he emphasized that Note 2 is specifically in respect of bidders who claim eligibility on the basis of Private/Institutional sales. He submitted that Note 2 clearly specified that copies of LoAs/WCCs must be uploaded alongwith the bid, and that the same shall be considered for evaluation. He further submitted that there is no ambiguity at all in the requirement from a bidder of the procedure specified in Note 2 of Annexure V.

11. Dilating further on the aforesaid contention, learned senior counsel drew attention to pages 156 and 703 of the paper book which is the certificate issued by the CA. In that context, he drew our attention to column 3 and column 4, which are "LoA/Work Order No. and Date" and "Work Experience Certificate Ref No. & issuing date". He strenuously argued that neither column 3 nor column 4, as referred to above, were filled in by the petitioner, barring some entries made in column no.3. Even those entries in column 3, according to learned senior counsel, were neither LoAs nor Work Orders, rather were tax invoices issued by the OEM i.e. Geminy Industrial Enterprises Private Limited to M/s Usha International Private Limited (MAF provider of respondent no.4). According to learned senior counsel, these documents would neither qualify as LoA or Work Orders, nor did the petitioner submit any WCC in relation to any of the supplies made and covered under the CA's certificate. He would forcefully contend that in the absence of such essential and crucial documents required in support of evaluating as to whether a bidder is or is not qualified, the rejection of the bid was the only possibility. In that view of the matter,

learned senior counsel submits that the writ petition be dismissed.

CONTENTIONS OF THE RESPONDENT No.1/UOI:

12. Mr. Chetan Sharma, learned ASG appeared on behalf of Union of India, and placed on record a compilation of judgments. The learned ASG relied on the judgment of this Court in ***Manjeet Plastic Industries & Anr. vs. Union of India & Anr.,*** W.P.(C) No.2010 of 2025 dated 06.05.2025, particularly paras 28 and 29, which are extracted hereunder:-

> *"28. The argument of Mr. Dayan Krishnan in respect of reference to the previous RFP regarding Malakaar and the submission that the petitioner on the previous occasion was granted an opportunity to give clarification, in contradistinction to the deprivation of such opportunity in the present RFP, appears to be very attractive, though on a deeper scrutiny are untenable. This is for the reason that Mr. Ahluwalia, learned senior counsel had categorically submitted that the OEM Certificate and other relatable documents furnished for previous RFP did not contain the signatures of the OEM on every page, prompting the Corporation to seek clarification being minor error/discrepancy. Whereas, the OEM Certificate furnished in the present RFP is stated to not meet the eligibility criteria at all and that the documents itself are unacceptable. A perusal of Clauses 7.3.4 and 7.3.5 of the Manual for Procurement of Goods 2017 appears to indicate that if there are any minor error/discrepancies or non-submission of copies of certain documents, the tender issuing authority may, if it so desires, seek clarification from the bidders who would have a right to furnish clarification or if need be, the requisite documents in order to satisfy the tender issuing authority. For clarification, Clauses 7.3.4 and 7.3.5 of the Manual for Procurement of Goods, 2017 read thus:*
>
> > *"7.3.4 Minor Infirmity/Irregularity/Non-conformity During the preliminary examination, some minor infirmity and/or irregularity and/or nonconformity may also be found in some tenders. Such minor issues could be a missing pages/attachment or illegibility in a submitted document; non-submission of requisite number of copies of a document. There have been also cases where the bidder submitted the amendment Bank Guarantee, but omitted to submit the main portion of Bid Document. The court ruled that this is a minor*

irregularity. Such minor issues may be waived provided they do not constitute any material deviation (please refer to Para 7.4.1 (iv)) and financial impact and, also, do not prejudice or affect the ranking order of the tenderers. Wherever necessary, observations on such 'minor' issues (as mentioned above) may be conveyed to the tenderer by registered letter/speed post, and so on, asking him to respond by a specified date also mentioning therein that, if the tenderer does not conform Procuring Entity's view or respond by that specified date, his tender will be liable to be rejected. Depending on the outcome, such tenders are to be ignored or considered further.

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

Nothing in either of the clauses of the Manual for Procurement of Goods, 2017 appear to indicate that a bidder whose document has been found to be lacking in merit/substance, can be permitted subsequently to, by *way of clarification, replace such document which was essential as per the eligibility criteria and not furnished initially in accordance with the requirements of the RFP. Essentially, such clauses clearly appear to come to the rescue of the genuine bidders who may have made inadvertent minor errors of the nature specified therein, to rectify or clarify only such minor discrepancies. Simultaneously, the said clauses would surely not aid a bidder whose document, furnished in respect of an essential eligibility criteria, itself is found to be lacking in substance. Applying this to the facts of the present case, it is observed that the CA Certificate dated 20.12.2024 furnished by the petitioner along with its bid, under the Retail Sales head did not fulfil the criteria specified in sub-clause (b) of Clause 4.4 predicated whereon, the petitioner was declared technically disqualified. Subsequently, post such disqualification, by way of a representation dated27.01.2025, the petitioner enclosed therewith a fresh CA Certificate showing sales under the Private/Institutional Sales head, attempting to shift the category itself under which it applied. These are two different certificates indicating two separate categories, which cannot be said to be a minor mistake or a discrepancy which could be subsequently rectified or clarified. No doubt, had the representation been submitted at the preliminary inquiry stage, possibly, the petitioner's submission would have some force in it. That having not been done in time, the said submission relying upon Clauses 7.3.4 and 7.3.5 of the Manual for Procurement of Goods, 2017 is unmerited.*

29. Apart from the above, we have also perused the CA Certificate dated20.12.2024 furnished by the petitioner alongwith its bid indicating Retail Sales for the FY 2024-25. It clearly indicates sale only to one entity comprising 27,500 units of the offered product. The interpretation of the Corporation that the Retail Sale would take within its ambit sale transactions to multiple customer/consumers or even multiple entities not restricted only to a single entity, appeals to us in view of the requirement specified under the Retail Sales head. The Retail Sales as mentioned in part (iii) of sub-clause (b) of Clause 4.4 of the RFP regarding experience and past performance required the bidders to provide a CA Certificate as per Annexure V(B) duly filled with details of Bill/Voucher No. and date, quantity, unit, amount etc. This, when compared with the requirements of documents in support of Private/Institutional Sales, clearly shows the distinction. In part (ii) of sub-clause (b) of Clause 4.4 of the RFP regarding Private/Institutional Sales, what is required is a CA Certificate as per Annexure V(B) duly filled with details of work orders/contract *agreements/purchase orders/LOAs/LOIs along with certificate for successful completion/execution. If one were to compare part (ii) with part (iii), it would bring to fore that Retail Sales would take within its ambit transactions/sales to multiple customers or even multiple entities unlike Private/Institutional Sales which could or may be only to a single entity and yet would fulfil the eligibility criteria. The reason is not far to see. In a Private/Institutional Sale, the ultimate object appears to be twofold, one for internal or home consumption or bulk sale to individual consumer(s) or organization(s) and two, for further retail sale. Whereas, the Retail Sale could be to either multiple customers or to multiple entities. This appears to be the most plausible reason to draw distinction between Private/Institutional Sale and Retail Sale. Otherwise, there would be no distinction and it would be otiose to have two separate and distinct heads for the same experience and past performance. The Black's Law Dictionary defines "Retail" as under:-*

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

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

> *"2.Definitions*
>
> *(i) "retail sale", in relation to a commodity, means the sale, distribution or delivery of such commodity through retail sales shops agencies or other instrumentalities for consumption by an individual or group of individuals or any other consumer."*

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

13. Learned ASG would contend that the non submission of the

mandatory eligibility documents would necessarily entail disqualification of the petitioner. Learned ASG contended that having regard to the ratio laid down by this Court in ***Manjeet Plastics*** *(supra),* the issues being similar, the dispute raised in the present petition is no more *res integra,* and in view thereof, the writ petition should be dismissed.

CONTENTIONS OF RESPONDENT NOs. 4 & 5

14. Ms. Jasleen Kaur and Ms. Rashi Suri, learned counsel appearing for respondent nos. 4 and 5 adopts the arguments addressed by Mr. Chetan Sharma, learned ASG, and Mr. Ahluwalia, learned senior counsel for NSIC.

REJOINDER ON BEHALF OF THE PETITIONER

15. Mr. Vikas Singh, learned senior counsel reiterated and reaffirmed the arguments already made. He stoutly emphasized that Note 6 of the Annexure V clearly provided that the bidder must ensure that the CA must match the details of bills, including the invoice value from the GST return, while issuing the above certificate. In that context, he would contend that the CA complied with the obligation cast upon him by Note 6 while issuing the CA certificate. He submitted that it needs no emphasis that a CA is bound by a statutory enactment to act in accordance with the provisions thereof, and discharging his duties in that capacity, the CA of the petitioner furnished a detailed certificate indicating the eligibility of the petitioner. He re-emphasized that the details of the entries made in the CA certificate were duly provided to the respondent, which failed to consider those documents in the correct perspective.

16. Mr. Singh also referred to the agreement executed between Geminy Industrial Enterprises Private Limited and M/s Usha International Private

Limited to submit that once there is a contract existing between two parties for supply of certain goods, the question of issuance of either LoA or Work Orders or, for that matter, a WCC does not arise. Therefore, in the present case, the petitioner could not have produced either the LoA or Work Order or the WCC. Other than that, the petitioner had filed voluminous documents to establish delivery of sewing machines, both branded and un-branded, to the extent of more than 4,00,000/- units. Learned senior counsel also drew our attention to the account statement of the Geminy Industrial Enterprises Private Limited as also the GST returns, as proof of not only the supply of the sewing machines but also the proof of receipt of payment on account of such supplies. According to him, the non-consideration of the totality of the documents placed on record alongwith the statutory CA certificate, has resulted in arbitrary, capricious and unconstitutional rejection of the representation and the bid of the petitioner. He submitted that even though respondent nos.5 and 6 are stated to have made certain supplies during the interregnum, keeping in view the overwhelming documents and proof of supplies made by the petitioner, the NSIC ought to be directed to consider the bid of the petitioner, and award the contract of supply of the subject goods.

ANALYSIS AND CONCLUSION

17. Having heard learned counsel for the parties, we are of the considered opinion that what engages our consideration is the interplay between the provisions of sub-clause (ii) of Clause 4.4 of the RFP and the provisions of Annexure V of the RFP. In order to appreciate such inter-connectivity and interplay, it would be apposite to reproduce hereunder

both the provisions:-

<u>Clause 4.4 (ii)</u>

*"**4.4 Experience and Past Performance:***

xx xx xx

<u>ii) Private/ Retail/ Institutional sales:</u> *Performance will be evaluated in the form of CA certificate only as per Annexure V. The required supporting documents shall be maintained by the bidder for verification at any stage.*

It must ensure that stock transferred will not be considered as quantity sold.

The Facilitator/MoMSME reserve the right to get the invoices verified given in the CA certificate from an independent CA firm. In case the certificate is found faulty, the Bidder/OEM will be black listed and the Performance Bank Guarantee will be forfeited."

<u>Annexure V</u>

<u>"ANNEXURE-V</u>

<u>Bidder's/OEM's Work Experience Certificate (For Central/State Government/CPSUs/SPSUs Supplies/Private/Retail/Institutional Sales)</u>

(On the Letter Head of Chartered Accountant)

M/s < Name of the Bidder/OEM>**____________________________**

Address: **____**

PAN No. **____**

GST No. **____**

We have verified all the Audited Financial Statements, Books of Accounts, Cost Records, Purchase Orders / Work Orders / Contract Agreements / LOAs / Bills of quantities, Bill wise details of payment received/ confirmation, retail sales invoices containing individual sale details pertaining to Toolkits/tools/ items of the retail customer, GST returns filed on the GST Portal and other relevant records of M/s. _____________(Name of the Bidder/OEM) and certify the following details for the Financial Year ______ as per RPF clause no. 4.4 of Instructions to Bidders.

For Central/State Government/CPSUs/SPSUs Supplies
(for sewing machine)

FY: __________

S.No.	Client Name with complete address, email ID & Contact No.	LOA / Work Order No. & Date	Total Contract Value (Rs.)	Items	Work Experience Certificate Ref. No. & Issuing Date	Quantity	Date of completion of delivery as per contract	Date of completion of delivery Actual	Remarks indicating reasons for late delivery, if any	Date of Receipt with Amount Received matching with Contract Value (Rs.)	Description of documents verified/ relied upon	Any complaints from Purchaser/ consignee for non-satisfactory Performance
1.												
						Total						
2.												
						Total						
TOTAL												

(A) Sub Total Quantity_________No.

<u>For Private/Institutional Sales</u>
(for sewing machine)
FY:_______________

S.No.	Client Name with complete address	LOA / Work Order No. & Date	Work Experience Certificate Ref. No. & Issuing Date	Quantity	Date of completion of delivery as per contract	Date of completion of delivery Actual	Remarks indicating reasons for late delivery, if any	Date of Receipt with Amount Received matching with Contract Value (Rs.)	Description of documents verified/ relied upon	Any complaints from Purchaser/ consignee for non-satisfactory Performance
1.										
				Total						
2.										
				Total						

(B) Sub Total Quantity________No.

<u>For Retail Sales</u>
(for sewing machine)
FY:_______________

S.No.	Bill / Voucher Date	Bill / Voucher No.	Quantity	Unit	Amount (Rs.)	Description of toolkits/tool/ item of toolkit	Details of MAF for each toolkits/tools/ item
1.							
2.							
3.							

(C) Sub Total Quantity_________No.

(A+B+C) Grand Total Quantity (Central/State Government/CPSUs/SPSUs Supplies +Private/ Institutional Sales + Retail Sales) _________No.

It is also certified that based on the information, explanations and documents given to us, the above-mentioned quantities of Toolkits/tools/

items sold are correct and in agreement with the Audited Financial Statements, Books of Accounts, Cost Records, Purchase Orders / Work Orders / Contract Agreements / LOAs / Bills of quantities, Bill wise details of payment received/ confirmation, retail sales invoices containing individual sale details pertaining to Toolkits/tools/ items of the retail customer, GST returns filed on the GST Portal and other relevant records w.r.t. Private/Retail/Institutional Sales of M/s. _________________ (Name of the Bidder/OEM) and can be considered for the Bid evaluation purpose.

Place:
Date:

Name of the Chartered Accountant Firm :
Signature & Seal of the Chartered Accountant :
Name of the Partner / Proprietor :
Designation :
Membership No. :
Firm Reg. No. :
UDIN :

____

____

Sign and Seal of Authorized Signatory of Bidder ***Sign and Seal of OEM (if applicable)***

Note:
1. For Central/State Government/CPSUs/SPSUs supply, copies of relevant work orders/ contract agreements/ purchase orders/LOAs/LOIs along with certificate for successful completion/execution must be uploaded along with the Bid and the same shall be considered for evaluation.
2. For Private/Institutional Sales, copies of LOAs/ Work Experience Certificates must be uploaded along with the Bid and the same shall be considered for evaluation.
3. All the records viz: Audited Financial Statements, Books of Accounts, Cost Records, Purchase Orders / Work Orders / Contract Agreements / LOAs / Bills of quantities, Bill wise details of payment received/ confirmation, retail sales invoices containing individual sale details pertaining to Toolkits/tools/ items of the retail customer, GST returns filed on the GST Portal and other relevant records must be kept by the bidder to substantiate/ verifying/ backing up /corroborating of afore-mentioned details and shall be made available to Facilitator/ M/o MSME as and when required.
4. The Facilitator/ M/o MSME reserves the right to get the invoices/ details mentioned in above CA Certificate verified from an independent

> ***CA firm or any other representative. In case the certificate is found faulty, the Bidder/OEM will be blacklisted and the Performance security will be forfeited.***
> ***5. It must be ensured that stock transfer will not be considered as Quantity sold.***
> ***6. Chartered Accountant (CA) must match the details of bills including the invoice value from the GST return while issuing the above certificate."***

18. We find that sub-clause (ii) of Clause 4.4 provides for the eligibility criteria to be fulfilled by the bidder in case the bidder relies upon documents pertaining to Private/Retail/Institutional sales. It states that the performance would be evaluated in the form of a CA certificate only as per Annexure V, and that the required supporting documents are to be maintained by the bidder for verification at any stage. The remaining provisions are not essential for consideration of this case. A plain reading of the said provision surely indicates that the performance of a particular bidder would be considered on the basis of the CA certificate to be furnished in terms of provisions of Annexure V of the RFP. It is clear that sub-clause (ii) of Clause 4.4 of the RFP is only a substantive provision without providing for the manner and procedure in which such a CA certificate, and other documents would be evaluated by the tendering authority. It is relevant to note that sub-clause (ii) employs the word "only" between the words "CA Certificate" and "as per Annexure V". In our considered opinion, the word "only" has great significance as to the manner and placement in the said provision. Infact, the word "only" qualifies the CA certificate which is to be evaluated as per Annexure V. Thus, the terms mentioned in Annexure V would become imperative to be complied with. *Ergo*, it is not the mere furnishing of CA certificate which would be the sole criteria for consideration of eligibility, but the manner in which

Annexure V proposes such CA certificate to be.

19. That apart, Annexure V on its own may not have been of any great significance but for the notes which are appended to it, in particular Note 2 which reads as under:-

> ***"2. For Private/Institutional Sales, copies of LOAs/ Work Experience Certificates must be uploaded along with the Bid and the same shall be considered for evaluation."***

20. Manifestly, Note 2 mandates that copies of LoAs/WCCs must be uploaded alongwith the bid, and that the same shall be considered for evaluation insofar as bidders seeking eligibility under Private/Institutional sales are concerned. It is also relevant to note that Note 3 directs that all records i.e. Audited Financial Statements, Books of Accounts, Cost Records, Purchase Orders / Work Orders / Contract Agreements / LoAs / Bills of quantities, Bill wise details of payment received/ confirmation, retail sales invoices containing individual sale details pertaining to Toolkits/tools/ items of the retail customer, GST returns filed on the GST Portal and other relevant records must be kept by the bidder to substantiate/ verifying/ backing up /corroborating of aforementioned details, and shall be made available to Facilitator/ Ministry of MSME as and when required.

21. In this context, Clause 4 also deserves mention. It provides that the facilitator/ Ministry of MSME reserves the right to get the invoices details mentioned in above CA certificate verified from an independent CA firm or any other representative, and in case such certificate is found faulty, the bidder/OEM may be blacklisted, and the performance security may be forfeited. Apparently, Note 3 and Note 4 are requirements which are mandated to be maintained by the bidder during the evaluation process with

severe penalties in the form blacklisting or forfeiture or the performance security contemplated in case of faulty CA certificate. It is Note 2 alone which is the procedure prescribed in Annexure V, which is unique and is not mentioned in the sub-clause (ii) of Clause 4.4, which appears to be only a substantive provision without prescribing the mandatory procedure to be followed by a bidder.

22. Looked at it from the aforesaid point of view, we are of the considered opinion that though Clause 4.4 and particularly sub-clause (ii) provide for furnishing of a CA certificate, but at the same time mandate that such CA certificate ought to be in terms of Annexure V. If that is the interplay and interconnection between Clause 4.4 (ii) and Annexure V, then the irresistible conclusion that Note 2 would be mandatory and binding on all the bidders who seek eligibility under Private/Institutional sales, has to be underscored. If that is so, and the requirement of Note 2 is held to be stringent, then the non-compliance of such requirement would, in our considered opinion, strike at the very eligibility criteria of any bidder.

23. If we are to apply the aforesaid analysis to the present facts, we cannot but conclude that the petitioner was unable to demonstrate its eligibility in terms of Clause 4.4 (ii) read with Annexure V of the RFP. Undeniably, the petitioner has not been able to upload the documents specified in Note 2 alongwith its bid, and therefore, the rejection of the petitioner's bid by the NSIC cannot be found fault with.

24. The argument that all other documents evidencing the supply of sewing machines through Institutional sales were indeed filed and would suffice the requirement stipulated in Clause 4.4 (ii) of the RFP does not

appeal to us in the backdrop of Note 2 of Annexure V of the RFP. This is for the reason that though sub-clause (ii) of Clause 4.4 of the RFP did not specifically mention the requirement of LoAs and WCCs or uploading of the same alongwith the bids, yet, the clause did mandate CA Certificate to be in terms of Annexure V, which in turn made the requirement as per note 2, mandatory. In that view of the matter, as things stand, in view of the provisions of Clause 4.4 (ii) read with Annexure V of the RFP, there is little that this Court can interfere with.

25. In view of the conclusion that we have arrived at above, the other strenuous arguments urged on behalf of the petitioners regarding CA certificate, the financial statement of accounts of Geminy Industries Private Limited, etc., as also the voluminous tax invoices depicting transactions would become wholly irrelevant and pale into insignificance, and since, we have restricted our consideration to the issue mentioned in para 17, the need to examine and consider the judgments relied upon by the parties, in our opinion, may not be required.

26. In that view of the matter, the present petition lacks in merit and is dismissed without any order as to costs. Pending applications also stand disposed of.

TUSHAR RAO GEDELA
(JUDGE)

DEVENDRA KUMAR UPADHYAYA
(CHIEF JUSTICE)

JANUARY 13, 2026
aj/yrj/rl