IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODGING) NO. 16159 OF 2026

1. Denish Jasubhai Sankhala Age: About 43 years, Occ: Business Proprietor, Fusion Digital Paiki 152-3, Plot No.-362, Panchratna Industrial Estate, At Changodar, Sanand, Ahmedabad, Gujarat, 382213	]]]]]]	
2. Gulshan Kumar Age : About 60 years, Occ: Business Proprietor, Shubham Engineering, 3rd Floor, 92/9, Block -2, Landmark Behind Sambi Furniture, WHS Kirti Nagar, New Delhi-110015.	]]]]]]	….Petitioners

Versus

1. Union of India Through the Secretary, Ministry of Petroleum and Natural Gas, Shastri Bhavan, Dr. Rajendra Prasad Road, New Delhi – 10001	]]]]]	
2. Indian Oil Corporation Limited (IOCL), Indian Oil Bhavan, G-9. Ali Yavar Jung Marg, Bandra (East), Mumbai – 400 051 Through its Chairman & Managing Director	]]]]]	
3. The Deputy General Manager (M&C), HO, Indian Oil Corporation Limited (Marketing Division), Head Office: Contract Cell Department, Small Wing, 6th Floor, Indian Oil Bhavan, G-9, Ali Yavar Jung Marg, Bandra (East,) Mumbai – 400051	]]]]]]]	….Respondents

ALONG WITH

INTERIM APPLICATION (LODGING) NO. 27395 OF 2026
IN
WRIT PETITION (LODGING) NO. 16159 OF 2026

CBM Industry Pvt. Ltd.	]	….Applicant

In the matter between

Denish Jasubhai Sankhala and Anr.	]	…..Petitioners
Versus		
Union of India,	]	
Through Ministry of Petroleum and	]	
Natural Gas and Ors.	]	….. Respondents

ALONG WITH

WRIT PETITION (LODGING) NO. 28202 OF 2026

Retail Impact Private Limited	]	
CIN :U7414ODL2012PTC236389	]	
Having its registered office at: A-1/119-120,	]	
Kavi Nagar Industrial Area, Sector-17,	]	
Glaziabad-201001, UP Through its	]	
Authorized Representative	]	….Petitioner
Versus		
1. Union of India	]	
Through the Secretary, Ministry of	]	
Petroleum and Natural Gas, Shastri	]	
Bhavan, Dr. Rajendra Prasad Road,	]	
New Delhi – 100 0001	]	
2. Indian Oil Corporation Limited (IOCL)	]	
Indian Oil Bhavan, G-9, Ali Yavar Jung Marg,	]	
Bandra (East), Mumbai – 400 051	]	
Through its Chairman & Managing Director	]	
3. The Deputy General Manager (M&C),	]	
HO, Indian Oil Corporation Limited	]	
(Marketing Division), Head Office:	]	
Contract Cell Department, Small Wing,	]	
6th Floor, Indian Oil Bhavan, G-9,	]	
Ali Yavar Jung Marg, Bandra (East,)	]	
Mumbai – 400051	]	….Respondents

Mr. Ravi Kadam, Senior Advocate with Mr. Jitendra Chaudhary, i/by Shavez Mukri, Advocates for the Petitioner in WP(L)/16159/2026.

Mr. Jitendra Chaudhary with Mr. Aaryan Aachra, i/by Ketan Dhavle, Advocates for the Petitioner in WP(L)/28202/2026.

Mr. D.N. Mishra, Advocate for Respondent No.1 in WP(L)/16159/2026.

Dr. Milind Sathe, Senior Advocate, with Mr. Sunil Gangan, Mr. Swapnil Shikhare, Mr. Manav Chetwani, Advocates, i/by RMG Law Associates for Respondent Nos.2 and 3 in WP(L)/16159/2026 and WP(L)/28202/2026.

Mr. Varun Singh with Mr. Prakhar Tandon, Ms. Parijat, Ms. Urvashi Chauhan and Mr. Rachit Rawat, Advocates for the Intervener.

CORAM : RAVINDRA V. GHUGE, ACJ. & GAUTAM A. ANKHAD, J.

RESERVED ON : 19th August, 2026.

PRONOUNCED ON: 21st August, 2026.

<u>JUDGMENT</u> : (Per Gautam A. Ankhad, J.)

1. Rule. Rule is made returnable forthwith. With the consent of the parties, the Petitions are heard finally.

2. The Petitioners, in both Writ Petitions, impugn Condition Nos. 22.3(vi), (ix), (x)(c) and (x)(e) of the Tender floated by the Respondents for the supply, fabrication, transportation, installation and commissioning of Retail Visual Identity ("**RVI**") elements, including canopies/building fascias, Indian Oil logo/Indian Oil lettering, signages, allied structures, at Indian Oil locations across 16 State Offices in India. Since the Petitioners have advanced similar arguments, they are being disposed of by this common judgment.

3. At the outset, Dr. Sathe, learned senior advocate appearing for Respondents Nos. 2 and 3, submits that Writ Petition (L) No. 16159 of 2026 filed by Denish Jasubhai Sankhala and Gulshan Kumar, is not maintainable. He submits that the Petitioners have neither participated in the Tender nor averred in the Petition that they satisfy all the eligibility criteria prescribed under the Tender. Hence, the Petition ought to be dismissed without adjudicating the same on its merits.

4. We do not intend to non-suit the Petitioners on this ground, as we find that the Petitioner in Writ Petition (L) No. 28202 of 2026, namely, Retail Impact Private Limited, has participated in the Tender and submitted its bid, which is presently under consideration by the Respondents. Hence, we are proceeding to consider the challenge to the impugned conditions on a demurrer that the Petitioners in Writ Petition (L) No. 16159 of 2026 possess the requisite qualifications to participate in the Tender.

Submissions of the Petitioners

5. Mr. Kadam, learned senior advocate appearing for the Petitioners in Writ Petition (L) No. 16159 of 2026, submits that Respondent No. 2 has floated the Tender for an estimated project value of Rs.11,98,82,61,101/-. On 26th March, 2026, the Petitioners submitted a representation to Respondent No. 2 objecting to the impugned clauses.

The objections were reiterated at the pre-bid meeting held on 8th April, 2026. On 15th April, 2026, Respondent No.2 responded by simply stating that the Tender conditions would prevail. The Petitioners thereafter submitted a further representation on 1st May, 2026 reiterating their objections to the impugned clauses of the Tender. The Petition was ultimately filed on 4th May, 2026, i.e. prior to the last date for submission of bids, which was 6th May, 2026. Mr. Kadam submits this was done as the Tender contains a specific stipulation that a bidder, having submitted its bid, cannot thereafter challenge the Tender conditions. He submits that the law laid down in ***National High Speed Rail Corporation Limited vs. Montecarlo Limited***[1], ***Watergrace Products Through its Proprietor Chetan Prtihviraj Bora vs. State of Maharashtra Through the Secretary Urban Development Department***[2], and ***Geocon Consultancy Pune vs. State of Maharashtra***[3] permits a challenge to the Tender conditions by a prospective bidder before participating in the Tender. Hence, the present petition is maintainable.

6. On merits, Mr. Kadam contends that the Tender prescribes a lower financial capacity as an eligibility criterion to ensure widest participation, which is:

1 (2022) 6 SCC 401
2 2024 SCC OnLine Bom 2511
3 2024 SCC OnLine Bom 2693

(i) having completed a single Similar Work order of a value of Rs.37.50 lakhs or above during any of the preceding seven years; and

(ii) the bidder must have an annual turnover of at least Rs.150 lakhs during any of the three preceding financial years, namely, 2022-23, 2023-24 and 2024-25.

The financial bid thereafter requires the bidder to quote within a price band of (-) 20% to (+) 5% of the respective line items of the BOQ. Where all bidders quote (-) 20%, which is likely to happen in this Tender, the ranking is determined on the basis of the higher annual turnover in any of the preceding three years as the sole criterion to determine the ascending order amongst bidders quoting the same L1 rate. The combination of price range of (-) 20% to (+5) % which restricts the pricing coupled with the bidder with the largest Turnover succeeding in the event of a tie-breaker operates to the disadvantage of bidders, particularly MSME bidders, who have comparatively lower overall turnover. Thus, this mechanism is arbitrary and the MSME bidders are discriminated on the basis of their overall annual turnover. The highest turnover criterion for a tie-breaker has no rational nexus to achieve the object of procuring RVI works from technically capable vendors.

7. It is further submitted that the total Turnover is to be as per the audited financial statements of the bidder. It includes the turnover of an entity from all sources including income derived from activities wholly unrelated to RVI works, such as trading in commodities, real estate or unrelated manufacturing activities. Turnover from other sources cannot be regarded as a measure of a bidder's capability to execute RVI works. This also creates an unfair advantage in favour of entities having a larger overall turnover, irrespective of their experience or capability in executing RVI works. A more rational and proportionate criterion would be Turnover derived from RVI-related works, coupled with the number of similar works successfully executed by the bidder. Reliance is placed on the judgment in ***Vinishma Technologies Pvt. Ltd. vs. State of Chhattisgarh***[4] to submit that conditions that restrict competition cannot be sustained and accordingly, Condition Nos. 22.3(vi), (ix), (x)(c) and (x)(e) of the Tender ought to be quashed and set aside.

8. Mr. Chaudhary, learned counsel appearing on behalf of the Petitioner in Writ Petition (L) No. 28202 of 2026, adopts the submissions advanced by Mr. Kadam. In addition, he submits that the Petitioners have also challenged Condition no. 21(1) of the Tender, which prescribes that the value of a single work order for Similar Work should be Rs. 37.50 lakhs or above. This condition is contrary to the Office

4 2025 SCC OnLine SC 2119

Memorandum dated 17th December, 2002 issued by the Central Vigilance Commission. Clause 5(ii) of the CVC Circular provides that, where a single completed work order is prescribed, *"one similar completed works costing not less than the amount equal to 80% of the estimated cost"* ought to be used as a guideline. Considering the value of works involved, the Tender prescribes a substantially lower threshold of Rs. 37.50 lakhs and violates the requirement of having 80% of the estimated cost as the base price. For instance, a single bidder may ultimately be awarded works aggregating to approximately Rs. 100 crores, while the experience requirement remains confined to a Similar Work of only Rs. 37.5 lakhs in the past seven years.

9. Mr. Chaudhary further submits that prescribing turnover as the sole tie-breaking criterion predetermines the outcome in the event of a tie, as the bidder having the highest turnover would prevail irrespective of its experience, capability or competitiveness in executing RVI works. He, therefore, submits that the Petition deserves to be allowed and the impugned conditions ought to be quashed and set aside.

<u>Submissions of the Respondents</u>

10. Dr. Sathe, learned senior advocate appearing for Respondent Nos. 2 and 3, reiterates that Writ Petition (L) No. 16159 of 2026 is not maintainable. Without prejudice to objection, on merits, he

submits that the Tender conditions are not tailor made to favour any particular bidder. The Petitioners have proceeded on an erroneous understanding of the Tender conditions and its scope of the work. Dr. Sathe relies upon the affidavits dated 11th August, 2026 and 18th August, 2026 filed by the Respondents in support of the Tender structure, evaluation and allocation mechanism. In their additional affidavit dated 18th August, 2026, Respondent Nos.2 and 3 have stated as follows:

> *"6. I say that as per clause 17 of the tender, the entire work of RVI has been divided into 16 state offices (SOs) across the country. The quantity of each SO comprising of state office is detailed in clause 17 of the tender. As per the said chart, there are total 4,730 number of RO's, which are divided into 16 States. Each State has a particular allocation of RO's. As per the tender, it is a consolidated tender invited for 16 number of State offices.*
>
> *7. I say that as per clause 22.3, the bids will be evaluated on techno commercial basis for each 16 SOs separately. The evaluation of the bid will be done in order to arrive at the lowest bidders to be listed in their ascending order i.e. L1, L2, L3 & L4 position for each State separately. As per clause 22.3 of the NIT, the techno commercial evaluation of the bidders in order to establish the L1 rates and merit list shall be conducted and in case there is a tie in establishing L1 rate as well as other than L1 rates, the turnover will be the criteria for establishing the merit list.*
>
> *8. The process of evaluation of bids is summarized in brief as under:*
>
> *The tender will be evaluated in a two-bid system (Technical + Price Bid) and on a percentage-rate basis.*
>
> *I) <u>Technical Evaluation</u>*
>
> *PQC*

II) <u>Opening of Price Bids</u>

Only bidders meeting all pre-qualification criteria and other conditions will have their price bids opened.

III) <u>Determination of L-1</u>

a) L-1 (lowest bidder) will be determined separately for each of the 16 State Offices.

b) A separate merit list (L-1, L-2, L-3 etc.) will be prepared for every SO based on ascending order of quoted rates.

IV) <u>Empanelment Process</u>

a) The finalized L-1 rate (with or without negotiation) for a State Office will be offered to all technically qualified bidders for that SO.

b) Bidders who agree to match the finalized L-1 rate will be empanelled, subject to:

i) Their position in the merit list.

ii) The number of contractors required for that SO.

V) <u>Tie-Breaking Rules</u>

A. <u>Tie at L-1 with Rate = (-)20%</u>

a) No discount bidding or negotiation.

b) Bidder having the highest annual turnover (among the last three years submitted) gets higher rank.

B. <u>Tie at L-1 with any other Rate</u>

a) All tied L-1 bidders will submit a further discount bid in sealed envelopes.

b) Revised bids will be opened on a specified date.

c) If tie still persists:

i) Higher turnover bidder gets preference.

ii) If turnover is also identical: The bidder who submitted the bid earlier on the portal (date and time) gets preference.

C. Tie at L-2, L-3 etc.

Higher annual turnover will be used to determine ranking.

VI) Waitlist Provision

a) Bidders who accept the L-1 rate but cannot be empanelled due to lower ranking may be placed on a waitlist.

b) Waitlisted parties may be empanelled later if:

i) An empanelled contractor withdraws, or
ii) Empanelled contractor is removed due to poor performance, or
iii) Additional vendors are needed during the contract period.

VII) Work Allocation
Initially, a,, empanelled contractors for a State Office will be awarded equal quantum of work (as defined in Para 17, Column F of the NIT).

9. *As per the evaluation, the bidders will be empanelled as L1, L2, L3 & L4 etc. for respective SO as per the requirement mentioned in Column E of para 17 of the NIT. In all, for 16 State offices, 109 contracts will be executed with empanelled contractors. All empanelled contractors for respective SOs shall be initially awarded contract for equal quantum of works based on Column F of para 17 of the NIT. Each empanelled contractors will be awarded contract in the tentative value of rate contract as mentioned in Column F of para 17 of the NIT. In any event, it is reiterated one bidder will get only one contract in one SO.*

10. *Thus the tender notice is in reality for works of 16 SOs where 109 bidders are to be selected. Bidders who submit the bids of each SO are separately evaluated at SO level by the Company, the price bids of technically qualified bidder. In terms of procedure in Clause 22.3, the seniority of bidders as per L1, L2, L3 etc. is decided and in case tie, the turnover is considered. Thus, the empanelled bidders decided as per the procedure are given the work order depending upon the number of vendors required as enumerated in Clause 17. In each SO, any bidder will get only one order and the other orders are given to the other bidders as per the empanelment done.*

> 11. *The procedure of selection of RVI contractors as prescribed in the present tender is similar in methodology to the earlier RVI tender, i.e., HCC/ENGG-28/PT-61/2022-23 (validity: 22.12.2024) in which, 85 contracts were awarded. The said tender was successfully completed. Similarly, two (2) more tenders for monolith and unipole having similar methodology [i.e., Tender Numbers HCC/ENGG-34/PT-73/2022-23 (validity: 15.01.2025) and HCC/ENGG-37/PT-82/2022-23 (validity: 28.02.2025) respectively] have also been successfully completed."*

11. Based on the above affidavit, Dr. Sathe submits that the Tender is an all-India Tender for rate contract covering 16 State Offices, with separate evaluation and allocation of work for each State Office. The prescribed pre-qualification criteria require bidders to demonstrate requisite experience, financial capacity, manufacturing facilities and machinery. Only bidders satisfying these criteria are permitted to have their price bids considered. The turnover criterion challenged by the Petitioners is not an eligibility criterion by which a bidder is either admitted to or excluded from the Tender, but operates only at the stage of determining ranking between otherwise qualified bidders in specified cases of a price-tie. The apprehension that the turnover criterion would enable a bidder with a higher turnover to monopolise the Tender is unfounded, as there will be State Office-wise evaluation and empanelment, and a bidder cannot be awarded more than one work order in a State Office.

12. Dr. Sathe submits that the determination of eligibility and evaluation criteria falls within the commercial wisdom of the Tendering Authority. Having regard to the nature, magnitude and geographical spread of the work under this Tender, Respondent Nos.2 and 3 are entitled to adopt a methodology which they consider appropriate for their requirements. The mere fact that another or, according to the Petitioners, a more suitable criteria could have been adopted would not render the chosen criteria arbitrary or discriminatory. He relies upon the judgment of the Hon'ble Supreme Court in ***Agmatel India Private Limited vs. Resoursys Telecom and Others***[5] and Delhi High Court in ***Well Protect Manpower Services Pvt. Ltd. vs. Lady Hardinge Medical College & Ors***.[6] for the well settled principles on limited scope of judicial interference in tender matters.

13. Lastly, it is submitted that the same methodology has also been successfully adopted by Respondent No.2 in earlier RVI-related tenders. There is no reason for Respondent No.2 to now deviate from the same. Accordingly, no ground for interference under Article 226 is made out and that both the Petitions deserve to be dismissed with costs.

5 (2022) 5 SCC 362

6 W.P.(C) 11132/2022 & CM APPLs. 32673/2022, 32674/2022, 52385/2022, 52386/2022, 52387/2022, 52388/2022 decided on 13th April 2023.

Reasons and Conclusions

14. We have perused the record and have heard the learned counsel for the parties. In our view, there is no merit in these Petitions.

15. At the outset, it is necessary to appreciate the nature and structure of the Tender. Respondent No.2 has invited an all-India rate contract for the supply, fabrication, transportation, installation and commissioning of Retail Visual Identity ('RVI') elements at Indian Oil retail outlets across the country. The Tender covers 16 State Offices comprising of 28 States and 5 Union Territories, and contemplates 109 work orders for installation of 4,730 RVIs in 16 State Offices across India. While the estimated total value of the Tender is approximately Rs.1,198 crores, the tentative value of the rate contract to be allocated to each vendor for each State is specifically stated at Clause 17 of the Tender. The said clause also records the number of work orders to be issued in each State. The Tender is, therefore, not a single contract to be awarded to one successful bidder. It is a consolidated Tender under which separate State Office-wise merit lists are to be prepared and the work is thereafter distributed amongst empanelled bidders. For convenience, the relevant Clauses of the NIT are extracted and quoted:

#	PARTICULARS		DETAILS
1	*TENDER NO.*	:	*MnC/ENGG-23/PT-144/25-26 (E-Tender ID: 2026_MKTHO_189229_1*
2	*NAME OF WORK*	:	*Rate Contract for Supply, Fabrication, Transportation, Installation and Commissioning of RVI elements (i.e. Canopy/Building Fascia, Indian Oil Logo/ Indian Oil Lettering/Swagat Signage on Canopy/building fascia, Directional/Facility Signages, Air Tower canopies etc.) at Indian Oil Locations under 16 nos. of State Offices.*
3	*LOCATION OF WORK*		*Indian Oil Retail Outlets across the country. (Tentative details are mentioned under Para 17 of NIT*
4	*ESTIMATED VALUE OF WORK*	:	*Rs. 11,98,82,61,101.00 (Rupees One Thousand One Hundred Ninety-Eight Crore Eighty-Two Lakhs Sixty-One Thousand One Hundred One Only). /- (Inclusive of GST considered @ 18%)*
5	*TYPE OF TENDER*	:	*Electronic Bid under Two Bid System* *Part-1 : Technical/Commercial Bid* *Part-2: Price Bid.*
6	*TENDER FEE*	:	*NIL, Bidders are required to download the tender documents free of cost from IOCL e-tender website (https://iocletenders.nic.in*
7	*EARNEST MONEY DEPOSIT*	:	*EMD shall be Rs. 75,000/- per State Office (SO) quoted…* *…...*

21 PRE-QUALIFYING CRITERIA:

I SIMILAR WORK CRITERIA:

Bidder shall have experience of having completed a Similar Work order of value Rs. 37.50 lakhs or above in any of the last 7 years upto to the last day of the month previous to the one in which tenders is being invited. (The completed value of above works shall be inclusive of taxes/GST.)

*"**Similar Work**" shall mean:*

The supply and installation works for Monolith/ Totem/Pylon/ RVI (Retail Visual Identity) / Fascia Works *for Building or canopies etc. / Building or Column cladding / outdoor signage works. All such works shall primarily involve use of Aluminum Composite Material / Panel (ACM/ACP)*

Note:

i) Cumulative value of call up orders against rate contracts ***shall not be considered*** *against monetary value for similar work. Only individual call up value shall be considered towards value of similar work.*

ii) In case bidder opts to quote for multiple State Offices, the requirement of similar work criteria shall remain the same and shall not be on cumulative basis. For e.g., even if a bidder opts to be qualified for 3 State Offices, then the similar work value required shall remain Rs. 37.5 lakhs or above.

…..

21(II) ANNUAL TURNOVER CRITERIA

Annual Turnover of the bidder during any of the last three preceding financial years i.e. 2022-23, 2023-24 & 2024-25 shall be at least Rs. 150 Lakhs for each State Office for which qualification is sought.

In case bidder opts to quote for multiple State Offices, the requirement of annual turnover criteria shall be on cumulative basis e.g., if a bidder opts to be qualified for 3 State Offices, then the minimum annual turnover requirement shall be 3 x 150 lakhs = Rs 450 lakhs and so on.

Bidder quoting for number of State Office(s)	Value of Turn Over for (In Lakhs)
1	150
2	300
3	450
4	600
5	750
6	900
7	1050

8	1200
9	1350
10	1500
11	1650
12	1800
13	1950
14	2100
15	2250
16	2400

21 (III) ***MANUFACTURING FACILITY:***

A. FACTORY PREMISES:

The bidder shall possess a Factory Premises (for works pertaining to RVI which includes Canopy/Building fascia, cladding, signages, spreaders etc.) of minimum covered area of factory premises as detailed in the table appended below. In case bidder is opting to quote in more than one State Office, they shall meet the minimum covered area requirement for the respective slabs (based on the number of State Offices quoted) as specified in the table below:

#	Description	Unit	Minimum Requirement of factory premises for quoting for multiple State Offices (SO)				
			Slab-I (Up to 3 SOs)	Slab-II (4-6 SOs)	Slab-III (7-9 SOs)	Slab-IV (10-12 SOs)	Slab-V (>12 SOs)
A	MANUFACTURING FACILITY						
1	Minimum covered area of factory premises	SQ Ft	7,000	10,500	14,000	17,500	21,000

B. AVAILABILITY OF REQUIRED MACHINERY AT FACTORY:

Bidder shall have the following minimum machinery /equipment at their factory as detailed in the table appended below. In case bidder is opting to quote in more than one State Office, they shall meet the minimum machinery requirement for the respective slabs (based on *the number of State Offices quoted) as specified in the table below:*

#	Description of Equipment/Machinery	Unit	Minimum Requirement of factory premises for quoting for multiple State Offices (SO)				
			Slab-I (Up to 3 SOs)	Slab-II (4-6 SOs)	Slab-III (7-9 SOs)	Slab-IV (10-12 SOs)	Slab-V (>12 SOs)
B	MINIMUM MACHINERY / EQUIPMENT AT FACTORY						
1	CNC Router: CNC Router with minimum cutting range of 8’ x 4’ OR CNC Router with cutting range of 5’ x 10’	No.	1	2	2	3	3
2	Roller Bending Machine (4 M Wide)	No.	1	1	1	1	1
3	Vinyl Plotter (4 Feet)	No.	1	1	1	2	2
4	Welding Machines (MIG/TIG)	No.	2	2	2	3	3
5	Power Saw	No.	1	1	1	2	2
6	Drilling Machines	No.	1	1	1	2	2
7	Backlit Glass Table for Vinyl Pasting (5’ x 10’)	No.	1	1	1	2	2
8	Welding Machines (Arc)	No.	3	6	6	9	9

…..

22 TENDER EVALUATION CRITERIA INCLUDING TECHNICAL & COMMERCIAL TERMS:

22.2 PRICE BID

i) This tender is consolidated tender being invited for 16 nos. of State Offices, comprising of Price Bid (BoQ), which consists of 16-line items (one line item for each SO).

ii) Bidders shall quote their rate in percentage, in price band of (-) 20% to (+) 5% mandatorily,in the respective line items of BOQ for the SO(s) only for which they have opted and as declared in Annexure-2. Bidders are advised to quote in the price bid as following:

……

22.3 TECHNO-COMMERCIAL BID EVALUATION AND ALLOCATION OF CONTRACT:

The techno-commercial bid shall be scrutinized and evaluated based on the qualifying parameters mentioned in NIT and based on the uploaded documents in e-tender portal.

i) This tender is invited under two bid system and on percentage basis.

ii) Duly filled Annexure '2' submitted by bidder shall be firm and final & no change in the same shall be entertained.

iii) In case bidder quotes for the State Office(s) for which they have not given their selection of quote for the State Office(s) in the Annexure '2', such quote shall not be considered as a 'Valid Offer' & bidder's quote for that particular SO shall not be opened.

iv) The documents submitted by the bidder along with the Technical Bid shall be evaluated based on the pre-qualifying parameter as mentioned under Para 21 of NIT & other commercial parameters mentioned.

v) The price bid of only those bidders shall be opened who are qualifying as per the qualifying criteria mentioned under Prequalifying criteria.

vi) As a matter of routine, price-negotiation shall not be conducted with L-1 bidder based on price quoted in BoQ, and tiebreaker (if any), however, IOCL reserves the right to conduct negotiations with L1 bidder. Price negotiation shall not be conducted for those State Office(s), wherever L1 rate is found at (-) 20%.

vii) The established L-1 rate (With or without negotiations) shall be finalized for each 16 SOs separately. Thus, SO wise merit list of the bidders shall be prepared based on the ascending order of bidder's quoted rate *received against the respective SO, e.g. L2 shall be ranked higher than L3, L3 shall be ranked higher than L4 and so on.*

viii) *Such L-1 rates of individual state offices shall be offered to all the technically qualified parties for that State Office at one go, with a provision that the bidders accepting the L-1 rate shall be empaneled for that State Office, depending on the original position of the bidder in the list and the requirement of parties indicated for that State Office.*

ix) *In case of tie between two or more bidders at (-) 20% for any of the SO(s), then in such case neither discount bid shall be asked nor negotiation shall be conducted with the L1 bidders for these SO(s). The bidder with the higher annual turnover (worked out to two decimal points) in any of the last three years, as submitted against Turnover criteria of this tender, shall be given priority in order to arrive at the ascending order (I.e. L-1, L-2, L-3, L-4 position) among such bidders having same L1 Rate l.e. (-) 20%.*

x) *In case of tie between two or more bidders for L-1 position at rate other than (-) 20% for any of the SO(s), the following shall be done:*

a) *All the L-1 bidders shall be asked to submit discount bid in terms of percentage discount over previous quoted amount in a sealed envelope. Above exercise shall currently be an offline activity outside the e-portal.*

b) *The sealed envelopes shall be opened on the specified date. The bidders, while seeking revised bids, shall be advised to witness the opening of sealed envelopes.*

c) ***In case there is a tie again, the bidder with the highest turnover in any of the last three years as submitted against turnover criteria shall be considered as L1 bidder**.*

d) In an exceptional case where turnover is also same, the bid submitted earlier in the portal in terms of both date and time shall be considered for award of job.

e) In case of tie at other than L-1 position (i.e. at L-2, L-3, L-4, … etc.) for any of the SO, the bidder with the higher annual turnover (worked out to two decimal points) in any of the last three years, as submitted against Turnover criteria of this tender, shall be given priority in order to arrive at the ascending order (i.e. L-2, L-3, L-4 position) of the lowest quoted bidders for that SO.

f) IOCL desires to have a panel of waitlist parties for each State Office, apart from individual requirement of contractors to be empaneled for each SOs, as mentioned in NIT. For those parties who had accepted L1 rates but could not be empaneled due to their position being lower in the merit list, shall be given option for being on waitlist and for this a consent shall be obtained along with consent for matching of finalized L1 rates.

The next party on the wait list can be included in the empaneled list, in case an empaneled party backs out/is removed from the empanelment for lack of performance or there is a need for additional requirement of vendors at a later date during the validity of the rate contract.

g) All empaneled parties for respective SOs, shall be initially awarded contract for equal quantum of works (As mentioned under column 'F' under Para 17 of NIT above).

h) The final distribution of RVI quantities shall be done after considering the purchase preference for Local content as defined under Para 22.4 below. However, in dividing the quantity of various type of

> *RVI, SO-wise or geographical state-wise to bidder in Lot, if any fraction or imbalance arises in calculation or to take care of any practical difficulties, the decision of IOCL will be the final and binding on all bidders.*

16. A reading of the above conditions makes it amply clear that to enable a bidder to participate, a bidder is required, i*nter alia*, to have:

(i) Experience of having completed a single Similar Work of a value of Rs.37.50 lakhs or above during the preceding seven years;

(ii) An annual Turnover of at least Rs.1.50 crore for each State Office for which qualification is sought, during any one of the preceding three financial years. In case the bidder desires to participate in more than one State, then 1.50 crores is multiplied by the number of States;

(iii) Possessing the stipulated minimum size and area of the factory premises; and

(iv) The prescribed machinery and equipment at the factory to perform the Tender.

Considering that the total value of the Tender is Rs.1,198 crores, we do not find that these PQC are restrictive.

17. We find that the manufacturing capacity prescribed under Clause 21(III) is a critical aspect of the tender structure. The said condition requires that a bidder possess a manufacturing facility as well as specified machinery commensurate to its participation. It is graded both in terms of the size of the factory and the minimum equipment required progressively increases for successive slabs according to the number of State Offices which a bidder seeks qualification. This requirement is directly linked to the bidders' capacity to execute the RVI works. It is in this context that the annual turnover criterion must be viewed. It is only after the bidder satisfies all the above criteria, that its financial bid is considered by Respondent Nos. 2 and 3. The role subsequently assigned to the annual turnover in a tie-breaker is materially narrower.

18. The Petitioners are proceeding on the basis that all bidders are likely to quote at the lower end of the price band, i.e, (-) 20% and have assailed the use of annual Turnover as a tie-breaker. It is argued that a bidder having a larger overall turnover including from other sources would obtain an unfair advantage over an MSME bidder having a lower turnover, even though both bidders may possess identical technical qualifications and may have quoted the same rate. We find no merit in this submission as the Tender does not permit a bidder with a high

turnover to qualify despite lacking the requisite technical experience or infrastructure as stated above.

19. Even as regards the evaluation of financial bids, we find that the Tender provides for a well structured evaluation basis. The annual turnover of a bidder does not determine who enters the competition. It only operates to resolve a residual tie at the last stage between otherwise similarly placed bidders. Just to illustrate, in the North-Eastern States, the Tender contemplates appointment of 11 vendors for works valued at approximately Rs.1,217.78 lakhs. Thus, depending on the prices quoted, the bidders are ranked L1 to L11 and the work is distributed amongst them. A similar mechanism applies to the other States. Where two or more bidders quote the same rate at a level other than (-) 20%, a further discount bid/negotiation is invited from the tied bidders. In a case where the bidders have quoted (-) 20%, no discount bid or negotiation is contemplated. Only where the price-tie continues even thereafter, the bidder having the higher annual turnover in any of the preceding three years is given priority for determining the L1 bidder. The bidder having the next higher turnover is correspondingly ranked L2, and so on. A particular bidder is not awarded more than one work order in a State Office. Even assuming that the bidder with the highest turnover submits bids for all 16 State Offices, it can, at the highest, secure 16 work orders

out of the total 109 work orders contemplated under the Tender. The apprehension that the impugned condition is tailor-made for bidder having a high-turnover to monopolise the Tender is, therefore, unfounded.

20. We are unable to accept the submission that the use of turnover in such a limited circumstance is wholly unrelated to the contract for supply of RVIs. It is settled law, as held by the Hon’ble Supreme Court in ***Directorate of Education vs. Educomp Datamatis Ltd.***[7] that financial capacity is a legitimate consideration for an authority awarding a contract of this magnitude and geographical spread. The Tender is an all-India contract covering 16 State Offices and 109 work orders. A bidder's overall turnover is a reasonable indicator of its financial and operational capacity. The Tendering Authority is entitled to take the financial capacity into account, once the qualified bidders have quoted an identical price. Most significantly, the Respondents have clarified that a particular bidder cannot be awarded more than one work order in a State Office. A bidder cannot, merely by virtue of its higher turnover and stronger financial capacity, get all 109 work orders. In our view, the turnover criterion is not arbitrary and does not operate as a device for excluding smaller bidders from the Tender. The Turnover

7 (2004) 4 SCC 19

criterion provides an objective method where two or more otherwise qualified bidders have quoted/negotiated the same price. We do not find that the criterion adopted is discriminatory or irrational or that it bears no reasonable relationship with the object sought to be achieved.

21. We are also unable to accept the submission of Mr. Chaudhary that the tender condition in Clause 21(I) of a bidder having done Similar Works for Rs. 37.50 lakhs violates the CVC Circular dated 17th December, 2002. The submission proceeds on the assumption that the figure of 80% mentioned in the said Circular constitutes a mandatory eligibility requirement. That is not so. Clause 5 begins with the words *"The following points must be kept in view while fixing the eligibility criteria..."*. Clause 5 or 5(ii) of the CVC Circular does not prescribe any formula or state that every Tendering Authority must, irrespective of the nature of the procurement, adopt 80% of the estimated cost as the minimum value of the single similar work. The CVC Circular appears to be illustrative in nature.

22. In the present case, the all-India Tender of Rs.1,198 crores prescribing value of Rs. 37.50 lakhs for similar works permits the widest possible participation. The value of work may fluctuate depending on the quotes in the price band of (-)20% and (+)5%. Hence, the 80% reference

in the CVC Circular cannot be applied mechanically by comparing it with the aggregate value of all works which may potentially be awarded under the Tender. We, therefore, find no inconsistency between the impugned tender conditions and the CVC Office Memorandum dated 17th December 2002. The additional challenge contended by Mr. Chaudhary is accordingly rejected.

23. The scope of judicial review in tender matters is extremely limited. The Court cannot undertake a microscopic examination of the commercial wisdom underlying every component of the tender. In the present case, the impugned criterion has a reasonable connection with the financial capacity of bidders and is employed only as a last-resort mechanism for resolving a tie. The Writ Court cannot rewrite the terms of the tender even if some other terms may appear preferable. It is settled law that the conditions of invitation to Tender falls exclusively within the domain of the Tendering Authority. Interference is warranted only where the decision is mala fide, discriminatory, manifestly arbitrary, irrational, or such that no reasonable authority acting in accordance with law could have arrived at it. We find none of it in the present case. Dr. Sathe's reliance on ***Agmatel (supra)*** is well placed, wherein the Hon'ble Supreme Court has held as follows:

"25. This Court referred to various decisions on the subject and stated the legal principles as follows : (Galaxy Transport Agencies case [Galaxy Transport Agencies v. New J.K. Roadways, Fleet Owners & Transport Contractors, (2021) 16 SCC 808 : 2020 SCC OnLine SC 1035] , SCC paras 14-20)

> *"14.* ***In a series of judgments, this Court has held that the authority that authors the tender document is the best person to understand and appreciate its requirements, and thus, its interpretation should not be second-guessed by a court in judicial review proceedings****.* ***In Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd. [Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd., (2016) 16 SCC 818] , this Court held : (SCC p. 825, para 15)***
>
> > ***'15. We may add that the owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. The constitutional courts must defer to this understanding and appreciation of the tender documents, unless there is mala fide or perversity in the understanding or appreciation or in the application of the terms of the tender conditions.*** *It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional courts but that by itself is not a reason for interfering with the interpretation given.'*
>
> *15. In the judgment in Bharat Coking Coal Ltd. v. AMR Dev Prabha [Bharat Coking Coal Ltd. v. AMR Dev Prabha, (2020) 16 SCC 759] , under the heading "Deference to authority's interpretation", this Court stated : (SCC p. 776, paras 50-52)*
>
> > *'50. Lastly, we deem it necessary to deal with another fundamental problem. It is obvious that Respondent 1 seeks to only enforce terms of NIT. Inherent in such exercise is interpretation of contractual terms. However, it must be noted that judicial interpretation of contracts in the sphere of commerce*

stands on a distinct footing than while interpreting statutes.

51. In the present facts, it is clear that BCCL and C1-India have laid recourse to clauses of NIT, whether it be to justify condonation of delay of Respondent 6 in submitting performance bank guarantees or their decision to resume auction on grounds of technical failure. BCCL having authored these documents, is better placed to appreciate their requirements and interpret them. [Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd., (2016) 16 SCC 818]

52. The High Court ought to have deferred to this understanding, unless it was patently perverse or mala fide. Given how BCCL's interpretation of these clauses was plausible and not absurd, solely differences in opinion of contractual interpretation ought not to have been grounds for the High Court to come to a finding that the appellant committed illegality.'

16. Further, in the recent judgment in Silppi Constructions Contractors v. Union of India [Silppi Constructions Contractors v. Union of India, (2020) 16 SCC 489] , this Court held as follows : (SCC pp. 501-02, para 20)

'20. The essence of the law laid down in the judgments referred to above is the exercise of restraint and caution; the need for overwhelming public interest to justify judicial intervention in matters of contract involving the state instrumentalities; the courts should give way to the opinion of the experts unless the decision is totally arbitrary or unreasonable; the court does not sit like a court of appeal over the appropriate authority; the court must realise that the authority floating the tender is the best judge of its requirements and, therefore, the court's interference

should be minimal. The authority which floats the contract or tender, and has authored the tender documents is the best judge as to how the documents have to be interpreted. If two interpretations are possible then the interpretation of the author must be accepted. The courts will only interfere to prevent arbitrariness, irrationality, bias, mala fides or perversity. With this approach in mind we shall deal with the present case.'

17. *In accordance with these judgments and noting that the interpretation of the tendering authority in this case cannot be said to be a perverse one, the Division Bench ought not to have interfered with it by giving its own interpretation and not giving proper credence to the word "both" appearing in Condition No. 31 of the NIT For this reason, the Division Bench's conclusion [New JK Roadways v. State (UT of J&K), 2020 SCC OnLine J&K 733] that JK Roadways was wrongly declared to be ineligible, is set aside.*

18. *Insofar as Condition No. 27 of the NIT prescribing work experience of at least 5 years of not less than the value of Rs 2 crores is concerned, suffice it to say that the expert body, being the Tender Opening Committee, consisting of four members, clearly found that this eligibility condition had been satisfied by the appellant before us.* ***Without therefore going into the assessment of the documents that have been supplied to this Court, it is well settled that unless arbitrariness or mala fide on the part of the tendering authority is alleged, the expert evaluation of a particular tender, particularly when it comes to technical evaluation, is not to be second-guessed by a writ court****. Thus, in Jagdish Mandal v. State of Orissa [Jagdish Mandal v. State of Orissa, (2007) 14 SCC 517] , this Court noted : (SCC pp. 531-32, para 22)*

‘22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made “lawfully” and not to check whether choice or decision is “sound”. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold. Therefore, a court before interfering in tender or contractual

matters in exercise of power of judicial review, should pose to itself the following questions:

(i) Whether the process adopted or decision made by the authority is mala fide or intended to favour someone;

OR

Whether the process adopted or decision made is so arbitrary and irrational that the court can say: "the decision is such that no responsible authority acting reasonably and in accordance with relevant law could have reached";

(ii) Whether public interest is affected.

If the answers are in the negative, there should be no interference under Article 226. Cases involving blacklisting or imposition of penal consequences on a tenderer/contractor or distribution of State largesse (allotment of sites/shops, grant of licences, dealerships and franchises) stand on a different footing as they may require a higher degree of fairness in action.'

19. Similarly, in Montecarlo Ltd. v. NTPC Ltd. [Montecarlo Ltd. v. NTPC Ltd., (2016) 15 SCC 272] , this Court stated as follows : (SCC p. 288, para 26)

'26. We respectfully concur with the aforesaid statement of law. We have reasons to do so. In the present scenario, tenders are floated and offers are invited for highly complex technical subjects. It requires understanding and appreciation of the nature of work and the purpose it is going to serve. It is common knowledge in the competitive

commercial field that technical bids pursuant to the notice inviting tenders are scrutinised by the technical experts and sometimes third-party assistance from those unconnected with the owner's organisation is taken. This ensures objectivity. Bidder's expertise and technical capability and capacity must be assessed by the experts. In the matters of financial assessment, consultants are appointed. It is because to check and ascertain that technical ability and the financial feasibility have sanguinity and are workable and realistic. There is a multi-prong complex approach; highly technical in nature. The tenders where public largesse is put to auction stand on a different compartment. Tender with which we are concerned, is not comparable to any scheme for allotment. This arena which we have referred requires technical expertise. Parameters applied are different. Its aim is to achieve high degree of perfection in execution and adherence to the time schedule. But, that does not mean, these tenders will escape scrutiny of judicial review. Exercise of power of judicial review would be called for if the approach is arbitrary or mala fide or procedure adopted is meant to favour one. The decision-making process should clearly show that the said maladies are kept at bay. ***But where a decision is taken that is manifestly in consonance with the language of the tender document or subserves the purpose for which the tender is floated, the Court should follow the principle of restraint.***

__Technical evaluation or comparison by the Court would be impermissible.__ The principle that is applied to scan and understand an ordinary instrument relatable to contract in other spheres has to be treated differently than interpreting and appreciating tender documents relating to technical works and projects requiring special skills. The owner should be allowed to carry out the purpose and there has to be allowance of free play in the joints.'

20. This being the case, we are unable to fathom how the Division Bench, on its own appraisal, arrived at the conclusion that the appellant held work experience of only 1 year, substituting the appraisal of the expert four-member Tender Opening Committee with its own."

26. The abovementioned statements of law make it amply clear that the author of the tender document is taken to be the best person to understand and appreciate its requirements; and if its interpretation is manifestly in consonance with the language of the tender document or subserving the purchase of the tender, the Court would prefer to keep restraint. Further to that, the technical evaluation or comparison by the Court is impermissible; and even if the interpretation given to the tender document by the person inviting offers is not as such acceptable to the constitutional court, that, by itself, would not be a reason for interfering with the interpretation given."

24. Similarly in ***Maa Binda Express Carrier v. North-East Frontier Railway***[8] and ***Balaji Ventures Pvt. Ltd. v. Maharashtra State Power Generation Company Ltd. & Anr.***[9], the Hon'ble Supreme Court

8 *(2014) 3 SCC 760*

9 *2022 SCC OnLine SC 1967*

has considered the rights of participating bidder and held that the bidder is entitled only to fair, equal and non-discriminatory treatment in the evaluation of their respective tenders. The authority is the best judge as to how the terms of the tender are to be interpreted.

25. We find that the Petitioners' reliance on the judgment of ***Vinishma Technologies Pvt. Ltd.*** (supra) is misplaced and distinguishable on facts. In that case, a tender was floated by the Department of School Education, Chattisgarh for supply of sports kits. The impugned condition was that bidders who possessed similar experience in other States were excluded from bidding in the tender. It is in that context that the Hon'ble Supreme Court held that such entry barriers restricting bidders from other States vis-a-vis bidders from State of Chattisgarh are arbitrary and violative of Articles 14 and 19(1)(g) of the Constitution of India. In the present case, the Tender is on an all-India basis. It does not impose any entry barrier. The Tender is geographically distributed across 16 State Offices and contemplates 109 separate work orders for 4,730 RVIs. The impugned turnover criterion operates only as a tie-breaking mechanism for ranking the bidders in limited circumstances as discussed above. There is nothing manifestly arbitrary or discriminatory in the impugned conditions in the present case.

26. Respondent Nos.2 and 3 have followed the same procedure in an earlier RVI Tender in which 85 contracts were awarded. Similarly, two other tenders have also been awarded using similar methodology. All these tenders have been successfully completed. Thus, Respondent No.2 is also justified in adopting the established methodology as it is the best judge of its commercial requirements.

27. For all the above reasons, **Writ Petition (L) No. 16159 of 2026 and Writ Petition (L) No. 28202 of 2026 are dismissed**. Interim Application (L) No. 27395 of 2026 also stands disposed off.

28. Rule is discharged. There shall be no order as to costs.

[GAUTAM A. ANKHAD, J.] **[ACTING CHIEF JUSTICE]**