
(2026) 02 BOM CK 1600

In the Bombay High Court

Case No : Writ Petition No.5367 Of 2025, Connected With Interim Application (Lodging) No.38376 Of 2025, Interim Application (Lodging) No.39353 Of 2025

Ecogreen Envirotech Solutions Ltd.

APPELLANT

Vs

Municipal Corporation of Greater Mumbai

RESPONDENT

Date of Decision : 13-02-2026

Acts Referred:

Constitution Of India, 1950 — Article 226

Citation : (2026) 02 BOM CK 1600

Hon'ble Judges : Shree Chandrashekhar, Cj;Gautam A. Ankhad, J

Bench : Division Bench

Advocate : Sharan Jagtiani, Farhan Khan, Kaushik Poddar, Pankaj Uttaradhi, Ravish Ajay Mishra, Nikhil Sakhardande, Pralhad Paranjpe, Oorja Dhond, Komal R. Punjabi, Vijay Gotarne, Lavina Kripalani, Girish Godbole, Siddhartha Puthoor, Janmesh Vora

Final Decision : Dismissed

Judgement

Gautam A. Ankhad, J

1. The petitioner challenges its disqualification by the respondent no.1 in the technical bid in respect of Tender at serial no.6 (2025_MCGM_1179484_1) (Group-6) for collection and transportation of municipal solid waste from wards of the Brihanmumbai Municipal Corporation to transfer stations and final disposal sites. The petitioner is the lead member in a Joint Venture comprising C.E. Infra (India) and Aakshya Infra Projects Private Limited, who are arraigned as respondent nos. 5 and 6 respectively in the present proceedings.

2. On 14th May 2025, the respondent no.3 (Deputy Chief Engineer (Solid Waste Management) Planning) invited e-tenders. By a corrigendum dated 25th June 2025, the eligibility condition relating to "Profitability" under section 2C and section 6F was modified, the relevant portions of which read as under:

Section 2 Clause "C" & Section 6 Clause "F"

"Profitability"

Modified as Profit after Tax as certified by 'Chartered Accountant' should be Positive for last five consecutive financial years (2019-20, 2020-21, 2021-22, 2022-23, 2023-24) of the Bidder and parent/subsidiary/SPV for which experience is being claimed.

Instead of Profit after Tax as certified by 'Chartered Accountant' should be Positive for "Any Three Years" out of the last five consecutive financial years of the Bidder and parent/subsidiary/SPV for which experience is being claimed. The profit shall not be negative for the last two consecutive financial years."

3. The petitioner submitted its bid along with a Financial Certificate dated 3rd July 2025. Upon scrutiny, the respondent no.3 noticed that while the Financial Certificate reflected a positive Profit after Tax of Rs.32.32 lakhs for Financial Year 2022-23, the balance sheet of the petitioner showed a loss of Rs.44.06 lakhs. A clarification was sought on 23rd September 2025. In response, on 24th September 2025, the petitioner's Chartered Accountant clarified that though the Profit & Loss Account reflected a loss, upon considering the next entry of Other Comprehensive Income ("OCI") as per Indian Accounting Standards ("Ind AS"), the total comprehensive income was Rs.32.32 lakhs (positive) and therefore the certificate reflected a positive profit after tax. On 17th November 2025, the petitioner's bid was rejected for inadequate financial capacity and it was informed that 10% of the earnest money deposit will stand forfeited as per the tender conditions. This action is the subject matter of challenge in this petition.

4. Mr. Sharan Jagtiani, the learned senior counsel appearing for the petitioner submits that the tender conditions inter alia requires the bidder to have sufficient financial capacity. The petitioner's company is profitable for all 5 years and the profit after tax for FY 2022-23 is also positive. The learned senior counsel submits that the petitioner is a subsidiary of a listed company and is required to follow the Ind AS under which certain re-measurement gains/losses on defined benefit obligations are reflected separately as OCI and not in the Profit & Loss Account. Under the Generally Accepted Accounting Principles ("GAAP"), the OCI forms part of the profit/loss computed. According to the learned senior counsel, if OCI is considered, then the petitioner's Total Comprehensive Income (post tax) is Rs.32.32 lakhs positive. He contends that the authorities ought to accept the Chartered Accountant's certificate, since the tender condition does not prescribe any specific accounting methodology. He submits that the aggregate profit after tax of the joint venture as a whole remains positive for each of the last five financial years and that the petitioner has strong sources of funds to qualify for the tender. The rejection of the petitioner's bid is arbitrary and without appreciating and/or understanding the accounting standards. He submits that as regards another bidder (ACE Enviro Solutions), a different yardstick has been applied which itself shows that there is no embargo in the tender document for

adopting a particular methodology for calculating the profitability of the bidder. Reliance is placed on the judgment of the Hon'ble Supreme Court in "Reliance Energy Limited v. Maharashtra State Road Development Corporation Limited" (2007) 8 SCC 1 in support of his submissions.

5. Mr. Nikhil Sakhardande, the learned senior counsel appearing for the respondent nos.1 to 3 relies upon the affidavit in reply dated 22nd December 2025 filed by the said respondents and submits that the authority is the author of the tender and in the best position to interpret the document. The petitioner had not sought any clarification in the pre-bid meeting and therefore cannot allege arbitrariness either in the decision or the decision making process of the respondents. The learned senior counsel submits that as stated in paragraph 17 of the affidavit, a uniform standard has been applied to all bidders for computing profit after tax, that is, Gross Income minus Expenses minus Tax. Secondly, he submits that a plain reading of the petitioner's Balance Sheet at page 323 of the paper-book shows that the petitioner's profit after tax for the FY 2022-23 is in the negative and in fact shows a loss of Rs.44.06 lakhs. He submits that OCI is fluctuating income and cannot be considered for the bidder for which experience is being claimed. Reliance is placed upon the judgment of this Court in "B.S.N. Joshi & Sons Ltd. v. State of Maharashtra & Ors." OOCJ Writ Petition (Lodging) No.29270 of 2025 – Order dated 18th September 2025 and "C4 Infrastructure Pvt. Ltd. v. Maharashtra State Road Transport Corporation, Nashik Division & Ors." Civil Writ Petition No.10052 of 2024 – Order dated 21st November 2025 for dismissal of the petition.

6. Mr. Girish Godbole, the learned senior counsel appearing for the respondent no. 7 supported the decision taken by the tendering authority and reiterated that no case is made out to grant any reliefs in this petition.

Analysis and Reasons

7. We have perused the records and heard the learned senior counsel appearing for the parties. In our view, there is no merit in this petition.

8. The controversy is narrow. The corrigendum requires a positive profit after tax for five consecutive financial years. The tender condition does not use the expression "Total Comprehensive Income" nor does it refer to OCI. In this case, the petitioner is the lead member of the consortium and is claiming experience for computation of its bid. For the sake of convenience, a scanned copy of the relevant portion of the balance sheet annexed by the petitioner at page 323 of the paper-book is extracted below –

9. The petitioner does not dispute that in the balance sheet for FY 2022-23, there is an entry reflecting net loss of Rs.44.06 lakhs when profit/loss is computed after taxes. In our view, the petitioner shall be bound by the entries in its balance sheet and cannot change the documents or interpret them in a different way. The respondent-authority is not supposed to be an expert in accounting and it cannot read the document in a different manner ignoring the

express words therein. This Court cannot issue a writ to direct the authority to deviate from the stipulated tender conditions. The terms of the tender cannot be disregarded as superfluous and the sanctity of the tendering process should not be diluted. According to the petitioner, it is a subsidiary of a listed company and thus is required to follow Ind AS. When the profit after tax is computed as per the Ind AS, the OCI is kept as a separate item whereas, if calculated under GAAP, it would be included in the profit after tax of the petitioner. We are unable to accept this argument for the simple reason that in matters of tender, the authority is entitled to prescribe the standards by which eligibility is to be judged. The respondents have stated on affidavit that a uniform formula was applied to all bidders. On that basis, the petitioner did not satisfy the eligibility criteria. In our view, if a uniform standard is applied, it cannot be termed as irrational, arbitrary or discriminatory. The argument that no specific accounting methodology is prescribed in the tender condition does not imply that the authority is bound to accept the methodology suggested by a bidder. The explanation of the Chartered Accountant is essentially an invitation to the tendering authority to adopt a different accounting approach than what is apparent from the balance sheet.

10. The powers of judicial review of the High Court in tender/ contract matters is limited. The author of the tender is the best person to understand and appreciate its requirements and interpret its terms as is held by the Hon'ble Supreme Court in "Silppi Constructions Contractors v. Union of India" (2020) 16 SCC 489 and "Agmatel India (P) Ltd. v. Resoursys Telecom" (2022) 5 SCC 362. Likewise in "Prakash Asphaltings & Toll Highways (India) Ltd. v. Mandeepa Enterprises" 2025 SCC Online 1959, the Hon'ble Supreme Court held that the Constitutional Courts must defer to the understanding and appreciation of the tender document by the tendering authority unless malafides or perversity is shown. It cannot be the ground for exercising jurisdiction under Article 226 of the Constitution of India that there could have been better tender conditions or that the existing conditions could have been framed in a better or particular manner. In tender matters, the Court is required to consider whether the decision making process is fair and transparent and that all participants are treated alike and the conditions have been uniformly applied to all bidders. As held by the Hon'ble Supreme Court in "Tata Cellular v. Union of India" 1994 SCC (6) 651, the terms and conditions of the tender are not open to judicial scrutiny, because more often than not, such decisions are made qualitatively by experts. Thus we do not find any reason to interfere with the decision of respondent nos. 1 to 3 to reject the bid of the petitioner-company.

11. The judgment in "Reliance Energy" does not assist the petitioner. That judgment was largely concerned with the authority's power to frame tender conditions and indicate norms and benchmark with clarity to ensure level playing field and legal certainty. However, in the present matter, there is no challenge to the tender conditions. The eligibility criteria for positive profit after tax for five consecutive financial years was expressly stipulated and has been uniformly

applied by the respondent nos.1 to 3. Such an approach cannot be faulted with.

12. Writ Petition No.5367 of 2025 is dismissed without costs. Interim Application (Lodging) Nos.38376 of 2025 and 39353 of 2025 do not survive and are disposed of accordingly.