
(2018) 10 RAJ CK 0058
In the Rajasthan High Court
Case No : Civil Writs No. 8466 of 2018

Giepl-Hsepl Jv @APPELLANT@Hash Additional Chief Engineer

Date of Decision : 26-10-2018

Acts Referred:

Rajasthan Transparency in Public Procurement Rules, 2013 — Rule 63(1)

Citation : (2018) 10 RAJ CK 0058

Hon'ble Judges : Ashok Kumar Gaur, J

Bench : Single Bench

Advocate : Bharat Vyas, Mahima Kirori, J.M.Saxena, S.S.Hora

Final Decision : Dismissed

Judgement

'''

1. The instant petition has been filed by the GIEPL-HSEPL (JV) challenging the order dated 05.01.2018 wherein its technical bid has been treated as,,,

non-responsive on account of not furnishing bank guarantee in the name of joint venture. The procuring entity found that the amount of bid security by,,,

way of bank guarantee was only in the name of lead partner.,,,

2. The petitioner has also challenged the order dated 29.01.2018 passed by the first appellate authority dismissing the first appeal filed by the petitioner,,,

against rejection of their bid and further the petitioner is aggrieved by the order dated 13.04.2018 passed by the second appellate authority dismissing,,,

the second appeal of the petitioner.,,,

3. The petitioner has sought a declaration against the respondents to declare the petitioner as responsive bidder in technical bid and further prayer has,,,

been made to accept the financial bid of the petitioner and to consider them for award of contract in pursuance of e-notice inviting bid No.07/2017-18,,,

dated 10.10.2017 for construction of Isarda Dam, across Banas river for drinking

water, near village Banetha, District Tonk (Rajasthan).",,,

4. The brief facts of the case are that the Government of Rajasthan, Water Resource Department, issued E-Notice Inviting Bid (NIB) dated",,,

10.10.2017 for planning, investigation, design, drawing and construction of Isarda Dam, across Banas river for drinking water, near village Banetha,",,

District Tonk (Rajasthan) on Engineering Procurement Construction Basis (Single Responsibility Turn Key Project) including its operation and,,,

maintenance for five years (hereinafter shall be referred to as â??the NIBâ??),,,,

5. The petitioner has pleaded in the writ petition that it was an intended Joint Venture in between M/s.Ghanaram Infra Engineers Pvt. Ltd. and,,,

M/s.Hoisto Structures & Equipment Pvt. Ltd., both duly registered under provisions of the Companies Act. It is pleaded in the petition that both the",,,

Companies were in agreement to subsequently form a legally constituted Joint Venture and M/s.Ghanaram Infra Engineers Pvt. Ltd. was designated,,,

as lead partner. Shri Bishan Singh, one of the Directors in M/s.Ghanaram Infra Engineers Pvt. Ltd. was given the power of attorney by both the",,,

entities intending to form JV. The petitioner has placed on record, a xerox copy of the agreement intending to form Joint Venture dated 30.11.2017, as",,,

Annexure-1.,,,

6. The petitioner has pleaded that the procuring entity-Government of Rajasthan issued E-Notice Inviting Bid No.07/2017-18 dated 10.10.2017 from,,,

interested bidders for planning, investigation, design, drawing and construction of Isarda Dam, across Banas river for drinking water, near village",,,

Banetha, District Tonk (Rajasthan) on Engineering Procurement Construction Basis (Single Responsibility Turn Key Project) including its operation",,,

and maintenance for five years. It is pleaded by the petitioner that later on Corrigendum No.1 of NIT No.07/2017-18 was issued on 06.11.2017 and,,,

certain amendments were made in the bid document and date of opening of bid was changed from 17.11.2017 to 07.12.2017 and further the bid,,,

security amount was also revised/amended, as per the revised estimated cost of the project.",,,

7. The petitioner has pleaded that as per the amended stipulations in NIT dated 06.11.2017, the estimated cost was revised to Rs.653.60 Crores and",,,

the bidder being registered as eligible contractor with Water Resources Department, was supposed to pay a sum of Rs.3.268 Crores as bid security by",,,

furnishing Bank Guarantee.,,,

8. The petitioner has pleaded that it purchased the bid document and submitted its tender on-line on 06.12.2017 and further submitted the bid security,,,

money in office of the respondent No.1, amounting to Rs.3.27 Crores through Bank Guarantee No.06/2017 dated 05.12.2017 issued by the Canara",,,

Bank, SME Branch, Kachari Chauraha, Jhansi in the name of beneficiary â?" The Executive Engineer, Isarda Project Division, Tonk, Rajasthan for",,,

procuring entity Additional Chief Engineer, Water Resources Zone, JLN Marg, Jaipur. A xerox copy of the Bank Guarantee dated 05.12.2017 has",,,

been filed as Annexure-6.,,,

9. The petitioner has pleaded in the petition that bid was submitted in two parts, the first part contained the information required by the Department for",,,

evaluation of eligibility for Technical Bid and the other part contained financial proposal to be opened after being found responsive in the Technical,,,

Bid. The tender document has been filed as Annexure-7 with the writ petition.,,,

10. The petitioner has pleaded that as per Section-1 of the document (Annexure-1) containing Instruction to Bidder, clause (1.4.1) pertains to the",,,

entity of the Bidder which may be a natural person, private entity, government owned entity or where permitted in the bid documents, any combination",,,

of them with a formal intent to enter into an agreement or under an existing agreement in the form of a Joint Venture, Consortium or Association." ,,,

11. The petitioner has pleaded that according to clause (3.10.5) the sealed bid should accompany bid security in the shape of Bank Guarantee or bid,,,

securing declaration. It is pleaded that as per clause (3.10.14) in case, where Joint Venture has not been legally constituted, the bid security may be",,,

submitted in the name of the lead partner named in the agreement entered into between Joint Venture partners to form a legally constituted Joint,,,

Venture after the issue of Letter of Acceptance/Letter of Intent to them.,,,

12. The petitioner has pleaded that as per clause (1.4.1) it was provided that in the event the bid of Joint Venture is accepted, they shall either form a",,,

registered Joint Venture or all the parties to the Joint Venture shall sign the agreement. The petitioner has pleaded that from the bare perusal of,,,

clauses pertaining to Joint Venture, it was clear that in cases where a lead partner is appointed with an agreement to form a legally constituted Joint",,,

Venture, bid security may be given in the name of lead partner." ,,,

13. The petitioner has pleaded that in the present case, the bid security in the shape of Bank Guarantee executed by the Canara Bank in favour of the",,,

Executive Engineer on behalf of the department, the Bank Gauranatee was submitted in a lawful manner making the petitioner eligible or technically",,,
qualified.,,,

14. The petitioner has pleaded in the petition that the Technical Bid was required to be opened on 07.12.2017, however, the Technical Bid was opened",,,

on 05.01.2018 by the Bid Evaluation Committee and the petitioner's bid was found non-responsive and such evaluation was done without providing",,,

any opportunity of hearing to the petitioner.,,,

15. The petitioner has pleaded in the petition that Technical Bid of following persons was found responsive:-",,,

(i) M/s.Om Metals Infra Projects Ltd., New Delhi.",,,

(ii) M/s.Simplex-Precision Isarda JV, Mumbai.",,,

(iii) M/s.Angelique International Ltd., New Delhi.",,,

(iv) M/s.Patel Engineering Ltd., Mumbai.",,,

16. The petitioner has further pleaded that M/s.Simplex and M/s.Patel Engineering, who have been found responsive by the Bid Evaluation",,,

Committee, ignored the case of the petitioner while it was identically situated with that of the above two entities. The petitioner has pleaded that",,,

M/s.Simplex Infrastructures Ltd. had entered into a Joint Venture with Precision Infra Tech Ltd. and xerox copy of their agreement dated 28.11.2017",,,

has been placed on record as Annexure-9. It is pleaded that on 02.12.2017, on the application of M/s.Simplex Infrastructures Ltd., the lead partner of",,,

M/s.Simplex Precision JV, SBI CAG, Calcutta issued Bank Guarantee in the name of the applicant M/s.Simplex Infrastructures Ltd.",,,

17. The petitioner has further pleaded that M/s.Patel Engineering Ltd. and M/s.S.S.Fabricatores & Manufacturers, Jogeshwari (West), Mumbai",,,

executed a Memorandum of Understanding (MoU) with intention to form a Joint Venture and executed power of attorney for lead member of the",,,

Joint Venture i.e. M/s.Patel Engineering and their MoU and power of attorney for lead member of the Joint Venture has been filed with the writ",,,

petition as Annexures-12 and",,,

13 respectively. It is pleaded that on 04.12.2017, Dena Bank, Mumbai issued

Bank Guarantee on behalf of M/s.Patel Engineering Ltd. and the said",,,

Bank Guarantyyee was accepted by the official respondents and there was no MoU for Joint Venture.,,,

18. The petitioner has pleaded that the official respondents acted in an arbitrary and discriminatory manner on one hand while considering the cases of,,,

the above mentioned two bidders and on the other hand they deprived the petitioner from participation in the tender process in arbitrary and unusual,,,

manner. The petitioner has pleaded that feeling aggrieved against the declaration of their bid as non-responsive and technically being disqualified, they",,,

preferred first appeal before the first appellate authority and the first appellate authority rejected their appeal vide order dated 29.01.2018 and further,,,

the second appeal provided under the Rajasthan Transparency in Public Procurement Act, 2012 has also been arbitrary rejected by the second",,,

appellate authority vide order dated 13.04.2018.,,,

19. The respondent-State has filed reply to the writ petition and supported the order dated 05.01.2018 passed by the authorities declaring the petitioner,,,

as technically disqualified. The official respondents have pleaded that the petitioner was declared non-responsive in view of the provisions of clause,,,

(3.10.14) of the bid document (Section-1 Instruction to Bidders). It has been pleaded that the petitioner did not fulfill the criteria as laid down, as the",,,

Bank Guarantee submitted by the petitioner was not a Joint Venture Bank Guarantee, though the bid document submitted was a Joint Venture",,,

document. It has been pleaded that the petitioner could not be permitted to draw their own interpretation and making the conditions and qualifications,,,

of bid document, as per their own choice and convenience." ,,,

20. The respondents have submitted in their reply that as far as M/s.Patel Engineering is concerned, they submitted as a single bidder and not as a",,,

Joint Venture bidder and the Bank Guarantee has been submitted solely by the applicant bidder and hence there was no similarity between the,,,

petitioner and M/s.Patel Engineering. The respondents have pleaded that the petitioner has tried to make a case of discrimination mala fide and its,,,

submissions are purely ill-founded.,,,

21. The respondents have further supported the order passed by the first appellate authority dated 29.01.2018 and the view taken by the first appellate,,,

authority that the petitioner should have submitted the bid security in the name

of the Joint Venture instead of lead partners, has been supported by the",,,
respondents. The respondents have further submitted that second appellate
authority while deciding the second appeal referred to clause (1.4.1) of the,,,
technical bid document and also clause (3.10.14),,,

22. The respondents have further submitted that the petitioner has tried to
justify in a wrong way that the Joint Venture agreement entered into,,,
between the two partners was not legally constituted JV and agreement was
enough to allow the petitioner to submit the bid security amount,,,
individually or by one of the partners. The respondents have submitted that the
Joint Venture agreement filed as Annexure-1 in the writ petition clearly,,,
reveals that the said agreement was complete and defined the rights and
liabilities of both the parties and as per the agreement, the Joint Venture",,,
partners were jointly required to enter into the agreement and jointly required to
submit the bid security, as per the requisite conditions of the bid",,,
document.,,,

23. The respondents have referred to several clauses where the Joint Venture
agreement was made and entered on 30.10.2017 and as such the Joint,,,
Venture agreement had become effective and operative for all practical purposes,
as was indicated in the agreement from 30.11.2017. The",,,
respondents have referred to Article-2 of the agreement where it refers to the
Joint Venture's name i.e. the Joint Venture shall do business in the,,,
name of GIEPL &" HSEPL (JV). The respondents have further referred to the
Article-3 which prescribes joint and several liabilities for execution of,,,
the projects. The Article-4 of the agreement refers to proportionate share
between the partners i.e. the lead partner is having 84% share of the,,,
contract value and the other partner is having 16% of the contract value. The
respondents have further pointed out that Article-5.1 of the agreement,,,
makes it very clear legal status of the Joint Venture, as there is a true disclosure
of the fact that "the parties shall participate as a JV in the",,,
submission of Bids. It is reiterated that once under the Article-5 of the
agreement, it was clear that the parties were to participate as Joint Venture",,,
in the submission of bid, the same cannot be read as per the choice and
convenience of the petitioner. It is submitted that the bid document submitted",,,
by the petitioner was jointly done by both the partners and they cannot be
allowed to raise issue that the Joint Venture was not legal or was,,,

unincorporated and thus, the lead partner submitted bid security amount." ,,,

24. The respondent No.4 has also filed reply to the writ petition. It has been submitted that the petitioner has suppressed the pre-bid meeting ,,,

clarification issued by the department in respect of clause (3.10.14) on a query as to whether bid security may be issued by one of the Joint Venture ,,,

partners and the response of the department was that the tender conditions will prevail. A copy of relevant part of pre-bid clarification has been filed ,,,

with the reply as Annexure R-4/1. It is submitted that the clarification given by the department showed that the important condition regarding bid ,,,

security has to be complied with as set out in tender conditions. ,,,

25. The respondent No.4 has pleaded that the petitioner has not filed correct bid security given by M/s.Simplex Precision Isarda JV as Annexures-10 ,,,

& 11 respectively with the petition and the same are not the bid security given by the said Joint Venture. The correct copy the bid security given by ,,,

M/s.Simplex Precision has been filed as Annexure R/-4/2 and it is submitted that the suggestion of the petitioner that bid security was given by ,,,

M/s.Simplex as lead partner alone, therefore, is false." ,,,

26. The respondent No.4 has pleaded that there were six bids which were opened on 05.01.2018 and four among the six companies, were qualified for" ,,,

the financial bid and two companies were disqualified including the petitioner in technical bid. It is reiterated that NIT had provided a format/proforma ,,,

for giving bid security consisting of two forms namely; Form of bid security and form of bid security declaration and both the forms contained a note ,,,

which reads as under:- ,,,

â??In case of joint ventures, the bid security must be in the name of all partners to the joint venture that submits the bid.â??" ,,,

27. It is pleaded that it is clear from bare reading that all the bidders were well aware with the terms and conditions concerning the bid security of ,,,

NIT. The respondent No.4 has submitted that correct format of Bank Guarantee is an essential term of the contract and if the Bank Guarantee was to ,,,

be executed by a Joint Venture, then the said Bank Guarantee of a partner or lead partner is not valid. It is reiterated that if the Bank Guarantee is not" ,,,

in the prescribed format/proforma, the bid is non-responsive and liable to the rejected. The respondent No.4 has submitted that the Joint Venture" ,,,

Agreement of the petitioner was legally binding and legally constituted Joint

Venture firm. The format of bid security, as per bid document clause",,,
(3.10.14) and as per the clarification in pre-bid meeting dated 25.10.2017, the Bank Guarantee was to be given in the name of Joint Venture. It is",,,
submitted that Bank Guarantee was not given in the prescribed format by the petitioner and the Bank Guarantee in the name of one of its partners",,,
M/s.Ghana Ram Infra Engineers Pvt. Ltd. was not on behalf of Joint Venture partner M/s.Hoisto Structure and Equipments Pvt. Ltd. named as",,,
GIEPL-HSEPL (Joint Venture).,,,

28. The respondent has further submitted that as per Rule 63(1) of the Rajasthan Transparency in Public Procurement Rules, 2013, the bid of the",,,
petitioner was non-responsive.,,,

29. Mr.Bharat Vyas, learned counsel for the petitioner has made the following submissions in support of the case of the petitioner:-",,,

(a) As per clause (1.4.1) of the tender document, providing for eligible bidders, the bid could be submitted by a natural person or by a Joint Venture",,,

consortium or association of persons and if two or more entities were to form Joint Venture, then there has to be a formal intent to enter into an",,,

agreement and in case LOI/LOA is issued, the successful bidder was required to form a registered Joint Venture. It is submitted that the agreement",,,

dated 30.11.2017 entered into by two entities is required to be construed to mean that it is a formal intent to enter into an agreement. The petitioner-,,,

Companies intended to form a Joint Venture and were not legally constituted Joint Venture, as per the tender condition No.1.4.1.",,,

(b) The procuring entity once provided that the Joint Venture which is not legally constituted at the time of bidding, the members of the proposed Joint",,,

Venture can enter into an agreement to form a legally constituted Joint Venture and also declare a partner as the lead partner in whose name the bid",,,

security may be submitted, the declaration of the petitioner as non-responsive by not treating them as technically qualified is in violation of clause",,,

(3.10.14) of the tender document.,,,

(c) The decision of the Bid Evaluation Committee is vitiated on the ground of discrimination as it has considered the other two bidders namely",,,

M/s.Simplex and M/s.Patel Engineering as technically responsive and on the other hand declared the petitioner as disqualified.,,,

(d) The bid of the petitioner did not suffer from material deviation, reservation,

omission and as such the bid should have been treated as responsive",,,,
and the same should be accepted.,,,,

(e) The orders passed by both the appellate authorities suffer from perversity. The first appellate authority committed jurisdictional error and acted,,,
with malice in law.,,,,

(f) There have been lapses of procedural fairness and the various pleas and judgments cited by the petitioner before both the appellate authorities have,,,
altogether been overlooked and ignored.,,,,

30. Mr.Bharat Vyas has placed reliance on the following judgments of the Apex Court in support of his submissions:-,,,

Â I. Transmission Corp. of Andra Pradesh Ltd. & Ors. Vs. GMR Vemagiri Power Generation Ltd. & Ors. reported in 2018 (3) SCC 716.,,,,

II. Sasan Power Ltd. Vs. North American Coal Corp. India Pvt. Ltd. reported in (2016) 10 SCC 813.,,,,

III. M/s.Poddar Steel Corporation Vs. M/s.Ganesh Engineering Works & Ors. reported in (1991) 3 SCC 273.,,,,

IV. Rashmi Metaliks Ltd. & Anr. Vs. Kolkata Metropolitan Development Authority & Ors. reported in (2013) 10 SCC 95.,,,,

V. Central Coalfields Ltd. & Ors. Vs. SLL-SML (Joint Venture Consortium) & Ors. reported in (2016) 8 SCC 622.,,,,

VI. Mumbai International Airport Pvt. Ltd. Vs. Regency Convention Centre & Hotels Pvt. Ltd. & Ors. reported in (2010) 7 SCC 417.,,,,

VII. Afcons Infrastructure Ltd. Vs. Nagpur Metro Rail Corporation Ltd. & Anr. reported in (2016) 16 SCC 818.,,,,

VIII. Faqir Chand Gulati Vs. Uppal Agencies Pvt. Ltd. & Anr. reported in (2008) 10 SCC 345.,,,,

IX. Jagdish Chander Vs. Ramesh Chander & Ors. reported in (2007) 5 SCC 719.,,,,

X. State of Mysore Vs. K.Manche Gowda reported in AIR 1964 SC 506.,,,,

XI. Kan Singh, Etc. Vs. State Transport Appellate Tribunal and Others, Etc. reported in 1987 SCC (Supl.) 671.",,,,

XII. Mahabir Auto Stores & Ors. Vs. Indian Oil Corporation & Ors. reported in (1990) 3 SCC 752.,,,,

XIII. Judgment of this Court delivered at Principal Seat at Jodhpur dated 07.03.2018 in M/s.Deepak & Company Infra Pvt. Ltd. Vs. The State of,,,

Rajasthan & Ors. [S.B.Civil Writ Petition No.2881/2018].,,,

31. Per contra, Mr.J.M.Saxena, learned Additional Advocate General has submitted that the petitioner has rightly been declared non-responsive.",,,

Mr.Saxena submitted that the petitioner had submitted the bid document as a Joint Venture and if the Bank Guarantee is given by one partner, the",,,

same is not legal as per the terms of the tender documents.,,,

32. Mr.Saxena submitted that clarification sought by the petitioner in pre-bid meeting was also very specific and the Committee informed that the,,,

tender conditions were to prevail. Mr.Saxena submitted that there has been no discrimination while considering the case of the petitioner qua the other,,,

bidders who applied as Joint Venture. Mr.Saxena further submitted that the bare reading of agreement between two Companies i.e. GIEPL-HSEPL,,,

clearly reflects that the Joint Venture Agreement was already executed and entered into on 30.11.2017 and the Joint Venture was to do business in,,,

the name of GIEPL-HSEPL (JV).,,,

33. Mr.Saxena submitted the bare reading of various Articles of the Joint Venture Agreement clearly reflects that the said Joint Venture was already,,,

formed and it is absolutely incorrect that later on, the Joint Venture was to be formed in respect of the project.",,,

1.4,Eligible Bidders,1.4.1,"A Bidder may be a natural

person, private Entity,

government-owned Entity

or, where permitted in the

intent to enter into an

agreement or under an

existing agreement in the

form of a Joint Venture

[JV], Consortium or

Association. In the case of

a Joint Venture,

Consortium or

Association:- all parties to

t h e Joint Venture,
Consortium or Association
shall sign the Bid and they
shall be jointly and
severally liable; and a Joint
Venture, Consortium or
Association shall nominate
a representative who shall
have the authority to
conduct all business for
and on behalf of any and
all the parties of the Joint
Venture, Consortium or
Association during the
Bidding Process. In the
event the Bid of Joint
Venture, Consortium or
Association is accepted,
either they shall form a
registered Joint Venture,
Consortium or Association
as company/firm or
otherwise all the parties to
Joint Venture, Consortium
or Association shall sign
the Agreement.

3.10,Bid Security,3.10.1,"Unless otherwise specified
in the BDS, the Bidder
shall furnish as part of its
Bid, a Bid Security for the

amount specified in the
BDS.

„3.10.2,"Bid Security shall be 2%
of the value of the Works
indicated in the NIB. For
bidders registered with the
Procuring Entity, the bid
security shall be 0.5% of
t h e value of works
indicated in the NIB. The
bid security shall be in
Indian Rupees, if not
otherwise specified in the
BDS.

„3.10.3,"The Bid Security may be
given in the form of a
bankerâ??s Cheque or
demand draft or bank
guarantee of a Scheduled
Bank in India in specified
format, in favour of the
Procuring Entity, or
deposited through
eGRAS/net banking, if
permitted.

„3.10.14,"The Bid Security of a Joint
Venture, Consortium or
Association must be in the
name of the Joint Venture,
Consortium or Association

that submits the Bid. If the Joint Venture, Consortium or Association has not been legally constituted at the time of Bidding, the members of the proposed consortium or JV shall enter in to an Agreement that they shall form a legally constituted JV after the issue of Letter of Acceptance/Letter of Intent to them and shall also declare a partner as the lead partner in whose name the Bid Security may be submitted.

3.11, Format and Signing of Bid, 3.11.1, "All pages of the Technical and Financial Bid shall be digitally signed by the Bidder or authorised signatory on behalf of the Bidder. The authorisation shall consist of a written confirmation as specified in the BDS and shall be attached to the Bid. In case of a Joint Venture, Consortium or Association, if the Joint Venture,

Consortium or Association
has not been legally
constituted at the time of
Bidding, all the members
of the proposed Joint
Venture, Consortium or
Association shall digitally
sign the Bid.

with the Contract till the actual completion of Contract including defect liability period and operation & maintenance as per bid conditions.,,,

ARTICLE 4: PROPORTIONATE SHARE:,,,

4.1 Each member of the Joint Venture agrees to place at the disposal of the Joint Venture, the benefit of all its experience, technical knowledge and",,,,

skill, and shall in all respects bear its share of responsibility and burden of completing the contract. The parties herein shall be responsible for physical",,,,

and financial distribution of work as under:-,,,

Lead Partner: Financial & Physical responsibility: 84% of the Contract Value.,,,,

Other Partner: Financial & Physical responsibility: 16% of the Contract Value.,,,,

ARTICLE 5: JOINT EFFORT AND MANAGEMENT:,,,

5.1 The Parties shall participate as a JV in the submission of bids and further negotiations with the WRD and shall co-operate and contribute their,,,

respective expertise and resources to secure and execute the Projects.,,,,

ARTICLE 7: Joint Venture Agreement,,,

7.1 This Joint Venture Agreement shall be terminated:,,,

a. If the Parties mutually confirm that the JV's bid proposal has not been finally accepted by the WRD and all rights and obligations of the Parties,,,

under or in connection with this Joint Venture Agreement have ceased, or",,,,

b. after successful completion of the project including commissioning and operation and defect liability period from the date of this Joint Venture,,,

Agreement unless extended for a further period on demand of WRD & mutual consent of the parties, or",,,,

7.2 The Joint Venture Agreement can be modified by mutual consent of the

parties to suit the efficient and expeditious execution of Projects including,,,
commissioning & operation of Plant or to make this agreement more
meaningfully to suit the requirement of WRD after the consent of the WRD.,,,

ARTICLE 11: address of consortium:,,,

Any and all correspondence from the Employee to the JV shall be addressed to M/
s.GIEPL-HSEPL (JV) Branch Office: 650, CIC Campus",,,

JhokanBagh Jhansi, at the address stated herein below. The address of the Joint
Venture office of the partner companies will be deemed to be the",,,

address for the purpose of communication. The notice, if any required to be
served on the party by the other party, will be deemed to be served. If the",,,

said notice/communication is delivered by Registered Post at the respective
address M/s.GIEPL-HSEPL (JV) Branch Office: 650, CIC Campus",,,

JhokanBagh Jhansi, (UP), PIN:284001",,,

ARTICLE 12: AUTHORISED REPRESENTATIVE,,,

The JV shall nominate a Representative who shall have the authority to conduct
all business for and on behalf of any and all the parties of the JV,,,

during the bidding process and, in the event the JV is awarded the Contract,
during contract execution.",,,

Authorized Representative of JV : Mr.Bishan Singh, Director, of M/s.Ghanaram
Infra Engineer Pvt Ltd.",,,

IN WITNESS WHEREOF the Parties hereto have caused this Agreement to be
executed by each of the duly authorized representatives as appearing,,,

below:,,,

Signed by Signed by For and on behalf of For and on behalf of M/s Ghanaram
Infra Engineers Pvt Ltd. M/s Hoisto Structures & Equipment Pvt Ltd,,,

Name: BISHAN SINGH,,,

Designation: Director,,,

in the presence of,,,

1.Mr. P K Pandey,,,

NAME: B N SHARMA Designation:Managing Director,,,

in the presence of,,,

1.Mr.T Ashok Kumar,,,

38. It would be appropriate to quote the relevant portion of the order dated

05.01.2018 whereby the bid of the petitioner has been held to be technically, non-responsive. The same reads as under:-

"The bid of the petitioner is found to be non-responsive, as it does not comply with the technical specifications of the project."

The bid of the petitioner is found to be non-responsive, as it does not comply with the technical specifications of the project."

The bid of the petitioner is found to be non-responsive, as it does not comply with the technical specifications of the project."

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The bid of the petitioner is found to be non-responsive, as it does not comply with the technical specifications of the project."

45. This court finds that Article-1 of the said Agreement provides in clause (1.1) that parties have agreed to form the Joint Venture with,

M/s.Ghanaram Infra Engineers Pvt. Ltd. as lead partner and M/s.Hoisto Structures & Equipment Pvt. Ltd. as other partner.

46. This court further finds that Article-2 of the Agreement provides that the Joint Venture shall do business in the name of HSEPL,

HSEPL(JV). This court further finds that Article-3 provides the joint and several liabilities and both the parties are jointly and severally liable for,

execution of the project and further under Article-4 of the Agreement proportionate share has been given to lead partner to the tune of 84% of the contract value and other partner has been given the share to the tune of 16% of the contract value.

47. This court further finds that Article-5.1 of the Agreement provides that parties shall participate as a Joint Venture in the submission of bids and further negotiations. Article-7 of the Agreement provides that Joint Venture Agreement shall be terminated if the parties mutually confirm that the Joint Venture's bid proposal has not been finally accepted by the Government and all the obligations of the parties under or in connection with the Joint Venture Agreement shall itself cease. This court finds that after quoting the various other agreements by way of inserting conditions, the parties have recorded that they have caused this Agreement to be executed by each of the duly authorized representatives.

48. A bare reading of Joint Venture Agreement leaves no room of doubt that the Joint Venture was already formed and as such the Joint Venture in the name of GIEPL-HSEPL(JV) submitted the bid document.

49. The submission of learned counsel for the petitioner Mr. Bharat Vyas that both the companies were to execute a separate Joint Venture Agreement and they were permitted to do so after award of contract and this clue is taken from the Clause

(B) of the Joint Venture Agreement which provides that parties have formed a Joint Venture and will form a Joint Venture to jointly execute the project, this court finds that the said argument is liable to be rejected in view of the clauses of agreement where both the companies entered into a Joint Venture Agreement for participating in the tender process in question and further they provided all the clauses regarding Joint Venture name, their liabilities, their shares, joint effort and management and the clauses relating to termination of Joint Venture Agreement.

50. This court finds that if the petitioner Joint Venture treated itself as eligible bidder, as they had already formed Joint Venture and accordingly they submitted the bid document by intending as a Joint Venture, the other conditions prescribed for the bid security by giving Bank Guarantee was accordingly required to be complied with. The bid security must be in the names of all partners to the Joint Venture who submit the bid.

51. This court finds that bid security was to be given by way of Bank Guarantee and had to be in the name of the Joint Venture, as per the",,,

requirement of clause (3.10.14) of the tender document. The only exception carved out was where the Joint Venture had not been legally constituted,,,

at the time of bidding and the proposed Joint Venture was to enter later on by way of agreement that they will form a legally constituted Joint Venture,,,

after the issue of Letter of Acceptance/Letter of Intent.,,,

52. This court finds that once the two Companies namely M/s.Ghanaram Infra Engineers Pvt. Ltd. and M/s.Hoisto Structures & Equipment Pvt. Ltd.,,,

had already formed a Joint Venture, the bid security was required to be given in the name of all the partners to the Joint Venture.",,,

53. The submission of learned counsel for the petitioner that the two intending partners/entities were free to participate and they were free to form a,,,

Joint Venture later on, this court finds that once the Joint Venture Agreement was there, the bid security by one of the partners and not in the name of",,,

Joint Venture has rightly been declared non-responsive by the respondent by not treating them as technically qualified.,,,

54. The submission of learned counsel for the petitioner that the Agreement dated 30.11.2017 was only in respect of a proposed Joint Venture,,,

Agreement which was to take place after issue of Letter of Acceptance/Letter of Intent, is liable to be rejected.",,,

55. The submission of learned counsel for the petitioner that the Joint Venture, Consortium or Association had not been legally constituted at the time",,,

of bidding and the members of such Joint Venture once entered into an agreement that they shall form a legally constituted Joint Venture after issue,,,

of Letter of Intent, the lead partner was within its rights to submit the bid security by way of Bank Guarantee, this court finds such plea will result into",,,

a situation where the Joint Venture is yet to be formed and bid security by way of Bank Guarantee instead of given by the Joint Venture, the intending",,,

partners will also be eligible and qualify to furnish such bid security by way of Bank Guarantee. The procuring entity has been very specific in its,,,

terms & conditions while inviting the bids and if the Joint Venture applies as a bidder, the furnishing of Bank Guarantee as bid security has to be given",,,

very same entity which stands already incorporated by way of agreement as Joint Venture.,,,

56. The submission of learned counsel for the petitioner that the respondents have acted in a discriminatory manner and they have found the other,,,

Joint Ventures as technically qualified bidders, this court finds that the official respondents have specifically narrated the facts with respect to the",,,

status of these entities. This court finds that example of M/s.Simplex has wrongly been quoted by the petitioner as they submitted the bid document as,,,

Joint Venture and Bank Guarantee was also submitted in the name of the Joint Venture and as such there cannot be any parity or similarity in the,,,

case of the petitioner with M/s.Simplex.,,,

57. The allegation of learned counsel for the petitioner that the other bidder M/s.Patel Engineering has also been wrongly treated as technically,,,

qualified, this court finds that the official respondents have submitted that M/s.Patel Engineering participated as a single bidder and not as a Joint",,,

Venture and the Bank Guarantee has also been submitted solely by the said bidder and as such the allegation of discrimination is not found to be,,,

correct.,,,

58. The submission of learned counsel for the petitioner that if at all the bid security was not found to be in order, the same could have been treated as",,,

minor deviation, this court finds that submission of Bank Guarantee as a bid security is a mandatory condition of the tender document and the same",,,

cannot be deviated or diluted. It is a trite law that if any condition of a tender document is essential, the same cannot be diluted by courts of law.",,,

59. This court further finds that in the pre-bid meeting, the question raised by the petitioner's representative was specifically answered and it was",,,

informed that the bid security would have to be deposited as per the conditions prescribed in the tender document. This court finds that clause (2.2.2),,,

of the tender document relates to clarification of bidding document and pre-bid conference, as per Instruction to Bidder, the issue was clarified and the",,,

clarification sought as to whether bid security may be issued by one of the Joint Venture partners, the reply of the department was specific that tender",,,

conditions will prevail. This court finds that the procuring entity had made it clear that bid security was not to be issued by one of the partners of the,,,

Joint Venture but it had to be issued in the name of the Joint Venture.,,,

60. The submission of learned counsel for the petitioner that the appellate authorities have not considered the case of the petitioner in a fair and,,,

objective manner, this court finds that the first appellate authority has recorded a finding that the Joint Venture Agreement had already led to",,,

constitution of a legal Joint Venture and as such bid security should have been submitted in the name of the Joint Venture instead of lead partner.,,,

61. The submission of learned counsel for the petitioner that the second appellate authority passed a non-speaking order, this court finds that the",,,

second appellate authority had taken into consideration all the facts of the case and approved the findings of the first appellate authority. The second,,,

appellate authority found that principles of natural justice have not been violated and M/s.Om Metals Infra Project Ltd.-M/s.Om Metals-SPML Pvt.,,,

Ltd. (JV) have emerged as the lowest bidder after opening of the financial bid and as such the second appellate authority did not interfere with the,,,

order passed by the bid evaluation committee as well as the first appellate authority.,,,

62. The law on the subject with regard to Bank Guarantee has been dealt with by the Apex Court in Central Coalfields Ltd. & Ors. Vs. SLL-SML,,,

(Joint Venture Consortium) & Ors. (supra). The Apex Court has laid down the law that furnishing a Bank Guarantee in the format prescribed in the,,,

bid document is an essential requirement in the bidding process and if the bid document is not accompanied by the Bank Guarantee in the format,,,

prescribed, it can be treated as non-responsive. The relevant paragraphs of the judgment are reproduced hereunder:-",,,

â??4. The question for our consideration is generally whether furnishing a bank guarantee in the format prescribed in the bid documents is an,,,

essential requirement in the bidding process of the Central Coalfields Limited and specifically whether a bid not accompanied by a bank guarantee in,,,

the format prescribed in the bid documents of the Central Coalfields Limited could be treated as non-responsive in view of Clause 15.2 of the General,,,

Terms and Conditions governing the bidding process. The answer to the general and the specific question is in the affirmative.,,,

27. What is extraordinary about this case is that the employer, that is CCL, seeks to adhere to the terms of the NIT and the GTC issued by it, but the",,,

submission of JVC is that CCL should actually deviate from the terms of these documents so as to benefit JVC. Indeed, in spite of a specific",,,

requirement that the bank guarantee should be submitted in the prescribed format, JVC claims an entitlement to a deviation in this regard on the",,,

ground that the prescribed format was a non-essential term of the NIT and the GTC. Who is to decide this issue of essentiality? Does CCL with,,,

whom the contract has to be entered into by the successful bidder have no say in the matter? Before adverting to this, it is necessary to get clarity on",,,

some circumstances.,,,

29. The first and the foremost aspect of the case that must be appreciated is that, as mentioned above, JVC was certainly not computer illiterate. Like",,,

every bidder, it was required to have a Digital Signature Certificate which clearly indicates that any bidder (including JVC) had some degree of",,,

comfort with e-tenders and the use of computers for bidding in an e-tender. It is this familiarity that enabled JVC to access the ""incorrect"" format of a",,,

bank guarantee. Under these circumstances, it is extremely odd that JVC was not able to access the correct and prescribed format of the bank",,,

guarantee. The excuse given by JVC that the NIT was vague and that it was not clear which was the prescribed format of the bank guarantee,,,

appears to be nothing but a bogey. A simple reading of the GTC and the terms of the bank guarantee would have been enough to indicate the correct,,,

prescribed format and the ""incorrect"" format."",,,

30. In this context and thirdly, it is important to note that if JVC had any doubt with regard to the format of the bank guarantee to be furnished, it could",,,

have and ought to have sought a clarification from the concerned authority as mentioned in the NIT. Moreover, JVC could have and ought to have at",,,

least made a representation to CCL that the prescribed format for the bank guarantee was either not available or that the NIT was ambiguous or that,,,

it lacked clarity with regard to the prescribed format of the bank guarantee. JVC neither sought any clarification nor did it make any representation to,,,

CCL. It is difficult to understand the conduct of JVC in the situation presented before us, particularly with reference to a contract for about Rs. 2000",,,

crores for eight years.,,,

31. We were informed by the learned Attorney General that 9 of the 11 bidders furnished a bank guarantee in the prescribed and correct format.,,,

Under these circumstances, even after stretching our credulity, it is extremely difficult to understand why JVC was unable to access the prescribed",,,

format for the bank guarantee or furnish a bank guarantee in the prescribed format when every other bidder could do so or why it could not seek a,,,

clarification or why it could not represent against any perceived ambiguity. The objection and the conduct of JVC regarding the prescribed format of,,,

the bank guarantee or a supposed ambiguity in the NIT does not appear to be fully above board.,,,

32. The core issue in these appeals is not of judicial review of the administrative action of CCL in adhering to the terms of the NIT and the GTC,,,

prescribed by it while dealing with bids furnished by participants in the bidding process. The core issue is whether CCL acted perversely enough in,,,

rejecting the bank guarantee of JVC on the ground that it was not in the prescribed format, thereby calling for judicial review by a constitutional court",,,

and interfering with CCL's decision.,,,

35. In *Ramana Dayaram Shetty v. International Airport Authority of India* this Court held that the words used in a document are not superfluous or,,,

redundant but must be given some meaning and weightage:,,,

“It is a well-settled Rule of interpretation applicable alike to documents as to statutes that, save for compelling necessity, the Court should”,,,

not be prompt to ascribe superfluity to the language of a document “and should be rather at the outset inclined to suppose every word intended to have”,,,

some effect or be of some use”. To reject words as insensible should be the last resort of judicial interpretation, for it is an elementary Rule based on”,,,

common sense that no author of a formal document intended to be acted upon by the others should be presumed to use words without a meaning. The,,,

court must, as far as possible, avoid a construction which would render the words used by the author of the document meaningless and futile or reduce”,,,

to silence any part of the document and make it altogether inapplicable.”,,,

36. Applying this principle to the present appeals, other bidders and those who had not bid could very well contend that if they had known that the”,,,

prescribed format of the bank guarantee was not mandatory or that some other term(s) of the NIT or GTC were not mandatory for compliance, they”,,,

too would have meaningfully participated in the bidding process. In other words, by re-arranging the goalposts, they were denied the “privilege” of”,,,

participation.,,,

37. For JVC to say that its bank guarantee was in terms stricter than the prescribed format is neither here nor there. It is not for the employer or this,,,

Court to scrutinize every bank guarantee to determine whether it is stricter than

the prescribed format or less rigorous. The fact is that a format was,,, prescribed and there was no reason not to adhere to it. The goalposts cannot be re-arranged or asked to be re- arranged during the bidding process to,,, affect the right of some or deny a privilege to some.,,,

47. The result of this discussion is that the issue of the acceptance or rejection of a bid or a bidder should be looked at not only from the point of view,,, of the unsuccessful party but also from the point of view of the employer. As held in Ramana Dayaram Shetty the terms of the NIT cannot be ignored,,, as being redundant or superfluous. They must be given a meaning and the necessary significance. As pointed out in Tata Cellular there must be,,, judicial restraint in interfering with administrative action. Ordinarily, the soundness of the decision taken by the employer ought not to be questioned but",,,

the decision making process can certainly be subject to judicial review. The soundness of the decision may be questioned if it is irrational or mala fide,,, or intended to favour someone or a decision ""that no responsible authority acting reasonably and in accordance with relevant law could have reached"",,, as held in Jagdish Mandal followed in Michigan Rubber.,,,

48. Therefore, whether a term of the NIT is essential or not is a decision taken by the employer which should be respected. Even if the term is",,, essential, the employer has the inherent authority to deviate from it provided the deviation is made applicable to all bidders and potential bidders as held",,, in Ramana Dayaram Shetty. However, if the term is held by the employer to be ancillary or subsidiary, even that decision should be respected. The",,, lawfulness of that decision can be questioned on very limited grounds, as mentioned in the various decisions discussed above, but the soundness of the",,, decision cannot be questioned, otherwise this Court would be taking over the function of the tender issuing authority, which it cannot.",,,

49. Again, looked at from the point of view of the employer if the Courts take over the decision-making function of the employer and make a",,, distinction between essential and non-essential terms contrary to the intention of the employer and thereby re-write the arrangement, it could lead to all",,, sorts of problems including the one that we are grappling with. For example, the GTC that we are concerned with specifically states in Clause 15.2",,, that ""Any Bid not accompanied by an acceptable Bid Security/EMD shall be

rejected by the employer as non-responsive." Surely, CCL ex facie",,, intended this term to be mandatory, yet the High Court held that the bank guarantee in a format not prescribed by it ought to be accepted since that",,, requirement was a non-essential term of the GTC. From the point of view of CCL the GTC has been impermissibly re-written by the High Court.,,,

50. Yet another problem could be faced by an employer (such as CCL) if the language used in the terms of the NIT or the GTC is not adhered to and,,,

its plain meaning discarded. A problem could be faced by an employer if every bidder furnishes a bank guarantee in a different format or one that it is,,,

comfortable with. In such a situation, CCL would have to scrutinize each bank guarantee to ascertain whether it meets with its requirements and the",,,

NIT and the GTC. Apart from the text of the bank guarantee, minor changes could be made by a bidder such as enforceability in a place other than",,,

Ranchi (but in Jharkhand) etc. This would place an avoidable and undue burden on the employer particularly if there are a large number of bidders.,,,

51. Not only this, any decision taken by the employer in accepting or rejecting a particular bank guarantee in a format not prescribed by it could lead to",,,

(avoidable) litigation requiring the employer to justify the rejection or acceptance of each bank guarantee. This is hardly conducive to a smooth and,,,

hassle-free bidding process.,,,

55. On the basis of the available case law, we are of the view that since CCL had not relaxed or deviated from the requirement of furnishing a bank",,,

guarantee in the prescribed format, in so far as the present appeals are concerned every bidder was obliged to adhere to the prescribed format of the",,,

bank guarantee. Consequently, the failure of JVC to furnish the bank guarantee in the prescribed format was sufficient reason for CCL to reject its",,,

bid.,,,

56. There is nothing to indicate that the process by which the decision was taken by CCL that the bank guarantee furnished by JVC ought to be,,,

rejected was flawed in any manner whatsoever. Similarly, there is nothing to indicate that the decision taken by CCL to reject the bank guarantee",,,

furnished by JVC and to adhere to the requirements of the NIT and the GTC was arbitrary or unreasonable or perverse in any manner whatsoever.â??,,,

(Emphasis supplied.),,,

63. The Apex Court in the case of Municipal Corporation Vs. BVG India Ltd.

(supra) has laid down parameters to exercise power of judicial review,,, in the matter of tenders. The Apex Court has reiterated that in administrative actions, the court does not sit as a court of appeal but merely reviews",,, the manner in which the decision was made. The court does not have the expertise to correct the administrative decision. The relevant paragraphs of,,, the judgment are quoted hereunder:-,,,

â??5. The questions involved in these appeals are:,,,

a. Whether under the scope of judicial review, the High Court could ordinarily question the judgment of the ex-pert consultant on the issue of technical",,,

qualifications of a bidder when the consultant takes into considera-tion various factors including the basis of non-perfor-mance of the bidder;,,,

b. Whether a bidder who submits a bid expressly declaring that it is submitting the same independently and without any partners, consortium or joint",,,

venture can rely upon the technical qualifications of any third party for its qualification;,,,

c. Whether the High Court is justified in independently evaluating the technical bids and financial bids of the parties, as an appellate authority, for",,,

coming to the conclusion?,,,

7. The modern trend points to judicial restraint in adminis-trative action. The Court does not sit as a Court of Appeal but merely reviews the manner in,,,

which the decision was made. The Court does not have the expertise to correct the administrative decision. If a review of the administrative de-cision,,,

is permitted, it will be substituting its own decision without the necessary expertise which itself may be fallible. The government must have freedom of",,,

contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or a",,,

quasi-administrative sphere. However, the deci-sion must not only be tested by the application of the Wednesbury principle of reasonableness, but",,,

must also be free from arbitrariness and not affected by bias or actuated by mala fides. (See the judgment in the case of Master Merin Services (P),,,,

Ltd. v. Metcalfe & Hodgkinson (2005) 6 SCC 138).,,,

24. Thus, only when a decision making process is so arbi-trary or irrational that no responsible authority proceeding reasonably or lawfully could have",,,

arrived at such decisions, power of judicial review can be exercised. However, if it is bona fide and in public interest, the Court will not interfere in the",,,

exercise of power of judicial review even if there is a pro-cedural lacuna. The principles of equity and natural justice do not operate in the field of,,,

commercial transactions. Wher-ever a decision has been taken appropriately in public inter-est, the Court ordinarily should exercise judicial restraint.",,,

When a decision is taken by the concerned authority upon due consideration of the tender document submitted by all tenderers on their own merits and,,,

it is ultimately found that the successful bidder had in fact substantially complied with the purpose and object for which the essential conditions were,,,

laid down, the same may not ordinarily be interfered with.",,,

40. Evaluating tenders and awarding contracts are essen-tially commercial transactions/contracts. If the decision relat-ing to award of contract is in,,,

public interest, the Courts will not, in exercise of the power of judicial review, interfere even if a procedural aberration or error in awarding the",,,,

contract is made out. The power of judicial review will not be permitted to be invoked to protect private interest by ignoring public interest. Attempts,,,

by unsuccessful bidders with an artificial grievance and to get the purpose defeated by approaching the Court on some technical and procedural,,,

lapses, should be handled by Courts with firmness. The exercise of the power of judicial review should be avoided if there is no irra-tionality or",,,,

arbitrariness. In the matter on hand, we do not find any illegality, arbitrariness, irrationality or unreasonable-ness on the part of the expert body while in",,,,

action. So also, we do not find any bias or mala fides either on the part of the corporation or on the part of the technical expert while taking the",,,,

decision. Moreover, the decision is taken keeping in mind the public interest and the work experience of the successful bidder.",,,

56. As aforementioned, unless the Court concludes that the decision making process or the decision taken by the author-ity bristles with mala fides",,,,

arbitrariness, or perversity, or that the authority has intended to favour someone, the Con-stitutional Court will not interfere with the decision-making",,,,

process or the decision.,,,,

57. Thus, the questions to be decided in this appeal are an-swered as follows:",,,

(a) Under the scope of judicial review, the High Court could not ordinarily interfere with the judgment of the expert consultant on the issues of",,,,

technical qualifica-tions of a bidder when the consultant takes into consid-eration various factors including the basis of non-per-formance of the bidder;,,,

(b) A bidder who submits a bid expressly declaring that it is submitting the same independently and without any partners, consortium or joint venture,",,,

cannot rely upon the technical qualifications of any 3rd Party for its qualification.,,,

(c) It is not open to the Court to independently evaluate the technical bids and financial bids of the parties as an appellate authority for coming to its,,,

conclusion inasmuch as unless the thresholds of mala fides, intention to favour someone or bias, arbitrariness, irrationality or perversity are met,",,,

where a decision is taken purely on public interest, the Court ordinarily should exercise judicial restraint.â??",,,

(Emphasis supplied.),,,

64. Counsel for the petitioner has placed reliance on the judgment in the case of Transmission Corp. of Andra Pradesh Ltd. (supra), this court finds",,,

that the Apex Court in the said case decided the definition of â??fuelâ?? as used in power purchase and whether the same includes the Regasified,,,

Liquefied Natural Gas. The said case has no bearing on the present controversy.,,,

65. Counsel has placed reliance on the judgment in the case of Sasan Power Ltd. (supra), this court finds that issue before the Apex Court was with",,,

regard to the two Indian Companies entering into the agreement with stipulation that their agreement was to be governed in accordance with the law,,,

of United Kingdom. The Apex Court has decided the controversy in respect of the provisions of the Arbitration and Conciliation Act, 1996. The said",,,

case does not have any bearing in the present controversy.,,,

66. So far as reliance placed by learned counsel for the petitioner on the case of M/s.Poddar Steel Corporation (supra) is concerned, this court finds",,,

that the issue was in respect of earnest money to be offered by bankerâ??s cheque of a Bank other than State Bank of India. The Apex Court held,,,

that the certified cheque of Union Bank of India drawn on its own branch must be treated as sufficient for the purpose of achieving the object of the,,,

condition. The said controversy decided by the Apex Court is not in respect of the Bank Guarantee to be given by the Joint Venture.,,,

67. Counsel further placed reliance on the case of Rashmi Metaliks Ltd. (supra), this court finds that the issue before the Apex Court was with",,,

respect to the non-filing of latest Income Tax Returns along with bid. The Apex Court held after considering the terms of the bid document that filing,,,

of latest Income Tax Return was collateral term and tendering authority ought to have brought discrepancy to the bidder to make necessary,,,

rectification.,,,

68. Counsel placed reliance on the case of Mumbai International Airport Pvt. Ltd. (supra), this court finds that the issue was with respect to",,,

impleadment as necessary and proper party to the suit as there was a claim by shareholder having 26% share in the Company and as such the Apex,,,

Court decided the controversy in respect of impleadment of party.,,,

69. So far as the order passed by the coordinate Bench of this Court at Principal Seat at Jodhpur in M/s.Deepak & Company Infra Pvt. Ltd. dated,,,

07.03.2018 is concerned, this court finds that the case was with regard to holding the bidder as non-responsive on the ground of submitting Fixed",,,

Deposit Receipt as bid security having validity of 120 days only and not for 135 days. In the said case, the Government Counsel had filed an affidavit",,,

before the court that the Fixed Deposit Receipt of 120 days submitted by some other bidder in the same tender process was accepted by the Public,,,

Works Department and the petitioner had also in that case, at a subsequent stage, secured and submitted a certificate from the Bank extending the",,,

fixed deposit at the instance of the department. The said order has been passed in view of the above facts and as far as the present controversy with,,,

respect to submitting the bid by Joint Venture is concerned, the said order is of little help to the petitioner.",,,

70. For the reasons mentioned above, this court does not find any illegality and irregularity in the decision taken by the Bid Evaluation Committee dated",,,

05.01.2018 and further does not find any reason to interfere in the orders passed by both the appellate authorities and accordingly the instant writ,,,

petition is dismissed. No costs.,,,