
(2020) 12 DEL CK 0245

In the Delhi High Court

Case No : Civil Writ Petition No. 3942 Of 2020, Civil Miscellaneous No. 14146, 24753, 24756 Of 2020

Macpower Cnc Machines Limited

APPELLANT

Vs

Union Of India, Through Development Commissioner Ministry
Of Micro Small And Medium Enterprises (MSME)

RESPONDENT

Date of Decision : 24-12-2020

Acts Referred:

Constitution Of India, 1950 — Article 14

Citation : (2020) 12 DEL CK 0245

Hon'ble Judges : Vipin Sanghi, J;Rajnish Bhatnagar, J

Bench : Division Bench

Advocate : Amar Dave, Pradhuman Srivastava, Upendra Sai, Jasleen Bindra, Vikas Mahajan

Final Decision : Disposed Of

Judgement

.....

Vipin Sanghi, J",.....

1. The petitioner has preferred the present writ petition to assail the Summary of Bid Evaluation of Package 41 dated 05.06.2020, whereby the",.....

petitioner's technical bids in respect of Lots 4,5 and 6 of Package 41 have been held to be "technically non-responsive but commercially",.....

responsive" and, consequently, the tender in question has not been awarded to the petitioner, despite the petitioner being the lowest bidder in respect",.....

of the said Lots. The petitioner seeks a direction that it be declared technically responsive in respect of its bids for Lots 4,5 and 6, and for a direction",.....

that the respondents should award the tender to the petitioner in respect of Lots 4, 5 and 6. The petitioner has sought certain other reliefs",.....

consequential in nature to the main reliefs sought by it, as aforesaid." ,,,,,,

Petitioner's Submissions ,,,,,,

2. The case of the petitioner is that the petitioner company is a reputed and one of the fastest growing Computer Numerical Control (CNC) Machine ,,,,,,

manufacturers in India. The petitioner claims that it is positioned at Number 1 amongst the top 5 manufacturers. The petitioner states that it has ,,,,,,

successfully delivered and commissioned various kinds of CNC machines to Government PSUs like DRDO, HAL, ISRO, CIPET etc. The petitioner" ,,,,,,

manufactures CNC Turning Machines for purposes of training at heavy duty training centers, CNC Turnmill center with 5 Axis with Sub spindle," ,,,,,,

Vertical Turret Lathe (VTL), Vertical machining center (VMC), Horizontal machining center (HMC) and CNC grinding centre. The petitioner states" ,,,,,,

that it has successfully bid for various projects, and has been awarded several projects by the Government in the past. The petitioner claims to have" ,,,,,,

supplied approximately 5,000 machines till date in various industry segments such as Automobiles, Agriculture, Plastics, Defence, Heavy engineering," ,,,,,,

Tool Room, Education, Aeronautics etc. The petitioner has been granted the Highest Credit Worthiness rating by CRISIL of MSEI." ,,,,,,

3. The petitioner states that the Government of India received financing from the International Bank for Reconstruction and Development (IBRD) in ,,,,,,

the form of a loan to meet the cost of a project called Technology Centre System Programme (TCSP). The Office of the Development Commissioner ,,,,,,

(MSME), Ministry of MSME, Government of India (which is the respondent) is the implementing agency for the project. A portion of the proceeds" ,,,,,,

received from IBRD was intended to be utilised for making payments under the contracts, for which the respondents invited bids. The respondents" ,,,,,,

issued an online General Procurement Notice for the aforesaid project on 07.07.2014, and the same was published on UNDB." ,,,,,,

4. The petitioner states that on 28.02.2019, the respondent " which is the implementing agency, invited electronic bids for Package 41 from eligible" ,,,,,,

and qualified bidders for "Supply of 12 Lots of Machines and Equipments required for training at New & Existing Technology Centres". The ,,,,,,

petitioner states that the salient condition of the bidding process as per the bid document were the following: ,,,,,,

i. Bid document was available for download online and had to be submitted

online.,,,,,,

ii. The bidding procedure provided for Instructions to Bidders (ITB), Bidding Data Sheet (BDS), Evaluation and Qualification Criteria and Bidding",,,,,,

Forms.,,,,,,

iii. Bid price was to be provided by bidders and adjustment of price was not allowed subsequently as per ITB 14.,,,,,,

iv. Bid was to be supported by Letter of Bid as per ITB 17.,,,,,,

v. Bid security was to be furnished in terms of ITB 19.,,,,,,

vi. Modification/ substitution of bid was allowed as per ITB 25 but not between deadline for submission of bid and expiration of period of bid validity.,,,,,,

vii. Bid was to be opened online at the Office of Development Commissioner as per ITB 25.1. The electronic summary of all the bids at the time of,,,,,

opening will be generated and kept online and will be available for viewing by participating bidders.,,,,,,

viii. Responsiveness was to be determined as per ITB 29. Substantially responsive bid was one that meets requirements of bidding document without,,,,,

deviation. ITB 30 provided Respondent liberty to waive non-conformity in responsiveness.,,,,,,

ix. As per ITB 33.1 margin of domestic preference shall apply.,,,,,,

x. Lowest value bid was to be determined as per ITB 35.,,,,,,

xi. Contract was to be awarded to lowest evaluated bid that is substantially responsive as per ITB 38.,,,,,,

xii. Prior to notification of contract, purchaser shall notify successful bidder and at the same time within 4 weeks convey to all bidders the result of bid,",,,,,

name of bidders whose bid were rejected, and reasons for the same as per ITB 40." ,,,,,,

5. The petitioner states that the respondents provided the Technical Specifications for supply of 12 Lots of machines and equipment for training at new,,,,,

and existing technology centres on its portal. The respondents issued Corrigendums 1,2 and 3. Consequently, the time period for submission of bids and" ,,,,,,

bid opening were extended from time to time. The final date for submission of bid was revised as 18.07.2019, and the online opening of the bid was" ,,,,,,

fixed on the same day.,,,,,,

6. The submission of the petitioner is that the petitioner submitted its bids for Lots 4,5 and 6 within the prescribed time. The petitioner submitted bid" ,,,,,, security to the tune of Rs, 61,61,000/- in the form of bank guarantee in support of its three bids for the three Lots. The petitioner further states that as" ,,,,,, per the clause 36.1 of the ITB, the bidders were required to provide documentary evidence in support of their qualification for making the bid, and the" ,,,,,, petitioner submitted the documents to show its experience and technical capacity by submitting copies of the purchase orders in respect of the CNC ,,,,,, Machines â?" for which bids were invited. The petitioner also provided performance statement of last three years from the date of bid opening, year" ,,,,,, wise, for each Lot separately. The petitioner also made a declaration that it meets the eligibility criteria, and detailed the total price and completion" ,,,,,, schedule in its bid. The petitioner states that it fully met the technical specifications prescribed by the respondents in the tender. The petitioner relies ,,,,,, on clause 29.2 of the ITB which delineates as to which bids are considered substantially responsive. It is the petitionerâ?'s submission that a bid which ,,,,,, is a substantially responsive bid could not be rejected as â?"non-responsiveâ?", unless it has a material deviation/ reservation or omission as explained" ,,,,,, in the aforesaid clause. Clause 29.2 of the ITB, insofar as it is relevant, reads as follows:" ,,,,,, â?"29.2 A Substantially responsive Bid is one that meets the requirements of the Bidding Documents without material deviation, reservation," ,,,,,, or omission. A material deviation, reservation, or omission is one that : " ,,,,,, â?"Lot No." ,Brief reason for rejection ,,,,,, 4,"Technically Non-responsive:

a) Clause No. 5.3: Bidder has mentioned Run out on test bar: 0.010mm or less [Test Bar Length 300mm] Runout at Nose: 0.003mm or better in the compliance statement. Tender Specified runout on test bar at 300mm is 0.010mm and at nose is 0.003mm. Whereas according to the bidderâ?'s submitted test chart the runout on test bar at 300mm is 0.020mm and at

nose is 0.010mm.

In view of above technical non-compliance with supporting evidence, the bid is technically not complied." ,,,,,,

5,"Technically Non-responsive:

a) Clause No. 6.3: Bidder has mentioned Run out on test bar: 0.005mm or less [Test Bar Length 300mm] Spindle Run out 0.003mm or less run out at Nose or better in compliance statement. As per bidder's submitted test chart runout on test bar at 300mm is 0.020mm and runout at nose is 0.010mm against tender specified spindle runout at 300mm is 0.005mm or less and at nose is 0.003mm or less.

In view of above technical non-compliance with supporting evidence, the bid is technically not complied." ,,,,,,

6,"Technically Non-responsive:

a) Clause 6.3: Bidder has mentioned Run out on test bar: 0.010mm or less [Test Bar Length 300mm] Runout at Nose: 0.003mm or better in compliance statement. As per bidder's submitted test chart runout on test bar at 300mm is 0.020mm and runout at nose is 0.010mm against tender specified spindle runout at 300mm is 0.010mm or less and at nose is 0.003mm or better.

In view of above technical non-compliance with supporting evidence, the bid is technically not complied." ,,,,,,

16.1 x x x x x x x x ,,,,,,

16.2 To establish the conformity of the Goods and Related Services to the Bidding Documents, the Bidder shall furnish as part of its Bid the" ,,,,,,

documentary evidence that the Goods conform to the technical specifications and standards specified in Section VII. Schedule of ,,,,,,

Requirements. ,,,,,,

16.3 The documentary evidence may be in the form of literature, drawings or data, and shall consist of a detailed item by item description of" ,,,,,,

the essential technical and performance characteristics of the essential technical and performance characteristics of the Goods and Related,,,,,,

Services, demonstrating substantial responsiveness of the Goods and Related Services to the technical specification, and if applicable, a" ,,,,,,

statement of deviations and exceptions to the provisions of the Section VII, Schedule of Requirements." ,,,,,,

x x x x x x x x xâ?? ,,,,,,

11. The following was added to Clause 16.3 by the addendum:,,,,,,

â??Bidder must submit items by items Technical Compliance Statement to the Technical Specification as given in Annexure A of Section-VII, ,,,,,,

of the bid document clearly bringing out the deviations, if any. Deviations mentioned elsewhere in the bid will not be" ,,,,,,

considered.â??(emphasis supplied), ,,,,,,

12. The case of the petitioner is that while submitting its bid, the petitioner had provided only the Format of Inspection Sheets â?" which contains the" ,,,,,,

Geometrical Test Chart as per the ISO 10791-2: 2001 (E). To understand the submission of the petitioner â?" and also why the respondent claims that, ,,,,,,

the petitionerâ?'s bid does not meet the technical specifications, it is necessary to look into the said Format. We, therefore, reproduce the first page of" ,,,,,,

the same herein below: ,,,,,,

13. It would be seen that the last column, the heading whereof reads â??Tolerances in MM Measuredâ? is blank. The other pages of the said Format" ,,,,,,

of Inspection Sheet also do not contain any data with regard to the â??Measuredâ? quantities in respect of the CNC Machines offered by the, ,,,,,,

petitioner. ,,,,,,

14. The submission of the petitioner is that the above Format sets out the tolerances in (MM). It contains two columns. The first column contains the, ,,,,,,

â??Tolerances in MM Permissibleâ? as per ISO, and the second column contains â??Tolerances in MM as Measuredâ?. The case of the petitioner" ,,,,,,

is that the said Format, under the column â??Permissibleâ?, indicated the tolerances as per the ISO specification. The respondents, however, desired" ,,,,,,

S. No,"Machine

Description","Bidderâ??s

Specification

**

[Ref.

Footnote]","Reference

Page Number/

Section

Number of

Catalogue/

Remarks",Compliance,,

,M/s Phillips,,,,,

4.12.7,"Spindle Run

out (Max):0.003

mm or better

at Spindle

nose","0.003

mm",,Complied,,

4.12.8,"Run out on test

bar at:

0.01 mm or

better for 300

mm (max) test

bar",0.01 mm,,Complied,,

,M/s Deckel

Maho",,,,,,

4.12.7,"Spindle Run out

(Max):

0.003 mm or

better at Spindle

nose","0.003

mm",,,,,

4.12.8,"Run out on test

bar at:0.01 mm
 or better for 300
 mm (max) test
 bar",0.01 mm,,,,
 â??,"Lot 1 CNC
 Milling
 Machine with
 SIEMENS
 Controller" ,,,,
 S.NO.,Description,"Bidderâ??s
 Specification
 **
 [Ref. Footnote]","Reference
 Page Number/
 Section
 Number of
 Catalogue/
 Remarks","Compli
 ance",,
 6.
 5.,"Run out
 (Max):
 0.003 mm run
 out at nose.,"0.003 mm run
 out at spindle
 nose." ,-,Yes,,
 6.
 6","Run out on test
 bar :
 0.005 mm or

less (Test Bar

Length 200

mm]","0.005 mm run

out at test bar

length of 200 mm",- ,Yes,,

18. It is the petitioner's submission that it has been deliberately ousted in respect of its bids for Lots 4, 5 and 6, only because the petitioner had gone",,,,,,

against the respondents by preferring the aforesaid writ petition. The petitioner, therefore, alleges an institutional bias against the respondents." ,,,,,,

19. During the hearing of the petition, learned counsel for the petitioner has drawn our attention to some of the relevant clauses of the tender" ,,,,,,

conditions. We have already extracted Clause 16.3 along with the addendum. That apart, learned counsel for the petitioner has also referred to and" ,,,,,,

relied upon Clause 27 of the ITB which states that in the examination, evaluation, comparison of the bids and qualifications of the bidders, the" ,,,,,,

purchaser may, at its discretion, ask any bidder for a clarification of its bid." ,,,,,,

Clause 27, in its entirety, reads as follows:" ,,,,,,

â??27. Clarification of bids ,,,,,,

27.1 To assist in the examination, evaluation, comparison of the bids, and qualification of the Bidders, the Purchaser may, at its discretion, ask any" ,,,,,,

Bidder for a clarification of its Bid. Any clarification submitted by a Bidder in respect to its Bid and that is not in response to a request by the ,,,,,,

Purchaser shall not be considered. The Purchaser's request for clarification and the response shall be in writing. No change, including any voluntary" ,,,,,,

increase or decrease, in the prices or substance of the Bid shall be sought, offered, or permitted except to confirm the correction of arithmetic errors" ,,,,,,

discovered by the Purchaser in the Evaluation of the bids, in accordance with ITB 31." ,,,,,,

27.2 If a Bidder does not provide clarifications of its bid by the date and time set in the Purchaser's request for clarification, its bid may be rejected.â?" ,,,,,,

(emphasis supplied) ,,,,,,

20. The submission of learned counsel is that the respondents did not resort to this procedure, and proceeded to erroneously make an unfounded" ,,,,,,

assumption with regard to the tolerance limits offered by the petitioner. Learned

counsel also places reliance on Clause 29.2 which has been extracted,,,,,,

hereinabove. Learned counsel has emphasized that the bids had to be substantially responsive "as defined in ITB, and a substantially responsive bid" ,,,,,,

could not be rejected either on a mere hyper-technical ground, or on a patently wrong reading and interpretation of the ITB, or the documents" ,,,,,,

submitted by the bidder. ,,,,,,

21. Learned counsel has also relied upon Clause 29.3, which obliges the respondent purchaser to examine the technical aspects of the bid submitted in" ,,,,,,

accordance with ITB 16 and ITB 17, in particular, to confirm that all requirements of Section VII, Schedule of Requirements have been met," ,,,,,,

"without any material deviation, reservation, or omission." ,,,,,,

22. Our attention has also been drawn to Clauses 30.1 and 30.2. The said clauses read as follows: ,,,,,,

"30.1 Provided that a Bid is substantially responsive, the Purchaser may waive any nonconformity in the Bid." ,,,,,,

30.2 Provided that a bid is substantially responsive, the Purchaser may request that the Bidder submit the necessary information or" ,,,,,,

documentation, within a reasonable period of time, to rectify nonmaterial nonconformities or omissions in the bid related to documentation" ,,,,,,

requirements. Such omission shall not be related to any aspect of the price of the Bid. Failure of the Bidder to comply with the request may ,,,,,,

result in the rejection of its Bid." (emphasis supplied), ,,,,,,

23. The submission of learned counsel for the petitioner is that in respect of a substantially responsive bid the purchaser, i.e. the respondent, has the" ,,,,,,

discretion to waive any non-conformity in the bid. This discretion has to be exercised judiciously & rationally, and in a non-discriminatory manner. The" ,,,,,,

submission is that when the same entity, i.e. the respondent, has invited bids for different Lots under the same package, in respect of the same or" ,,,,,,

similar machinery & equipments, it cannot adopt different yardstick while examining the bids submitted in respect of different Lots, and the manner in" ,,,,,,

which the respondent deals with the bids in respect of different Lots has to be consistent. It cannot discriminate in the matter of examination of the ,,,,,,

bids of the bidders in respect of different Lots. Learned counsel emphasizes that

Clause 30.2 enables the respondent purchaser to call for necessary,,,,,,
information or documentation within a reasonable period of time, to rectify non-
material non-conformities or omissions in the bid related to",,,,,,
documentation requirements. Learned counsel submits that, whereas, in respect
of other Lots the respondent invoked the said clause, in respect of",,,,,,
Lots 4, 5 & 6, the respondents summarily and erroneously held the technical bids
submitted by the petitioner to be non-responsive on a clearly",,,,,,
erroneous and mindless interpretation of the documents submitted by the
petitioner, without even seeking any clarification in respect there for.",,,,,,
24. Learned counsel for the petitioner submits that the right of the respondent
under Clause 37 to accept or reject any bid has to be exercised,,,,,,
reasonably and rationally. In the process of inviting the bids, the respondents
had expended time and money. Substantial number of bids have been",,,,,,
received from serious bidders who have also invested their time and money in
preparing and submitting their bids. The respondents cannot whimsically,,,,,,
or arbitrarily reject the bids without assigning any cogent reasons in respect of
the three Lots in question, when the bids in respect of other Lots have",,,,,,
been accepted in similar circumstances.,,,,,,
25. Learned counsel for the petitioner then drew our attention to Clause 1 of
Section III, which deals with evaluation and qualification criteria. Clause",,,,,,
1, inter alia, provides that "The Purchaser will grant a margin of preference to
goods manufactured in the Purchaser's country for the purpose",,,,,,
of bid comparison, in accordance with the procedures outlined in subsequent
paragraphs. Based on this Clause, it is submitted that the",,,,,,
respondents' conduct is to the contrary inasmuch, as, the petitioner "which
is an Indian entity manufacturing in India, has been discriminated",,,,,,
against in comparison to the multinational bidders like M/s. Phillips Corporation
and M/s Deckel Maho Pfronten.,,,,,,
26. Learned counsel for the petitioner then drew our attention to the bids
submitted by the petitioner. Along with its bids, the petitioner placed several",,,,,,
orders placed upon the petitioner by Government Authorities for supply of CNC
Machines of the kind for which the tender in question was called for.,,,,,,
Even under Clause 10.4 of the Technical Sheet, the petitioner reiterated its
commitment to meet the technical specifications of the tender documents.",,,,,,
27. Learned counsel for the petitioner points out that in respect of Lot 1, the

tender documents specifically provided â?" by incorporating an",,,,,,

â??Important Noteâ?, that â??The bidder must provide exact and relevant input, against the specified features having â??numerical valueâ? or",,,,,,

â??% valuesâ? or any â??specific requirementâ? in the same format as specified in the tender document. Any response specifying (Confirmed/,,,,,

Complied, etc.) may be liable for rejection.â? (emphasis supplied). Despite the aforesaid Note, M/s Phillips Corporation while submitting their bids in",,,,,,

respect of Lot 1, merely stated â??Compliedâ? at several places of the Technical Sheet, yet their Technical Bids were held to be responsive. In this",,,,,,

regard, our attention has been drawn to pages 384 to 388 of the record and we find that M/s Phillips Corporation had, indeed, merely stated",,,,,,

â??Compliedâ?? under the column â??Bidderâ??s Specification (Ref. Footnote)â??.,,,,,

28. Mr. Dave, learned counsel for the petitioner has taken us through the Counter Affidavit of the respondents. The stand taken by the respondents in",,,,,,

their counter-affidavit â?" to justify the discriminatory manner in which the petitionerâ?s bid in respect of Lots 4, 5 & 6 have been held to be",,,,,,

technically non-responsive, while bids of the other bidders like M/s Phillips Corporation, M/s DeckelMahoPfronten GmbH and M/s AMS were",,,,,,

entertained (even when the bids were made in similar fashion), is that the machines in respect of other Lots were required for â??training purposesâ?"",,,,,,

only and, therefore, a liberal approach was adopted, whereas the machines required under Lots 4, 5 & 6 are for manufacturing purposes. Learned",,,,,,

counsel points out that, firstly, the ITB/ bid conditions do not disclose that different yardsticks would be adopted on the aforesaid ground. Secondly,"",,,,,,

even the impugned order dated 19.06.2020 does not state so. Thus, this stand of the respondents is an afterthought, and has been taken only now in",,,,,,

the Counter Affidavit, to somehow justify the illegal, arbitrary and discriminatory treatment of the petitionerâ?s bids. Learned counsel for the petitioner",,,,,,

submits that if the respondents had any confusion or doubt with regard to the petitionerâ?s technical competence in meeting the technical specification,,,,,

while supplying the machines, the respondents could and ought to have called for clarification from the petitioner."",,,,,,

29. The petitioner has placed on record â?" along with its rejoinder, the Inspection Sheet in respect of the CNC Machines offered under the tenders in",,,,,,

question for Lots 4, 5 & 6 which contains the measured tolerances and these tolerances are in terms of the technical specifications laid down in the",,,,,,

tender documents. The Inspection Sheet relates to the supplies made by the petitioner way back in the year 2016 and 2019 and can be found on,,,,,,

record from pages 513 and 476.,,,,,,

30. Learned counsel for the petitioner has summed up his arguments by stating as follows:,,,,,,

I. That the bidding conditions for all Lots under Package 41 was common, and hence the evaluation process for all Lots in this Package was legally",,,,,,

and morally required to be done consistently. Any deviation from consistent evaluation, without prior intimation to all applicants/ bidders in all Lots, is a",,,,,,

clear case of discrimination and foul play. The Respondent has now admitted that an inconsistent evaluation process was adopted. This admission,,,,,,

leaves no room for any further debate in the matter.,,,,,,

II. The entire foundation to treat the bids of the Petitioner in Lot 4, 5 and 6 as non-responsive was that the evaluating authority had assumed " on its",,,,,,

own, the prescribed ISO specifications as the offered specifications when, in fact, the column of actual measurement was blank (since it was only a",,,,,,

Format which was placed, and not actual values). In the Counter Affidavit, an admission has been made by the respondents as follows:",,,,,,

"Technical Evaluation Committee has considered the permissible value in absence of actual measured values for evaluation",,,,,,

How such assumption could have been made has not been explained by the Respondent.,,,,,,

III. Aforesaid being the only reason and ground in the impugned communication, it is as it is not permissible to add grounds by way of counter affidavit",,,,,,

as an afterthought.,,,,,,

IV. Reliance placed on Clause 16.2 is misplaced. This is also for the reason that Clause 16.2 was not invoked or cited as a reason while evaluating the,,,,,,

bids for Lot 1 of the same Package, and the substantially responsive bids were not rejected on that ground.",,,,,,

V. The technical parameters specified in schedule VII (Schedule of Requirements) had primacy, even in case of any deviation " as per amended",,,,,,

clause 16.3. Therefore, when, admittedly, the correct required specifications were quoted in the Technical Sheet, there was no question of declaring",,,,,,

the bid of the petitioner as non-responsive.,,,,,,

VI. Crucially, it is the Respondent's own case that in respect of Lot1, the bids of Philips and DeckelMaho (DMG) were only "broadly meeting",,,,,,

the requirements subject to immaterial technical clarifications which were sought from both these bidders. Philips had submitted a clarification when,,,,,

sought for by Respondent, whereas no supporting document (including no test reports) was provided by DeckelMaho. The specific averments made",,,,,,

by the petitioner in paragraph 18.1 have not been traversed in the Counter Affidavit. At least qua DeckelMaho, the position is identical with the",,,,,,

petitioner, and the respondent has sought to justify discrimination by only stating that machine under procurement are different, but this is without any",,,,,,

basis. An unfair and arbitrary evaluation has been made by the Respondent, and there is no justification for treating petitioner's bid as technically",,,,,,

non-responsive, when identically placed bidders, like DeckelMaho, have been considered as technically responsive, solely on the baseless argument",,,,,,

that the Lots were different, even though, the package and bidding conditions were common for all the Lots.",,,,,,

VII. In spite of an express and unambiguous condition stating as follows:,,,,,

"The bidder must provide exact and relevant input, against the specified features having numerical value or %values or",,,,,,

any specific requirement in the same format as specified in the tender document. Any response specifying (confirmed/ complied, etc.)",,,,,,

may be liable for rejection.",,,,,,

The Respondent failed to treat the petitioner at par with Philips and DeckelMaho whose bids were not rejected as non-responsive for Lot 1, even",,,,,,

though, in various columns they just wrote "complied", without assigning actual value which was mandatory. This is another instance of selective",,,,,,

and discriminatory treatment in the present Package.,,,,,,

VIII. Clause 16.3, as amended, provided:",,,,,,

"Bidders must submit items by items Technical Compliance Statement to the Technical Specification as given in Annexure A of Section-VII",,,,,,

of the bid document clearly bringing out the deviations, if any. Deviations mentioned elsewhere in the bid will not be considered".",,,,,,

(emphasis supplied),,,,,,

In their Technical Specifications Sheet at page 305 (for Lot 4), page 314 (for Lot 5) and page 339 (for Lot 6), the Petitioner has mentioned the" ,,,,,,

technical specifications offered, and also stated "complied". The Petitioner has not deviated from any condition and, as such, no deviation was" ,,,,,,

mentioned. As per ITB 16.3 above, deviation, if any, mentioned elsewhere from Section VII were to be ignored and response to the clause was to be" ,,,,,,

taken as final. A whimsical and unfounded assumption by the respondents on a reading of the Format of Inspection Sheet has been wrongly treated as ,,,,,,

a deviation. Similarly, M/s. AMS submitted the Geometric Test Chart in similar format and was declared a successful bidder for Package 20, where" ,,,,,,

even M/s. AMS has left the actual tolerance column blank. No such defect, as pointed out in the bid of the Petitioner in the present case, was raised" ,,,,,,

in the bid of M/s. AMS while holding them successful and awarding the contract to them. ,,,,,,

IX. Supply Orders at page 297, shows that in the past, the petitioner had fulfilled the technical specifications laid down in Clause 6.3 presently. Had" ,,,,,,

clarification in this regard " in the spirit of clause 27, been sought, like it was sought for Lot 1, and on many other earlier occasions, the Petitioner" ,,,,,,

would have fully satisfied the misconception of the respondent. ,,,,,,

X. Uncontrovertedly, even though other bidders were given an opportunity to provide clarification, surprisingly, no such opportunity was provided to" ,,,,,,

the Petitioner. The argument of requirement of different machines, in different Lots, is a smoke screen, since the conditions of bid evaluation cannot" ,,,,,,

be applied differently Lot-wise, especially when the Package was the same. Once the bidding conditions are common for all the Lots in a Package, it" ,,,,,,

is but logical and fair that evaluation process is the same for all the Lots. Adoption of different yardsticks for technical evaluation of the bids " Lot ,,,,,,

wise, is nothing but malafide attempt to oust the Petitioner " a local supplier, and give benefit to other International bidders in other Lots. It is, " ,,,,,,

therefore, a clear case of arbitrary and malafide conduct on the part of the Respondent, and it cannot be justified merely by creating a smoke screen" ,,,,,,

that the Lots were different. ,,,,,,

XI. Under clause 11 of the Technical Specifications, the bidders were asked to provide copy of specific documents to support their answers. In" ,,,,,,

response to the said clause, the Petitioner has specifically written at point 5 that

the Petitioner has attached Machine Geometric Test Charts. It is",,,,,,
submitted that the Geometric Test Chart submitted by the Petitioner alongwith
the bid was in support of Clause 11 hereinabove, and was indicative of" ,,,,,,
the format in which the results would be provided by the Petitioner to the
Respondent. (Also the chart shows the permissible value of tolerance as,,,,,,
specified by ISO and actual value column is left blank as it is a format to show
the process followed).,,,,,,

XII. Even the NITI Ayog has taken a note of rejection of all Indian bidders based
on their ability to supply the required accuracy machine and has,,,,,,
done independent technical evaluation by highest technical institute for machine
tools in India i.e. CMTI (Central Manufacturing technology of India),",,,,,,
and it has cleared many Indian bidders, including the Petitioner, to be technically
capable to supply the machines with required accuracy mentioned in" ,,,,,,
tender.

XIII. Fresh invitation of bids and evaluation would take time. The matter is long
pending since bid publication on 28.02.2019, and the delay is" ,,,,,,
hampering the chance of MSME centers to get the latest technology machines in
time. There would be no injustice to any bidder if the respondent is,,,,,,
directed to conduct re-evaluation. This will be beneficial to all the bidders and
department, as it will avoid unnecessary repetition of process." ,,,,,,
Respondent's submissions,

31. Mr. Vikas Mahajan, learned Central Government Standing Counsel has
defended the action of the respondents. Mr. Mahajan has, firstly, referred" ,,,,,,
to Clause 29.3 of the ITB which stipulates that the Purchaser shall examine the
technical aspects of the bid submitted in accordance with ITB 16 and,,,,,,
ITB 17, in particular, to confirm that all requirements of Section VII, Schedule of
Requirements have been met without any material deviation or" ,,,,,,
reservation, or omission. He submits that if a bid is not substantially responsive
to the requirements of the bidding documents, it is liable to be rejected" ,,,,,,
by the purchaser, and it cannot subsequently be made responsive by correction
of the material deviation, reservation, or omission. His submission is" ,,,,,,
that the bids of the petitioner in respect of Lots 4,5 and 6 were technically non-
responsive on account of the requirements to Schedule VII not being" ,,,,,,
met. The run out on test bar reflected in the Test Chart did not meet the bid
stipulations.

32. Mr. Mahajan has also referred to Clause 16.2 which stipulates that to establish the conformity of the goods and related services to the bidding,,,,,, documents, the bidder shall furnish, as part of its bid, the documentary evidence that the goods conform to the technical specifications and standards" ,,,,, specified in Schedule VII Schedule of Requirements. His submission is that the petitioner had not provided any document as evidence to establish that,,,,, it meets the technical specifications and standards specified in Schedule VII Schedule of Requirements. He has also referred to paragraph 7 of the,,,,, counter affidavit filed by the respondents, which states that all the bids were technically evaluated in line with ITB clause 29.3 to determine their" ,,,,, technical responsiveness with respect to stipulated Technical Specification and other technical aspects. The technical evaluation is done by a duly,,,,, constituted Committee of technical experts, including external technical expert. In this case the committee had 10 members, including 2 external" ,,,,, technical experts.,,,,,,

33. The respondents state that the present being â??A Prior Review Caseâ? of World Bank, World Bank: â??No Objectionâ? was also obtained for" ,,,,, â??No Awardâ?. Mr. Mahajan drew our attention to the averment made in paragraph 18.1 of the counter affidavit. The respondents have sought to,,,,, explain the difference in the manner of examination of the technical bids in relation to Lots 4,5 and 6 when compared to the manner of examination of" ,,,,, the technical bids in respect of Lot 1. The respondents have, inter alia, stated in paragraph 18.1 as follows:" ,,,,, â??18.1 The machines under procurement in Lot 1 are different and not comparable to the machines under Lot 4, 5 and 6 and petitioner" ,,,,, was not a bidder for that Lot. In the evaluation of Lot 1, there were 5 bids out of which 3 bids were technically non-complying on number of" ,,,,, technical aspects. Whereas, 02 bids â?" (i) M/s Phillips and (ii) M/s DMG - were broadly meeting the requirements subject to immaterial" ,,,,, technical clarifications which were sought from both these bidders which is a matter of record. The respondent had evaluated these bids in,,,,, accordance with the bid document, with due diligence and the whole of the bid, including supporting documents as submitted, to determine" ,,,,, the substantial responsiveness. No contradiction, as in the case of petitioner for Lot 4, 5 & 6, was found in the bids of M/s Phillips and M/s" ,,,,,

Deckel Maho.,,,,,,

As regards Lot 1 for clauses 4.12.7 and 4.12.8, the Technical Evaluation Committee had noted claim of each of these bidders for values",,,,,,

mentioned in their technical compliance statement.,,,,,,

In case of M/s Phillips and M/s DMG, they have mentioned values in their technical compliance statement which were meeting the technical",,,,,,

requirements and was not contradicting with any supporting document submitted along with the bid. Moreover, M/s Phillips had submitted a",,,,,,

copy of the purchase order with the bid clearly indicating that they have fulfilled the requirements of clause 4.12.7 and 4.12.8, proving",,,,,,

their manufacturing capabilities to meet the specified accuracy requirements of technical specifications. Copy of the PO from U.R. Rao.,,,,,,

Satellite Centre, ISRO (Department of Space, Govt. of India), submitted by M/s Phillips, the successful bidder, with the bid is annexed hereto",,,,,,

as Annexure R-2. Hence, based on the available evidence in the bid, M/s Phillips were found technically responsive and were awarded the",,,,,,

contract.,,,,,,

Committee had sought some clarifications from these bidders for other lots of the same package, and the common documents submitted in",,,,,,

response to these clarifications further confirmed the responsiveness of M/s Phillips for Lot I in addition to information already available in",,,,,,

the bid which is a matter of record.,,,,,,

Similarly, the common information furnished by M/s DMG also substantiated their claim for accuracy requirements of quoted machine for",,,,,,

Lot I as well in-line with values mentioned in their respective technical compliance statement which is a matter of record.,,,,,,

Accordingly, it will be wrong to compare the evaluation of Lot I with that of Lot 4, 5 and 6 as they are for different machines and the overall",,,,,,

background and circumstances of evaluation were different as mentioned above, which have been duly considered by the Technical",,,,,,

Evaluation Committee maintaining the sanctity of fair and transparent technical evaluation and there is no question of any arbitrariness in",,,,,,

the award for Lot I to M/s Phillips as being alleged by the petitioner. Position become further clear from the following table:.,,,,,,

Lot No., "Tender

Specifications

(Clause 6.3)",Bidders,"Technical
Compliance

Statement","Permissible values
as per Test Chart","Responsive
/Nonresponsive",

4,"Run out on test bar :

0.010 mm or less

[Test Bar Length

30 mm]

Runout at Nose:

0.003 mm or better",Jyoti,Complied,"0.020

0.010",Non Responsive,

,, "Ace Manufacturing

Systems","0.010

0.003","0.020

0.010",,,

,,BFW,Complied,"0.020

0.008",,,

,,Macpower,"0.010

0.003",0.020 0.010,,

,,Philips*, "0.010

0.003","0.025

0.012",,,

,,HMT,"0.020mm

0.003mm","0.020

0.010",,,

5,"Run out on test bar:

0.005 mm or less

[Test Bar Length

300 mm]

Spindle Run out :

0.003 mm or less

run out at nose or

better",Jyoti,Complied,"0.020

0.010",Non Responsive,

,, "Ace Manufacturing

Systems", "0.005

0.003", "0.020

0.010",,,

,,BFW,Complied,"0.020

0.008",,,

,,HMT,"0.020mm

0.003mm", "0.020

0.010",,,

////////

////////

////////

,,Macpower,"0.005

0.003", "0.020

0.010",,,

,,Makino,"0.008

0.003", "0.008

0.002",,,

,,Philips*, "0.010

0.003", "0.025

0.012",,,

6., "Run out on test bar :

0.010 mm or less

[Test Bar Length

300 mm] Runout at
 Nose : 0.003 mm or
 better",Jyoti,Complied,"0.020
 0.010",Non Responsive,
 ,, "Ace Manufacturin g
 Systems","0.010
 0.003","0.020
 0.010",,
 ,,BFW,Complied,"0.020
 0.008",,
 ,,Macpower*,"0.010
 0.003","0.020
 0.010",,
 ,,Philips,"0.010
 0.003","0.025
 0.012",,

*Price-wise lowest Bidder irrespective of Responsiveness of Bid,,,,,,,,

Reliance has been placed on paragraph 26 of this decision, which reads as follows:",,,,,,,,

â??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.â?? (emphasis supplied),,,,,,

43. Reliance is also placed on Central Coalfields Ltd. and Anr. v. SLL-SML (Joint Venture Consortium) and Ors., (2016) 8 SCC 622, wherein the" ,,,,,,

Court observed in paragraph 48 as follows:,,,,,,

â??48. Therefore, whether a term of 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 [Ramana Dayaram Shetty v. International Airport Authority of India, (1979) 3 SCC 489] ." ,,,,,,

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.â??(emphasis supplied),,,,,,

44. Reliance is also placed by Mr. Mahajan on Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corporation Limited and Anr. (2016) 16 SCC 818.,,,,,,

Particular reliance has been placed on paragraphs 11-13 of this decision, which reads as under:" ,,,,,,

â?? 11. Recently, in Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium) [Central Coalfields Ltd. v. SLL-SML (Joint Venture" ,,,,,,

Consortium), (2016) 8 SCC 622 : (2016) 4 SCC (Civ) 106 : (2016) 8 Scale 99] it was held by this Court, relying on a host of decisions that" ,,,,,,

the decision-making process of the employer or owner of the project in accepting or rejecting the bid of a tenderer should not be interfered ,,,,,,

with.,,,,,,

Interference is permissible only if the decision-making process is mala fide or is intended to favour someone. Similarly, the decision should" ,,,,,,

not be interfered with unless the decision is so arbitrary or irrational that the Court could say that the decision is one which no responsible ,,,,,,

authority acting reasonably and in accordance with law could have reached. In other words, the decision-making process or the decision" ,,,,,,

should be perverse and not merely faulty or incorrect or erroneous. No such extreme case was made out by GYT-TPL JV in the High Court ,,,,,,

or before us.,,,,,,

12. In Dwarkadas Marfatia and Sons v. Port of Bombay [Dwarkadas Marfatia and Sons v. Port of Bombay, (1989) 3 SCC 293] it was held" ,,,,,,

that the constitutional courts are concerned with the decision-making process. Tata Cellular v. Union of India [Tata Cellular v. Union of ,,,,,,

India, (1994) 6 SCC 651] went a step further and held that a decision if challenged (the decision having been arrived at through a valid" ,,,,,,

process), the constitutional courts can interfere if the decision is perverse. However, the constitutional courts are expected to exercise" ,,,,,,

restraint in interfering with the administrative decision and ought not to substitute its view for that of the administrative authority. This was ,,,,,,

confirmed in Jagdish Mandal v. State of Orissa [Jagdish Mandal v. State of Orissa, (2007) 14 SCC 517] as mentioned in Central Coalfields" ,,,,,,

[Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium), (2016) 8 SCC

622 : (2016) 4 SCC (Civ) 106 : (2016) 8 Scale 99].",,,,,,

13. In other words, a mere disagreement with the decision-making process or the decision of the administrative authority is no reason for a",,,,,,

constitutional court to interfere. The threshold of mala fides, intention to favour someone or arbitrariness, irrationality or perversity must be",,,,,,

met before the constitutional court interferes with the decision-making process or the decision.â?? (emphasis supplied),,,,,,

45. He also places reliance on Rajasthan State Industrial Development and Investment Corporation v. Subhash Sindhi Cooperative Housing Society,,,,,

Jai, (2013) 5 SCC 427, wherein the Court observed in paragraph 19 as follows:",,,,,,

â??19. â??!The doctrine of discrimination based upon the existence of an enforceable right, and Article 14 would hence apply, only when",,,,,,

invidious discrimination is meted out to equals, similarly circumstanced without any rational basis, or to relationship that would warrant",,,,,,

such discriminationâ?? (Emphasis supplied),,,,,,

46. Lastly, he places reliance on Rajasthan High Court, Jodhpur v. Babu Lal Arora, (2004) 9 SCC 71. The court observed in paragraph 6 of this",,,,,,

decision as follows:,,,,,

â??6. The employees who are in service are governed by the conditions of employment and their promotions also take place accordingly,,,,,

and not on any general principle of justice and fair play. Discrimination, if any, will arise only amongst equals and not between those who",,,,,,

are in different cadres. As was set out earlier, the respondent had obtained three promotions as per the orders issued by the Registrar â??",,,,,,

firstly, as UDC on 12-11-1973, secondly, as Court Fee Examiner/Stamp Reporter on 7-4-1984 and lastly, as a Bench Reader on 28-10-",,,,,,

1989. Thus in the course of his 27 years' service, he had already obtained three promotions and, therefore, the circular was not attracted to",,,,,,

his case at all. It is, therefore, that the High Court wanted to rely upon the doctrine of justice and fair play.â??",,,,,,

(emphasis supplied),,,,,,

Lot No.,Brief reason for rejection,,,,,

4., "Technically Non-responsive:

b) Clause No. 6.3: Bidder has mentioned Run out on test bar:
0.010mm or less [Test Bar Length 300mm] Runout at Nose:
0.003mm or better in the compliance statement. Tender Specified
runout on test bar at 300mm is 0.010mm and at nose is 0.003mm.
Whereas according to the bidder's submitted test chart the
runout on test bar at 300mm is 0.020mm and at nose is 0.010mm.
In view of above technical non-compliance with supporting
evidence, the bid is technically not complied." ,,,,,

5,"Technically Non-responsive:

b) Clause No. 6.3: Bidder has mentioned Run out on test bar:
0.005mm or less [Test Bar Length 300mm] Spindle Run out
0.003mm or less run out at nose or better in compliance statement.
As per bidder's submitted test chart runout on test bar at
300mm is 0.020mm and runout at nose is 0.010mm against
tender specified spindle runout at 300mm is 0.005mm or less and
at nose is 0.003mm or less.

In view of above technical non-compliance with supporting
evidence, the bid is technically not complied." ,,,,,

6,"Technically Non-responsive:

b) Clause 6.3: Bidder has mentioned Run out on test bar:
0.010mm or less [Test Bar Length 300mm] Runout at Nose:
0.003mm or better in compliance statement. As per bidder's
submitted test chart runout on test bar at 300mm is 0.020mm and
runout at nose is 0.010mm against tender specified spindle runout
at 300mm is 0.010mm or less and at nose is 0.003mm or better.

In view of above technical non-compliance with supporting
evidence, the bid is technically not complied." ,,,,,

Lot

No.,"Machine

Description","Bidder

No.", "Name of the
Bidder", "Acceptance/
Comments",,
1, "CNC Milling
5 Axis-
Gr1(Medium
Bed Size)", "03/15, "M/s. Bharat Fritz
Werner Limited", "Technically Non-
Responsive",,
,, "04/15, "M/s Deckel
Maho Pfronten
GmbH", "Additional
clarifications
sought from the
bidder [Ref.
Enclosed
Annexure -A]",,
,, "12/15, "M/s. Jyoti CNC
Automation Ltd.", "Technically
Non- Responsive",,
,, "09/15, "M/s. Lakshmi
Machine Works
Ltd.", "Technically Non-
Responsive",,
,, "15/15, "M/s. Philips
Corporation", "Additional
clarifications
sought from the
bidder [Ref.
Enclosed

Annexure -A]",,,
2,"CNC Milling
5 Axis-
Gr2(Medium
Bed Size)",03/15,"M/s. Bharat Fritz
Werner Limited","Technically Non-
Responsive",,,
,,04/15,"M/s Deckel
Maho Pfronten
GmbH","Additional
clarifications
sought from the
bidder [Ref.
Enclosed
Annexure -A]",,,
,,12/15,"M/s. Jyoti CNC
Automation Ltd.", "Technically Non-
Responsive",,,
,,09/15,"M/s. Lakshmi
Machine Works
Ltd.", "Technically Non-
Responsive",,,
3,"CNC Milling
5 Axis (
LargeBed Size)",03/15,"M/s. Bharat Fritz
Werner Limited","Technically Non-
Responsive",,,
,,04/15,"M/s Deckel Maho
Pfronten GmbH","Technically Non-
Responsive",,,

,,12/15,"M/s. Jyoti CNC
Automation Ltd.", "Technically Non-
Responsive",,

,,,,,

,,,,,

,,,15/15,"M/s. Philips
Corporation", "Additional
clarifications
sought from the
bidder [Ref.

Enclosed

Annexure -A]",

,4,"CNC Milling 3

Axis (Small Bed

Size)",02/15,"M/s ACE

Manufacturing

Systems Limited", "Technically Non-
Responsive",

,,,03/15,"M/s Bharat Fritz

Werner Limited", "Technically Non-
Responsive",

,,,08/15,"M/s HMT

Machine Tools Ltd", "Technically
Non- Responsive",

,,,12/15,"M/s Jyoti CNC

Automation Ltd.", "Technically Non-
Responsive",

,,,09/15,"M/s Lakshmi

Machine Works

Ltd", "Technically

Non- Responsive",
,,,10/15,"M/s Macpower
CNC Machines
Limited","Technically Non-
Responsive",
,,,11/15,"M/s Makino Asia
Pte Ltd","Technically
Non- Responsive",
,,,15/15,"M/s Philips
Corporation","Additional
clarifications
sought from the
bidder [Ref.
Enclosed
Annexure -A]",
,5,"CNC Milling
3 Axis
(Medium Bed
Size)",02/15,"M/s ACE
Manufacturing
Systems Limited","Technically Non-
Responsive",
,,,03/15,"M/s Bharat
Fritz Werner
Limited","Technically
Non- Responsive",
,,,08/15,"M/s HMT Machine
Tools Ltd","Technically Non-
Responsive",
,,,12/15,"M/s Jyoti CNC

Automation Ltd.", "Technically
Non- Responsive",
,,,09/15, "M/s Lakshmi
Machine Works
Ltd", "Technically Non-
Responsive",
,,,10/15, "M/s Macpower
CNC Machines
Limited", "Technically
Non- Responsive",
,,,11/15, "M/s Makino Asia
Pte Ltd", "Technically Non-
Responsive",
,,,15/15, "M/s Philips
Corporation", "Technically
Non- Responsive",
,6, "CNC Milling 3
Axis (Large Bed
Size)", 02/15, "M/s ACE
Manufacturing
Systems Limited", "Technically Non-
Responsive",
,,,03/15, "M/s Bharat
Fritz Werner
Limited", "Technically
Non- Responsive",
,,,12/15, "M/s Jyoti CNC
Automation Ltd.", "Technically Non-
Responsive",
,,,09/15, "M/s Lakshmi

Machine Works
Ltd","Technically
Non- Responsive",
,,,10/15,"M/s Macpower
CNC Machines
Limited","Technically Non-
Responsive",
,,,11/15,"M/s Makino Asia
Pte Ltd","Technically
Non- Responsive",
,,,,,
,,,,,
,,,15/15,"M/s Philips
Corporation","Additional
clarifications
sought from the
bidder [Ref.
Enclosed
Annexure -A]",
,7,"EDM Die
Sinking (Large
Bed Size)",06/15,"M/s GF
Machining
Solutions Pte Ltd","Additional
clarifications
sought from the
bidder [Ref.
Enclosed
Annexure -A]",
,,,11/15,"M/s Makino Asia

Pte Ltd", "Technically Non-Responsive",
,,,14/15, "M/s ONA Electroerosion S.A.", "Technically Non-Responsive",
,8, "EDM Die Sinking (Large Bed Size)", 05/15, "M/s Electronica India Limited", "Technically Non-Responsive",
,,,06/15, "M/s GF Machining Solutions Pte Ltd", "Additional clarifications sought from the bidder [Ref. Enclosed Annexure -A]",
,,,14/15, "M/s ONA Electroerosion S.A.", "Technically Non-Responsive",
,9, "EDM Wire Cut (Medium Bed Size)", 05/15, "M/s Electronica India Limited", "Technically Non-Responsive",
,,,06/15, "M/s GF Machining Solutions Pte Ltd", "Additional clarifications

sought from the
bidder [Ref.
Enclosed
Annexure -A]",
,,,11/15,"M/s Makino Asia
Pte Ltd","Technically Non-
Responsive",
,,,15/15,"M/s Philips
Corporation","Technically Non-
Responsive",
,10,"EDM Wire Cut
(Large Bed Size)",06/15,"M/s GF
Machining
Solutions Pte Ltd","Additional
clarifications
sought from the
bidder [Ref.
Enclosed
Annexure -A]",
,,,14/15,"M/s ONA
Electroerosion S.A.,"Technically Non-
Responsive",
,11,"Coordinate
Measurement
Machine
(Medium Bed
Size)",01/15,"M/s Accurate
Gauging and
Instruments Pvt.
Ltd","Technically Non-

Responsive",
,,,07/15,"M/s Hexagon
Metrology India
Pvt Ltd","Additional
clarifications
sought from the
bidder [Ref.
Enclosed
Annexure -A]",
,,,13/15,"M/s Mitutoyo
South Asia Pvt Ltd","Additional
clarifications
sought from the
bidder [Ref.
Enclosed
Annexure -A]",
,,,01/15,"M/s Accurate
Gauging and
Instruments Pvt.
Ltd","Technically
Non- Responsive",

/////

Lot No,Bidder,Clause No,Description,Clarification/ Confirmation,,
1,Philips Corp,3.5.1,7 T Slots,"Bidder to confirm if the design of
table with 7 slots instead of 8(as
per the tender specification) is
functionally compatible",,
1,Philips Corp,3.7.10,"Automatic tool changing and
through spindle air blow cleaning
while tool change","Bidder to confirm, whether the

function ?Spindle air blow while
tool change? is a standard feature
of the offered machine",,,

1,DeckelMaho,3.6.1,"Direct scale feedback on rotary
and swivel axis is desirable.

Linear glass scales","Bidder to confirm availability of
direct scale feedback on rotary,
swivel axis and linear glass scale
in the offered machine",,,

1,DeckelMaho,3.9.3,"Coolant Chiller for Internal
Coolant Supply ICS External
Coolant mist air (MQL) with
Integrated clock generator","Bidder to confirm whether Coolant
temperature control; Is through
chiller unit or through some
alternative method.",,,

1,Philips Corp,3.17.3,"Optical Data Acquisition Signals
for Collection of operating Data
for Process Monitoring in
Production.",,"Bidder to provide detailed
description of the abbreviation
?BDE? and provide description of
the term ?BDE signal?",,,

2,DeckelMaho,4.11.7,"Spindle Run out (Max): 0.003 mm
or better at Spindle nose",,"Bidder to provide Geometric test
chart",,,

2,DeckelMaho,4.11.8,"Run out on test bar at: 0.01 mm or
better for 300 mm (max) on test
bar",,"Bidder to provide Geometric test
chart",,,

,3,Philips,7.6,"Note: Machine Accuracies

1 . All accuracies should be in
accordance to VDI/ DGQ 3441 or
ISO 230- 2/ JIS Standard B 6338
2 . Working accuracies shall be
verified as per ISO 1079-1
standard work piece machining
test.

3. Geometrical alignment check
as per supplier's test chart
confirming to DIN 8615/ ISO 230-
Part I", "Bidder to provide details about the
accuracy standards followed.",

,3,Philips,11.1,"Please point wise and specifically
describe, how workmanship
standards are maintained in your
plant for inventory control,
casting, machining, fabrication,
QA and testing lab and painting
facilities", "Bidder to provide descriptive/
suitable information for this
clause.",

,3,Philips,11.2,"Please confirm that, how much
percentage of work will be
offloaded to vendors, for the
manufacturing of the offered
product, also give details about
the name addresses of your
registered vendors with details
about quality system and its

accreditation","Bidder to provide descriptive/
suitable information for this
clause.",
,3,Philips,11.3,"What are the plan adopted for
equipment calibration and the
normal frequency adopted for
shop floor and inhouse QA and
quality control labs equipment?","Bidder to provide information in
support of this clause.",
,3,Philips,11.4,"Please specifically send a typical
flow in-line with your quality
assurance plan with proposed
hold points for the offered
product.","Bidder to provide information in
support of the said clause.",
,3,Philips,11.5,"Please specifically and inline
describe about the corrective
action plan proposed for the
offered product.","Bidder to provide information in
support of the said clause.",
,3,Philips,11.7,"Give brief about the in-house
knowledge updation plan for
working staff in your organizatio
n. Also describe how frequently
your shop floor and quality
control staff is being trained to
achieve the same.","Bidder to provide information in
support of the said clause.",
,3,Philips,11.8,"Describe about shop floor safety
culture in your organizatio n and

how effectively it is maintained.", "Bidder to provide information in support of the said clause.",

,4,Makino,3.2,"800 Kgs for high speed rates, 1000 kg with low feed rates", "Bidder to clarify Table loading capacity of the offered version along with the applicable feed rates.)",

,4,Philips,6.3,"Run out on test bar: 0.010 mm or less [Test Bar Length 300 mm] Run out at Nose : 0.003 mm or better", "Bidder to provide Test chart to confirm the specified run out, for the offered machine.",

,6,Philips,9.5,"Quality Test and Accuracy Test Chart Records", "Bidder to provide Test & accuracy chart for the offered machine.",

6,Philips,11.1,"Please point wise and specifically describe, how workmanship standards are maintained in your plant for inventory control, casting, machining, fabrication, QA and testing lab and painting facilities.", "Bidder to provide information in support of the said clause.",,

6,Philips,4.4,"Through spindle coolant system; 40 bar (min) with coolant filtration", "Bidder to confirm availability of 40 bar (min) coolant pressure for the offered machine.",,

6,Philips,6.3,"Run out on test bar: 0.010 mm or less [Test Bar Length 300 mm]

Run out at Nose : 0.003 mm or better", "Bidder to provide Test Chart to confirm the specified run out, for the offered machine.",,

7,GF & ONA,8.1,"Solid state voltage stabilizer (suitable for the offered machine)", "Bidder to provide the make & model of Solid state voltage Stabilizer.",,

7,GF & ONA,8.2,Suitable Chiller,"Bidder to provide the make & model of chiller unit",,,

7,GF & ONA,8.14,"2 in 1 AVR and Isolation Transformer", "Bidder to provide the make & model of 2 in 1 AVR and Isolation Transformer",,,

7,GF & ONA,8.15,"Electrical Touch probe: Renishaw or equivalent", "Bidder to provide the model/ part no. of Electrical Touch probe.",,

8,GF & ONA,8.1,"Solid state voltage stabilizer (suitable for the offered machine)", "Bidder to provide the make & model of Solid State voltage stabilizer.",,

8,GF & ONA,8.2,Suitable Chiller,"Bidder to provide the make & model of chiller unit",,,

8,GF & ONA,8.14,"2 in 1 AVR and isolation Transformer", "Bidder to provide the make & model of 2 in 1 AVR and Isolation Transformer",,,

8,GF & ONA,8.15,"Electrical Touch probe: Renishaw or equivalent", "Bidder to provide the model/ part no. of Electrical Touch Probe.",,

9,GF,5.3,2 in 1 AVR + Transformer,To confirm the make & model,,
 9,GF,5.6,Suitable Water Chiller,To confirm the make & model,,
 10,GF,3,"Diameter of Electrode Wire: 0.22
 TO 0.33 mm","Bidder to confirm the availability
 of 0.33 mm wire.",,
 11,Hexagon,3.6,"NOTE: The specified accuracies
 shall be checked with only one
 probe head. The specified
 accuracies shall be guaranteed in
 the following temperature
 gradients: Ambient Temp: 20 +_
 deg C, with a permissible
 variation of 1 deg C / hr / m / day.","Bidder to confirm about the 1 deg
 C/ day permissible variation of
 temperature for guaranteed
 specified accuracies conformed in
 bidder? specs instead of 2 deg C/
 day mentioned in catalogue.",,
 11,Hexagon,8.3.4,"Measureme nt Interfaces for IGES
 and STEP for their latest versions.","Bidder to provide the version no.
 of Measurement Interfaces for
 IGES and STEP",,,
 11,Hexagon,10.1,"OEM or its group company shall
 have NABL certified laboratory in
 operation for last 3 years,
 developed in relevance to offered
 product. The OEM can have their
 own calibration masters, but these
 calibration masters shall have
 certification / traceability for

NABL accreditation. Supplier/
OEM should submit copies of
NABL certification along with the
bids.", "Bidder has submitted the valid
documents with the bid but not
mentioned in the submitted
bidder's specification. Bidder
to compliance to this clause.",,
11,Mitutoyo,3.6,"NOTE: The specified accuracies
shall be checked with only one
probe head. The specified
accuracies shall be guaranteed in
the following temperature
gradients; Ambient Temp: 20+-
deg C, with a permissible
variation of 1 deg C / hr / m / day.", "Bidder to confirm about the 1 deg
C/ day permissible variation of
temperature for guaranteed
specified accuracies conformed in
bidder? specs instead of 2 deg C/
day mentioned in catalogue.",,
11,Mitutoyo,7.6,"NVIDIA Quadro K2000 2 GB
Graphic Memory", "Bidder to provide Graphic
memory.",,
12,Hexagon,3.6,"NOTE: The specified accuracies
shall be checked with only one
probe head. The specified
accuracies shall be guaranteed in
the following temperature
gradients; Ambient Temp: 20+-

deg C, with a permissible variation of 1 deg C / hr / m / day.", "Bidder to clarify about the 1 deg C/ day permissible variation of temperature for guaranteed specified accuracies conformed in bidder? specs instead of 2 deg C/ day mentioned in catalogue.",,,

12,Hexagon,10.1,"OEM or its group company shall have NABL certified laboratory in operation for last 3 years, developed in relevance to offered product. The OEM can have their own calibration masters, but these calibration masters shall have certification / traceability for NABL accreditation. Supplier/ OEM should submit copies of NABL certification along with the bids.", "Bidder has submitted the valid documents with the bid but not mentioned in the submitted bidder's specification. Bidder to compliance to this clause.",,,

12,Hexagon,4.5,"Drive Speed 600 mm / sec (min) (for all axes)", "As per the enclosed catalogue with the bid, the bidder has two options for drive arrangement

1 . ?Standard Dynamics? with drive speed of 510 mm/s [Ref. Catalogue Page # 54] which is not

complied.

2 . ?High Dynamics? with drive
speed of 860 mm/s [Ref. Catalogue

Page # 54] is being complied.

Bidder to confirm the supply of

option 2 ?High Dynamics?",",,

12,Mitutoyo,3.6,"NOTE: The specified accuracies

shall be checked with only one

probe head. The specified

accuracies shall be guaranteed in

the following temperature

gradients; Ambient Temp: 20+-

deg C, with a permissible

variation of 1 deg C / hr / mtr /

day.", "Bidder to clarify about the 1 deg

C/ day permissible variation of

temperature for guaranteed

specified accuracies conformed in

bidder? specs instead of 2 deg C/

day mentioned in catalogue.",,,

65. The aforesaid Minutes of the TEC clearly show that TEC sought additional
clarifications from various bidders. The bidders from whom,,,,,,

clarifications were sought, lot-wise, were:",,,,,,

(i) Lot 1 â?" M/s. Philips Corporation and M/s. DeckelMaho,,,,,,

(ii) Lot 2 â?" M/s. DeckelMaho Pfronten GmbH,,,,,,

(iii) Lot 3 â?" M/s. Philips Corporation,,,,,,

(iv) Lot 4 â?" M/s. Philips Corporation,,,,,,

(v) Lot 5 â?" None,,,,,,

(vi) Lot 6 â?" M/s. Philips Corporation,,,,,,

(vii) Lot 7 â?" M/s. GF Machining Solutions Pte Ltd.,,,,,,,

(viii) Lot 8 â?" M/s. GF Machining Solutions Pte Ltd.,,,,,,

(ix) Lot 9 â?" M/s. GF Machining Solutions Pte Ltd.,,,,,,

(x) Lot 10 â?" M/s. GF Machining Solutions Pte Ltd.,,,,,,

(xi) Lot 11 â?" M/s. Hexagon Metrology India Pvt Ltd and M/s. Mitutoyo South Asia Pvt. Ltd.,,,,,,

(xii) Lot 12 â?" â?" M/s. Hexagon Metrology India Pvt Ltd and M/s. Mitutoyo South Asia Pvt. Ltd.,,,,,,

66. The aforesaid analysis shows that the TEC was not averse to calling for additional clarifications from the bidders. It also shows that additional,,,,,

clarification was sought in majority of the cases from bidders who were foreign entities.,,,,,,

67. Now, we may turn to the nature of clarifications sought from the aforesaid bidders by the respondents which have been set out in Annexure â?" A",,,,,,

quoted herein above. Pertinently, it would be seen that the respondents sought clarification on a variety of technical issues, including in respect of the",,,,,,

spindle run out on test bar. In respect of Lot 2, the clarification sought by the TEC was with regard to â??Spindle Run out (Max): 0.003 mm or better",,,,,,

at Spindle nose â? with reference to Clause 4.11.7 of the ITB. The bidder was required â??to provide Geometric Test Chartâ?. With reference to,,,,,

Clause 4.11.8, DeckelMaho was again asked to provide clarification in respect of â??Run out on test bar at: 0.01 mm or better for 300 mm (max) on",,,,,,

test barâ?, and the bidder was required â??to provide Geometrical Test Chartâ?. Similarly, Philips Corporation was required to provide, in relation to",,,,,,

Clause 7.6 â??details about the accuracy standards followedâ?. It is extremely pertinent to note that in respect of Lot 4, for which the petitioner is",,,,,,

also a bidder, Philips Corporation was required â??to provide (with reference to Clause 6.3 of the ITB) Test Chart to confirm the specified run out,",,,,,

for the offered machineâ??. No such clarification was sought from the petitioner.,,,,,,

68. As noticed herein above, the Technical Specification set out in the tender document stipulated â??run out on test bar at: 0.01 mm or better for 300",,,,,,

mm (max) on test barâ?. Similarly, for Lot 6, Philips Corporation was granted an opportunity to provide clarification on several technical aspects",,,,,,

â??by providing Test and Accuracy Chart for the offered machinesâ?, and â??to provide Test Chart to confirm the specified run out, for the offered",,,,,,

machineâ?. It is thus evident that bidders like Philips Corporation were given the opportunity to provide clarifications on multiple aspects, including on",,,,,,

the aspect on which the petitioner has been ousted, but the same opportunity was denied to the petitioner in respect of Lot 6. Pertinently, on the same",,,,,,

nature of clarification sought from other bidders, opportunity was denied to the petitioner.",,,,,,

69. The record produced also contains the communications issued by the Office of the Development Commissioner (Micro, Small and Medium",,,,,,

Enterprises), Ministry of Micro, Small and Medium Enterprises, Government of India to the aforesaid bidders. We are setting out herein below one",,,,,,

such communication issued in respect of Lot 1 and 2 to DeckelMaho dated 20.09.2019. The said communication reads as follows:,,,,,,

â??To," ,,,,,,

M/s. DECKEL MAHO Pfronten GmbH,,,,,,

Deckel Maho Street 1, 87459," ,,,,,,

Pfronten, Germany" ,,,,,,

Email: Neeraj.khera@dmgmori.com,,,,,,

Kind Attn: Mr. Neeraj Khera (Vice President â?" NKAM),,,,,,

Subject: ICB No. 21/TCSP/GOODS/P41/2018/TR/TC (Package,,,,,,

â?" 41) opened on 18th July 2019 for Supply of 12 Lots of Machines and Equipment required for Production at New & Existing Technology Centres.,,,,,,

Ref: Your Bid submitted for the above ICB [CPPP Tender ID:,,,,,,

2019_DCMSM_450328_1],,,,,,

Dear Sir/Madam," ,,,,,,

Following Technical clarifications may please be furnished with reference to your above referred bid.,,,,,,

Lot

No.", "Reference

Clause of

Technical

specifications

/ Section of the

Bid",Description,"Clarification
required" ,,,
Technical Clarifications,,,,,,,,
1,3.6.1,"Direct scale
feedback on rotary
and swivel axis is
desirable. Linear
glass scales","Bidder to confirm
availability of direct
scale feedback on
rotary, swivel axis and
linear glass scale in the
offered machine." ,,,
,3.9.3,"Coolant Chiller for
Internal Coolant
Supply ICS External
Coolant mist air
(MQL) with
Integrated clock
generator","Bidder to confirm
whether Coolant
temperature control is
through chiller unit or
through some
alternative method." ,,,
2,4.11.7,"Spindle Run out
(Max):0.003 mm or
better at Spindle
nose","Bidder to provide
Geometric test chart" ,,,

,4.11.8,"Run out on test
bar at :0.01 mm or
better for 300 mm
(max) test bar","Bidder to provide
Geometric test chart",,,
Lot No.,"Reference Clause of
Technical
specifications /
Section of the Bid",Description,"Clarification
required",Our Confirmation,,
Technical Clarifications,,,,,,,,
1,3.6.1,"D i r e c t scale
feedback on rotary
and swivel axis is
desirable. Linear
glass scales","Bidder to confirm
availability of direct
scale feedback on
rotary, swivel axis
a n d linear glass
scale in the offered
machine.,"W e Confirm that
offered machine is
equipped with direct
feedback system for
rotary and swivel
axis. Linear axis are
equipped with Linear
glass scale",,
,3.3,"Coolant Chiller for

Internal Coolant
Supply ICS External
Coolant mist air
(MQL) with
Integrated clock
generator", "Bidder to confirm
whether Coolant
temperature control
is through chiller
unit or through some
alternative method.", "We confirm that
coolant temperature
control is through
chiller unit", ,
2,4.11.7, "Spindle Run out
(Max): 0.003 mm or
better at Spindle nose", "Bidder to provide
Geometric test chart", "We Comply and
Geometric Test Chart
is attached.", ,
,4.11.8, "Run out on test bar at
: 0.01 mm or better
for 300 mm (max)
test bar", "Bidder to provide
Geometric test chart", "We Comply and
Geometric Test Chart
is attached.", ,
could be considered as adverse against other competing bidders.,,,,,,
ii. Due diligence should be done to examine the whole bid to look for missing
information.,,,,,,

iii. Clarification should not be sought if the information specifically sought in the bidding document has not been furnished by the bidder.,,,,,,

iv. Only in case of genuine doubt and bid containing contradictory information, clarification may be sought which should in general be for",,,,,,

minor, non-material issues.",,,,,,

v. Any of the clarification sought should not be in contravention to the bidding document e.g. if the bidder is to be summarily rejected for,,,,,,

non-fulfillment of certain conditions, no clarification should be sought in such cases.â??",,,,,,

72. After taking into consideration the responses received from the bidders who were given the opportunity to provide clarification, in respect of Lot 1," ,,,,,,

M/s. Deckel Maho Pfronten GmbH and M/s. Philips Corporation were held to be technically responsive. In respect of Lot 2, M/s. Deckel Maho",,,,,,

Pfronten GmbH was held to be technically responsive. In respect of Lot 3, M/s. Philips Corporation was held to be technically responsive. In respect",,,,,,

of Lot 7 M/s. GF Machining Solutions Pte Ltd and M/s. ONA Electroerosion S.A. were held to be technically responsive. In respect of Lot 8, M/s.",,,,,,

GF Machining Solutions Pte Ltd and M/s. ONA Electroerosion S.A were held to be technically responsive. Similarly, for Lot 9 M/s. GF Machining",,,,,,

Solutions Pte Ltd was held to be technically responsive. In respect of Lot 10, M/s. GF Machining Solutions Pte Ltd and M/s. ONA Electroerosion S.A",,,,,,

were held to be technically responsive.,,,,,,

73. Curiously, the TEC, in its meeting held between 11-13 September, 2019 had ruled M/s. ONA Electroerosion S.A to be technically non-responsive," ,,,,,,

and no clarification was sought from them. This would be evident from a perusal of Annexure â?" A. However, without seeking any further",,,,,,

clarification, they were declared technically responsive in its meeting held on 16-17 December, 2019. In respect of Lot 11, M/s. Hexagon Metrology",,,,,,

India Pvt. Ltd. and M/s. Mitutoyo South Asia Pvt. Ltd. were declared to be technically responsive. In respect of Lot 12, M/s. Hexagon Metrology",,,,,,

India Pvt. and M/s. Mitutoyo South Asia Pvt. Ltd. were held to be technically responsive.,,,,,,

74. What we find is that, firstly, the guidelines were evolved and set down only in the 2nd Meeting of the TEC, after the TEC in the first meeting had",,,,,,

already decided to hold some of the bidders technically non-responsive, and to

call for clarification from several others. It appears, the TEC sought to" ,,,,,,
tailor make the guidelines in its meeting held on 16-17 December, 2019 to fit
into its decisions already taken and put into action. Secondly, without" ,,,,,,
exception, all the bidders who were found technically responsive in its meeting
held on 16-17 December, 2019 had been provided an opportunity to" ,,,,,,
provide clarification, including on the very aspect of which the petitioner was
denied the said opportunity. This, in our view, is a clear demonstration of" ,,,,,,
glaring discrimination against the petitioner when we look at the grounds on
which the petitioner has been held to be technically non-compliant by the" ,,,,,,
respondent. It is a different matter that M/s. Deckel Maho Pfronten GmbH was
not awarded the contract for Lot 1 since the Bid Evaluation" ,,,,,,
Committee found M/s. Philips Corporation to be the lowest bidder and M/s.
DeckelMaho was not the lowest." ,,,,,,

75. The terms and conditions in respect of all the lots under Package 41 are
identical. Admittedly, there is no distinction and the respondents have not" ,,,,,,
reserved the right under the terms and conditions of the tender to treat the
bidders differently in the matter of examination of their bids, for different" ,,,,,,
Lots, or in respect of machines required for training and those required for
production. The respondents did not clearly state that relaxed standards" ,,,,,,
would be adopted for machines required for training purposes as compared to
machines required for manufacturing purposes." ,,,,,,

76. In our view, the respondents are bound to maintain uniformity in the manner
in which they examine the technical bids â?" whether relating to one" ,,,,,,
Lot, or the other, since the terms and conditions for all the Lots are uniform and
common. If adherence to Clause 16.2 of the ITB by the bidders at the" ,,,,,,
initial stage of submission of the bids was not considered sacrosanct by the TEC
in respect of Lot 1, and resort was had to Clause 27 of the ITB â?" " ,,,,,,
which permits the respondents to call for clarification, there is no reason why the
same TEC of the respondents should not have resorted to the same" ,,,,,,
mechanism while dealing with the bids in respect of Lots 4,5 and 6 at the same
point of time." ,,,,,,

77. The submission of respondents is that the petitionerâ?'s technical bids could
not be considered substantially compliant, and acceptance of any" ,,,,,,
further clarifications in respect of technical specifications from them would
tantamount to a â?"material deviation, reservation, or omissionâ?". Clause" ,,,,,,

29.2 which is relevant to examine this submission has been extracted in paragraph 6 hereinabove. The principle laid down to determine whether a,,,,,, material deviation, reservation, or omission has taken place is that, if accepted, the same would effect, in a substantial way, the scope, quality or",,,,,, performance of goods and related services specified in the contract; or, limit in any substantial way, inconsistent with the Bidding Documents, the",,,,,, Purchaser's rights or the Bidder's obligations under the Contract; or if rectified, would unfairly affect the competitive position of other bidders",,,,,, presenting substantially responsive bids.,,,,,,

78. The interpretation advanced by the respondents to Clause 29.2 of the ITB, in our view, is incorrect and cannot be said to be even a plausible view.",,,,,,

Even if the petitioner was called upon to clarify the position with regard to the technical specifications offered by it, all that the petitioner could have",,,,,,

done is to re-affirm its commitment to supply the machines with the specifications as desired by the respondents in their tender for the three Lots and,,,,,,

to reaffirm its commitment as offered in Clause 6.3 of its Technical Sheet. Thus, there would be no question of the scope, quality or performance of",,,,,,

the goods and related services specified in the contract being affected in any way, much less, substantially. The said clarification would not limit in any",,,,,,

substantial way, inconsistent with the bidding documents, purchasers rights, or the bidder's obligation of the contract. It would also not affect the",,,,,,

competitive position of other bidders, firstly, for the reason that the respondents found no other substantially responsive bids. Moreover, the evaluation",,,,,,

whether the clarification tantamounts to a material deviation, reservation, or omission could have been made only after calling of; receipt, and;",,,,,,

examination of the clarification and not on an assumption. Consequently, the said opportunity ought to have been provided to all other bidders as well,",,,,,,

who were sought to be declared as technically non-responsive on the basis of the assumption, as aforesaid, which itself is arbitrary and whimsical. All",,,,,,

that the petitioner could have done to undo the self-created confusion in the mind of the Respondents with regard to the specifications offered by the,,,,,,

petitioner and to provide documents to establish its capability to supply the machines as per the technical specifications quoted by it. The petitioner has,,,,,,

been discriminated against by denying to it the opportunity to offer its clarification " even if one was called for.,,,,,,

79. Admittedly, the respondents invoked Clause 27 of the ITB while examining the bids of the bidders under several Lots. That is how M/s" ,,,,,,

DeckelMahoPfronten was treated as technically responsive, in respect of Lot" ,,,,,,

1. The purpose of Clause 27 of the ITB (set out in paragraph 19 above) is â??to assist in the examination, evaluation, comparison of the bids, and" ,,,,,,

qualification of the biddersâ?. Therefore, whenever a reasonable doubt arises upon examination of the technical bid of a bidder with regard to, inter" ,,,,,,

alia, the qualification of the bidder, the respondents, at its discretion, may call for clarification." ,,,,,,

80. Firstly, in our view, there was no deviation, discrepancy, or confusion about the bids submitted by the petitioner in view of petitioner having" ,,,,,,

expressly offered the machines as per the technical qualification laid down by the respondents for the three Lots. In any event, even if the respondents" ,,,,,,

could remotely be said to have entertained a genuine doubt about the petitionerâ?s technical qualification, the respondents were obliged to call for" ,,,,,,

clarification, for the reason, that it had adopted the same procedure in respect of M/s DeckelMahoPfronten and several others while examining its" ,,,,,,

technical bid in respect of Lot 1 and other Lots. Even the cause for the so called doubt, if any, was the same, as in the present case. In our view, the" ,,,,,,

respondents were bound to maintain uniformity in the matter of examination of the technical bids and it is not acceptable that the petitionerâ?s fate ,,,,,,

should be dependent upon the whims of the Technical Evaluation Committee. The discretion vested in the respondents to call for Clause 27 is not an ,,,,,,

unguided discretion. The said discretion cannot be exercised arbitrarily, or whimsically. There is a purpose for incorporation of Clause 27 in the ITB," ,,,,,,

namely, to conduct the evaluation process of the bids with all seriousness and sincerity, and not to deal with the bids recklessly and casually. After all," ,,,,,,

invitation of bids and award of contracts by the Government is a serious matter, and the endeavour of the respondents, who have invited the tender," ,,,,,,

should be to successfully conclude the tender rather than to deal with the bids in a casual way and declare all the bidders as technically disqualified ,,,,,,

â?" as was done in respect of Lots 4,5 and 6." ,,,,,,

81. The entire process of inviting bids in respect of a public tender is an expensive and time consuming process. The whole process, even in the" ,,,,,,

present case, started way back in July, 2019 and the respondents sought to

reject, inter alia, the petitioner's bids for Lots 4,5 and 6 in June, 2020." ,,,,,,

Substantial expenditure would have been incurred not only by the Government in the process of inviting the bids, but also by all the bidders in meeting" ,,,,,,

the terms and conditions of the bid, preparing their bids, and submitting their bids. They had to shell out substantial monies towards earnest money" ,,,,,,

deposit. The respondents cannot treat their bids lightly. They have a right to fair examination of their bids. If the respondents are allowed to conduct ,,,,,,

themselves in arbitrary and whimsical manner in the matter of examination of the bids, the public bidding process would lose its credibility, which would" ,,,,,,

be detrimental to public interest. The respondents are accountable to the bidders, and merely because they have a right to reject any bid, and the" ,,,,,,

discretion whether, or not, to call for clarification, it does not mean that the said powers can be exercised in an arbitrary and whimsical manner. The" ,,,,,,

exercise of any discretion by a public authority has to be guided by the object and purpose for such powers being vested in the authority in the first ,,,,,,

place. Thus, in our view, even if the respondents genuinely entertained any doubt with regard to the technical bids submitted by the petitioner and other" ,,,,,,

bidders, the respondents could not have lightly and casually rejected all the bids as technically disqualified, and that too on the basis of an unfounded" ,,,,,,

and whimsical assumption as noted hereinabove, and they should have given a chance to the bidders to clarify the doubts, if any. Pertinently, the TEC" ,,,,,,

called for clarification in numerous instances, but denied this opportunity to the petitioner unfairly." ,,,,,,

82. Our aforesaid view is fortified by Clause 30 of the ITB which provides that a bid which is substantially responsive may not be rejected on account ,,,,,,

of non-conformity, or omission, which is non-material. We have extracted Clause 30.1 and 30.2 in paragraph 22 hereinabove which states that in" ,,,,,,

respect of a bid which is substantially responsive the Purchaser may waive any nonconformity in the Bid. It also provides that in respect of a ,,,,,,

substantially responsive bid, the purchaser, i.e. the respondent may request the bidder to submit the necessary information or documentation within a" ,,,,,,

reasonable period of time to rectify non-material, non-conformities or omissions in the bid related to documentation requirements." ,,,,,,

83. The respondents have sought to place heavy reliance on Clause 16.2 which talks about the obligation of the bidder to submit documentation in ,,,,,,

support of their technical bid. When Clause 16.2 is read in juxtaposition with Clause 30.2, it emerges that in respect of substantially responsive bids," ,,,,,,

non-submission of non-material documents can be made good even later. Pertinently, this is how the respondents have viewed and interpreted the" ,,,,,,

aforesaid Clause while dealing with the bids received in respect of Lot 1 of the same Package. That approach of the respondent accords with the ,,,,,,

letter and spirit of the ITB. There is no reason for the respondents, not to follow suit while examining the technical bids in respect of Lots 4, 5 and 6." ,,,,,,

84. In paragraph 18.1 of their counter affidavit (which is extracted in paragraph 37 hereinabove), the respondents have stated that Philips and" ,,,,,,

DeckelMaho were broadly meeting the requirements subject to immaterial clarifications which were sought from both these bidders. The respondents ,,,,,,

treated non-submission of documents in support of their technical specifications offered to be "immaterial" and, therefore, sought technical" ,,,,,,

clarification from the bidders. They have admitted that DeckelMaho was given the opportunity to clarify the position, and substantiate their claim for" ,,,,,,

accuracy requirements of quoted machines for Lot 1, in line with the values mentioned in their respective technical compliance statement." ,,,,,,

85. The Supreme Court in Montecarlo Limited (supra) held that exercise of power of judicial review would be called for if the approach in the matter ,,,,,,

of examination of the bids is arbitrary, or mala fide, or where the procedure adopted is meant to favour one." ,,,,,,

86. In the present case, though it cannot be said that the respondents have adopted the procedure to eventually favour anyone, since all the bidders" ,,,,,,

were held to be technically non-responsive in respect of Lots 4,5 and 6, the manner of examination of the bids is clearly arbitrary, discriminatory, and" ,,,,,,

whimsical, as we have already discussed hereinabove. The right of the respondents to evaluate the bids with free play in the joints cannot be used as a" ,,,,,,

shield against arbitrary, discriminatory, and whimsical conduct, as held in Central Coalfields Ltd. (supra). It is for the respondents to decide whether a" ,,,,,,

term of the NIT is essential or not. However, the TEC of the respondents cannot adopt different yardstick when dealing with tenders submitted under" ,,,,,,

the same Package; with the same terms and conditions and; Â in respect of same or similar machines. It cannot be that the respondents treat ,,,,,,

compliance of a term of the tender as mandatory in one case, and as directory in

another. Adoption of different yardsticks would certainly expose the" ,,,,,,
conduct of the respondents to the vice of arbitrariness.,,,,,,

87. We have no hesitation in concluding that the decision-making process in the present case is not merely faulty, incorrect, or erroneous, but the same" ,,,,,,
is perverse. The perversity stems from the fact that the respondents have proceeded on a completely unfounded assumption, which is not borne out" ,,,,,,
from the terms contained in their own ITB, and the assumption made by them is also contrary to the ITB. It is also at variance with the conduct of the" ,,,,,,
respondents while dealing with the bids with respect of Lot 1.,,,,,,

88. In our view, the bidders of different Lots cannot be treated as separate classes, for the reason that they are bidding under the same umbrella" ,,,,,,
contract with identical terms and conditions, and in respect of the same or similar machines. The decisions relied upon by the respondents, in our view," ,,,,,,
do not come in our way in exercising our jurisdiction to quash the technical evaluation process undertaken by the respondents in respect of Lots 4, 5" ,,,,,,
and 6 of Package 41.,,,,,,

89. So far as the submission of respondents that they have already closed the bidding process in respect of the Lots in question, by even returning the" ,,,,,,
earnest money and the bid security/ bank guarantee is concerned, there is no submission made to this effect in the counter affidavit. This position is" ,,,,,,
only disclosed in the written submission filed by the respondents.,,,,,,

90. The petitioner had approached this Court by preferring the present writ petition on or about 26.06.2020. The matter was listed before us, for the" ,,,,,,
first time on 06.07.2020. The respondents were represented through their standing counsel. We directed the respondents not to proceed to award the ,,,,,,
contract in relation to Lot 4, 5 and 6 of Package 41. No such statement was made by the respondents, as is contained in the written submissions." ,,,,,,

Obviously, all such developments have taken place during the pendency of the writ petition before taking any such steps. The respondents have not" ,,,,,,
even bothered to inform the Court, much less take its permission, before taking these steps. We are, therefore, of the view that the said developments" ,,,,,,
cannot come in the way of granting relief to the petitioner, if it is made out in the facts of the case." ,,,,,,

91. Having considered the entire situation, we are inclined to allow this petition. We declare the action of the respondents to be whimsical, arbitrary" ,,,,,,

and highly discriminatory. We, accordingly, quash the Technical Evaluation made by the respondents in respect of Lots 4,5 and 6 of Package 41. We" ,,,,,,

direct the respondents to provide an opportunity to all the bidders of Lots 4,5 and 6 of Package 41 to extend the validity of their respective bids and to" ,,,,,,

re-deposit/ re-furnish the bid security/ bank guarantees for a reasonable length of time to enable the respondents to undertake fresh evaluation of the,,,,,,

technical bids in respect of these three Lots. Such of the bidders, who accept the proposal to re-validate their bids as earlier offered, and to re-furnish" ,,,,,,

the bid security / bank guarantees, may be called for Technical Evaluations after granting them the similar opportunity to provide their clarifications." ,,,,,,

92. The Technical Evaluation Committee of the respondents shall examine the technical bids of all such bidders in the light of the clarifications offered,,,,,,

and based on the said findings, the Bid Evaluation Committee may proceed further in the matter to evaluate the bids of those bidders who are found to" ,,,,,,

be technically responsive after inviting their clarifications.,,,,,,

93. The petition stands disposed of in the aforesaid terms leaving the parties to bear their respective costs.,,,,,,