

(2025) 05 BOM CK 0241

In the Bombay High Court

Case No : Writ Petition No. 13976 Of 2024

Thakur Infraprojects Pvt. Ltd

APPELLANT

Vs

State Of Maharashtra, Through Directorate of Industries & Ors

RESPONDENT

Date of Decision : 06-05-2025

Acts Referred:

Maharashtra Regional and Town Planning Act, 1966 — Section 40(1)(b)
Information Technology Act, 2000 — Section 3
Specific Relief Act, 1963 — Section 41(ha)

Citation : (2025) 05 BOM CK 0241

Hon'ble Judges : Alok Aradhe, CJ; M.S. Karnik, J

Bench : Division Bench

Advocate : C. A. Sundaram, Zal Andhyarujina, Nirman Sharma, Rohini Musa, Shivaji Jadhav, Akanksha Agrawal, Dhruvad Vaghani, Ansh Karnawat, Ashwath Reddy, Nihar Ghag, Deeshank Doshi, O. A. Chandurkar, G. R. Raghuwanshi, Ravi Kadam, Rohan Kadam, Rahul Sinha, Soham Bhalerao, Vikram Nankani, Chirag Shah, Jay Sanklecha, Bhavya Shah, Ekta Dalvi, Ashish Kamat, Chirag Shah, Harsh Moorjani, Namrata Vinod, Shyamsundar Jadhav, Vishal Acharya

Final Decision : Disposed Of

Judgement

Alok Aradhe, CJ

1. Rule. Rule is made returnable forthwith. By consent of learned counsel for the parties, heard finally.
2. In this writ petition, the petitioner seeks to quash and set aside minutes of meeting of the Tender Committee dated 8th October 2024 by which the bids submitted by the petitioner in respect of the tenders in question have been rejected. In order to appreciate the grievance of the petitioner, the relevant facts need narration, which are stated infra.

(I) INTRODUCTION :

3. The petitioner, Thakur Infraprojects Pvt. Ltd. (TIPL) is a lead member of the

Joint Venture viz. Thakur-EVRASCON JV comprising of TIPL and M/s. OJSC Euro Asian Construction Corporation 'EVRASCON', established in the year 1968 in Azerbaijan (hereinafter referred to as the JV). The JV is a company incorporated in India and is in the business of infrastructure projects since 1974.

4. The Respondent No.1 is State of Maharashtra, whereas, respondent No.2 is the City and Industrial Development Corporation of Maharashtra Ltd. (CIDCO), appointed as a Special Planning Authority under Section 40(1)(b) of the Maharashtra Regional and Town Planning Act, 1966 for Navi Mumbai Airport Influence Notified Area (hereinafter referred to as NAINA project).

5. The Respondent No.3 – M/s. PNC Aakshya Joint Venture and Respondent No.4 – M/s. Ashoka-Aakshya Joint Venture are joint venture companies who had submitted their bids in respect of the tenders in question.

(II) BACKGROUND FACTS:

6. The following tenders (hereinafter referred to as the subject tenders) form subject matter of this writ petition.

(i) Notice inviting bids for Integrated Infrastructure Development of 20M & above wide Roads, Construction of Various Major & Minor Structures (viz. Flyover, Minor Bridges, VUPs, PUPs etc.) and Allied Electrical Works (street light) in TPS 10 and 11 (vide Tender No.CA No.02/CIDCO/EE(NAINA-I)/2024-25) [Tender 1] dated 23rd July 2024.

(ii) Notice inviting bids for Integrated Infrastructure Development of 20M & above wide Roads, Construction of Various Major & Minor Structures (viz. Flyover, Minor Bridges, VUPs, PUPs etc.) and allied Electrical Works in TPS 8, TPS 9 and TPS 12 (vide Tender No.CA No.01/CIDCO/EE(NAINA I)/2024-25) [Tender 2] dated 23rd July 2024.

7. These tenders pertain to infrastructure works for NAINA Project. The project cost for first tender was notified at Rs.1568,86,38,074.87 (Rs.One thousand five hundred sixty-eight crores eighty-six lacs thirty-eight thousand seventy-four and eighty-seven paise only) (excluding GST), whereas, the same was notified for the second tender over Rs.1909 crores (Rupees One thousand nine hundred and nine crores only).

8. On 23rd July 2024, notices were published by CIDCO in newspaper viz. daily Indian Express inviting bids for the subject tenders. The JV submitted its technical and financial bids on 9th November 2024 in respect of subject tenders. The other bidders viz. respondent No.3– M/s. PNC Aakshya Joint Venture and respondent No.4–M/s.Ashoka-Akshaya Joint Venture Ltd. also submitted their bids. The technical bids were opened on 11th September 2024. M/s. PNC Aakshya Joint Venture and M/s.Ashoka-Akshaya Joint Venture Ltd., on 26th September 2024 addressed separate letters to CIDCO by which they raised objections to the bids submitted by the JV in respect of the subject tenders. The JV thereupon sent a communication on 27th September 2024 to CIDCO pointing

out deficiencies in the technical bids submitted by respondent Nos.3 and 4.

9. The CIDCO, by a communication dated 2nd October 2024 sought response from the JV with regard to objections raised by the other bidders. The JV was asked to remain present on 3rd October 2024 to submit a clarification with regard to its bids along with supporting documents. The JV, thereupon, submitted its response to the objections filed by M/s. PNC Aakshya Joint Venture and M/s. Ashoka-Akshaya Joint Venture Ltd. to its bid. The JV also annexed the addendum certificate dated 13th September 2024 issued by the Government of Azerbaijan in which it was certified that construction by EVRASCON of four lane highway included asphalt concrete works (flexible pavement, street lights with allied work and drain work with a total strength of 48.21 kms.). A representative of the JV attended the personal hearing on 3rd October 2024. The JV, on 4th October 2024 submitted tax registration details of its foreign joint venture partner viz. EVRASCON from Azerbaijan. The JV, on 5th October 2024 was again granted personal hearing. Thereafter JV on 7th October 2024 again submitted clarifications on completion certificate and financial statement of the member of JV, namely EVRASCON.

10. The technical bids of the JV were evaluated by Tender Committee and the same were rejected by an e-mail dated 8th October 2024. The minutes of the meeting of the Tender committee records the following reasons for rejection of the bids of the JV in respect of the subject tenders:

(i) JV partner had not signed the Integrity Pact in breach of the mandatory condition under the tender that all parties in a consortium were required to sign the same.

(ii) Mandatory Eligibility documents were not stamped and/or signed as mandatorily required under the Tender.

(iii) The JV had failed to have the foreign JV partner. EVRASCON's documents duly certified by the country of origin and the Indian Embassy and had only submitted translations with apostille certificate.

(iv) The completion certificates submitted by the petitioner did not include Storm Water Drainage (SWD) and Street Light Scope work experience and the same was only self-certified.

(v) The petitioner's JV partner was not registered under the ambit of the GST Act.

11. The JV, on 8th October 2024 itself submitted a letter to CIDCO and furnished point-wise clarifications to the objections raised by the CIDCO. The financial bids were opened on 9th October 2024 and financial bid submitted by JV led by Ashoka Buildcon for Tender No.1 and the financial bid of JV led by PNC Infratech Ltd. for Tender No.2 were approved. The JV, on 9th October 2024 itself filed this writ petition.

12. A Division Bench of this Court, on 10th October 2024 passed an interim order

in this writ petition that in case any work order is issued in pursuance of the subject tenders, the same shall be subject to further orders which may be passed in the writ petition. The CIDCO, however, on 15th October 2024 issued the work order in favour of M/s. PNC-Akshya Joint Venture in respect of Tender No.2. The Ministry of Road Transport and Highways, on 18th October 2024, passed an order by which M/s. PNC-Infratech Ltd., one of the joint venture partners of M/s. PNC-Akshya Joint Venture and M/s.Ashoka-Aakshya Joint Venture, was blacklisted on account of discrepancy in the integrity pact submitted by M/s.PNC Aakshya Joint Venture. The lead member of M/s.PNC Aakshya Joint Venture i.e. PNC filed a writ petition i.e. writ petition No.14903 of 2024 against the order of blacklisting dated 18th October 2024 before Delhi High Court. Learned Single Judge of Delhi High Court, by order dated 29th October 2024, dismissed the writ petition. Thereupon, PNC filed LPA Nos.1222, 1224 and 1225 of 2024 before Division bench of Delhi High court. The LPAs preferred by the PNC were disposed of vide order dated 29th December 2024. The Division Bench of Delhi High Court remitted the matter for reconsideration to the Ministry of Road Transport and Highways. The Ministry of Road Transport and Highways, after affording a hearing to PNC, revised the period of disqualification from one year to four months. The period of four months has ended on 17th February 2025.

13. In the aforesaid factual background, the JV has approached this Court against rejection of its bids in respect of the subject tenders.

(III) SUBMISSIONS ON BEHALF OF THE PETITIONER:

14. Learned senior counsel for the JV submitted that the JV is a lowest bidder and there is no real or substantial violation of tender conditions by the JV. It is pointed out that there is difference in the bids submitted by the JV and M/s. PNC Aakshya Joint Venture and M/s. Ashoka-Aakshya Joint Venture in respect of Rs.46.69 Crores as against Tender-1 and Rs.135.45 Crores as against Tender-2. It is further submitted that the JV's bid complied with the essential eligibility criteria. It is contended that deviation, if any, in the bid, was purely technical in nature and did not amount to fundamental or substantial non-compliance with the eligibility criteria.

15. It is pointed out that the tender conditions Clauses 3(k), (l) and (s) permit authorisation of one of the members of the JV. It is further pointed out that JV also executed a joint bidding agreement for JV on 28th August 2024. It is urged that the JV had supplied integrity pact which was duly signed by the authorised signatory for and on behalf of the JV. It is pointed out that the Power of Attorney dated 28th August 2024 was executed by both the constituents of the JV in favour of the JV. It is urged that the JV had submitted all essential documents viz. solvency certificate, EMD (earnest money deposit), GST Registration, PAN etc. and the same were digitally signed under Section 3 of the Information Technology Act, 2000 which allows authentication of electronic record by affixing digital signature.

16. It is contended that the aforesaid fact was brought to the notice of the CIDCO vide letters dated 3rd October 2024 and 8th October 2024. It is urged that the documents submitted are apostilled from the country of origin. It is contended that EVRASCON is established in the Republic of Azerbaijan and Azerbaijan is a signatory to the Hague Convention, 1961. The aforesaid stand of the JV was communicated vide letters dated 3rd October 2024 and 8th October 2024. It is submitted that the JV has fulfilled the criteria for the work experience as per Annexure-1 to the tender and has produced the project completion certificate for EPC project. It is urged that in the aforesaid EPC Project, SWD (storm water drain) and Street Light work was included. It is submitted that the stand of the JV with regard to completion certificate was explained in the communications dated 3rd October 2024 and 8th October 2024.

17. It is pointed out that M/s. PNC Aakshya Joint Venture and M/s. Ashoka-Aakshya Joint Venture had not complied with the tender conditions which were essential in nature. It is submitted that neither M/s.PNC Aakshya Joint Venture had furnished the EMD bank guarantee issued from a Bank in Mumbai or Navi Mumbai nor it had submitted two numbers of ready mixed plants (RMC) proof having capacity of 60 cum/hr (Cubic Meter Per Hour). M/s. PNC Aakshya Joint Venture had also not submitted google map for TPS 8, 9 and 12. It is submitted that M/s. PNC Aakshya Joint Venture also did not submit the details of technical persons and joint venture agreement was executed only on a stamp paper of Rs.100/- instead of Rs.500/-. It is pointed out that Lead Partner's Power of Attorney was also submitted which was executed on a stamp paper of Rs.100/- instead of Rs.500/-. It is further pointed out that M/s.PNC-Aakshya Joint Venture also did not submit the board resolution for entering into a joint venture and signing the joint venture with other agency.

18. It is also pointed out that M/s. Ashoka-Aakshya Joint Venture did not submit EMD of Rs.15,69,00,000.00 (Rs. Fifteen crores and sixty nine lac only) in the lead partner's name and the bank guarantee was furnished in the name of M/s. Ashoka-Aakshya Joint Venture which is not registered and therefore, the bank guarantee furnished by M/s. Ashoka-Aakshya Joint Venture is invalid. It is urged that M/s. Ashoka-Aakshya Joint Venture has neither submitted the net worth certificate of Akshaya Infra, which has share of 49% in the JV, nor has submitted three years audited balance-sheet. It is contended that M/s. Ashoka-Aakshya Joint Venture did not have RMC plant capacity certificate of 60 cum/hr. and also did not submit the google map. It is pointed out that the joint venture agreement and the Lead Partner Power of Attorney was executed on a stamp paper of Rs.100/- instead of Rs.500/-. It is urged that the board resolution was submitted on a stamp paper of Rs.100/-. It is submitted that the bridge experience was certified as 97.93% and not 100%. It is contended that despite the aforesaid objections pointed out by the JV with regard to the eligibility of M/s. PNC Aakshya Joint Venture and M/s. Ashoka-Akshya Joint Venture, they were not called upon even to furnish the explanation to the aforesaid objections.

19. It is contended that the procedure followed by CIDCO in evaluating the bids is unfair and discriminatory. It is also pointed that M/s. PNC Aakshya Joint Venture's JV partner was blacklisted on 18th October 2024 and the aforesaid fact has not been disclosed in the counter affidavit filed on behalf M/s. PNC Aakshya Joint Venture and M/s. Ashoka-Aakshya Joint Venture which was filed on 29th October 2024. It is submitted that against M/s. PNC Aakshya Joint Venture's JV partner, on the date of tender i.e. on 8th June 2024, an FIR was registered by the CBI. It is further submitted that the decision-making process is vitiated, as the rejection of the JV's bid is on illusory and technical grounds which are neither substantive nor foundational. It is contended that there is serious violation of tender conditions by M/s. PNC Aakshya Joint Venture and M/s. Ashoka-Aakshya Joint Venture. It is argued that the process is discriminatory as the objections against the JV were acted upon, but those against other bidders were ignored indicating legal mala fides. It is contended that there is loss to public exchequer to the extent of Rs.182.14 Crores. It is, therefore, submitted that the impugned order is liable to be quashed and set aside and the CIDCO be directed to consider the technical bid of the JV and to take a decision afresh.

20. In support of his submissions, learned senior counsel has placed reliance on the judgments of the supreme court in BANSIDHAR CONSTRUCTION PVT. LTD. VS. BHARAT COKING COAL LIMITED & ORS. 2024 SCC OnLine SC 2700, SUBODH KUMAR SINGH RATHOUR VS. CHIEF EXECUTIVE OFFICER AND ORS. 2024 SCC OnLine SC 1682, KANHAIYA LAL AGRAWAL VS. UNION OF INDIA & ORS (2002) 6 SCC 315 and RASHMI METALIKS LTD. AND ANR. VS. KOLKATA METROPOLITAN DEVELOPMENT AUTHORITY & ORS. (2013) 10 SCC 95

(IV) SUBMISSIONS ON BEHALF OF CIDCO :

21. On the other hand, learned senior counsel for the CIDCO, at the outset, submitted that the JV has not assailed the validity of tender conditions but has impugned the decision of CIDCO to reject its bid in respect of subject tenders. It is, therefore, pointed out that scope of inquiry is confined to ascertain whether the JV's bids were compliant with the tender criteria framed in the notice inviting tender. It is contended that CIDCO being the tendering authority, is obliged to punctiliously and rigidly enforce the terms of the tender. It is submitted that it is for the tendering authority to consider as to which condition in the tender is essential and which is ancillary. It is further submitted that CIDCO granted sufficient time and opportunity to the JV and other bidders to clarify their bids and could not have relaxed the tender conditions in favour of the JV.

22. It is urged that bids of the JV for the subject tenders have been rejected for the following reasons:

(i) integrity pact is an undertaking and is a personal declaration that the bidder shall not resort to corrupt practice during the tender. It is submitted that it is a vital foundation document under a tender to ensure transparency and ward off corrupt practices in dealing with the Government. The tender document,

therefore, require all the parties in a consortium to sign the same. However, the integrity pact in case of the JV was not signed EVRASCON, its foreign joint venture partner.

(ii) The JV in its communication dated 8th October 2024 admitted that EVRASCON had not signed the integrity pact and sought ten more working days to enable EVRASCON to sign the same.

(iii) There is no bar either under the Contract Act or under the Powers of Attorney Act against a person imposing a contractual condition that performance must be effected only by the principal. Reference is made to decision in RAO BAHASUR RAVULA SUBBA RAO AND OTHERS VS. THE COMMISSIONER OF ICNOME TAX, MADRAS (1956) 30 ITR 163.

(iv) The mandatory eligibility criteria require all the bidders to self-attest all eligibility documents. The JV's bid documents were not signed and self-attested in the manner required under the tender.

(v) The mandatory eligibility criteria in the tender requires that the documents of foreign joint venture partner were to be certified through legalization in the country of origin and the Indian Embassy under the tender. However, the documents of EVERASCON i.e. JV's foreign partner were not legalized in the country of origin and the Indian Embassy. The reliance on Hague Apostille Convention is misplaced as it excludes the documents dealing directly with commercial or customs operations, from the operation of convention.

(vi) The certificates of work experience relating to EVRASCON, foreign joint venture partner of JV do not disclose storm water drainage and street light work.

23. It is, therefore, contended that CIDCO was justified in rejecting the bids submitted by the JV, who substantially relied on foreign work experience which was not authenticated strictly in the manner laid down in the tender. It is also contended that the contention of the JV that the CIDCO did not examine the deficiencies in the bids submitted by M/s. PNC Aakshya Joint Venture and M/s. Ashoka-Aakshya Joint Venture, is without any merit. It is urged that the bidder, who is ineligible, cannot complain award of contract on the ground that its bid offered better financial terms. In support of aforesaid submissions reliance has been placed on G.J. FERNANDEZ VS. STATE OF KARNATAKA AND OTHERS (1990) 2 SCC 488, CENTRAL COALFIELDS LIMITED AND ANOTHER VS. SLL-SML (JOINT VENTURE CONSORTIUM) AND OTHERS (2016) 8 SCC 622 and TATA MOTORS LIMITED VS. BRIHAN MUMBAI ELECTRIC SUPPLY & TRANSPORT UNDERTAKING (BEST) AND OTHERS 2023 SCC OnLine SC 671.

(V) SUBMISSIONS ON BEHALF OF RESPONDENT NO.3:

24. Learned senior counsel for M/s. PNC Aakshya Joint Venture, while adopting the submission made by learned senior advocate for CIDCO, submitted that no relief at the instance of a party can be granted, who does not fulfil the requisite mandatory eligibility criteria and the JV first has to independently establish its

own right and cannot request this Court to consider the eligibility of other qualified bidders. It is urged that NHAI revised the period of debarment from one year to four months which ended on 17th February 2025 and presently there is no order of debarment against M/s.PNC Infratech. It is further submitted that M/s. PNC Aakshya Joint Venture complied with the objections raised with regard to its technical bid. It is contended that the tendering authority has right to punctiliously and rigidly enforce the terms of the tender. It is urged that the instant project is an infrastructure project and no injunction can be granted in respect of an infrastructure project in view of mandate contained in Section 41(ha) of Specific Relief Act, 1963. It is urged that the Court should not disqualify the successful parties at the behest of a third party. It is contended that writ petition has to be filed by both the members of the joint venture and the writ petition at the instance of TIPL alone, without impleading EVRASCON as a petitioner, cannot be entertained. In support of aforesaid submissions, reliance has been placed on the decision of the Supreme Court in TATA MOTORS LIMITED VS. BRIHAN MUMBAI ELECTRIC SUPPLY & TRANSPORT UNDERTAKING (BEST) AND OTHERS (SUPRA), CARETEL INFORTECH LIMITED VS. HINDUSTAN PETROLEUM CORPORATION LIMITED AND OTHERS (2019) 14 SCC 81 and a Division Bench judgment of this Court in COASTAL MARINE CONSTRUCTION & ENGINEERING LIMITED & ANOTHER VS. BHARAT PETROLEUM AND OTHERS WP(L)/6003/2025 dated 22.04.2025.

(VI) SUBMISSIONS ON BEHALF OF RESPONDENT NO.4:

25. Learned senior counsel for M/s. Ashoka-Aakshya Joint Venture has adopted the submissions made by learned senior counsel for CIDCO and learned senior counsel for M/s. PNC Aakshya Joint Venture and has invited attention of this Court to paragraph 1.1 and 2.1 of the writ petition and has contended that TIPL is the lead member of the JV of which the other member is EVRASCON and the EVRASCON has not filed the writ petition. Therefore, the writ petition, at the instance of TIPL alone cannot be entertained. In support of his submissions, reliance has been placed on TATA MOTORS LIMITED VS. BRIHAN MUMBAI ELECTRIC SUPPLY & TRANSPORT UNDERTAKING (BEST) AND OTHERS (SUPRA).

(VI) SUBMISSIONS IN REJOINER:

26. Learned senior counsel for the JV submitted that CIDCO does not dispute that the JV has power of attorney in its favour to sign on behalf of foreign joint venture partner EVRASCON. It is submitted that such a power of attorney has been specifically recognized by the Supreme Court in BANSHIDHAR CONSTRUCTION PVT. LTD (SUPRA). It is urged that documents submitted by the JV are digitally signed under Section 3 of the Information Technology Act, 2000, which allows authentication of electronic record by affixing digital signature. It is pointed out that the minutes of the tender committee dated 8th October 2024 do not record that the documents of the JV were digitally signed but record that the same were defective/inadequate. It is contended that objection in this regard is an after-thought. It is urged that the JV had submitted documents which were

apostilled in the country of origin and as per Hague Apostille Convention the documents are valid. It is pointed out that in view of office memorandum dated 18th November 2020 issued by Ministry of External Affairs no further attestation or legalization of an apostilled document is required in India. It is also contended that the CIDCO's interpretation of Article 1 of Hague Apostille Convention is erroneous.

27. It is submitted that the work completion certificates for EPC projects include storm water drain and street light work and the JV had submitted a clarification on 3rd October 2024 by way of an addendum dated 13th September 2024. The issue with regard to non-legalization and non-apostallization of addendum has been raised for the first time. It is urged that an attempt to improve on the impugned order is wholly contrary to the decision of Supreme Court in MOHINDER SINGH GILL VS. ELECTION COMMISION OF INDIA (1978) 1 SCC 405.

(VII) ANALYSIS

28. We have considered the rival submissions made on both sides and have perused the record. According to the JV, it is the lowest bidder. The details of the bids submitted by the JV and respondent Nos.3 and 4 are extracted below for the facility of reference:

Tender Details

Estimated Rate

Variation in Financial Bid submitted by the Selected Bidder

Variation in Financial Bid submitted by the Petitioner

Tender-1 (TPS 10, 11)

Rs.1568,86,38,074.87

(excluding GST)

Above 9.6% by Ashoka- Akshaya JV (Rs.1667,78,35,680.62)

Below 2.6%

Tender-2 (TPS 8, 9,

12)

Rs.1908,83,17,416.79 (excluding GST)

Above 11.1% by PNC- Akshaya JV (Biddable part :
Rs.1881,71,70,287.45)

Below 6.1%

Tender

Agency

Tender Estimate

L1 as per Financial Opening

Petitioner's Bid

(in crores)

Loss to exchequer (in crores)

Tender 1 – (TPS 10, 11)

Ashoka- Buildcon Ltd –

Akshaya JV

Rs.1568,86,38,074.8 7 (excluding GST) [Biddable part :
Rs.1521,70,03,358.2 3]

1714.08

1674.52

46.69

Tender 2 – (TPS 8, 9, 12)

PNC Infratech -Akshaya JV

Rs.1908,83,17,416.7

9 [Biddable part :Rs.1881,71,70,287.4 5]

2116.87

2002.09

135.45

Total

3830.95

3676.60

182.13

Thus, the bids of the JV appear to be lower by 182.13 Crores than the bids of respondent Nos.3 and 4.

29. The bids of the JV in respect of subject tenders have been rejected on the following grounds:

(i) The partner of JV viz. EVRASCON has not signed the integrity pact in breach of mandatory condition under the tender which require all the parties to sign the integrity pact.

(ii) The mandatory eligibility documents were not stamped and signed as required under the tender.

(iii) The JV failed to produce the documents of its foreign partner EVRASCON duly certified by the country of origin and the Indian Embassy and submitted the translations with apostilled certificates.

(iv) The completion certificate of foreign partner of the JV did not include the experience of storm water drain and street light in the scope of work.

(v) The JV's foreign partner viz. EVRASCON was not registered under the GST Act.

30. At the outset, it may be noted that the JV has not challenged the validity of the tender conditions but its case is that its bids were compliant with the tender criteria as framed in the invitation to tender. The subject tenders contain the mandatory eligibility criteria. Clause-3(k), (l) and (s) of the subject tenders which are relevant for the purposes of controversy involved in the instant writ petition are extracted below for the facility of reference:

(k) All partners of joint venture/consortia shall be legally liable jointly and severally during the bidding process and for execution of contract in accordance with the contract terms. Joint venture/consortia shall declare the lead partner in the MoU. The MoU shall be explicitly indicate the partner who is authorized signatory for bid and contract.

(l) Lead partner shall be the authorized member to act as a single point contact and be responsible on behalf of the JV.

(s) Authorized Member-Joint Venture members shall authorize one of the members on behalf of the Joint Venture firm to deal with the bid, sign the agreement or enter into contract in respect of the said bid, to receive payment, to witness joint measurement of work done, to sign measurement books and similar such action in respect of the said bid/contract. All notices/ correspondences with respect to the contract would be sent only to this authorized member of the JV firm. no member of the Joint Venture firm shall have the right to assign or transfer the interest right or liability in the contract without the written consent of the other members and that of the employer in respect of the said bid/contract."

Thus, from perusal of aforesaid clauses, it is evident that the same permit authorisation of one of the members of the JV to deal with the bid, sign the agreement or enter into contract in respect of said bid etc. A member of the JV can also be authorised to act as single point contract and be responsible on behalf of the JV.

(VIII) ISSUES:

31. Therefore, the following issues arise for consideration in this writ petition.

(a) Whether the JV has complied with the eligibility criteria laid down in the subject tenders?

(b) Whether the decision of tender committee dated 8th October 2024, by which the technical bids of the JV in respect of subject tenders, is liable to be set aside/quashed on the ground that the same is arbitrary and is irrational?

(c) Whether the action of CIDCO in rejecting the technical bids of the JV and in awarding the contracts to respondent Nos.3 and 4 has vitiated the decision-making process leading to grant of contracts?

(IX) ISSUE NOS.(a) AND (b):

32. Now, we shall deal with the issue Nos.(a) and (b) analogously, as they are interlinked. In order to examine, whether the JV has complied with the criteria laid down in the subject tenders and whether the decision of the tender committee dated 8th October 2024 is arbitrary and is irrational, it is apposite to advert to the decision of the tender committee in respect of each of the ground of disqualification and to deal with such grounds of disqualification.

32.1 The First ground of rejection of the technical bids of the JV is that TIPL alone has signed the integrity pact and the same is not signed by its foreign partner viz. EVRASCON.

32.2 The Supreme Court in BANSIDHAR CONSTRUCTION PRIVATE LIMITED (SUPRA) examined the action of Bharat Coking Coal Ltd. in rejecting the technical bid of a bidder in response to Notice Inviting Tender (NIT) dated 16th August 2023. The Supreme Court in paragraph 13 extracted clause 10 of the NIT dated 16th August 2023. The relevant extract of paragraph 13 which deals with integrity pact is extracted below for the facility of reference.

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Integrity pact

Duly signed and witnessed integrity pact as per proforma provided at Appendix VIII of RFB.

Note : In case the Bidder is a Consortium, the integrity pact is to be signed by all the Members.

The bidder in the said case furnished the integrity pact which was signed by the power of attorney. However, the Bharat Coking Coal Ltd. rejected the technical bid of the bidder. The Supreme Court in paragraph 19 held as under:

"19. It would be apposite to note that as per Section 2 of the Power of Attorney Act, 1882, the donee of a power of attorney may, if he thinks fit, execute or do

any instrument or thing in and with his own name and signature, and his own seal, where sealing is required, by the authority of the donor of the power; and every instrument and thing so executed and done, shall be as effectual in law as if it had been executed or done by the donee of the power in the name, and with the signature and seal, of the donor thereof. In the instant case, the PoA was duly executed in favour of the donee, the signatory of the documents, and was duly notarised before its submission along with other important documents required to be submitted as per NIT by the appellant, before the last date of submission fixed by the respondent BCCL. Hence, there was no legal or justifiable ground to reject the technical bid of the appellant."

32.3 Thus, the action of rejection of the technical bid on the ground that the integrity pact was signed by attorney was not approved by the Supreme Court in the said decision.

32.4 In the instant case, Clause 39.1 of the subject tenders deals with adoption of integrity pact, and reads as under:

"39.0 ADOPTION OF INTEGRITY PACT:

39.1 Integrity Pact will be one of the mandated documents of bid submission. The Integrity Pact is uploaded along with the Bid document. All the Bidders are requested to download the Integrity Pact and take printouts on plain paper and fill the form manually and shall sign and submit the same along with the bid. Only uploaded Integrity Pact form along with Signature of Chief Engineer and Bidders signed & company's seal documents shall be considered. Non-submission of such signed Integrity Pact will lead to bid rejection."

32.5 Section 10.3 of the proforma of integrity pact prescribes that if the contractor is a partnership or a consortium, this agreement must be signed by all the partners or consortium members. Section 10.3 is extracted below for the facility of reference.

"Section 10 – Other provisions

(3) If the Contractor is a partnership or a consortium, this agreement must be signed by all partners or consortium members."

32.6 Thus, Clause 3 requiring the signature of all the members of a consortium in BANSHIDHAR CONSTRUCTION PRIVATE LIMITED (SUPRA) is *pari materia* to Section 10.3 of proforma integrity pact, in the case in hand. It is pertinent to note that the foreign partner of the joint venture of the JV viz. EVRASCON has executed a power of attorney on 28th August 2024. The power of attorney has been annexed with the bids of the JV. The lead member of JV viz. TIPL in the capacity of power of attorney of EVRASCON has signed the integrity pact. It is pertinent to note that clauses 3(K), (I) and (s) of the subject tenders permit authorization of one of the members of JV to deal with the bid, sign agreement or to enter into contract in respect of the bid. In view of law laid down by Supreme Court in BANSHIDHAR CONSTRUCTION PRIVATE LIMITED (SUPRA) and

clauses of 3(K), (l) and (s) of the subject tenders, the inevitable conclusion is that the action of CIDCO in finding the technical bid of the JV to be not responsive on the ground that the integrity pact has been signed only by TIPL and not by the other members of the JV viz. EVERASCON, cannot but has to be held arbitrary and irrational.

33. The second ground for rejection of technical bids of the JV is that the mandatory eligibility documents have not been signed and stamped.

33.1 A three Judge Bench of Supreme Court in COMMISSIONER OF POLICE, BOMBAY VS. GORDHAN DAS BHANJI (SUPRA) examined the validity of order of Commissioner of Police, Bombay, cancelling the permission to erect a cinema building. In paragraph 9 it was held as under:

"9. An attempt was made by referring to the Commissioner's affidavit to show that this was really an order of cancellation made by him and that the order was his order and not that of the Government. We are clear that public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself."

33.2 A constitution Bench of Supreme Court in MOHINDER SINGH GILL VS. ELECTION COMMISSION OF INDIA (SUPRA), while laying down the parameters to adjudge the validity of a statutory order, reiterated the principles laid down in COMMISSIONER OF POLICE VS. GORDHAN DAS BHANJI AIR 1952 SC 16 and held as under:

"8. The second equally relevant matter is that when a statutory functionary makes an order based on certain grounds, its validity must be judged by the reasons so mentioned and cannot be supplemented by fresh reasons in the shape of affidavit or otherwise. Otherwise, an order bad in the beginning may, by the time it comes to Court on account of a challenge, get validated by additional grounds later brought out. We may here draw attention to the observations of Bose, J. in Commissioner of Police, Bombay Vs. Gordhandas Bhanji (AIR 1952 SC 16).

Public orders, publicly made, in exercise of a statutory authority cannot be construed in the light of explanations subsequently given by the officer making the order of what he meant, or of what was in his mind, or what he intended to do. Public orders made by public authorities are meant to have public effect and are intended to affect the actings and conduct of those to whom they are addressed and must be construed objectively with reference to the language used in the order itself.

Orders are not like old wine becoming better as they grow older."

33.3 In the backdrop of aforesaid well settled legal principles with regard to examination of the validity of a decision/order, we may advert to the facts of the case in hand. Note 1 appended to Notes to the subject tenders provides the bidder to self-attest all the documents in relation to mandatory eligibility criteria such as registration, valid bank solvency certificate, GST No., income tax PAN, list of technical staff, list of plant, machinery, equipments, list of works and its magnitude executed in last seven years with work completion certificates, list of works in hand. Note-1 of the Notes is extracted below for the facility of reference:

"1) For qualification, on-line submission shall be accompanied by attested copies of all documents mentioned in Sr.No.1 to 5 of Mandatory Eligibility Criteria such as Registration, valid Bank solvency certificate/GST No. Income Tax Permanent Account No. list of technical staff, list of plant, machinery and equipments list of works & it's magnitude, executed in last 7 (Seven) years along with work completion certificates, list of works in hand.

The applicant should also produce original documents for verification if called for. Failure to attach requisite documents with application will render applicant not eligible for qualification of bid without any intimation."

Thus, in case the documents are not self-attested, the CIDCO has the authority to require a bidder to produce the original documents and only when the bidder fails to produce original documents, the bidder is declared to be ineligible.

33.4 The JV's contention as communicated to CIDCO in the communication dated 3rd October 2024 and communications dated 8th October 2024 is that the documents annexed with the bids are digitally signed under Section 3 of the Information Technology Act, 2000. The decision of the tender committee does not record that the documents submitted by the JV are not digitally signed. Therefore, the CIDCO cannot be permitted to justify the action of rejection of bids of JV on the ground that the documents were not digitally signed as the same would amount to supplementing the fresh reasons in support of its decision to reject the technical bids of the JV, which is impermissible in law. It is also pertinent to note that similar digital signature was accepted by the CIDCO in respect of other bids of the JV. In any case, in case CIDCO had any doubt with regard to the documents produced on behalf of the JV, the CIDCO could have required the JV to produce the original documents as required in Note 1 of the Notes. The consequence of non-compliance viz. the rejection of the bid is provided in Note 1 itself and the same can be resorted in the contingency mentioned therein viz. non-production of original documents. The bid of the JV could have been rejected as prescribed in Note 1 only on non-production of the original documents. For the aforementioned reasons, the action of CIDCO in rejecting the technical bid of the petitioner on this ground, cannot be sustained.

34. The third ground of rejection of JV's technical bid is that the documents required for fulfilling mandatory criteria have not been certified by both the Embassy i.e. Certification by the country of origin viz. Azerbaijan and the Indian

Embassy. The JV has submitted English translated documents and apostille certificate of the origin country.

34.1 The foreign partner of JV viz. EVRASCON is established in Republic of Azerbaijan, which is a signatory to the Hague Convention, 1961. The explanatory report on the Hague Convention of 5th October 1961 is reproduced for the facility of reference:

"Administrative documents dealing directly with commercial or customs operations. This exclusion is justified by the fact that such documents are currently given favoured treatment in the majority of countries. However, it was only accepted after lengthy debate. The question was whether to make an exception to this exclusion and to bring within the scope of the Convention certificates of origin and import/export licences. It was finally decided not to do so for two reasons. First, it would have been pointless to apply the Convention to them as they are more often than not exempt from legislation. Second, in cases where a formality is required, it is not a question of legalisation but of an authentication of the content implying that there has been a physical check made by the competent authority. Last, it was pointed out that import and export licences are most often used in the country in which they were issued.

The Commission nonetheless wanted to avoid the exclusion, once accepted, being given too general a meaning. The qualified "administrative" shows that commercial documents such as contracts and powers of attorney are subject to the rules of the Convention. Moreover, the adverb "directly" tends to restrict the exclusion solely to documents whose very content shows that they are intended for commercial or customs operations, thus excluding those which may occasionally be used for commercial operations such as certificates issued by the Patent Offices (authenticated copies, documents certifying additions to patents, etc.)"

Thus, the Hague Convention applies to commercial documents such as contracts and powers of attorney.

34.2 The Ministry of External Affairs has issued Office Memorandum dated 18th November 2020. The said office memorandum reads as under:

"Ministry of External Affairs

(CPV Division)

Room No.20, Patiala House Anexe,

Tilak Marg, New Delhi – 110001

No.Q/OI/433/2/2020 November 18,2020

OFFICE MEMORANDUM

The Hague Apostille Convention, 1961, abolishes the requirement of legalization of foreign documents for use in any member country, once an Apostille certificate

(including e-Apostille) has been issued by a competent authority of the country where the document originates.

2. It has been brought to the notice of this Ministry that some institutes/organizations/establishments in India demand an apostilled document of a member country to be further attested by the Indian Mission/post in that country. It is clarified that no further attestation or legalization of an apostilled document should be required in India as India is a member of the Hague Apostille Convention. An apostilled document should, therefore, be treated as legalized document in India by all concerned, in accordance with the international obligation under the Hague Apostille Convention.

3. Copy of a Note on "Issuing and Accepting Apostilles" is enclosed for ready reference. The full text of the Hague Apostille Convention and list of its member countries are available at: <https://www.hcch.net/en/instruments/conventions/specialised-sections/apostille>

4. To avoid unnecessary hassle caused to general public by demand of further legalization or attestation of an apostilled document, all concerned are requested to disseminate the information contained in paras 1, 2 & 3 above, among organizations/academic establishments, which are under their charge/in their jurisdiction or are affiliated with them. The information may also please be prominently displayed on the official websites.

OSD(CPV)

Tel:011-23387104

E-mail:jscpv@mea.gov.in

1. Joint Secretary (P & ICC), Ministry of Education, New Delhi
2. Secretary, Department of Education and Secretary, Department of Information/Public Relations, All State and UT Governments."
3. Registrar, University Grants Commission, New Delhi
4. Secretary, National Medical Commission of India, New Delhi
5. Secretary, Dental Council of India, New Delhi
6. Secretary, Indian Nursing Council, New Delhi
7. Director, All India Council for Technical Education (AICTE), New Delhi."

Thus, it is evident that no attestation or legalization of an apostilled document is required in India, as India is a member of Hague Apostilled Convention. An apostilled document should therefore be treated as legalized document in India by all concerned in accordance with International obligation under the Hague Apostille Convention.

34.3 The JV has submitted the documents which are apostilled from the country

of origin viz. Azerbaijan. The JV in its communication dated 3rd October 2024 and communications dated 8th October 2024 has brought the aforesaid fact to the notice of CIDCO. Thus, the rejection of the bid of the JV on this ground as well cannot be sustained.

35. The fourth ground of rejection of the JV's bid is that the experience certificates submitted by the JV which is of its foreign partner EVRASCON do not include the storm water drain and street light scope work experience.

35.1 The relevant extract of clause 1 (xii) of the subject tenders reads as under:

"(xii) Experience of having successfully completed one work of construction of City Infrastructure development project or road project passing through urban area/Green Field Expressway costing not less than Rs.870.73 Cr. (Excluding GST) consisting of Road Network including any one component as mentioned below-

Storm Water Drain, Sewerage Pipe Network, Water Supply Network, Street/ Highway Lights and Utility ducts etc."

35.2 The JV has submitted work completion certificate for EPC certificate and has also furnished an addendum dated 13th September 2024 issued by the Azerbaijan Government which certifies that construction by EVRASCON of a four-lane highway included street lights with allied work and drain work with a total length of 48.21 kms. The aforesaid addendum is also apostilled. Thus, the decision taken by the tender committee that experience certificate furnished by the JV does not include the street light work or storm water drain, is factually incorrect and suffers from the vice of non-application of mind.

36. The fifth ground of rejection of JV's bid is that the JV's partner viz. EVRASCON is not registered under the GST Act.

36.1 Clause 1(iii) and (iv) of the subject tenders read as under:

1(iii)Valid Goods & Service Tax (GST) Registration Certificate/GST No.

1(iv) If the bidder is not required to be registered under GST Act, the declaration to this effect in the form of an affidavit on Rs.500 Stamp Paper duly notarized is to be submitted justifying with reasons as to why the GST registration is not applicable to them.

36.2 The JV had furnished an undertaking as required under Clause 1(iv) of the subject tenders. Therefore, on this ground also the technical bid of the JV could not have been rejected.

37. For the aforementioned reasons, the issue Nos.(a) and (b) are answered in the affirmative.

ISSUE (c):

38. Now, we may advert to the third issue. It is trite law that in exercise of powers of judicial review if an action is shown to suffer from arbitrariness,

irrationality or mala fides, this Court can interfere with a decision. A two Judge Bench of Supreme Court in SIEMENS AKTIENGESELEISCHAFT AND SIEMENS LIMITED VS. DELHI METRO RAIL CORPORATION LIMITED AND ORS. (2014) 11 SCC 288 held that the tenders floated by the Government are amenable to judicial review only in order to prevent arbitrariness and favoritism and protect the financial interest of the State and public interest. Thus, the scope of judicial review is confined as to whether there was any illegality, irrationality or procedural impropriety Committed by the decision- making authority. It has further been held that the Court cannot sit in appeal over the soundness of the decision made by the competent authority and the Court can only examine whether the decision-making process is fair, reasonable, transparent and bona fide with no perceptible injury to public interest. A three Judge Bench of Supreme Court in CENTRE FOR PUBLIC INTEREST LITIGATION VS. UNION OF INDIA (2016) 6 SCC 408 held that minimal interference is called for by Courts in exercise of judicial review of a decision taken by the technical experts after due deliberations inasmuch as the Courts are not well equipped to fathom into such domain which is left to the discretion of the executive. It has further been held that primary and secondary purpose of review is to ensure that administrative bodies act in efficient, transparent, fair, unbiased manner and keep in forefront public interest. In TANGEDCO VS. CSEPD – TRISHE CONSORTIUM (2017) 4 SCC 318 and SAM BUILT WELL (P) LTD. VS. DEEPAK BUILDERS (2018) 2 SCC 176, the principles laid down in CENTRE FOR PUBLIC INTEREST LITIGATION (SUPRA) was reiterated with approval.

39. In the instant case the JV has asserted that the JV is the lowest bidder. The decision of the CIDCO dated 8th October 2024 rejecting the technical bids of the JV is arbitrary and irrational. A First Information Report was lodged against PNC, a partner of M/s.PNC-Aakshya Joint Venture – respondent No.3 for irregularity in integrity pact in respect of previous tender. The aforesaid First Information Report was not taken into account by the CIDCO while adjudging the suitability of M/s.PNC-Aakshya Joint Venture. The aforesaid fact had a material bearing on the issue of eligibility of M/s.PNC-Aakshya Joint Venture. Therefore, the decision-making process of CIDCO which led to grant of contracts in favour of respondent Nos.3 and 4 cannot be said to be fair, reasonable or transparent. The issue No. (c) is, therefore, answered in the affirmative.

40. Now, we may advert to the issue with regard to maintainability of the writ petition. The TIPL is the lead member of M/s.Thakur EVRASCON Joint Venture. The petitioner is the power of attorney holder on behalf of its foreign partner viz. EVRASCON. The tender conditions viz. clauses 3(k), (l) and (s) permit authorization on behalf of joint venture. The power of attorneys dated 28th August 2024 has been executed by EVRASCON in favour of TIPL. The TIPL has been authorized to submit the bid on behalf of the JV. The decision of Division Bench of this Court in COASTAL MARINE CONSTRUCTION & ENGINEERING LIMITED & ANOTHER (SUPRA), is an authority for the proposition that an entity of a consortium in its individual capacity cannot file a writ petition. In the instant

case, the TIPL has filed the petition challenging the decision of the tender committee dated 8th October 2024 by which the bid of the JV has been rejected. The writ petition is filed on behalf of the JV. It is not the case of the respondents that EVRASCON has not authorised the TIPL to file the writ petition. For the aforementioned reason, the decision in MARINE CONSTRUCTION & ENGINEERING LIMITED & ANOTHER (SUPRA), does not apply to the facts of the case and is distinguishable. Therefore, the contention that the instant writ petition at the instance of TIPL is not maintainable, does not deserve acceptance.

41. In view of the preceding analysis, the following directions are issued:

(i) The impugned decision dated 8th October 2024 of the tender committee of the CIDCO, by which the technical bids of JV in respect of Tender No.CA No.02/ CIDCO/ EE (NAINA-I)/2024-25) and Tender No.CA No.01/ CIDCO/ EE (NAINA I) /2024-25) dated 23rd July 2024 (subject tenders), is quashed and set aside.

(ii) Consequently, work order dated 15th October 2024 issued in favour of respondent No.3-M/s.PNC Aakshya Joint Venture for Integrated Infrastructure Development of 20M wide and above Roads, Construction of Various Major & Minor Structures (viz. Flyover, Minor Bridges, VUPs, PUPs etc.) and allied Electrical Works in TPS 8, TPS 9 and TPS 12 (vide Tender No.CA No.01/ CIDCO/ EE (NAINA I) /2024-25), dated 23rd July 2024 is quashed and set aside.

(iii) The action of approval of financial bid of respondent No.4 – M/s. Ashoka-Aakshya Joint Venture for Integrated Infrastructure Development of 20M & above wide Roads, Construction of Various Major & Minor Structures (viz. Flyover, Minor Bridges, VUPs, PUPs etc.) and Allied Electrical Works (street light) in TPS 10 and 11 (vide Tender No.CA No.02/ CIDCO/ EE (NAINA-I)/2024-25) dated 23rd July 2024 is also quashed and set aside.

(iv) The CIDCO is directed to consider the financial bids of the JV viz. Thakur-EVRASCON JV, PNC-Aakshya Joint Venture and M/s.Ashoka-Aakshya Joint Venture as well as other eligible bidders and take a decision afresh to award the contracts in question.

42. Accordingly, the Rule is made absolute. The writ petition is disposed of.