

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.883 of 2026**

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M/s Anirudh Sarswati Construction a Partnership Firm, having its Office At Azad Nagar (Sarswati Sadan), Ward No. 09, Madhepura, Bihar- 852113, through its Partner, namely, Arvind Kumar, aged about 56 years (Male), Son of Anirudh Prasad Yadav, Resident of Villajge- Sahugadh-2 Bhatu Tola, Ward No. 7, Madhepura, P.O. and P.S. and District- Madhepura, Bihar- 852113.

... .. Petitioner

Versus

1. The State of Bihar through the Additional Chief Secretary, Rural Works Department, Government of Bihar, 5th Floor, Visvesvaraya Bhawan, Nehru Path, Patna, Bihar 800015.
2. The Additional Chief Secretary, Rural Works Department, Government of Bihar, 5th Floor, Visvesvaraya Bhawan, Nehru Path, Patna, Bihar 800015.
3. The Engineer-in-Chief-Cum-Additional Commission-cum-Special Secretary, Rural Works Department, Government of Bihar, 5th Floor, Visvesvaraya Bhawan, Nehru Path, Patna, Bihar 800015.
4. The Chief Engineer- 4 (Purnea) Rural Works Department, Government of Bihar.
5. The Superintending Engineer, Work Circle Madhepura, Rural Works Department, Government of Bihar.
6. The Executive Engineer, Work Circle Madhepura, Rural Works Department, Government of Bihar.
7. The Nodal Officer, Mukhya Mantri Gramin Sadak Unnayan Yojana, Rural Works Department, Government of Bihar.
8. M/s R.K. Construction (Bid ID- 625036), Plot No. 9, Bhuiyadih, P.O.- Agrico, P.S.- Sitaramdera Jamshedpur Jharkhand- 831009 through its Proprietor, namely, Rajender Shangari, Son of Late Jagdish Shangari.

... .. Respondents

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**Appearance :**

For the Petitioner	:	Ms. Shrishti Singh, Advocate Mr. Pranav Kumar, Advocate
For the State	:	Mr. Amish Kumar, AC to AG
For the Respondent No.8:	:	Mr. Anand Kumar Ojha 1, Advocate Mr. Sushil Kumar, Advocate

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**CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH**  
**and**  
**HONOURABLE MR. JUSTICE SHAILENDRA SINGH**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE SUDHIR SINGH)**

**Date : 24-03-2026**

Heard learned counsel for the parties.



2. The following reliefs have been sought in the present writ application:

*“(i) To issue an appropriate writ, order, direction in the nature of certiorari for quashing the revised technical bid decision of the Committee headed by the Engineer-in-Chief-cum-Additional Commissioner-cum-Special Secretary, Rural Works Department, dated 02.01.2026 published through memo no. 32 dated 12.01.2026 in relation to NIT No. RRSMP-11/2025-26 (Package no. Madhepura/05) of the Rural Works Department, Government of Bihar, to the extent that the respondent no. 8 has been once again, declared as technically qualified (Annexure-P/10, Pg. 71).*

*(ii) To issue an appropriate writ, order, direction in the nature of certiorari for quashing the financial bid decision dated 28.11.2025 in relation to NIT No. RRSMP-11/2025-26 of the Rural Works Department, Government of Bihar, to the extent that the private respondent no.8, namely, M/s R.K. Construction has been declared as L1 on the basis of incorrect technical bid qualification (Annexure-P/5, Pg-58).*

*(iii) To issue an appropriate writ, order, direction in the nature of mandamus commanding the respondents to revise the financial bid and accordingly, declare the petitioner as L1, as according to the financial bid decision dated 28.11.2025, the petitioner is L2 but the private respondent no. 8, namely, M/s R.K. Construction has been wrongly declared as technically qualified and consequently, as L1.*

*(iv) To issue an appropriate writ, order, direction in the nature of certiorari for the consequential relief of quashing the revised technical bid decision dated 25.11.2025 published through memo no. 3995 dated 28.11.2025 in relation to NIT No. RRSMP- 11/2025-26*



*of the Rural Works Department, Government of Bihar, to the extent that the respondent no. 8 has been once again, declared as technically qualified. (Annexure-P/4, Pg53).*

*(v) To issue an appropriate writ, order, direction in the nature of certiorari for the consequential relief of quashing the technical bid decision dated 08.09.2025 published through memo no. 3338 dated 09.09.2025 in relation to NIT No. RRSMP-11/2025-26 of the Rural Works Department, Government of Bihar, to the extent that the respondent no. 8 has been declared as technically qualified. (Annexure-P/2, Pg. 50).*

*(vi) To issue an appropriate writ, order, direction in the nature of certiorari for quashing any consequential action taken pursuant to the impugned decision, including quashing of any letter of award, agreements entered with third party, if any.*

*(vii) To any other relief or reliefs for which the petitioner is found to be entitled to in the facts and circumstances of the case.”*

3. The brief facts of the present case are that the petitioner had participated in a tender process pursuant to Notice Inviting Tender (NIT) bearing no. RRSMP-11/2025-26 dated 26.07.2025 issued by the Rural Works Department, Government of Bihar. The petitioner submitted his bid for Package No. Madhepura/05 and was declared technically qualified along with other bidders, including the private respondent, M/s R.K. Construction, *vide* decision dated 08.09.2025. However, the petitioner submitted an objection dated 13.09.2025, against the



technical qualification of the private respondent, alleging that the private respondent did not fulfil the mandatory criteria under Clause 4.4A(a) of CMBD. The respondent department considered the objection and passed an order dated 28.11.2025, whereby the private respondent had again been declared technically qualified. Another objection was submitted by the petitioner *vide* letter dated 01.12.2025, challenging the technical qualification of the private respondent on the ground of non-conformity to Clause 4.4A(a) of CMBD.

4. Pursuant thereto, the petitioner approached this court, and in CWJC No. 19719 of 2025, the respondent authorities were directed to consider the representation of the petitioner. The respondent department passed a reasoned order dated 12.01.2026, affirming its earlier orders, whereby the technical qualification of the private respondent has been upheld.

5. *Vide* order dated 29.01.2026, notice was issued to respondent no. 8. In pursuance thereof, Mr. Anand Kumar Ojha, learned counsel, has entered appearance on behalf of respondent no. 8 by filing Vakalatnama on 18.02.2026, which is taken on record. However, till date, no counter affidavit has been filed on behalf of respondent No.8.



6. *Vide* order dated 29.01.2026, this Court had observed as under:

“3. It is not in dispute that the petitioner is one of the technically qualified bidders. In the present writ application, the petitioner has challenged the technical bid decision whereby respondent No. 8 has also been declared technically qualified.”

4. It has been brought to the notice of this Court that ITB 24.2 of the Combined Model Bidding Document (CMBD) deals with the evaluation and comparison of bids. The said ITB 24.2 defines a “substantially responsive bid”, which is extracted hereunder

E. Evaluation and Comparison of Bids

ITB 24.2	A substantially responsive bid is one that fulfills the following mandatory requirements of the Bidding Document:-			
	Sl. No.	Mandatory requirement of the Bidding Document	ITB Clause	Reference of Format
	1	ATO	Clause-4.4A(a)	
	2	Similar Work Experience Certificate	Clause-4.4A(c)	
	3	Existing Commitment and On-going Works	Clause-4.2(m)	Section-III Qualification Information Clause-1.3.2(A)
	4	Deleted		
	5	Bid Validity	Clause 16.1	Section-IV
	6	Evidence of access to line(s) of credit and availability of other financial resources/facilities certified by banker	Clause 4.2(g)	Section-IV
	7	Undertaking to invest money from own resources	Clause 4.4B(b)(iii)	Section-IV
	8	Conditions relating to Joint Venture, where applicable	Clause 4.3 and 4.4D	



5. It has further been pointed out that Sl. No.-1 of the said ITB refers to ATO Clause 4.4A(a), which reads as follows:

क्र० सं०	CMBD की कंडिका	पूर्व में CMBD में अंकित प्रवधान	प्रस्तावित प्रवधान
1.	4.4A(a)	-----	-----  <i>Note:</i> 1. ---- 2. Payment Certificate of Required civil Engineering work of any one year (by which the bidder will be qualified) should be attached as mandatory.

7. Learned counsel for the petitioner submits that the Clause 4.4A(a) of the CMBD, amended *vide* letter dated 14.07.2025, unequivocally mandates submission of a payment certificate of the relevant financial year/qualifying year along with the bid, and the same is integral to determine whether a bid is 'substantially responsive' under Clause 24.2 of CMBD. It is submitted that respondent no. 8 failed to furnish such certificate at the time of submission of the bid and, therefore, could not have been declared technically qualified.

8. Learned counsel for the petitioner further submits that the said clause had been amended *vide* letter dated 14.07.2025, and since the present NIT had been published on 26.07.2025, the said amendment would be applicable for the purposes of present NIT.



9. Learned counsel further submits that Clause 24.1 to 24.4 of the CMBD mandates that the determination of responsiveness must be based solely on the contents of the bid itself and any bid which is not substantially responsive is liable to be rejected and cannot be subsequently made responsive by curing material deficiencies. Clause 24.1 to 24.4 is reproduced hereinbelow:

*"24.1 The Engineer-in-chief-cum-Additional Commissioner-cum-Special Secretary/ Engineer-in-chief's determination of a bid's responsiveness is to be based on the contents of the bid itself, as defined in ITB10.*

*24.2 A substantially responsive bid is one that meets the requirements of the Bidding Document without material deviation, reservation, or omission. The mandatory requirements for a substantially responsive bid is mentioned in Bid Data Sheet. A material deviation, reservation, or omission is one that,*

*(a) if accepted, would*

*(i) Affect in any substantial way the scope, quality, or performance of the Works specified in the Contract; or*

*(ii) Limit in any substantial way, inconsistent with the Bidding Document, the Engineer-in-chief-cum-Additional Commissioner-cum-Special Secretary/Engineer-in-chief's rights or the Bidder's obligations under the proposed Contract; or*

*(b) If rectified, would unfairly affect the competitive position of other Bidders presenting substantially responsive bids.*



*24.3 The Engineer-in-chief-cum-Additional Commissioner-cum-Special Secretary / Engineer-in-chief's shall examine the technical aspects of the bid submitted in accordance with ITB 14.*

*24.4 If a bid is not substantially responsive to the requirements of the Bidding Document, it shall be rejected by the Engineer-in-chief-cum- Additional Commissioner-cum-Special Secretary / Engineer-in-chief's and may not subsequently be made responsive by correction of the material deviation, reservation, or omission.”*

10. Learned counsel for the State referring to paragraphs 23 to 26 of the counter affidavit submits that the Technical Bid Tender Committee, in its meeting dated 08.09.2025, declared all eligible bidders, including respondent no. 8, as technically qualified based on the documents submitted.

11. It is submitted that upon receipt of objection from the petitioner, the department undertook verification of the civil works and turnover details furnished by respondent no. 8 from the concerned authorities, including TSUISL (Tata Steel Utilities and Infrastructure Services Limited) and upon such verification, found the bid capacity of respondent no. 8 to be in order. Accordingly, in the re-meeting dated 25.11.2025, the technical qualification of respondent no. 8 was reaffirmed and its financial bid was opened, wherein it emerged as L1.



12. It is further submitted that Clause 25.1 of the CMBD empowers the authority to seek additional documents to rectify non-material non-conformities, and the documents sought from respondent no. 8 were only for verification purposes. It is thus submitted that the decision of the respondents is in accordance with the tender conditions and does not call for interference.

13. *Per contra*, learned counsel for the petitioner submits that Clause 25.1 of the CMBD, relied upon by the respondents, applies only to non-material non-conformities and cannot be invoked to cure a fundamental defect such as non-submission of a mandatory document. The action of the respondents is thus arbitrary and violative of Article 14 of the Constitution of India.

14. Learned counsel for the respondent No.8 has adopted the arguments as advanced by the learned counsel for the State.

15. The limited issue that arises for consideration is whether a mandatory condition stipulated in the bid document can be overlooked or relaxed by the authority concerned while determining technical qualification of a bidder.

16. At the outset, it is well settled that the terms and



conditions of a tender document constitute the foundational framework governing the bidding process and are binding on all the participants as well as the authority issuing the tender. The sanctity of such conditions, particularly those expressly characterized as mandatory, cannot be diluted or relaxed in a manner that would compromise fairness, transparency, and equality amongst competing bidders. The Hon'ble Supreme Court in *Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium)* reported in *(2016) 8 SCC 622*, has observed that while the employer is best suited to interpret tender conditions, such discretion must be exercised uniformly and without arbitrariness. The relevant part of the said order reads as follows:

*“47. ... Ordinarily, the soundness of the decision taken by the employer ought not to be questioned but the decision-making process can certainly be subject to judicial review. The soundness of the decision may be questioned if it is irrational or mala fide or intended to favour someone or a decision “that no responsible authority acting reasonably and in accordance with relevant law could have reached” as held in Jagdish Mandal followed in Michigan Rubber.”*

17. It is evident from the statements made in the writ petition, and the counter affidavit, that the present NIT had been published on 26.07.2025. An amendment in some clauses of the



CMBD was notified *vide* letter dated 14.07.2025, wherein the relevant Clause 4.4A(a) of the CMBD was also amended. The said amendment would find application in the present NIT, as the amendment had been notified *vide* letter dated 14.07.2025, and the present NIT has been published at a later date on 26.07.2025.

18. In the present case, the amended Clause 4.4A(a) of the CMBD, as noticed by this Court in its earlier order dated 29.01.2026, unequivocally mandates submission of payment certificate of requisite civil engineering work for a qualifying year. The use of the term 'mandatory' leaves no scope for ambiguity. The said requirement is intrinsically linked with determination of eligibility and bid capacity and forms part of the criteria for a 'substantially responsive bid' under Clause 24.2.

19. However, upon perusal of materials on record it is evident that the payment certificate for the relevant financial year/qualifying year had not been submitted by the private respondent. Further, the department in its order dated 12.01.2026, has stated that only the ATO sheet, along with a 26AS certificate for the relevant financial year was attached with the bid document. The submission of payment certificate



for the relevant financial year/qualifying year does not find any mention in the impugned order. As such, it is evident that a mandatory clause of the CMBD has not been fulfilled. The relevant part of the order dated 12.01.2026 is reproduced hereinbelow:

“ वस्तुस्थिति यह है कि निविदाकार M/s. R.K. Construction द्वारा:-

निविदा में UDIN आधारित कुल राशि रू0 11554.28189 लाख का Annual Turnover Summary sheet संलग्न किया गया है, जिसपर Civil Work की राशि क्रम संख्या-01 से 09 पर अंकित है जिसकी कुल राशि रू0 10666.94 लाख अंकित है। अधीक्षण अभियंता, ग्रामीण कार्य विभाग, कार्य अंचल-मधेपुरा के पत्रांक-886 (अनु0), दिनांक-26.08.2025 द्वारा इस निविदा का तुलनात्मक विवरणी मुख्यालय को उपलब्ध कराया गया था जिसके साथ सभी 03 निविदाकारों का शपथ-पत्र 26AS की प्रति सहित (दिनांक-20.08.2025, 20.08.2025, एवं 22.08.2025 का शपथ-पत्र) भी संलग्न है, ताकि Civil Work की राशि का मिलान किया जा सके।

दिनांक- 08.09.2025 को संपन्न तकनीकी बीड निविदा समिति की संपन्न बैठक में इस निविदा में भाग लेने वाले निविदाकारों द्वारा निविदा में संलग्न किये गये कागजातों के आधार पर न्यूनतम अहर्ता पूरा करने वाले (CMBD की कडिका 24.2) सभी निविदाकारों की निविदा को तकनीकी रूप से योग्य घोषित किया गया। तदोपरांत निविदाकार MS Anirudh Saraswati Construction (Bid Id-626191) से प्राप्त परिवाद के आलोक में निविदाकार M/s. R.K. Construction द्वारा निविदा में समर्पित Annual Turnover Summary sheet के क्रम संख्या-01 से 06 पर अंकित Government Sector से संबंधित Civil Work की राशि (रू0 2508.077 लाख) के अतिरिक्त क्रम संख्या-07 एवं 09 पर अंकित अधिकतम दो Civil Work की राशि के सत्यापन हेतु संबंधित कार्यालय को मुख्यालय स्तर से पत्र भेजा गया। उक्त के आलोक



में क्रम संख्या-09 पर अंकित अधिकतम Civil Work की राशि रू0 5971.66417 लाख के सत्यापन के संबंध में संबंधित फर्म Tata Steel utilities and Infrastructure Services Limited (TSUISL) द्वारा यह पुष्टि किया गया कि M/s. R.K. Construction द्वारा वित्तीय वर्ष 2023-24 में Annual Rate Contract (ARC) for All kind of Civil Repair Job से संबंधित Billed Value की राशि रू0 5827.45660 लाख है। निविदाकार M/s. R.K. Construction(Bid Id-625036) द्वारा वित्तीय वर्ष 2023-24 में किये गये अधिकतम राशि वाले Civil Work की राशि के सत्यापनोपरान्त आकलित Available Bid Capacity की राशि इस निविदा की राशि से अधिक पाया गया, जिस कारण दिनांक-25.11.2025 को तकनीकी बीड निविदा समिति की सम्पन्न पुनर्बैठक में निविदाकार M/s. R.K. Construction (Bid Id-625036) के तकनीकी बीड को पुनः योग्य घोषित किया गया एवं पूर्व का निर्णय यथावत रहने के कारण कार्यवाही Upload करने के साथ वित्तीय बीड खोलने का आदेश दिया गया। वित्तीय बीड में निविदाकार M/s. R.K. Construction(Bid Id-625036) द्वारा उद्धृत दर (-) 5.10 प्रतिशत को L1, निविदाकार MS Anirudh Saraswati Construction (Bid Id-626191) द्वारा उद्धृत दर (-) 1.88 प्रतिशत को L2 तथा निविदाकार Diwakar Kumar (Bid Id-626404) द्वारा उद्धृत दर 0.00 प्रतिशत को L3 पाये गये।”

20. A reading of Clauses 24.1 to 24.4 of the CMBD make it explicitly clear that the determination of responsiveness must be based solely on the contents of the bid as submitted and that a bid which is not substantially responsive cannot be subsequently made responsive by curing a material omission. Clause 24.4, in particular, prohibits any post-submission



rectification of a material deviation.

21. In such circumstances, and considering the express provisions under CMBD, the reliance placed by the respondents on Clause 25.1 of the CMBD is wholly misplaced. The said provision permits the authority to seek clarification/additional information only in respect of non-material deficiencies and that too where the bid is otherwise substantially responsive.

22. This position has been reiterated by the Hon'ble Supreme Court in ***Banshidhar Construction Pvt. Ltd. v. Bharat Coking Coal Ltd.*** reported in ***(2024) 10 SCC 273***, wherein it has been observed that a bidder cannot be permitted to cure a fundamental defect in its bid after the last date of submission and mandatory conditions cannot be waived or relaxed. The relevant part of the said order reads as follows:

*“20... This was the mandatory requirement of NIT, the same being related to the qualification criteria as also transpiring from Clause 2.2.5 of the RFB.*

*21. Admittedly, Respondent 8 had not submitted the scanned copies of its Audited Annual Reports for the last three financial years, at the time of submitting/uploading the bid documents, before the last date fixed i.e. 1-12-2023 and the same were submitted on 17-4-2024 only when the clarification was sought from Respondent 8, after the technical bids were opened on 4-12-2023.*



22.... *there was no justification on the part of the respondent authorities for accepting the technical bid of Respondent 8, which clearly was not in compliance with the same mandatory Clause 10 of NIT. The respondent BCCL has miserably failed to justify as to how the technical bid of Respondent 8 was accepted when it had not submitted the requisite important documents related to the qualification criteria as mentioned in Clause 10 of NIT.*

23. *A lame submission was made on behalf of the respondent BCCL that the Tender Evaluation Committee could call for the shortfall of documents and could not allow replacement of the documents, and that Respondent 8 was asked to submit the shortfall documents only. We are neither impressed nor can accept the said submissions. Further, apart from the fact that the technical bid of Respondent 8 deserved to be rejected at the threshold for non-compliance of Clause 10 of NIT, there was also no legal and justifiable reason for rejecting the technical bid of the appellant.*

...

27. *Thus, the said action of the respondent BCCL in rejecting the technical bid of the appellant on absolutely extraneous ground and accepting the technical bid of Respondent 8 though submitted in utter non-compliance of the mandatory requirement of Clause 10 of NIT, and subsequently calling upon Respondent 8 to furnish the shortfall of documents after the opening of technical bids of the bidders, was totally arbitrary and illegal.”*

23. In ***W.B. State Electricity Board v. Patel***



*Engineering Co. Ltd.* reported in (2001) 2 SCC 451, the Hon'ble Supreme Court has observed that the terms of the invitation to tender must be strictly adhered to and cannot be deviated from, in favour of any bidder. The relevant part of the said judgment reads as follows:

*“24. It is essential to maintain the sanctity and integrity of process of tender/bid and also award of a contract. The appellant, Respondents 1 to 4 and Respondents 10 and 11 are all bound by the ITB which should be complied with scrupulously. In a work of this nature and magnitude where bidders who fulfil prequalification alone are invited to bid, adherence to the instructions cannot be given a go-by by branding it as a pedantic approach, otherwise it will encourage and provide scope for discrimination, arbitrariness and favouritism which are totally opposed to the rule of law and our constitutional values. The very purpose of issuing rules/instructions is to ensure their enforcement lest the rule of law should be a casualty. Relaxation or waiver of a rule or condition, unless so provided under the ITB, by the State or its agencies (the appellant) in favour of one bidder would create justifiable doubts in the minds of other bidders, would impair the rule of transparency and fairness and provide room for manipulation to suit the whims of the State agencies in picking and choosing a bidder for awarding contracts as in the case of distributing bounty or charity. In our view such approach should always be avoided. Where power to relax or waive a rule or a condition exists under the rules, it has to be done strictly in compliance with the rules. We have, therefore, no hesitation in concluding that adherence to the ITB or rules is the best principle to be followed, which is also in the best public interest.”*



24. Applying the aforesaid principles to the facts of the present case, it is evident that the respondent no. 8 did not furnish the mandatory payment certificate for the relevant year along with its bid. This omission on part of the private respondent would be relevant in determining the eligibility of the bidder and cannot be treated as a minor procedural lapse. In terms of Clause 24.4 of the CMBD, such a bid ought to have been rejected as non-responsive.

25. Instead, the authorities undertook a post-bid verification process and permitted respondent no. 8 to furnish supporting documents. This effectively allowed supplementation of mandatory documents of the bid after the cut-off date, which is impermissible under the provisions of CMBD, and would constitute as procedural irregularity on part of the respondent-department. Such procedural irregularity would be non-curable as it effectively determines the substantive right of the petitioner and it essentially causes failure of justice.

26. The contention of the respondents that such documents were sought merely for verification cannot be accepted, as verification presupposes the existence of foundational material in the bid itself. In the absence of the mandatory document, the exercise undertaken by the



respondents amounts to curing a fundamental defect in the bid of the private respondent. Such action confers an undue advantage upon respondent no. 8 and disturbs the level playing field among bidders, thereby violating the principle of equality enshrined under Article 14 of the Constitution of India. The fact that such exercise was undertaken only after objections were raised, strengthens the argument that the bid was deficient at the very initial stage.

27. In these circumstances, this Court is of the considered opinion that the action of the respondents in declaring respondent no. 8 as technically qualified, despite non-submission of a mandatory document at the time of bid submission, is clearly arbitrary, contrary to the tender conditions, and legally unsustainable. Consequently, the impugned decisions, whereby respondent no. 8 has been declared technically qualified and thereafter as L1, cannot be sustained in the eyes of law.

28. In view of the aforesaid discussion, order dated 12.01.2026, as contained in Annexure – P/10 is set aside. Further, the financial bid decision dated 28.11.2025, as contained in Annexure – P/5, to the extent that respondent No.8 has been declared as L1, is also set aside.



29. Accordingly, the present writ application stands allowed.

30. Pending application(s), if any, shall stand disposed of.

**(Sudhir Singh, J.)**

**(Shailendra Singh, J.)**

*Gaurav Kumar/-*

<b>AFR/NAFR</b>	A.F.R.
<b>CAV DATE</b>	N.A.
<b>Uploading Date</b>	06.04.2026
<b>Transmission Date</b>	N.A.

