

**2026 LiveLaw (SC) 530**

**IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION**

**SANJAY KUMAR; J., K. VINOD CHANDRAN; J.**  
**Special Leave Petition (C) No.37099 of 2025; May 20, 2026**

**RR CONSTRUCTIONS AND INFRASTRUCTURE INDIA PVT. LTD.**

*versus*

**GAYATRI VENTURES AND ORS.**

**Public Tender — Earnest Money Deposit (EMD) — Permissibility of Fixed Deposit (FD) vs Demand Draft (DD) for out-of-state bidders — Interpretation of tender terms — Mandatory vs Directory - The High Court disqualified the appellant (an out-of-state bidder) on the ground that it submitted its EMD in the form of a Fixed Deposit (FD) instead of a Demand Draft (DD) - The High Court interpreted the relevant tender terms as rendering a DD strictly mandatory for out-of-state bidders - Reversing the High Court's view, the Supreme Court analyzed Clause 2.13 and Clause 2.15 of the Notice Inviting Tender - noted that Clause 2.13(a)(iv) permitted EMD submission via "Approved Interest Bearing Security", a character that a Fixed Deposit (FD) definitely possesses - Clause 2.13(b) and Clause 2.15 employed the permissive phrase "may submit" and "may" concerning the submission of a bank draft by out-of-state bidders – Held that the terms of the tender document clearly indicate that the requirement of providing a DD for out-of-state bidders was merely an option and not a mandatory condition - A Fixed Deposit issued by a scheduled bank in favor of the tendering authority satisfies the technical requirements of the EMD under the category of an "Approved Interest Bearing Security" - The High Court erred in invalidating the appellant's technical qualification. [Paras 7- 10]**

*For Petitioner(s) Mr. Amit Anand Tiwari, Sr. Adv. Ms. Devyani Gupta, AOR Mr. Pranjali Mishra, Adv.*

*For Respondent(s) Mr. Gagan Gupta, Sr. Adv. Mr. Padmesh Mishra, Adv. Mr. Shantanu Krishna, AOR Ms. Vasvikta Bhardwaj, Adv. Mr. Vaishnavi Srivastava, Adv. Mr. Anant Prakash, Adv. Mr. Dama Seshadri Naidu, Sr. Adv. Mr. Bishwajit Dubey, A.A.G. Mr. Vinayak Sharma, Standing Counsel, Adv. Mr. Yashvardhan Shah, Adv. Mr. Vivek Sharma, Adv. Mr. Ravinder Kumar Yadav, AOR Mr. Sahil Sood, Adv.*

**J U D G M E N T**

**K. VINOD CHANDRAN, J.**

Leave granted.

**2.** The appellant is aggrieved with the impugned judgment of the High Court, which disqualified the appellant for reason of the Earnest Money Deposit (EMD) having been provided by way of a Fixed Deposit (FD), when it was mandatory for out of State bidders to submit EMD in the form of Demand Draft (DD). The High Court also followed a judgment of that Court, which on identical conditions found the submission of a DD mandatory for out of State bidders.

**3.** Sri Amit Anand Tiwari, learned Senior Counsel appearing for the appellant would point out that the furnishing of EMD by a DD was optional and the appellant had furnished a FD in the name of the Tendering Authority itself. The finding that furnishing of a DD was mandatory is not borne out from the specific terms of the tender document and even the Committee which scrutinizes the tenders had found the appellant to be qualified. There was a subsequent disqualification made by the Tendering Authority which, however, was not responded to within 48 hours' time granted, since the appellant was already disqualified by the High Court. It is prayed that if this Court finds in favour of the appellant,

the appellant may be granted such time as this Court may determine, so as to contest the disqualification subsequently made.

**4.** Sri Gagan Gupta, learned Senior Counsel appearing for the 6<sup>th</sup> respondent, at the outset contends that the appellant is guilty of suppression, since the second disqualification was never disclosed to this Court. It is also submitted that now the financial bid has been opened and the 6<sup>th</sup> respondent's bid having been accepted, this appeal itself has become infructuous.

**5.** Sri Dama Sesadhri Naidu, learned Senior Counsel appearing for the State while supporting the 6<sup>th</sup> respondent on the subsequent disqualification, admits that the State as per the accepted practice had been accepting FDRs even in the case of out of State bidders. The appellant though was disqualified for having submitted a FD, on the representation filed by the appellant, it was found that the submission of a FDR cannot lead to a disqualification, even with respect to out of State bidders.

**6.** The Notice Inviting Tender was issued by the Water Resources Department for a work titled "*Construction of Head Work of Lamti Feeder Minor Tank Scheme*", the estimated project value of which was Rs. 13,72,98,000/-. Admittedly the financial bid of the appellant was of Rs. 120 Crores and that of the 6<sup>th</sup> respondent, Rs. 149 Crores; the latter having been accepted only due to the disqualification of the appellant.

**7.** The bids were to be submitted in accordance with the tender document, Annexure P2, in 3 envelopes termed Envelope A, B and C, the first two being the technical qualification and the last containing the financial bids. Insofar as Envelope A is concerned, it has to contain *inter alia* the EMD in one of the approved forms as laid down in Clause 2.13. Clause 2.13 has been extracted in the impugned judgment, out of which we only notice sub-clause (a)(iv): *Approved Interest Bearing Security* and sub-clause (a)(xiii): *Bank Draft of State Bank of India or scheduled Banks in case of tenderers of other States*. Clause 2.13(b) relaxes the condition applicable to out of State bidders, in furnishing the EMD, which *may be* in the form of bank draft as specified in Clause 2.13(a)(xiii). Clause 2.15 with nominal heading "*Earnest Money for Tenders form other State*" mandates that on submission of DD, the same shall be renewed at least one month prior to the expiry date from time to time failing which the same would be encashed and the money kept by Engineer-in-Charge, since the EMD is valid for a period of not less than 18 months as per Clause 2.16.

**8.** We cannot but notice that though Clause 2.13 (a)(xiii) specifies bank draft of State Bank of India or scheduled Banks in case of tenderers of other States it is in the nature of an option as reiterated in Clause 2.13 (b), which employs the words "*may submit*". The word "*may*" is also employed in Clause 2.15 and hence it is only in the nature of an option and not a mandatory condition. The appellant admittedly had provided a FD of the Punjab National Bank drawn on the Banjara Hills Branch, Hyderabad. The FD was made in favour of the Executive Engineer, Water Resources Division, Chhuikhadan (CG).

**9.** The submission is that the provision of FD was by virtue of Clause 2.13(a)(iv), which speaks of *Approved Interest Bearing Security*. The word *approved* used is not to indicate any specific approval by the State Government, as is submitted by the learned Senior Counsel for the State, but loosely indicates *Interest Bearing Security*, which character a FD definitely has.

**10.** We are hence of the opinion that the impugned order is not sustainable going by the specific terms of the tender document and hence we set aside the order of the High

Court and declare the qualification of the appellant on the opening of Envelope A as has been declared by the Tendering Authority.

**11.** The next contention is insofar as the subsequent disqualification, which is not a subject of challenge before us. The second disqualification was occasioned on opening Envelope B, which requires a *pre-bid qualification certificate* issued from the office of the Engineer-in-Chief, WRD, Shivnath Bhawan, Nawa Raipur (CG). The State contends that the appellant had not responded to the notice within 48 hours specified in the notice, while the appellant urges that in view of the disqualification ordered by the High Court a response to the second disqualification would be defeated at the outset. As far as the allegation of suppression, it is argued that the second disqualification was after the filing of the Special Leave Petition. The 6<sup>th</sup> respondent, however, submits that the subsequent disqualification was immediately after the SLP and the appellant did not bring it to the notice of this Court, even when the status quo order was passed, which was later to the disqualification.

**12.** The appellant's disqualification on Envelope A was reversed by the Tendering Authority on the representation filed by the appellant and the 6<sup>th</sup> respondent filed a Writ Petition on 12.10.2025, which was allowed on 11.12.2025. The present SLP was filed on 17.12.2025 after which on 26.12.2025, the subsequent disqualification was made.

**13.** We cannot but observe that even if a challenge was made against the subsequent disqualification, it would have been declined by reason of the disqualification ordered by the High Court. The appellant cannot be faulted for not having responded to the same and it is the submission of the learned Senior Counsel for the appellant that though not within time, a representation was filed against the said disqualification too. The disqualification on opening Envelope A with respect to the EMD, as ordered by the High Court having been reversed by us, we are of the opinion that the appellant could approach the Tendering Authority within 48 hours of this judgment being uploaded, with a representation against such disqualification or urge contentions based on the representation submitted later to the 48 hours granted by the Authorities.

**14.** We make it clear that we have not made any observation on the qualification/disqualification on the opening of Envelope B. The appeal stands allowed, setting aside the impugned judgment of the High Court and affirming the qualification of the appellant on the opening of Envelope A.

**15.** Pending applications, if any, shall also stand disposed of.

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