HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT JAMMU

Case: LPA No.167/2026 in
WP(C) No.2388/2026
CM Nos.5687/2026 &
5688/2026

Reserved on: 01.09.2026

Pronounced on:17.09.2026

Uploaded on:17.09.2026

Whether the operative part or
Full judgment is pronounced

M/S Jai Sukrala Trading Co.,
Through its Prop. Sh. Ishan Gupta, 38 years,
S/o Sh. Pawan Gupta,
R/o H.No.75/76, Sarwal Colony, Jammu

.....Appellant

Mr. Vikram Sharma, Sr. Advocate with
Mr. Sachin Dev Singh, Advocate.

1. Union of India through the
Secretary, Ministry of Defence,
South Block, New Delhi.

2. The Commanding Officer,
59 Engineer Regiment,
PIN-914059,
C/o 56 APO, Rajouri (J&K).

3. General Officer Commanding
(GOC), 25 Infantry Division/Chief
Engineer, Headquarter 25
Infantry Division, C/o 56 APO.

4. Engineer Planning Officer for CO,
59 Engineer Regiment,
PIN 914059, C/o 56 APO.

..... Respondents

Mr. Vishal Sharma, DSGI with
Mr. Karan Sharma, CGSC and
Capt. Varun Bajiya OIC, Legal Cell HQ16
Corps.

CORAM: HON'BLE MRS.JUSTICE SINDHU SHARMA, JUDGE
HON'BLE MR. JUSTICE SHAHZAD AZEEM, JUDGE

(JUDGMENT)

PER-SHAHZAD AZEEM, J

1. This *intra-court* appeal is directed against the order dated 13 August 2026 passed by the learned Single Judge [the writ Court] in WP(C) No.2388/2026 titled "***Jai Sukrala Trading Co. Vs. Union of India and others***", whereby the interim order dated 3 August 2026 was modified and respondents were left at liberty to proceed with and finalise the bidding process and all further action including finalisation, was kept subject to the final outcome of the writ petition, with a further direction that the successful bidder shall not claim equity by reason of action taken pursuant to that order.

FACTS

2. The facts in brief are that the appellant is a proprietorship concern engaged in supply of fencing, electrification, solar and allied structural stores/works to defence Army Units functioning under 25-Infantry Division/16 Corps. It claims to have executed similar works of substantial value with the respondents.

3. On 17 June 2026, respondent No.2- the Commanding Officer, 59 Engineer Regiment, issued a Request For Proposal (RFP) No.6690/RFP/26-27/04/OPW and floated nine (9) parallel open tender enquiries on the defence e-procurement portal for "Realignment of IAIOS/AOIS at multiple stretches including Naushera, Jhangar, Shiv Shakti to Cheetah; and eight (8) connected tenders. Accordingly, twelve (12) bidders including the appellant, participated.

4. The original bid submission and bid opening date was 8 July 2026. On 7 July 2026, a corrigendum dated 6 July 2026 was uploaded. It altered original conditions and, *inter-alia,* mandated physical submission of sample of the "Solar Cube Generator-cum-Invertor" at the Technical Evaluation Committee (TEC) stage, failing which the bid was liable to rejection. The last date was thereafter extended.

5. The appellant's case is that it cured the short falls within the extended period, reported on the scheduled date of sample evaluation/demonstration with representations of the OEM; that no TEC was present that day; that no other bidder produced a sample in its presence; and that the Commanding Officer examined its sample.

6. On 29 July 2026 the appellant was declared as "rejected-technical" in all nine (9) tenders, on grounds of non-submission of BIS/ISO certificates, non- submission of the sample in time, non-conformity of the sample, and failure to establish that the offered product did not infringe a patent of a similar product.

7. On 30 July 2026 the appellant made a representation alleging absence of the TEC on 23 July 2026; formulaic clearance of eight (8) competing bidders; and that one cleared bidder, M/s Ace Engineering Infratech India, faced an FIR/chargesheet concerning an alleged forged army supply order qua 107 Engineer Regiment.

8. Aggrieved, the appellant filed WP(C) No.2388/2026 seeking quashing of the rejection order dated 29 July 2026 and the corrigendum dated 6 July 2026 and also the appellant sought direction for re-evaluation before a duly constituted TEC, opening of its financial bid, and an interim restraint against opening/finalising the financial bids.

9. By order dated 3 August 2026 the writ Court directed that opening of the financial bid be deferred till the next date of hearing.

10. The respondents filed objections and *inter alia*, informed the writ Court that the financial bids had already been opened on 29 July 2026; that rate analysis was underway; and that in the FY 2024-25 the appellant had emerged as L-1 but had withdrawn its offer unilaterally, causing operational delay and administrative difficulty.

11. By the order dated 13 August 2026 the writ Court modified the interim order dated 3 August 2026 permitted the respondents to proceed with and finalise the bidding process subject to the outcome of the writ petition and directed that the successful bidder shall not claim equity.

SUBMISSIONS

12. The appellant has challenged the ad-interim order dated 13 August 2026, *inter alia* on the ground that he was duly qualified; that its documents and averments remained unrebutted; and that the writ Court returned no prima facie finding on eligibility and yet permitted finalisation. It was further submitted that no finding was returned on the alleged arbitrariness in clearing the other eight (8) bidders, though it was specifically pleaded that they resorted to a pooled sample in breach of the Defence Procurement Manual (DPM)-2025; that those eight (8) bidders did not independently possess BIS certification; that two cleared bidders are husband and wife; and that one cleared bidder faces a charge-sheet. The corrigendum issued two days before the original last date, altering specifications, was described as tailored-made and vitiated by malafides. On that footing, it was contended that the order dated 13 August 2026 takes away the protection granted on 03 August 2026, as a result it affects the valuable right to compete, therefore, said order is a "Judgment" under Clause 12, and is, therefore, appealable.

13. Ex-adverso, Mr. Vishal Sharma, learned DSGI submits that the financial bids had already been opened on 29 July 2026 and that the appellant, though was declared L-1 in 2024-25, but had withdrawn unilaterally, delaying operational works. Learned DSGI has also produced the record and canvassed that the technical bid was evaluated and found not to conform to the tender conditions; that clause 5.12 of chapter 5 of DPM-2025 permits sample-evaluation criteria in justified cases with approval of the Competent Financial Authority (CFA) and that same was observed; that the sample was not submitted within the time fixed as 0900 hours on 23 July 2026; and that mandatory parameters and sample standards were not met, for which reason the bid was declared technically non-responsive.

ANALYSIS

14. We have heard learned counsels for the parties and perused the record.

15. The writ Court noticed that the appellant disputed the opening of financial bids before 3 August 2026 and relied on the portal status "under process", and that the issues required consideration after completion of pleadings. The challenge to technical evaluation was held to be serious, but strongly controverted, and incapable of conclusive determination at the interlocutory stage. The writ Court further held that the work pertain to re-alignment of IAIOS(S&C) on the Naushera-Jhanger border, pursuant to directions for operational readiness after "**OP Sindoor**", in a sensitive sector in the Area of Responsibility (AOR) of 25 Infantry Division. The writ Court also observed that 22.15 km had been executed in the preceding year and a further 6.20 km in the Naushera sector along the LOC was planned for the current year. The defence procurement for active operational requirements, the writ Court held, cannot be stalled merely to accommodate a vendor's commercial interest, particularly where interference may compromise proscribed technical or operational requirements.

16. On the question of opportunity, the writ Court recorded that technical opening was on 8 July 2026, the period was extended to 15 July 2026, and the appellant participated in sample production/evaluation**.** The respondents' case that the sample was late and non-compliant was noticed. Lateness was held to be a disputed question to be decided on completion of the pleadings and the record. The appellant, as on date, stands technically dis-qualified and whether that disqualification is the product of an unfair process was expressly left open.

17. The observation which weighed with the writ Court is that whether the appellant met the technical threshold is a matter for the writ petition on merits; that, at the interlocutory stage, the material indicated that opening of financial bids had already commenced and, according to the respondents, stood completed before 3 August 2026; and that portal status "under process" was not sufficient to hold that the bids had not been opened. Stalling the entire tender merely because issues warranting further consideration had been raised, it was held, may seriously prejudice public interest and impede operationally urgent works.

The principal issue, whether disqualification accorded with the tender and the law, or whether the process was arbitrary, non-transparent or mala fide, requires adjudication after completion of pleadings and production of the record. At the interlocutory stage, the competing equities were held to yield to the larger public and operational interest in timely execution.

18. It is not in dispute that the writ petition remains pending. The writ Court has neither upheld nor quashed the rejection order dated 29 July 2026 or the corrigendum dated 6 July 2026. It has not finally declared the appellant technically qualified or disqualified. It has not determined cartelisation, tailored made specification, absence of the TEC, or alleged discrimination. On the contrary, it has expressly held that those allegations cannot be conclusively determined at the interlocutory stage, that technical eligibility is an issue in the writ petition, and that the legality of the process remains open. All that has been done is modification of the earlier deferment order dated 3 August 2026, with finalisation kept subject to the writ and with a further express rider that the successful bidder shall not claim any equity.

19. What is discernible, therefore, is that the writ Court order under challenge is a classic example of balancing of equities and is not a disposal of the application for interim relief in the sense of a final determination of rights.

20. The contention of the appellant that modification of the order dated 3 August 2026 amounts in substance and effect, to a final and irreversible disposal of the interim application cannot be accepted. An interim order merges in, and remains capable of being moulded by, later orders in the same proceeding. Modification of an interim restraint is an ordinary incident of interlocutory jurisdiction. If every such modification were a "judgement" under clause 12 of the Letters Patent, the Division Bench would become a court of first appeal against every interlocutory direction of the writ Court. The writ Court has shut out the argument of fait accompli. Finalization of the tender is expressly kept subject to the outcome of the writ petition. The successful bidder is restrained from claiming equity. Those twin conditions are the conventional device by which the Courts refuse to stall public works without extinguishing the petition.

21. An order that keeps the petition alive, keeps every substantial issue open, and only refuses to halt an ongoing tender, does not determine vital rights with finality. An order which recognizes that the stage sought to be frozen has already been crossed, and therefore declines to keep the process in suspended animation, does not decide the merits of the technical qualification. It, therefore, decides only that the public work will not be stalled. The impugned order cannot be fitted into the category of an intermediary judgment.

22. In any event, appellate interference with grant, refusal or modification of interim relief is confined to perversity, disregard of settled principles, reliance on irrelevant considerations, or omission of considerations that were legally mandatory. Another possible view is, by itself, no ground for interference. That proposition is well settled, and this judgment need not to be burdened with a plethora of authorities on the subject. The prayer is not for preservation of the lis, in substance, it is the final relief sought in the writ petition to treat the appellant as technically qualified. Grant of that relief in a Letters Patent Appeal would pre-empt the writ petition, usurp the TEC, and rest on the conjecture that the appellant would emerge as L-1. The writ Court rightly declined to act on that conjecture.

23. Clause 12 of the Letters Patent permits an Intra-Court appeal against a "judgment" of a Single Judge. The expression "Judgment" carries a concept of finality. The judgment may be final, preliminary or intermediary, but it must determine some right or issue between the parties. Routine or purely interlocutory orders which do not determine any such right or issue are not judgments. The law is settled in **'*Shah Babulal Khimji vs. Jayaben D. Kania and anr*;' (1981) 4 Supreme Court Cases 8, and *Midnapore Peoples' Coop Bank Ltd. Vs. Chunilal Nanda and ors*; (2006) 5 Supreme Court Cases 399.**

24. Tested on that principle, the grievance that the writ Court did not return point-wise findings on each certificate and each competing bidders' document mistakes the nature of an interlocutory order. It is to be kept in mind that the writ Court was not deciding the writ petition finally, rather it was deciding whether to keep a defence tender frozen. Having held that the issues were debatable, controverted and reserved for the main petition, it was not required to write a trial judgment on the applications, CM No.5301/2026 and 5514/2026. Absence of issue-wise findings at that stage is not a vitiating infirmity.

25. Even otherwise, the judicial review of tenders is a review of the decision making process, not a re-trial of the TEC. That principle admits of no dilution in a Letters Patent Appeal. The Court examines the process, not the soundness of technical choice. The author of the tender is the best interpreter of its terms. If two views are possible, the owners' view prevails. Therefore, technical evaluation and comparison by the Court is impermissible. The Court does not sit in appeal over the Technical Evaluation Committee. In contracts involving technical issues, restraint is greater.

26. Private commercial interest of a bidder must yield to the public interest. The RFP is not a routine civil store purchase. It is "realignment of IAIOS/AIOS on stretches in the Naushera-Jhanger sector, in the Area of Responsibility of 25 Infantry Division, pursuant to directions issued for operational readiness after "**OP Sindoor**". Defence procurement of operational works on the LOC is not to be halted on a vendor's claim that it would have been L-1, if admitted to the financial bid.

27. Without prejudice to the conclusion of the maintainability, the learned Single Judge applied the correct principles of interlocutory restraint in tender matters, gave due weight to the operational character of the IAIOS/AIOS "Realignment on the LOC" and preserved the appellant's remedies in the writ petition, therefore, no interference on merits is called for.

CONCLUSION

28. As a necessary corollary to the above discussion, it is held that the order dated 13 August 2026 is not a "judgment" within the meaning of clause 12 of the Letters Patent. It is a discretionary modification of an interim direction in a pending writ petition, with the lis kept alive and equity expressly balanced. The Letters Patent Appeal is, therefore, not maintainable and is dismissed.

29. It is made clear that this Court expressed no opinion on the merits of the writ petition. All contentions of the parties therein are kept open.

30. The record produced by the learned DSGI be returned forthwith.

31. All the connected applications also stand disposed of.

(SHAHZAD AZEEM)
JUDGE

(SINDHU SHARMA)
JUDGE

JAMMU
17.09.2026
Surinder

Whether order is speaking: Yes/No
Whether order is reportable: Yes/No