



2026:AHC-LKO:70233-DB

**A.F.R.**

**HIGH COURT OF JUDICATURE AT ALLAHABAD  
LUCKNOW**

**WRIT - C No. - 10822 of 2026**

Larsen And Toubro Limited Thru. Authorized Representative  
Arghya Chattopadhyay

.....Petitioner(s)

Versus

State Of U.P. Thru. Prin. Secy. Deptt. Of Infrastructure/Industrial  
Development Lko. And 5 Others

.....Respondent(s)

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| Counsel for Petitioner(s) | : Prashant Kumar Singh  |
| Counsel for Respondent(s) | : C.S.C., Sharad Tewari |

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**Court No. - 3**

**HON'BLE SHEKHAR B. SARAF, J.  
HON'BLE ABDHESH KUMAR CHAUDHARY, J.**

**1.** Heard Mr. Mukul Rohatgi and Mr. J.N. Mathur, learned Senior Advocates, assisted by Ms. Mahima Pahwa and Mr. Prashant Kumar Singh, appearing for and on behalf of the petitioner; Mr. Pritish Kumar, learned Senior Advocate and Additional Advocate General, assisted by Mr. Rahul Kapoor, appearing for and on behalf of the respondent no. 1-State of U.P.; as well as Mr. Gaurav Mehrotra, learned Senior Advocate, assisted by Mr. Abhineet Jaiswal and Mr. Sharad Tewari, appearing for and on behalf of respondent nos. 2 and 3 at sufficient length.

**2.** The present writ petition has been filed, seeking the following substantial reliefs:

*"(a) issue a writ of certiorari or a writ, order or direction in the nature of certiorari quashing the impugned rejection order dated 25.09.2026 passed by the Respondent No. 2 contained in Annexure No. 1 to the writ petition to the extent it arbitrarily rejects the technical bid of the petitioner;*

*"(b) issue a writ of mandamus or a writ, order or direction in the nature of mandamus commanding the Respondents to declare the technical bid submitted by the Petitioner as qualified and to consider and open the financial bid of the Petitioner along with the financial bids of other technically qualified tenderers;"*

**3.** Mr. Mukul Rohatgi and Mr. J.N. Mathur learned Senior Advocates, appearing for and on behalf of the petitioner, submit that the petitioner is one of the India's largest construction companies and amongst the world's top contractors. Its end to end capabilities span highways, high speed rail, metros, airports, nuclear and green energy plants, refineries, water infrastructure and defence systems, making it the partner of choice for India's most complex, first of its kind projects, including having executed projects of international and social importance in the State of Uttar Pradesh.

**4.** The learned Senior Advocate further submits that the respondent no. 2, being the Uttar Pradesh Expressways Industrial Development Authority (hereinafter to be referred as "UPEIDA") floated a notice, inviting e-tenders on 22.06.2026 for development of Jewar Airport to Ganga Expressway via Bulandshahar Link Expressway (Package-I) from

Bhaipur Brahman (District Gautam Buddha Nagar) to Bichaula (District Bulandshahar) in the State of Uttar Pradesh on EPC basis.

**5.** It has emerged from the records that in respect to the aforesaid tender notice, the petitioner has submitted a bid on 07.09.2026 along with 11 other participants/bidders.

**6.** According to Mr. Mukul Rohatgi, the present controversy arises from the illegal rejection of the technical bids submitted by the petitioner in the aforesaid tender. According to him, the technical bids of the petitioner was declared non-responsive by the technical evaluation committee on 25.09. 2026. on the sole ground that the petitioner was "debarred by the Jal Jeevan Mission U.P."

**7.** It has been submitted by the learned Sr. Counsel, that the said rejection is contrary to the express terms of the Request for Proposal (hereinafter referred to as "RFP"). Highlighting clause 2.1.18 of Section 2 of the RFP he has submitted that the said clause no doubt provides that any entity barred by the central/state government would be not eligible to submit his bid, if the said debarment existed on the bid due date, however, the fact remains that clause 2.2.2.10 specifically deals with catastrophic failure of structure/highway due to construction defects and requires the bidder to furnish an undertaking in that regard. According to him, clause 2.2.2.10 outshines the requirement of 2.1.18. The learned counsel taking a cue from the said clauses has submitted that the

rejection of the bid submitted by the petitioner company is for reasons not stipulated in the notice inviting tender dated 22nd of June, 2026. According to him, the bidder was required to furnish a declaration to substantiate its stand that no catastrophic failure of structure/highway due to construction benefits has occurred in the last five years and no such declaration relating to debarment was required to be made. He further submits that as per sub clause 2.1.18 which relates to the general terms of bidding and describes the entity who may apply for bidding only, does not examine the eligibility of the participants. According to him a reading of clause 2.1.18 indicates that no condition has been stipulated, mandating the bidder to make any declaration regarding debarment, and as such, the rejection of the bid submitted by the petitioner company was not as per law especially when the petitioner has already submitted a declaration regarding absence of catastrophic failure of structures.

**8.** He has further submitted that as far as clause 2.1.18 is concerned, the clause itself stipulates that the bar must subsist as on the bid due date, and according to him, in the present case the order of debarment dated 13.04.2026, relied upon by UPEIDA had already been kept in abeyance by the U.P. State Water and Sanitation Mission vide order dated 14.09.2026, that is, much prior to the technical evaluation dated 25.09.2026 and as such, according to him, consequently on the date of technical evaluation on 25.09.2026, there was no operative Order of

debarment by the U.P. Jal Jeevan Mission against the petitioner so as to disqualify him in the technical bid.

**9.** It has been further submitted that as per clause 1.2.2 of the RFP the bid was to remain valid for a period of 120 days from the date specified in class 1.3 for submission of bids and according to him since the final evaluation of the technical bid was uploaded on 25.09.2026, the said date ought to have been construed as the bid due date and the eligibility ought to have been checked as on the said date, wherein admittedly the petitioner was not debarred because of the abeyance order by the concerned authority. He has also highlighted that the technical evaluation committee has not taken into consideration the subsequent event of keeping the debarment order at abeyance on 14.09.2025, which has caused great prejudice to the petitioner. Grounds for not providing any opportunity to cure/clarify the deficiencies in their technical submission required under RFP has also been raised as was provided to other participants of the tender.

**10.** Thus, according to the learned Senior counsel the issue before the court was not one of substituting, the courts commercial judgment for that of the technical evaluation committee but the limited issue was as to whether the respondents have evaluated the petitioner bid in accordance with the conditions contained in the RFP. According to Mr. Mukul Rohatgi, the decision-making process, proceeded on conditions, not stipulated in the document and completely ignored clarification with respect to the debarment that had

already been kept in abeyance. Hence, according to him the decision of the technical evaluation committee is amenable to judicial review by this Court.

**11.** The Learned Senior Counsel has also highlighted the subsequent development after the technical bid was rejected, and the financial bid opened of other participants. He has submitted that the price quoted by the lowest bidder (L-1) in comparison to the price quoted by the petitioner is more than 252 Crores and accordingly the subsequent events/development patently demonstrates the actual prejudice caused by the exclusion of the petitioner from the financial evaluation. It has been thus submitted that the impugned technical evaluation dated 25.09.2026 in so far as it declares the petitioner's bid as non-responsive deserves to be set aside and the respondents be directed to reconsider the petitioner's technical bid in accordance with the RFP. He has relied on the judgments of ***Kimberly club Private Limited versus Krishi, Mandi and others***, reported in **2025 SC online SC 2323; *Banshidhar Construction (P) Ltd. v. Bharat Coking Coal Ltd.***, reported in **(2024) 10 SCC 273; *National high-speed Rail corporation Limited versus Monte Carlo Limited, and another***, reported in **2022 6 SCC 401; *U.P. Jal Sansthan Karmchari Sangh v. State of U.P.***, reported in **2019 SCC OnLine All 6723; and *Food Corporation of India v. Kamdhenu Cattle Feed Industries***, reported in **(1993) 1 SCC 71** in support of his contentions.

**12.** *Per contra*, Mr. Gaurav Mehrotra, learned Senior Advocate, who has appeared on behalf of UPEIDA, the contesting respondent nos. 2 and 3, has submitted that clause 2.1.18 specifically provides "*any entity, which has been barred but the Central/State Government, or any entity controlled by it, from participating in any project, and the bar subsists as on the Bid Due Date, would not be eligible to submit the BID*". According to him, the said clause sufficiently indicates that the debarment had to be checked at the time of the Bid Due Date, which in the present case was 07.09.2026, and since admittedly, the petitioner was debarred on the said date, as per first principles of law was not eligible to participate in the tender.

**13.** He further submits that the Petitioner is also guilty of fraudulent practice as provided under clause 4.3 (b) of the RFP, according to which fraudulent practice means a representation or omission of facts or suppression of facts. He has submitted that since the petitioner was not eligible because of the existence of debarment on the bid due date, he purposely did not disclose such debarment. Thus, according to Mr. Mehrotra, the petitioner has not come with clean hands by suppressing material and relevant facts regarding the said debarment on the Bid Due Date, which amounts to a fraudulent practice on the part of the petitioner. He further referred to clause 2.6.3 of the RFP to demonstrate that the eligibility and/or qualification requirement of the bidder can be evaluated by them during the evaluation or at any time before signing of the agreement and as such has

justified the procedure adopted by them in giving the petitioner a chance to explain the debarment. According to him, the mere providing of the said chance to explain does not in any manner entitle the petitioner to furnish fresh documents and rely on the same, when the last date or the bid due date has already lapsed. The counsel submitted that during the technical bid evaluation of the petitioner certain information came to light as was available in the public domain and as such UPEIDA issued letter dated 18th of September 2026 seeking clarification of the said information in view of clause 2.2.10 and 2.1.18.

**14.** He has further taken this Court to the response dated 22nd of September 2026 to the letter issued by the respondent wherein the petitioner has for the first time mentioned that a letter dated 14th of September 2026 was issued by the U.P. Jal Jeevan Mission relating to putting on hold the debarment issued to them. He has also submitted that in the said response the petitioner has also disclosed that even the State of Madhya Pradesh has issued a debarment notice to the petitioner on 13th of August 2026, that has been assailed before the High Court of Madhya Pradesh at Jabalpur. The learned Counsel has also argued that in view of these facts it is apparent from the records that the bid of the petitioner was not eligible on the Bid Due Date, that is, on 7th of September, 2026, and in any case the putting on hold of the debarment by the UP mission came to be effective on 14th of September, 2026 as it is on that date the debarment notice was kept in abeyance. He further submits that the said

abeyance letter cannot relate back to the date of the Bid Due Date, and technically the petitioner was not eligible on the said date, and accordingly, prayed that the present petition be dismissed *in limine*.

**15.** The learned Senior counsel has further submitted that any relief to the petitioner would be in the nature of not providing an equal level playing field to other participants who due to the said clause of eligibility being clause 2.1.18 have not participated thinking themselves to be not eligible in the present tender. As far as the arguments of the counsel for the petitioner placing heavy reliance on the catastrophic declaration is concerned the counsel has submitted that the certificate was in addition to the eligibility of the participants and was broadly under the technical capacity head. According to him, the said certificate demonstrates the technical capacity and/or capability of the petitioner and does not in any manner, dilute the eligibility of the petitioner or the other participants, as ought to have been 'in existence' on the Bid Due Date.

**16.** Mr. Mehrotra has relied on the judgment ***Central Coalfields Limited and another Vs. SLL-SML (Joint Venture Consortium and others)*** reported in ***(2016) 8 SCC 622***, to submit that the respondent-authority being the author of the tender has a right for strict enforcement of the terms of the tender and since no case of arbitrary action, unreasonableness and perversity has been made out, there is no case for interference by this Court. He has also relied on the judgment ***State of Madhya Pradesh and another***

***Vs. Uttar Pradesh State Bridge Corporation Limited and another*** reported in **(2022) 16 SCC 633**, to submit that this Court, in exercise of the scope of judicial review, has limited powers of evaluation, and the rejection of technical bid on the ground of suppression of information is correct and as per law. He further relies on the judgments ***Najma Khatun and others Vs. State of West Bengal and others*** reported in **2026 SCC OnLine SC 1313**, and ***Shree Chamundi Mopeds Ltd Vs. Church of South India Trust Association CSI Cinod Secretariat, Madras*** reported in **(1992) 3 SCC 1**, to substantiate an effect of an interim order, staying operation of an order under challenge and quashing of the said order. According to him, the quashing of an order results in restoration of the position as it stood on the date of passing of the order which has been quashed, whereas the stay of operation of an order operates prospectively from the date the stay order has been passed and does not in any manner mean that the order which has been passed has been wiped out from its existence. He has also relied on the judgment ***Tata Motors Limited Vs. Brihan Mumbai Electric Supply and Transport Undertaking (Best) and others*** reported in **(2023) 19 SCC 1**, to substantiate that this Court is normally loath to interfere in contractual matters unless a clear-cut case of arbitrariness or mala fide or bias or irrationality is made out. He has also relied on the judgment ***PSEB and others Vs. Bhatia International Limited*** reported in **(2006) 13 SCC 284**, to substantiate that the High Court should not extend the last date for submitting any document

which was necessarily required to be filed with the tender to make it a valid tender bid.

**17.** Mr. Pritish Kumar, Learned Additional Advocate General, appearing for and on behalf of the State, has adopted the submission advanced by UPEIDA and has additionally submitted that a technical objection based on the rejection order cannot be allowed to prevail in the case of the debarment of the petitioner on the bid due date. According to him, the petitioner was duty bound on the date of submitting its tender to disclose the debarment. He further submits that on the plain reading of clause 2.1.18 it emerges that the said clause is in the nature of eligibility and, as such, it was incumbent on the petitioner to have satisfied itself of being eligible and then participated in the tender process. He has also relied on the judgment dated 01.06.2022 passed by the Division Bench of the Delhi High Court in ***CJDARCL Logistics Ltd Vs. Rites Ltd and others***, reported in ***2022 LawSuit (Del) 1429***; to submit that deviation from the terms and conditions is not permissible as a rule and the same can be permitted only with the caveat that the said permission provides a level playing field so that it does not result in any arbitrariness or discrimination. He has submitted that if the petitioner, de hors his debarment on the bid due date, is allowed to participate further in the tender process, it would be prejudicial to all those participants who did not participate by making the correct self-assessment of being debarred on the said due date but having qualified subsequently by an order

of abeyance and/or quashing of such debarment prior to the date of Tender opening. Thus, according to him, any dilution of the said terms and conditions would result in not providing a level playing field and would result in arbitrariness and discrimination to those proposed participants.

**18.** This Court has given a patient hearing to the learned senior counsel appearing for the parties and has perused the material available on record. The admitted facts of the present *lis*, relevant to the context can be re-capitulated in the following pointers:

- (a)** The Notice Inviting Tender (NIT) was issued on 22.06.2026. As per the corrigendum, the bid due date was **07.09.2026**, and the technical bids were opened on 08.09.2026.
- (b)** By order dated **13.04.2026**, the Jal Jeevan Mission, U.P., debarred the petitioner. On the bid due date this order was in force.
- (c)** The petitioner did not disclose the debarment in its bid. It furnished only the declaration under clause 2.2.2.10 regarding absence of catastrophic failure of structures or highways due to construction defects in the preceding five years.
- (d)** During evaluation, information available in the public domain came to UPEIDA's notice. By letter dated **18.09.2026**, UPEIDA sought the petitioner's clarification under clauses 2.2.10 and 2.1.18.

**(e)** By response dated **22.09.2026**, the petitioner disclosed for the first time that the Mission had, by letter dated **14.09.2026**, kept the debarment in abeyance. It also disclosed a further debarment by the State of Madhya Pradesh dated **13.08.2026**, which it said was under challenge before the High Court of Madhya Pradesh at Jabalpur.

**(f)** On 25.09.2026 the Committee declared the bid non-responsive. The financial bids of the other bidders were thereafter opened, and the petitioner says that its price was about ₹252 crores lower than the L-1 price.

**19.** Thus, the petitioner challenges the decision of the Technical Evaluation Committee dated 25.09.2026, whereby its technical bid was declared “non-responsive” in the tender floated by the UPEIDA under the Notice Inviting Tender dated 22.06.2026, for development of the Jewar Airport to Ganga Expressway link (Package-I). The stated ground of rejection is that the petitioner stood “debarred by the Jal Jeevan Mission, U.P.” The petitioner prays that the decision be quashed and that its technical bid be reconsidered in accordance with the RFP by exercising the power of judicial review by this Court.

**20.** The principles governing judicial review of tender decisions are well settled. This Court need not burden this judgment with the catena of judgments, which have invariably held that this Court, while exercising its extra-ordinary power of judicial review in tender

matters does not sit in appeal over the decision of the employer or its expert committee. It merely examines the decision-making process and not the decision. The well celebrated judgment of the Hon'ble Supreme Court in ***Tata Cellular v. Union of India***, reported in **(1994) 6 SCC 651**; has in clear and unequivocal terms held that judicial review is concerned with the legality of the process and not the merits of the decision, and that the Court must not substitute its own opinion for that of the authority. The said power of judicial review was further codified by the Supreme Court in the case of ***Jagdish Mandal v. State of Orissa***, reported in **(2007) 14 SCC 517**; wherein the Supreme Court framed the test, and while testing the legality of the process, the Court asks as to whether the process or decision is so arbitrary or irrational that no responsible authority acting reasonably and in accordance with law could have reached it, and whether public interest is affected. If the answer is in the negative, there would be no scope for interference. The contours of the extent and scope of judicial review in tender matters have been reiterated in ***Michigan Rubber (India) Ltd. v. State of Karnataka***, reported in **(2012) 8 SCC 216**; ***Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corporation Ltd.***, reported in **(2016) 16 SCC 818**; ***Silppi Constructions Contractors v. Union of India***, reported in **(2020) 16 SCC 489**; and ***Uflex Ltd. v. Government of Tamil Nadu***, reported in **(2022) 1 SCC 165**.

**21.** It would be apt to mention herein and also relevant to the context that the Supreme Court held in

***Afcons case*** (*supra*) that the author of a tender document is the best person to understand and appreciate its requirements. Unless the construction is so absurd that no reasonable person could adopt it, the Court must defer to the employer's interpretation. This was reaffirmed in ***Agmatel India Pvt. Ltd. v. Resoursys Telecom***, reported in **(2022) 5 SCC 362** and ***N.G. Projects Ltd. v. Vinod Kumar Jain***, reported in **(2022) 6 SCC 127**. In ***Tata Motors v. BEST***, reported in **(2023) 19 SCC 1**, the Court went to an extent of cautioning against interference in the absence of a clear case of arbitrariness, mala fides, bias or irrationality.

**22.** As far as the submission of Mr. Mukul Rohatgi, learned Senior counsel for the petitioner is concerned that the tender authority must act within the four corners of the tender document and a decision that ignores the document's terms, or introduces a condition foreign to it, would be arbitrary, we find force in his arguments in view of the judgments of the Supreme Court in ***Ramana Dayaram Shetty v. International Airport Authority***, reported in **(1979) 3 SCC 489** and ***Food Corporation of India v. Kamdhenu Cattle Feed Industries***, reported in **(1993) 1 SCC 71**.

**23.** Therefore, according to this Court, the question to be decided in the present petition percolates to as to whether the respondents acted within the framework of the RFP or outside it. For the sake of convenience, we have created different headings of arguments addressed by the learned senior counsels and as such

we propose to deal with them independently and in seriatim.

**Clause 2.1.18 is an eligibility condition.**

**24.** The first line of argument was relating to clause 2.1.18 of the RFP, which provides that any entity barred by the Central or State Government, or by an entity controlled by it, from participating in any project, where the bar subsists on the bid due date, “would not be eligible to submit the bid.”

**25.** The language of the said clause is plain and simple. It says who “would not be eligible to submit the bid.” A clause declaring a class of person’s ineligible to submit a bid is by definition an eligibility condition. The submission of Mr. Mukul Rohatgi, Senior Advocate that the clause merely “describes the entity who may apply” and “does not examine eligibility” is self-defeating, because determining who may apply is what an eligibility clause does. The label of the Section or subsection in which the clause appears cannot alter its substance. Clauses in a tender document are read as a whole and according to their ordinary meaning, and the employer’s interpretation of its own document will be accepted unless it is perverse.

**26.** It is also of no consequence that the clause does not expressly demand a declaration. An eligibility bar operates by its own force. A bidder is presumed to know whether it is barred and must bid only if it is eligible. The absence of a prescribed format for declaring

debarment does not license a barred entity to participate. If it did, an ineligible bidder could sidestep the bar simply by remaining silent. The employer may therefore verify eligibility during evaluation, and clause 2.6.3 expressly reserves that power until execution of the agreement.

**Clause 2.2.2.10 does not displace clause 2.1.18.**

**27.** Mr. Mukul Rohatgi, learned Senior Advocate has retorted that clause 2.2.2.10, which deals with catastrophic failure of structures or highways due to construction defects and requires an undertaking, is the only debarment-related requirement, and that satisfying it disposes of the matter. However, we are unable to subscribe to the contention of Mr. Mukul Rohatgi, as the said submission appears to be misconceived. According to this Court, the two clauses serve different purposes. In as much as, clause 2.2.2.10 tests the bidder's construction record, namely whether any project of the bidder suffered catastrophic failure during the preceding five years, it is a technical-capacity attribute. Whereas, clause 2.1.18 is a threshold condition that goes to the very right to submit a bid. A bidder may have a spotless construction record and still be barred by a governmental authority for entirely different reasons. The debarment here was imposed by the Jal Jeevan Mission, Uttar Pradesh, not for a highway failure, but for a different reason. A clean declaration on structural failure says nothing on the subject of clause 2.1.18 or eligibility and as such according to us, both of

them operate in different hemispheres and are independent of each other.

**28.** According to this Court, reading the two clauses harmoniously, as they must be read, both apply cumulatively. The petitioner's construction that catastrophic declaration meets the ends of the tender qualification, would make clause 2.1.18 redundant, which is contrary to the settled rule that no part of a document should be rendered otiose. It would also read into the RFP an exclusivity that the RFP does not contain. The petitioner's own case, that the debarment is "meaningless" once clause 2.2.2.10 declaration is furnished, cannot be accepted.

**The relevant date is the Bid Due Date, not the date of evaluation.**

**29.** The next line of argument developed by the learned Senior Counsel for the petitioner is that the Bid Due Date ought to be the date the Technical Evaluation Committee uploaded the result of the said evaluation, that is, 25.09.2026 and not the bid due date mentioned in clause 3.1 of the RFP, which was 07.09.2026.

**30.** First and foremost, we must understand that clause 2.1.18 expressly fixes the reference point: the bar must subsist "as on the bid due date." This is clear, and the employer chose it and the same is apparent from a plain reading of the clause itself. It emerges from the fact that the bid due date is 07.09.2026 and as a matter of fact the petitioner does not dispute that on

that date the debarment order of 13.04.2026 was in force.

**31.** No doubt, the learned Senior Counsel, seeks to shift the reference date to 25.09.2026 through clause 1.2.2. However, in our view the said clause merely provides that bids remain valid for 120 days. It only addresses how long a bidder is held to its offer and is basically a validity clause and says nothing about when eligibility is to be judged. A provision fixing the period of validity of an offer cannot be used to amend an express, specific provision fixing the date on which eligibility is tested. The date of evaluation, or the date on which the Technical Evaluation was uploaded, is a stage in the process. It is not the "bid due date," which the RFP defines by reference to clause 1.3 and the corrigendum.

**32.** Further, we find that the aforesaid understanding is consistent with the general principle that eligibility is tested by the conditions, and as on the date, stipulated in the tender, and that a bidder cannot cure an ineligibility after the cut-off. In ***Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium)***, reported in **(2016) 8 SCC 622**; the Supreme Court held that essential conditions of the tender must be strictly complied with, and that a bidder cannot be permitted to cure or rectify an essential deficiency after the due date. In ***Rashmi Metaliks Ltd. v. Kolkata Metropolitan Development Authority***, reported in **(2013) 10 SCC 95**; eligibility was likewise tested on the basis of the tender conditions. The same view was taken in ***PSEB v.***

***Bhatia International***, reported in **(2006) 13 SCC 284**; which held that the last date for submission cannot be extended to allow a document essential to a valid bid to be supplied.

**The abeyance of 14.09.2026 does not relate back.**

**33.** The next argument of the learned Senior counsel is that the abeyance of debarment dated 14.09.2026 relates to the date of its issuance, that is, 13.04.2026 and as such according to him on the bid due date, there was no debarment of the petitioner. According to this Court, the said submission suffers from serious infirmity. Even if one considers the effect of the Mission's letter dated 14.09.2026, it cannot assist the petitioner, for the simple reason that the said debarment letter was not quashed and/or recalled/withdrawn, but was merely kept in abeyance. That letter dated 14.09.2026 merely kept the debarment in abeyance with effect from 14.09.2026, seven days after the bid due date. An order suspending the operation of a debarment operates prospectively. It does not erase the debarment or makes it non-existent for any period prior to its passing. According to this Court, this distinction is settled. In ***Shree Chamundi Mopeds Ltd. v. Church of South India Trust Association***, reported in **(1992) 3 SCC 1**; the Supreme Court held that a stay of an order does not have the effect of setting it aside or wiping it out. The order continues to exist, and the stay merely prevents its operation from the date of the stay. Quashing, on the other hand, restores the position as it stood on the date of the impugned order. The abeyance

here is akin to a stay. It is not a quashing, and it has no retrospective consequence. On 07.09.2026, therefore, the petitioner was, as a matter of fact and law, an entity "barred" within the meaning of clause 2.1.18. The decision in ***Najma Khatun v. State of W.B.***, reported in **2026 SCC OnLine SC 1313**; cited by the respondents, is to the same effect.

**34.** The petitioner's own case that the debarment was kept in abeyance on 14.09.2026 is thus an admission that a valid, operative debarment existed on 07.09.2026. Nothing in the record suggests that the debarment order was quashed or that the abeyance was made retrospective from a date on or before the bid due date. Further, a plain reading of the said letter, clearly indicates that the abeyance was with immediate effect, that is, on and from 14.09.2026.

**35.** The Court has also noted that the record reveals a second debarment, by the State of Madhya Pradesh dated 13.08.2026, which was in existence on the bid due date and, on the petitioner's own statement, is under challenge. The petitioner has not shown that this debarment was stayed or quashed as on 07.09.2026. clause 2.1.18 speaks of a bar imposed by "the Central/State Government." A debarment by the State of Madhya Pradesh falls squarely within it. According to us, this is an additional and independent reason why the petitioner was not eligible on the Bid Due Date. However, it is settled position of law, right from the decision of the Constitution Bench rendered in the year 1978, in the case of ***Mohinder Singh Gill v. Chief***

***Election Commr.***, reported in **(1978) 1 SCC 405**, that existence of reasons must be seen in the impugned order itself and cannot be supplemented by a subsequent affidavit/arguments. It is stated that since the petitioner has been marked as “non-responsive” only on the ground of their debarment by the Jal Jeevan Mission, U.P, we do not need to speak our mind on the debarment by the State of Madhya Pradesh.

**Essential and non-essential conditions; no right to “cure”.**

**36.** The next argument of the learned Senior Counsel for the Petitioner, is that the debarment was a curable defect and in as much as once the said debarment was put on abeyance, he ought to have been made responsive in the technical bid. He further submits that other bidders were allowed to cure deficiencies, however, the petitioner was not permitted. According to this Court, the whole proposition of the petitioner proceeds on a misconception. Tender law does not treat all conditions alike. It distinguishes conditions that go to the root of the matter, which must be complied with strictly, from ancillary or procedural conditions, which the employer may waive or allow to be rectified. Whether a bidder may “cure” a deficiency depends on which side of that line the deficiency falls.

**37.** The distinction was drawn in ***Poddar Steel Corporation v. Ganesh Engineering Works***, reported in **(1991) 3 SCC 273**. There the Supreme Court held that conditions that are essential must be strictly adhered to, while the employer may waive

ancillary conditions meant only to secure the proper conduct of the process, provided no prejudice results to others. It was applied in ***W.B. State Electricity Board v. Patel Engineering Co. Ltd.***, reported in **(2001) 2 SCC 451**; where non-compliance with an essential condition was held to be beyond the employer's power to overlook. ***B.S.N. Joshi & Sons v. Nair Coal Services Ltd.***, reported in **(2006) 11 SCC 548**; restated the test that a departure may be permitted only if the condition is not essential and the departure does not confer an unfair advantage or cause prejudice to other bidders.

**38.** In ***Central Coalfields Ltd. v. SLL-SML (Joint Venture Consortium)***, reported in **(2016) 8 SCC 622**; the Supreme Court held that an essential condition of a tender must be complied with as stipulated. The employer has no power to relax it in favour of one bidder, and a bidder cannot be allowed to rectify an essential deficiency after the cut-off. This was followed in ***Bakshi Security & Personnel Services (P) Ltd. v. Devkishan Computed (P) Ltd.***, reported in **(2016) 8 SCC 446**; and in ***State of Jharkhand v. CWE-SOMA Consortium***, reported in **(2016) 14 SCC 172**. In ***Reliance Telecom Ltd. v. Union of India***, reported in **(2017) 4 SCC 269**; the Court held that an essential condition cannot be waived selectively for one participant. In ***Afcons case (supra)*** and ***Silppi Constructions (supra)***, the Court added that it is for the author of the document to decide which conditions are essential, and that the Court will not second-guess that classification unless it is perverse.

**39.** Applying these principles, clause 2.1.18 is plainly an essential condition, for four reasons:-

**(i)** It is a threshold condition. It decides who “would not be eligible to submit the bid” at all, before any question of technical merit arises.

**(ii)** It is a public-interest and integrity safeguard. It bars entities that another arm of government has already found unfit to deal with the State. It is not a matter of form or convenience.

**(iii)** It is tied to a fixed reference date, the bid due date. A condition tested on a fixed date is meant to be applied rigidly. Otherwise, the date would have no purpose.

**(iv)** It affects persons outside this litigation. Prospective bidders read it and stayed away. Waiving it for one bidder would prejudice them, which is the very prejudice that the ***Poddar Steel*** (*supra*) and ***B.S.N. Joshi*** (*supra*) line treats as the limit of the employer’s power to relax.

**40.** According to this Court, the petitioner cannot therefore claim parity with bidders who were permitted to rectify curable, non-essential lapses such as an unsigned page, a missing annexure or a formatting defect. Those deficiencies do not change the bidder’s status. Here, what the petitioner asks is a change in its status, from “barred” to “not barred”, by reference to an event after the due date. That is not rectification of a

lapse in the bid. It is a change in the eligibility of the bidder.

**41.** The petitioner's reliance on the clarification stage is equally misplaced. Clarification exists to explain what is already in the bid. It does not permit a bidder to supply, after the due date, a document or a fact that did not exist on the due date. The abeyance letter of 14.09.2026 did not exist on 07.09.2026. Accepting it would amount to what **Central Coalfields** (*supra*) and **Bhatia International** (*supra*) forbid, which is to let a bidder complete an ineligible bid after the deadline. Opportunity was in any event given on 18.09.2026. The petitioner was asked about the very clauses on which it was later rejected, and it answered. The Committee took the reply on record and decided on 25.09.2026. The petitioner was thus heard on the very point on which it was rejected.

**42.** Nor is this a case in which the Court can say that the employer's approach to the condition was irrational. The test in **Jagdish Mandal** (*supra*) and **Tata Motors** (*supra*) is whether the decision is so arbitrary that no reasonable authority could have reached it. An employer that enforces an express, unambiguous eligibility bar, as on its own stipulated date, is on firm ground.

### **Level playing field.**

**43.** Mr. Gaurav Mehrotra, learned Senior Counsel for the respondent - UPEIDA has rightly pointed out that any relief to the petitioner would prejudice those who

read clause 2.1.18, considered themselves ineligible, and did not bid. Fairness in public procurement requires that all prospective bidders be able to rely on the published conditions. In ***Reliance Energy Ltd. v. Maharashtra State Road Development Corporation Ltd.***, reported in **(2007) 8 SCC 1**, the Supreme Court emphasised the principle of a level playing field and held that the terms of a tender must be applied uniformly, and that a departure to accommodate one bidder is arbitrary and discriminatory. The Division Bench of the Delhi High Court in ***CJDARCL Logistics Ltd.*** (*supra*) took the same view: deviation from tender terms is not permissible as a rule, and where permitted must not result in arbitrariness or discrimination.

**44.** In our considered view, if the petitioner is barred on the bid due date, they cannot now be permitted to participate on the strength of a post-due-date abeyance, other entities that abstained on account of the same clause would be treated unequally. That would be the very arbitrariness which judicial review guards against and would be in the teeth of Article 14 of the Constitution of India.

**The price difference does not confer a right.**

**45.** Mr. Mukul Rohatgi, learned Senior counsel has laid great emphasis on the subsequent development in the tender process and has submitted that there is almost a price difference of about ₹252 crore between the petitioner's price and the L-1 price. The Court is conscious of the importance of public money. But the

lower price argument presupposes that the petitioner was eligible to have its financial bid opened. Financial competitiveness is examined only for bidders who clear the eligibility stage. Otherwise the eligibility conditions would be meaningless.

**46.** The Supreme Court in ***Jagdish Mandal*** (*supra*) and ***Afcons case*** (*supra*) has held that the decisions on such matters are appropriately left to the tendering authority, and that a bidder has no right beyond fair consideration in accordance with the tender terms. In ***Meerut Development Authority v. Association of Management Studies***, reported in **(2009) 6 SCC 171**; it was held that a bidder has no vested right to have its bid accepted, and that the employer is not bound to accept even the lowest bid. A lower quote by an ineligible bidder does not translate into a right to be considered. Nor can the Court, in the name of price advantage, direct the respondents to ignore an express eligibility clause. The Court has also to be mindful that interference at this stage would disturb a project of public importance and delay the ongoing tender process.

**The petitioner's own case on disclosure.**

**47.** The Court has considered whether the absence of a specific "no debarment" declaration excuses the petitioner. In the considered opinion of this Court, on a facial reading of the various clauses of the RFP, the answer has to be in negative for the following reasons:

(i) Eligibility is not conditional on a declaration. As held above, clause 2.1.18 operates on its own force.

(ii) A bidder that knows it is barred and submits a bid, while giving a certificate on its record under clause 2.2.2.10, cannot claim that silence about the bar was innocent. A prudent bidder in that position would have disclosed and explained the position at the time of bidding.

(iii) The disclosure came only after UPEIDA raised the matter by letter dated 18.09.2026, and the Madhya Pradesh debarment surfaced only in that reply. The petitioner has given no explanation for its silence at the time of submitting the Bid.

### **Conduct and clean hands.**

**48.** Independent of the merits, this Court is entitled to weigh the petitioner's conduct in exercising its discretionary jurisdiction under Article 226 of the Constitution of India. A litigant that seeks a discretionary writ must approach the Court with clean hands and must not suppress or gloss over facts that bear on its claim. (See ***Ramjas Foundation v. Union of India***, reported in **1993 Supp (2) SCC 20**; ***K.D. Sharma v. Steel Authority of India Ltd.***, reported in **(2008) 12 SCC 481**; ***Dalip Singh v. State of U.P.***, reported in **(2010) 2 SCC 114**.) By analogy, in the service jurisprudence context the Supreme Court has held that suppression of a material fact in the course of a selection is a relevant consideration whatever the

eventual outcome on the merits: ***Avtar Singh v. Union of India***, reported in **(2016) 8 SCC 471**. The petitioner disclosed the debarment only after being confronted, and its pleadings in this Court present the matter as one of interpretation while understating the sequence of disclosure. That conduct weighs against exercise of the Court's discretion in its favour, even apart from the merits already decided.

**49.** This Court is mindful of the principle in ***S.P. Chengalvaraya Naidu v. Jagannath***, reported in **(1994) 1 SCC 1**, that fraud vitiates everything. We emphasise, however, that we have not come to any finding of fraud against the petitioner. The conclusion on the tender rests on ineligibility under clause 2.1.18. The non-disclosure is relevant only to the equities and to the discretion under Article 226 of the Constitution of India.

#### **The authorities cited for the petitioner.**

**50.** As far as the judgments relied on by the petitioner, the same do not assist the case of the petitioner. The case reported as ***Banshidhar Construction (P) Ltd. v. Bharat Coking Coal Ltd.***, in **(2024) 10 SCC 273**; stands for the proposition that the Court may interfere where the decision is arbitrary or the process unfair. Here, the decision is grounded on an express clause and is not arbitrary. Similarly, ***National High Speed Rail Corporation v. Montecarlo***, reported in **(2022) 6 SCC 401**; supports the respondents. The Supreme Court there reiterated the limited scope of review and set aside the High

Court's interference with the employer's technical decision. Further, as far as ***Food Corporation of India v. Kamdhenu Cattle Feed Industries***, reported in ***(1993) 1 SCC 71***; is concerned, it recognises that the State must act fairly, but also that the terms of the tender are to be applied as written. It does not permit a bidder to escape an eligibility bar. Further, as far as judgment of ***Kimberly Club*** (*supra*) and ***U.P. Jal Sansthan Karmchari Sangh*** (*supra*), is concerned, the Court has not been shown any ratio that holds a debarment subsisting on the bid due date to be irrelevant, or that fixes the date of evaluation as the reference date contrary to an express clause.

**51.** On the contrary, we find that the respondents' authorities, particularly ***Tata Motors*** (*supra*), ***Bhatia International*** (*supra*), ***Shree Chamundi Mopeds*** (*supra*), and ***CJDARCL Logistics*** (*supra*), buttress the view taken above.

**52.** After sifting through the catena of judgments discussed above, the following principles of law emerge:

(i) Where a tender document contains an express eligibility condition that bars an entity from submitting a bid if a governmental debarment "subsists on the bid due date," such a condition is an essential and threshold requirement;

(ii) Eligibility must be judged strictly as on the Bid Due Date fixed by the Tender itself. A

subsequent order of abeyance or stay of the debarment operates only prospectively and does not relate back so as to render the bidder eligible on the due date;

**(iii)** The tendering authority has no power to waive, relax or cure non-compliance with such an essential condition after the due date, nor can a Court, in the exercise of writ jurisdiction, compel it to do so. Any selective accommodation would destroy the level playing field and fall foul of Article 14 of the Constitution of India;

**(iv)** Judicial review is confined to examining whether the decision is so arbitrary, irrational, mala fide or perverse that no reasonable authority could have reached it; and

**(v)** A bidder has no vested right to have its bid accepted, and that the employer is not bound to accept even the lowest bid, nor can the Court, in the name of price advantage, direct the respondents to ignore an express eligibility clause.

**53.** For all the reasons as aforesaid and on a careful consideration of the record and the law, the Court is of the considered view that:

**(a)** Clause 2.1.18 is an eligibility condition, and the petitioner was barred on the bid due

date, i.e. 07.09.2026, by the order of the Jal Jeevan Mission dated 13.04.2026.

**(b)** Clause 2.2.2.10 is a distinct technical-capacity/capability requirement and does not displace clause 2.1.18.

**(c)** The bid due date, and not the date of evaluation, is the relevant date, and clause 1.2.2 has no bearing on eligibility.

**(d)** The abeyance of 14.09.2026 operates prospectively and does not relate back.

**(e)** The petitioner was given an opportunity by the letter of 18.09.2026 and its reply was considered.

**(f)** The Technical Evaluation Committee acted within the terms of the RFP, and its decision is neither arbitrary, irrational, mala fide nor perverse.

**(g)** Clause 2.1.18 is an essential condition, non-compliance with which cannot be cured by post-due-date events or waived for one bidder.

**(h)** The petitioner's non-disclosure of a subsisting debarment, without explanation until confronted, weighs against the grant of discretionary relief.

**54.** As a sequel to our aforesaid view, no ground for interference under Article 226 of the Constitution of India is made out. The **writ petition is accordingly dismissed.**

**55.** There shall be no order as to costs. Any interim order stands vacated.

**56.** It is clarified that the observations herein are confined to this petition. Nothing in this judgment prevents the petitioner from pursuing its remedies against the debarment orders before the competent forum, and nothing here prejudices the pending challenge before the High Court of Madhya Pradesh at Jabalpur.

**(Abdhesh Kumar Chaudhary,J.) (Shekhar B. Saraf,J.)**

**September 29, 2026**

MVS/-