IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

BEFORE :-

THE HON'BLE JUSTICE SHAMPA SARKAR
&
THE HON'BLE JUSTICE ARJUN RAY MUKHERJEE

MAT 1491 of 2026
with
CAN 1 of 2026

United Air Express
vs.
Sanjay Kumar Agarwal & Ors.

For the Appellant	: Mr. Siddhartha Datta, Adv. Ms. Suhani Dwivedi, Adv. Ms. Trisha Mukherjee, Adv. Mr. Chetan Kr. Kabra, Adv.
For the Respondent No. 1	: Mr. Sakya Sen, Sr. Adv. Mr. Ankan Rai, Adv. Mr. Sarasij Dasgupta, Adv. Mr. Ratnesh Kr. Rai, Adv. Ms. Sakshi Kejriwal, Adv. Ms. Vipra Gang, Adv. Ms. Nabanita Manna, Adv.
For the Respondent Nos. 2 to 4	: Mr. Jishnu Chowdhury, Sr. Adv. Mr. Mohit Dang, Adv.

For the Respondent No. 5	: Mr. Ayan Podder, Adv. Mr. Soham Dutta, Adv. Ms. Anjali Shaw, Adv.
Judgment reserved on	: 07.09.2026
Judgment pronounced on	: 17..09.2026
Judgment uploaded on	: 17.09.2026

Arjun Ray Mukherjee, J.

1. This appeal is directed against an order dated September 1, 2026 passed in WPA 6836 of 2026. By the said order, the learned Single Judge allowed the writ petition, filed by one Sanjay Kumar Agarwal / respondent no. 1 [hereafter 'writ petitioner'], proprietor of Metal Traders Processing Company.

2. The writ petitioner is an enterprise within the meaning of the Micro, Small and Medium Enterprise Development Act, 2006 having an UDYAM registration certificate, engaged in the business of handling and processing of slag and scrap for major steel plants in India.

3. The respondent no. 2 / Steel Authority of India Limited [hereafter 'SAIL'] floated a notice inviting tender [hereafter 'the said tender'] on December 5, 2025 through a portal, namely, Government e-Marketplace [hereafter 'GeM'] for handling, processing and management of raw

material / scrap / slag and for other miscellaneous job at the ISSCO Steel Plant. One of the conditions of the said tender was as follows:

"Other Terms:

The bid cannot be split. Number of sources of procurement shall be 1 (One) only. In case L-1 is non-MSE and preference is to be given as per MSE/MII guidelines, 100% order shall be placed on the eligible MSE/MII vendor as per the extant guidelines. Purchase preference as per the extant MSE policy and Make In India (MII) guidelines shall be applicable. Fifteen (15)% Relaxation on Financial Turnover shall be applicable to verified MSE and verified Start-ups. Registered companies may submit a copy of their Certificate of Incorporation. Other Bidders should submit a copy of a current valid Trade License/ Certificate of Enlistment/Certificate of Registration/ Self attested copy of declaration for non-applicability of Trade License. If Trade License is not applicable, please provide a signed declaration explaining the valid reason for the same."

4. The writ petitioner duly participated in the said tender. GeM, by an email dated 25.02.2026, invited the writ petitioner to participate in a

reverse auction process. It is relevant to mention here that upon opening of the financial bids, each and every technically qualified bidder was invited to participate in the reverse auction process through the GeM portal except the H1 bidder.

5. Upon completion of the reverse auction process, SAIL declared the list of seven bidders who qualified financially and the names of the first three bidders with the price quoted by them and their respective ranks are set out herein below:

Name	Price	Rank
[i] United Air Express	Rs. 1552683638.14	L1
[ii] FSNL Private Limited	Rs. 1552916575.50	L2
[iii] Metal Traders Processing Co.	Rs. 1553401218.49	L3

6. According to the writ petitioner, their financial bid was within 15% of both United Air Express [L1] and FSNL Private Limited [L2] and as such they, being an MSME, was entitled to be declared as the lowest bidder or at least to be given an opportunity to match the price of the L1 bidder.

7. It was the case of the writ petitioner that although he was willing to match the L1 price in terms of the tender conditions of the said tender, no such opportunity was extended either by GeM or by SAIL. In the writ petition the following reliefs were prayed for:

> "c) *A writ and/or writs in the nature of Mandamus do issue, commanding the Respondent Authorities to invite the Petitioner to match the price of the United Air Express being a sum of Rs. 1,55,34,01,218.49/- as proposed in the communication dated 7th March, 2026;*
>
> d) *A writ and/or writs in the nature of Mandamus do issue, commanding the Respondent Authorities to forthwith reconsider the bid of the Petitioner and offer the Petitioner to match the bid of the L1 bidder i.e. the bid of the said United Air Express;*
>
> e) *A writ and/or writs in the nature of Mandamus do issue, commanding the Respondent Authorities not to issue any Work Order and/or Letter of Intent and/or Letter of Award in favour of United Air Express, until the pendency of the present proceeding;*
>
> f) *A writ and/or writs in the nature of Mandamus do issue, commanding the Respondent Authorities to recall and/or cancel*

and/or revoke any Work Order and/or Letter of Intent and/or Letter of Award, if issued in favour of United Air Express in derogation to the aforesaid national policy of Union of India as well as of the internal guidelines of the Respondents and in the bid invitation document;

g) *A writ of or in the nature of certiorari directing the Respondent Authorities to remit all records pertaining to the present case before this Hon'ble Court so that conscionable justice may be rendered;"*

8. The writ petition was taken up for consideration by the learned Single Judge on April 9, 2026 and His Lordship directed the writ petitioner to implead United Air Express, being the successful bidder, as a party respondent. The writ petition was thereafter taken up by His Lordship on April 27, 2026 and His Lordship, inter alia, passed the following order:

"13. By relying upon the said judgment, learned counsel appearing for the private respondents submits that the authorities have found that the petitioner has not given the preference of the MSME during the bid process and accordingly

the petitioner was considered as a Non-MSME and LOA has been issued to the private respondents.

14. Learned counsel for the petitioner has relied upon a communication dated 26th March, 2026 issued by the SAIL wherein it is mentioned that though the LOA has been issued to the private respondents but the SAIL has extended the contract of the earlier contract form till 30th September, 2026. He submits that though LOA issued by the private respondent has not commenced the writ and he prays for interim order by directing the respondent authorities not to award any work to the private respondents.

15. Heard the learned counsel for the respective parties and perused the materials on record.

16. At the time of hearing, learned counsel appearing for the GeM Portal has submitted that the letter dated 9th March, 2026 provides that the buyer not opted the MSE/MII preference during the bid creation. He submits that in the said letter the buyer is the SAIL and not the bidder and though the buyer has not opted the MSE/MII purchase preference during the bid creation.

17. Considering the submissions made by the learned counsel for the respective parties, this Court finds that the SAIL authority while processing the bid process through the website have not opted the MSE/MII purchase preference during the bid creation as a result bidder could not avail the MSE/MII purchase preference during participation.

18. On the other hand, the SAIL has given the benefit to the petitioner with regard to the MSME, the petitioner has not deposited the earnest money in terms of the contract as the petitioner is a MSME.

19. This Court finds that though the LOA has been issued to the private respondents but the private respondents have not commenced any work. At the same time earlier contract has been extended till 30.09.2026.

20. The respondents are directed to file affidavit-in-opposition within two weeks. Reply, if any within two weeks thereafter.

21. In the meantime, the authorities are directed not to give any effect/further effect to the LOA issued to the private respondents.

22. This interim order is passed only on the basis of the communication dated 26th March, 2026 wherein it is mentioned that the earlier contract is extended from 1st April to 30th September, 2026."

9. The said writ petition was finally taken up for consideration by the learned Single Judge and by a judgment and order dated September 1, 2026, His Lordship, inter alia, passed the following:

"26. Neither SAIL nor GeM or the added respondent has brought to the notice of this Court whether the authorities have modified the guidelines in terms of the order of the Hon'ble Supreme Court. On the other hand, the SAIL has published tender notice in terms of the guidelines dated 23rd March, 2012, by incorporating the terms and conditions in bid documents including the additional terms and conditions of the contract and the added respondent after having knowledge has participated in the said tender process.

27. Though the work order is issued to the added respondent but the SAIL has not given effect to the said work order as the SAIL has issued a letter dated 26th March, 2026, wherein the

SAIL maintained the continuity of the said work with the earlier contract till 30th September, 2026.

28. This Court finds that the SAIL has not opted for the MSE/MII purchase preference during bid creation due to which the petitioner could not avail the MSE/MII purchase preference during participation through GeM portal. The respondent nos. 1 to 4 are directed to invite the petitioner to match the price of the added respondent as proposed in the letter dated 7th March, 2026, being Annexure "P-9" at page 298 of the writ petition within a week from the date of this order and if the respondent nos. 1 to 4 finds that the petitioner is able to match with the L1 bidder in terms of the Government of India procurement policy to pass appropriate order and to recall the work order issued in favour of the added respondent."

10. United Air Express / the added respondent [hereafter 'the appellant'], being aggrieved by the judgment and order dated September 1, 2026, has preferred this appeal.

11. Mr. Dutta, learned counsel appearing for the appellant submitted that the scope of judicial review under Article 226 of the Constitution of

India was limited and that a writ court should not interfere with the decision of the buyer not to opt for the MSE/MII purchase preference in respect of a particular tender. Such decision was within the buyer's permissible discretion. It was submitted that the learned Single Judge changed the terms of the bidding process by imposing the new mechanism which was beyond the basis for conclusion of the reverse auction. The learned Single Judge could not have taken into consideration the discovered price of the appellant and use the said price as the base for the writ petitioner to match. The learned Single Judge could not have used the appellant's contract price, to order price matching, thereby, directing the respondent Nos. 2 to 4 to allow the writ petitioner to match the said price, manually. The appellant had already mobilised resources and had incurred heavy overhead costs on a daily basis. The learned Single Judge ignored the said fact and also ignored the right that had vested in the appellant to execute the work. The learned Single Judge could not have destroyed the sanctity of the competitive bidding process by directing the L3 bidder to match the L1 bidder's price, thereby vitiating the close reverse auction already conducted through the GeM portal.

12. Mr. Jishnu Chowdhury, learned Senior Advocate appearing for the SAIL, referred to Rule 149 of the General Financial Rules, 2017 which is reproduced herein below:-

> ***Rule 149. Government e-Market place (GeM).*** *Government of India has established the Government e-Marketplace (GeM) for common use Goods and Services. GeM SPV will ensure adequate publicity including periodic advertisement of the items to be procured through GeM for the prospective suppliers. The Procurement of Goods and Services by Ministries or Departments will be mandatory for Goods or Services available on GeM. The credentials of suppliers on GeM shall be certified by GeM SPV. The procuring authorities will certify the reasonability of rates. The GeM portal shall be utilized by the Government buyers for direct on-line purchases as under:*

13. He further submitted that from the documents on record, it appeared that the GeM portal treated the appellant as a non-MSME or a regular bidder due to some technical issue and therefore SAIL should not be held liable in any manner.

14. Mr. Sakya Sen, learned Senior Advocate for the writ petitioner submitted that there was no infirmity in the order passed by the learned Single Judge and as such the appeal was liable to be dismissed.

15. The question which falls for our consideration is whether SAIL, by not treating the writ petitioner as an MSME and further by not extending an opportunity to them to match the L1 price in spite of their willingness, committed any procedural impropriety.

16. Before considering the issue in question, it is relevant to reproduce the applicable terms and conditions of the said tender:

> *"7. PURCHASE PREFERENCE: (BOTH FOR INDIGENOUS AND IMPORT TENDERS)*
>
> *7.1.1 Any purchase preference to Make in India Suppliers and MSE Suppliers, shall be based on the extant guidelines of Govt. of India and guidelines of SAIL Plants/Units.*
>
> *1) Micro and Small Enterprises (MSES): In line with the Public Procurement Policy (PPP) for Micro & Small Enterprises (MSEs) Order 2012, issued vide Gazette Notification dated 23.03.2012 and amendments thereof the tenderer who is registered as Micro/small Enterprises must submit valid self-certified copy of*

Udyam Registration Certificate (URC) issued after registering on the Udyam Registration Portal i.e. https://udyamregistration.gov.in

In case Udyam Registration Certificate (URC) is not provided, they shall not be eligible to the benefits admissible under the Act.

14. Purchase preference to MSE parties shall be applicable as per MSE guidelines. In case the order cannot be split, the 100% order will be placed on the MSE party if their quoted price is within<L1+15%, with acceptance of the MSE party to match the L1 price."

17. A bare perusal of the aforesaid terms and conditions clearly shows that the writ petitioner had a right to be treated as an MSME and had a further right to match the L1 price provided their quoted price was within L1+15%.

18. In order to ascertain whether SAIL or GeM extended such opportunity to the writ petitioner, it will be prudent to refer to the three communications between SAIL and GeM.

19. The first e-mail dated March 3, 2026 is reproduced herein below:

"From: Pankaj Sharma
To: R MISHRA
Date: Tue, 03 Mar 2026 16:25:49 +0530
Subject: Regarding GeM Bid No: GEM/2025/8/6974725, dated 08.12.2025 (RA Number: GEM/2026/R/631912)

Dear Sir,
Against the subject GeM bid (GEM/2025/8/6974725), 8 (Eight) offers viz. of 1) M/S. FSNL Private Limited, 2) M/s. GSW Mining & Recycling Private Limited, 3) M/S, KRL Infratech (India) Limited, 4) M/s. Metal Traders & Processing Company, 5) M/s. Neha Construction Private Limited, 6) M/s. Shree International Vyapar Private Limited, 7) M/s. Shree Krishna Earthmovers and 8) M/s. United Air Express were received within the extended due date i.e., 08.01.2026.
As per GeM rules, the H-1 bidder viz. M/s. Neha Construction Private Limited was eliminated before RA and vide RA Number: GEM/2026/R/631912, Reverse Auction (RA) was conducted on the GeM portal for the subject tender from 26.02.2026 to 03.03.2026.
After H-1 elimination, a total of 7 (seven) bidders were eligible for participating in the RA. Out of which, 5 (five) bidders had participated in the said RA. Names of the bidders along with their Ranking in RA are as mentioned below:
1) M/s. United Air Express (L-1)-Non-MSE bidder (Participated in RA)
2) M/s. FSNL Private Limited (L-2) Non-MSE bidder (Participated in RA)
3) M/s. Metal Traders & Processing Company (L-3) MSE bidder (Participated in RA)
4) M/s. Shree Krishna Earthmovers (L-4) MSE bidder (Participated in RA)
5) M/s. Shree International Vyapar Private Limited (L-5) Non-MSE bidder (Participated in RA)
6) M/S. KRL Infratech (India) Limited (L-6) Non-MSE bidder (Did not Participate in RA)
7) M/s. GSW Mining & Recycling Private Limited (L-7) MSME (Medium) bidder (Did not Participate in RA)
As per the tender terms & conditions:

a) Purchase preference as per the extant MSE policy and Make In India (MII) guidelines are applicable.
b) The bid cannot be split. Number of sources of procurement shall be 1 (One) only. In case L-1 is non-MSE and preference is to be given as per MSE/MII guidelines, 100% order shall be placed on the eligible MSE/MII vendor as per the extant guidelines.
However, there is no option available on the GeM portal to launch the price-matching event for the subject GeM Bid (after RA). GeM Bid and GeM screenshots have been attached for ready reference. In view of the above, it is requested to kindly take up with GeM to provide the following for further processing of the subject GeM tender:*
i) Original Bid Price (before RA) of all the above-mentioned 8 (eight) bidders.
ii) Price-matching option, if applicable, to be made available as per the extant MSE policy/guidelines.
Kindly note that all the 8 (eight) bidders are "Class-I local supplier", as per the MII declaration submitted by them in the GeM portal.
Thanks & Regards,
Pankaj Sharma
Senior Manager | Steel Authority of India Limited
Contract Cell
IISCO Steel Plant."

20. The second e-mail dated March 3, 2026, sent by SAIL to GeM, reads as follows:

"From: R MISHRA
To: "Sayantan Roy
Date: Tue, 03 Mar 2026 16:59:35 +0530
Subject Fwd: Regarding GeM Bid No. GEM/2025/B/6974725, dated 08.12.2025 (RA Number: GEM/2026/R/631912)

Dear Sir,
As per bid terms of Service Bid no. GEM/2025/B/6974725, purchase preference is to be given to MSEs as the L1 Bidder is non-MSE.

May kindly advise asap whether the Buyer can proceed with offline price-matching as the "Price-Matching" tab is not available on the Buyer's Dashboard.
Regards
RK Mishra GM (MM), SAIL/CMMG"

21. The third e-mail dated March 5, 2026 is reproduced herein below:

"From: Sayantan Roy

Thu, 05 Mar 2026 9 45 06 AM +0530

To R MISHRA

Dear Sir,
We would like to inform you that for ITC enabled bids purchase preference to MSEs is not available as of now through the system. We would request to kindly do the price matching the MSEs offline and share it with GeM with the break-up ITC wise.
Thanks,
Sayantan Roy
Director Category Management
Government e Marketplace"

22. It is clear from the aforesaid correspondences that on the GeM portal the bids purchase preference for MSMEs was not available and under such circumstances it was suggested by GeM to SAIL, to complete the price matching process offline. Such communication was received by SAIL on a query of SAIL whether it could proceed offline for the price matchup. Unfortunately, such opportunity was not afforded to the writ petitioner. In any event, no legally protected right of the appellant has been violated. The appellant, having participated in the said tender

process knowing fully well of the 'price matching term' applicable to MSMEs, is estopped from raising any demur in this regard.

23. The terms and conditions of the tender were framed by SAIL and it was SAIL's duty to adhere to such terms and conditions. Any deviation from the terms and conditions which infringes the rights of a bidder is liable to be set aside. The writ petitioner did not get a chance to match the L1 price due to a technical issue in the GeM portal. Despite a query having been made by SAIL to complete the process offline, the said process was not explored for the reasons best known to them. Under such circumstances, we have no hesitation in holding that a gross procedural infirmity was committed by the respondent authorities.

24. We are mindful of the law settled by the Hon'ble Apex Court that, in a tender matter, the court while exercising the power of judicial review, can interfere if there is an infirmity in the decision-making process. [See: ***Tata Cellular Vs. Union of India,*** reported in ***1994 [6] SCC 651*** and ***Silppi Constructions Contractors Vs. Union of India and Anr.,*** reported in ***2020 (16) SCC 489***].

25. We agree with His Lordship that the tendering authority had erroneously granted the contract in favour of the appellant without

complying with the tender conditions. The MSME/the writ petitioner, who had qualified upon fulfilment of the eligibility criteria, was required under the tender conditions to be given an opportunity to match the price of the L1 bidder. This process was not followed by the tendering authority.

26. The GeM portal had clarified that their system did not provide for such price matching mechanism and had asked the respondent tendering authority to manually allow such price matching in the offline mode. Such clarification was given by GeM upon a query raised by SAIL. This query raised by SAIL would indicate that SAIL was also conscious that the tender conditions provided for such price matching and the same should be made available to the successful MSME.

27. In spite of knowing that the tender conditions would be breached, if the price matching was not allowed to the MSME/writ petitioner, the contract was awarded in violation of the tender conditions. Thus, the award of the tender by the tendering authority in favour of the appellant was vitiated. No right could be created in favour of the appellant to execute the work on the basis of a contract which was awarded in violation of the terms. Such violation was ex facie available from a bare perusal of the tender document.

28. However, with regard to the contention of Mr. Dutta that the appellant has suffered loss on account of mobilization of resources and recurring overhead charges, we are of the view that the appellant, at best

has a remedy by way of damages. He can always approach the civil court, but the writ court did not commit any error of jurisdiction as alleged by the appellant.

29. In view of the above, we do not find any infirmity in the judgment and order dated September 1, 2026. The learned Single Judge correctly addressed the issue and decided it in accordance with the tender terms. The writ petitioner could not have been made to suffer either due to the inability of GeM to upgrade its portal or the failure on the part of SAIL to have a more robust system so that tender terms could be adhered to.

30. We were informed by the learned counsel appearing for the writ petitioner that pursuant to the order passed by the learned Single Judge, the writ petitioner was given an opportunity by SAIL to match the L1 price. The writ petitioner, by a letter dated September, 2, 2026 expressed their unconditional consent to match the L1 price. The order of the learned Single Judge is upheld.

31. The appeal is dismissed along with the connected application.

32. Urgent Photostat certified copies of this judgment, if applied for, be supplied to the parties upon fulfilment of requisite formalities.

I agree.

(Arjun Ray Mukherjee, J.) (Shampa Sarkar, J.)

Later,

33. After pronouncement of the judgment the learned counsel appearing for the appellant seeks stay of operation of the judgment.

34. Same is considered and rejected.

I agree.

(Arjun Ray Mukherjee, J.) (Shampa Sarkar, J.)