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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment Reserved on: *06.07.2026*
Judgment delivered on:*15.07.2026*
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\+ **<u>W.P.(C) 6915/2026 & CM APPLs. 33903/2026, 36750/2026</u>**

GORKHA SECURITY SERVICES ..... Petitioner

versus

DELHI TRANSPORT INFRASTRUCTURE DEVELOPMENT CORPORATION LTD. (DTIDC) .....Respondent

<u>Advocates who appeared in this case</u>

For the Petitioner	:	Mr. Ramesh Singh, Sr. Adv. along with Mr. Harshit Singh, Ms. Hage Nanya and Mr. Anant Dev, Advs.
For the Respondent	:	Mr. Sanjay Vashishtha, Mr. Siddhartha Goswami and Mr. Aditya Sachdeva, Advs.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

<u>JUDGMENT</u>

<u>MANMEET PRITAM SINGH ARORA, J.</u>

1. The present petition lays a challenge to the Tender bearing no.13/2026-27 dated 28.04.2026 for the work of 'Operation and maintenance of electromechanical services, housekeeping, security and allied installations at 'Maharana Pratap ISBT[1], Kashmere Gate' issued by

[1] Inter State Bus Terminal

the Respondent [‘impugned Tender’] on the principal ground that it is exclusionary. In addition, the petition challenges the criteria for allocation of marks in the technical evaluation and the procedure for determination of the successful bidder.

SUBMISSIONS OF THE PETITIONER

2. Mr. Ramesh Singh, learned senior counsel for the Petitioner, stated that the impugned Tender, which is a consolidated tender of several services required at Maharana Pratap ISBT, Kashmere Gate [the ‘Terminal’], is illegal and discriminatory as it excludes entities which provide specialised services in a specific field, if they otherwise do not provide the remaining services.

2.1. He stated that the Petitioner has challenged the impugned Tender on several grounds. It is stated that the requirement of security services as detailed at (III) of Section 6, Clause 2 of the impugned Tender is contrary to the provisions of the Private Security Agencies (Regulation) Act, 2005 [‘PSARA’] and Rule 10(2) of the Delhi Private Security Agencies (Regulation) Rules, 2023 [‘2023 Rules’] as it fails to specify deployment of supervisor.

2.2. He stated that Clause 1.8 and Clause 2(a) of Section 3 of the impugned Tender prohibit participation by proprietorships, partnerships, joint ventures [‘JVs’], and consortiums, thereby restricting eligibility exclusively to companies. The said exclusion is contrary to Rule 173 of the General Financial Rules, 2017 [‘GFR Rules’], which mandates that eligibility criteria should not be restrictive. He stated that different entities that provide the services sought under the impugned Tender can come together to form a consortium; therefore, this condition needs to be set aside.

It was further stated that prohibiting consortiums from bidding is contrary to the judgment of the Supreme Court in **New Horizons Ltd. v. Union of India**[2].

2.3. He stated that Clause 9.2.2 of Section 3 of the impugned Tender prescribes a technical evaluation framework based on factors including the number of years in operation, annual turnover, manpower strength, and quality-related certifications, assigning 25 marks to each parameter are tailor-made to favour the existing contractor. He stated that the impugned Tender has an estimated cost value of Rs. 23 crores and a manpower requirement of approximately 500. For this requirement, the technical evaluation criteria are disproportionately high, giving an advantage to the existing contractor.

2.4. He stated that, also, the financial bid evaluation and determination process of the successful bidder as per Clause 11 of Section 3 of the impugned Tender is tailor-made to favour the existing contractor. He stated that M/s BVG India Pvt. Ltd. is the existing service provider, which has been serving since August, 2013. This procedure permits the grant of weightage to technical qualifications even post financial bid opening, operates in a manner whereby the L1 bidder may be excluded, while a bidder with the highest technical score may be awarded the contract despite being the highest financial bidder. He stated that once the bidders qualify the minimum technical criteria and score 70%, the said score should not have any relevance after the financial bids have been opened. He states that this is the procedure followed on the Government e-Marketplace [‘GeM’] portal and has been upheld by the Court. In this regard, reliance is being placed

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[2] (1995) 1 SCC 478

upon the judgment of this Court in **Gaurav Enterprises v. Municipal Corporation of Delhi**[3].

2.5. He stated that the Respondent has issued an e-tender for the impugned Tender on https://govtprocurement.delhi.gov.in/nic, whereas in a different premises, it has been relying on the GeM Portal to fulfil its security manpower needs. He stated that the impugned Tender has been deliberately issued outside GeM, which is in contravention of Rule 149 of the GFR Rules. He stated that the special terms for financial bid evaluation and determination of the successful bidder stipulated in this impugned Tender would not have been permitted in the GeM Portal, which does not permit technical qualifications to override the L1 bidder.

2.6. He stated that the impugned Tender arbitrarily combines four distinct and unrelated activities, with the final activity intentionally characterised as an *'allied'* activity to circumvent the GeM portal framework, as the portal does not recognise *'allied'* activity as a permissible category for procurement.

2.7. He stated that the Petitioner is a partnership firm specialising in providing security services and that there exists no reasonable or rational justification for clubbing security services with the other distinct services under a single tender.

2.8. He submits that on the GeM portal, exemption from past experience and turnover criteria is provided to MSMEs[4] and Start Ups. This exemption has not been granted in the impugned Tender.

2.9. No other ground was pressed during the course of arguments.

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[3] 2026:DHC:808-DB [Paragraph Nos. 23 and 24]
[4] Micro, Small and Medium Enterprises

SUBMISSIONS OF THE RESPONDENT

3. In response, Mr. Sanjay Vashishtha, learned counsel for the Respondent, stated that the Office Memorandum dated 23.01.2020 issued by the Government of India and Rule 147 of the GFR stipulate as follows:

i. The procurement of Goods and Services through GeM is mandatory only in respect of the Goods and Services for which products/services are available on GeM.

ii. The availability of Goods and Services can be ascertained from the 'GeM availability Report and Past Transaction Summary' so that the procuring department can take an informed procurement decision through GeM.

3.1. He stated that the impugned Tender under consideration pertains to the services of 'Operating and Maintenance of Electromechanical Services, Housekeeping, Security and Allied Installations at Maharana Pratap ISBT, Kashmere Gate'. As per the GeM availability report, this category is not available on GeM. Hence, the services which are the subject matter of the impugned Tender could not be procured through the GeM.

3.2. He stated that JVs, partnerships, and consortiums executing diverse works often lack a unified chain of command, resulting in poor coordination, accountability, and maintenance of service standards. Considering the critical nature of operations at the Terminal, it was decided to restrict participation to companies having a regulated and hierarchical management structure. It is stated that the Terminal has high footfall and security concerns; therefore, accountability of the contractor rendering services and fixation of responsibility need to be clear and explicit. Consequently, such entities were declared ineligible to participate in the tender.

In addition, he stated that partnerships and proprietorships lack a distinct legal identity and perpetual succession, unlike companies, which could adversely affect continuity and smooth execution of the contract.

3.3. He placed reliance on the judgment of a Co-ordinate Bench of this Court in **Top Edge Security and Services Private Limited v. Government of NCT of Delhi and Ors.**[5], to state that exclusion of proprietorships, partnership firms, JVs or consortiums from participation in a tender is a matter of procurement policy and is not liable for judicial interference.

3.4. He stated that the Respondent proposes to procure eight distinct services under this Tender from a single bidder and wants a single entity that provides all these services due to the complex nature of the Terminal. He refers to Clause 2, Section 6 of the impugned Tender, which enlists the details of the services on internal page nos. '33' to '46'. He stated that it is administratively not convenient for the Respondent to have independent agencies rendering these eight distinct services. He stated that the impugned Tender has been designed as per the experience and requirements of the Terminal to make it efficient. He stated that there is no ambiguity in the scope of services, which are given in detail in the impugned Tender and relying on the title of the Tender is misleading. He stated that, therefore, not issuing a separate Tender for each of the services is a conscious decision to achieve efficiency.

He stated that in the past, single tenders have consistently been issued for seeking multi-disciplinary services from a single contractor for this Terminal.

3.5. He stated that the methodology adopted, namely Quality and Cost-

[5] 2023:DHC:4419-DB

Based Selection ['QCBS'], is permissible under Rule 192 of GFR, which also illustratively contemplates a 70:30 ratio between technical and financial evaluation. He stated that the adoption of the QCBS methodology is intended to strike a balance between technical competence and financial competitiveness, ensuring that the successful bidder offers the best overall value rather than merely the lowest price. He stated that the Respondent has consciously preferred quality plus price over a purely price-driven selection process, considering the specialised and expansive nature of the services involved at the Terminal.

3.6. He stated that it is settled law that in the matter of formulating conditions of a tender document and awarding a contract, greater latitude is required to be conceded to the State authorities and unless the action of the tendering authority is found to be malicious and a misuse of its statutory powers, interference by Courts is not warranted and that certain preconditions or qualifications for tenders have to be laid down to ensure that the contractor has the capacity and the resources to successfully execute the work. In this regard, reliance was placed upon the judgment of the Supreme Court in **M/s Steag Energy Services (India) Pvt. Ltd. v. GSPC Pipavav Power Company Ltd. (GPPC) and Ors**[6].

3.7. He stated that as per the impugned Tender, the successful party is bound to comply with all laws and therefore, the compliance of PSARA and 2023 Rules would be the obligation of the contractor and he is bound to comply with the same.

3.8. He stated that it is correct that M/s BVG India Pvt. Ltd. has been the contractor since August, 2013; however, that is a consequence of its

[6] (2012) 8 SCC 216 [Paragraph Nos. 35 to 37]

successful bidding in several tenders from time to time.

3.9. He further stated on instructions that three bidders have qualified in the technical bid, and in fact, two bidders have scored full 100 marks. He states that this shows that the marking criteria at Clause 9.2.2 in Section 3 have been fulfilled by two bidders already.

COURT'S FINDINGS

4. This Court has heard the learned counsel for the parties and perused the record.

5. The Petitioner has challenged the impugned Tender on the following grounds:

(i) Unreasonable bunching of disparate and unrelated eight services for manpower deployment at Clause 2 Section 6 under a common tender [i.e., the impugned Tender] is with an intent to exclude entities which specialise in providing a particular service. Additionally, this bunching of unrelated services enabled the Respondent to overcome publishing the Tender on the GeM portal and instead publish the same on https://govtprocurement.delhi.gov.in/nic, and in the process include special conditions which would have been impermissible on the GeM portal.

(ii) Unreasonable exclusion of participation of partnership firms and proprietorship firms at Clause 2(a) of Section 3 of the impugned Tender and restricting the bidding to a company registered under the Companies Act, 1956.

(iii) Similarly, unreasonable exclusion of JVs or consortium at Clause 2(a) of Section 3 of the impugned Tender, whereas different entities providing distinct services can join hands to submit a bid for providing the multi-disciplinary services in the Tender.

(iv) Arbitrary eligibility criteria under Clause 9 of Section 3 of the impugned Tender, which has no nexus with the requirement of the actual manpower and the estimated value of the contract. The criteria has been tailor-made to favour the existing contractor, who has been providing services since the year 2013.

(v) Arbitrary financial bid evaluation and determination of successful bidder formula adopted at Clause 11 of Section 3 of the impugned Tender, which deprives the public exchequer of the advantage of the L1 bid and is suspected to favour the existing contractor. This criterion would have been impermissible under the GeM portal and is the reason for skipping the said portal.

6. Having examined the record, in the facts of this case, we are of the considered opinion that the determination of the first issue raised by the Petitioner is pivotal; only if the challenge to the first ground succeeds would the examination of the remaining grounds arise for consideration.

7. The Respondent has published the impugned Tender seeking to outsource manpower for deployment in different categories such as skilled, semi-skilled, clerical and non-technical supervisory staff for eight services as enlisted at Clause 2 of Section 6 of the impugned Tender, which reads as under: -

> "2. SCOPE OF WORK
>
> I. HELP DESK MANAGEMENT
> II. E&M SERVICES:- Electrical Supply (HT & LT), DG sets, FPS, Water Supply & Plumbing, HVAC, LV Systems, Escalator, Elevators, Baggage Scanners & Solar Power System etc. Including comprehensive AMC of items listed at Annexure-III
> III. HOUSE KEEPING I/C FACIA CLEANING
> IV. HORTICULTURE

V. SECURITY
VI. PEST CONTROL
VII. INCLUSIONS & EXCLUSIONS OF THE SERVICES
VIII. REQUIREMENT FOR FM OFFICE FROM DTIDC"

The details of scope of each of the services are set out on internal page numbers '33' to '46' of the impugned Tender.

8. The Petitioner is a registered partnership concern, and it exclusively provides manpower security services, which are enlisted at sl. no. (v) at Clause 2 of Section 6 of the impugned Tender. The Petitioner by itself can only provide security services and no other service sought for by the Respondent in the impugned Tender. There is no dispute *qua* these facts.

9. The Respondent has submitted that in the past as well, the Respondent has consistently issued a single Tender for these multi-disciplinary services, as in its experience, having one entity providing these services increases efficiency and accountability. It is submitted that, given the nature of the high footfall at the Terminal, which increases exponentially during weekends and festivals, having a rigorously efficient environment at the Terminal is possible when the services are provided by a single entity. It is stated that if these services are sought from different entities, it results in lower efficiency of the Terminal, lack of coordination between the different service providers, and excessive administrative headache for the Respondent while coordinating with each of the service providers.

10. Having considered the submissions of the Respondent for seeking selection of a single entity for providing all eight services, we are of the view that the Respondent, based on its experience in managing the Terminal, would be in the best position for taking such a decision. The explanation offered by the Respondent that availing multi-disciplinary services from a

single entity enhances efficiency and administrative control appears to be persuasive and reasonable, and not arbitrary. The Respondent has even restricted subcontracting[7] under the tender, which further shows its intention to ensure that the services remain under the control of a single accountable contractor.

11. Moreover, as already stated by the Respondent, the impugned Tender is consistent with its past practice of inviting bids for multi-disciplinary services from a single entity and therefore, the present impugned Tender is not a departure from the past practice.

This fact is not disputed by the Petitioner.

The Petitioner has challenged the action of the Respondent in issuing a single impugned Tender for all eight services in Ground A of the petition. It is averred that clubbing of eight distinct services is discriminatory and has been inserted to favour select bidders. It is stated that it would lead to minimum participation, favour few and is therefore, contrary to the intent of inviting public participation.

We are unable to accept the challenge to the Tender on this ground as we are satisfied that the Respondent's action in seeking a single contractor for the multi-disciplinary services is rooted in a plausible explanation for achieving seamless efficiency in management and security of the Terminal. The challenge to the Tender on this basis is therefore, rejected.

12. Even otherwise, it is trite law that a tendering authority is best placed to understand its own requirements, and that Constitutional Courts must refrain from scrutinising the tender documents unless they are mala fide or perverse. In this regard, we find it apposite to refer to the dicta of the

[7] Clause 8.3 at internal page 24 of the impugned Tender

Supreme Court in **Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corporation Limited**[8]. The relevant paragraph reads as under: -

> "15. We may add that the owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. The constitutional courts must defer to this understanding and appreciation of the tender documents, unless there is mala fide or perversity in the understanding or appreciation or in the application of the terms of the tender conditions. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional courts but that by itself is not a reason for interfering with the interpretation given."
>
> [Emphasis supplied]

13. The question then arises that since the Respondent issued a single Tender for the provision of eight multi-disciplinary manpower services and the Petitioner admittedly does not have the capacity to provide manpower for 7 out of the 8 services, what locus can such a Petitioner have for maintaining a challenge to other conditions of the impugned Tender?

14. The Petitioner, in its writ petition and arguments, alleged that by consolidating the eight multi-disciplinary services in a single Tender, the Respondent has been able to mischievously bypass the GeM portal and includes special terms and conditions which are anti-competitive. However, we find even if the impugned Tender was published on the GeM portal, the Petitioner would have been ineligible to participate in the Tender as it cannot provide all eight enlisted multi-disciplinary services.

We, therefore, conclude that since the Petitioner does not have the capacity to provide the eight multi-disciplinary services, it cannot challenge the other terms and conditions of the impugned Tender.

15. Nonetheless, we have examined the issue of non-publishing of the

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[8] (2016) 16 SCC 818

impugned Tender on the GeM portal, as raised by the Petitioner.

In its reply, the Respondent has filed as Annexure R-2 a report generated from the GeM portal to contend that an attempt was made to enquire from the portal if the impugned Tender could be published on the GeM; however, as per the report, the services prayed for were not available. During arguments, learned counsel for the Respondent stated on instructions that the decision to publish the impugned Tender on https://govtprocurement.delhi.gov.in/nic had been duly approved by the Board of the Respondent. In this regard, we observe that the report of the GeM portal filed as Annexure R-2 is cryptic and fails to satisfy us that indeed this Tender could not have been published on the said portal. It appears to be an automated report generated at the portal and not a deliberated response by the administration of the portal. Merely, the title of the Tender appears to have been fed into a computer field on the GeM portal, which has led to the said report. The Respondent had complete details of the services required as set out at Clause 2 of Section 6 of the impugned Tender, and it would have been appropriate to submit the said details for assessing whether the Tender can be published on the GeM portal. We are therefore not satisfied with the explanation given by the Respondent in its counter affidavit on this issue. However, since the Petitioner herein could not have qualified even if the impugned Tender was published on the GeM portal as it does not have the capacity to provide the other services except security, we do not deem it appropriate to interfere with the impugned Tender on this ground, at the instance of the Petitioner.

However, we reasonably expect that the Board of the Respondent will ensure that the best bid is accepted in the interest of the security and users' comfort at the Terminal and the cost to the public exchequer. The contract will be awarded with the approval of the Board.

16. The Petitioner sought to challenge the exclusion of consortium in the impugned Tender. We, however, note that this challenge is academic as the Petitioner has not brought on record details of any other parties with which it seeks to form a consortium, or has an understanding to form a consortium, to provide the eight multi-disciplinary services sought by the Respondent. We, therefore, do not propose to examine this question. Similarly, since the Petitioner by itself cannot provide the eight multi-disciplinary services, the issue of its exclusion as it is a partnership firm is also academic in this case. We leave these questions open to be decided in appropriate proceedings.

17. Since the Petitioner lacks capacity to participate in the impugned Tender, we find it superfluous to delve into the other the tender conditions challenged in the present proceedings. We accordingly refrain from expressing any opinion on the merits of those issues, which are kept open for consideration in appropriate proceedings.

18. The Respondent will place this decision before its Board to bring to its attention the observations made by this Court at paragraph '15' hereinabove.

19. With the aforesaid reasons, the writ petition is dismissed as being devoid of merit. Pending applications stand disposed of.

MANMEET PRITAM SINGH ARORA, J

V. KAMESWAR RAO, J

JULY 15, 2026/mt/msh/aa