2026:DHC:6904-DB

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

% Judgment reserved on*: 18.08.2026*
Judgment delivered on*: 20.08.2026*
Judgment uploaded on*: As per Digital Signature~*

\# **CNR No. DLHC010289972026**

\+ **<u>W.P.(C) 9110/2026</u>**

ALTHION TECH INNOVATIONS PVT. LTD.
THR. AUTHORISED SIGNATORY .....Petitioner

versus

UNION OF INDIA .....Respondent

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

For the Petitioner : Mr. P.B. Sashaankh, Mr. Ritwik Mohapatra, Mr. Vardaan Wanchoo, Advocates.

For the Respondent : Mr. Jivesh Tiwari, CGSC with Mr. Rahul Kumar Sharma, Govt. Pleader, Ms. Nandini Aggarwal and Ms. Samiksha, Advs. with Col. M.K. Mishra and Col. GPS Gahlot

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

<u>JUDGMENT</u>

<u>V. KAMESWAR RAO, J.</u>

1. This petition has been filed with the following prayers:-

"a) Issue a Writ in the nature of Mandamus or any other

appropriate Writ/Order/Direction quashing and setting aside the terms in the Tender dated 17.07.2025 bearing Bid Number: GEM/2025/B/6425918 for the supply, installation and commissioning of 13 RO water plants for Hemodialysis in so far as they prescribe a Minimum Average Annual turnover for the bidder (For 3 years) of Rs.200 lakhs & OEM Average Turnover (Last 3 years) of 4800 lakhs as being arbitrary, disproportionate and violative of Article 14 and Article 19(1)(g) of the Constitution of India; OR

b) Issue a Writ in the nature of Mandamus or any other appropriate Writ/Order/Direction directing the Respondent to reconsider and reevaluate the Petitioner's bid without insisting upon the Turnover criterion mentioned in the Tender dated 17.07.2025 bearing Bid Number: GEM/2025/B/6425918;

c) Pending final disposal of the present Writ Petition, stay the operation and effect of the turnover criterion and restrain the Respondent from rejecting or disqualifying the Petitioner's bid on that ground alone;

d) Pass any other Order/s or Direction/s as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and in the interest of justice."

2. The facts as noted from the record and so contended by Mr. P.B. Sashaankh, learned counsel appearing for the petitioner are that:-

2.1 The Director General Armed Force Medical Services, (DGAFMS), Ministry of Defence, Government of India on 17.07.2025 floated a tender on Government e-Marketplace ("GeM") for supply, installation and commissioning of 13 RO Water Plants for Hemodialysis. As per the tender, the minimum average annual turnover of the bidder should be Rs.2.00 Crores and the Original Equipment Manufacturer turnover should be Rs.48.00 Crores, for the last three years.

2.2 According to him, the petitioner is a registered micro enterprise as per Micro, Small and Medium Enterprises Act, 2006 ("MSME Act"), a national award-winning Indian enterprise, and the actual Original Equipment Manufacturer ("OEM") of the dialysis-grade RO plants offered. The petitioner is not a trader or intermediary. It holds an ISO 13485 certification for medical devices, Central Drugs Standard Control Organization ("CDSCO") Class C licensing for the very device in question, Department of Scientific and Industrial Research recognition as an in-house R&D centre, and a patent granted in 2021 for a compact softener-free Hemodialysis RO system.

2.3 He stated that petitioner has over 40 installations across leading public and private institutions, including AIIMS campuses, NIMS Hyderabad, CMC Vellore, Tata Memorial Hospital and Sir Ganga Ram Hospital.

2.4 He submitted that the subject tender on the one hand, specifically extends the purchase preference to a Micro and Small Enterprise ("MSE") by expressly stipulating that "*Purchase preference will be given to MSE's having valid Udyam Registration..*", yet, on the other hand completely bars the entry of micro enterprises by imposing a turnover condition that no MSE can satisfy. In other words, it is his submission that an enterprise having a turnover of Rs.10.00 Crores is graded as micro enterprise, but the conditions of annual turnover for the OEM by the respondent cannot be met by MSE. He submitted that there is a contradiction in the tender clauses inasmuch as the tender *vide* Clause 5 expressly extends the benefit of Purchase preference to MSE in terms of the Public Procurement Policy for Micro and Small Enterprises ('MSEs') Order, 2012, providing *inter alia* that an MSE seller quoting within the prescribed band of the lowest price shall be afforded the opportunity to match the L-1 price and be awarded a portion of the tendered quantity.

2.5 In other words, the benefit so conferred is by definition, a benefit to MSE. Yet a micro enterprise is, by statutory definition, an enterprise whose annual turnover does not exceed Rs.10.00 Crores turnover. Beyond that ceiling, it takes the enterprise out of the micro category altogether. He stated that the tender simultaneously prescribes a minimum average annual turnover of Rs.48.00 Crores, which has been reduced to Rs.33.00 Crores for the manufacturer of the offered goods, that is, almost five times the maximum turnover that the law permits an MSE to possess. The qualification is therefore, incapable of being met by any micro enterprise whatsoever, irrespective of the merit of its product, the strength of its record, or its full compliance with every technical specification.

2.6 He highlighted the fact that a preference extended to a defined class by one clause or tender, negated by an eligibility condition in another place in the tender, which the class is incapable of fulfilling, is self-defeating and constitutionally arbitrary.

2.7 That apart, his submission is that the turnover condition serves no legitimate object that could sustain it. The quality and reliability of the goods are independently and fully secured by the technical and regulatory requirements stipulated in the tender itself, which every bidder must satisfy in any event. The turnover threshold is not a measure of quality; it operates purely as a barrier to entry. He stated arbitrariness is aggravated by the fact that the tender, in terms, declines to extend any exemption from the turnover and experience criteria to MSE, thereby consciously disabling the very relaxation that the binding public procurement policy of the Government of India mandates in their favour.

2.8 He referred to the fact that the petitioner wrote an email to the DGAFMS on 02.08.2025 expressly conveying its concern regarding the tender. The same was replied to by the DGAFMS on 13.08.2025 wherein it was stated that in order to *inter alia* ascertain quality, the criteria of Average Annual Turnover for last 3 years are applied uniformly to all bidders and the items related to public health/safety.

2.9 According to the petitioner, its fitness for the contract is not a matter of its own assertion alone; it stands affirmed by a competent authority of the Government. Upon a grievance preferred by the petitioner on the MSME Portal on 20.08.2025, a platform instituted by the Ministry of Micro, Small and Medium Enterprises for the redressal of grievances of MSEs, the MSME Development and Facilitation Office of the Ministry examined the matter and addressed a communication to the procuring authority i.e. respondent on 29.08.2025. That communication recorded the petitioner's credentials, observed that the petitioner's experience is fully aligned with the requirements of the tender, and requested that the petitioner's participation be considered in the spirit of affording fair opportunity to MSEs in government tenders.

2.10 According to him, the turnover condition is arbitrary, irrational, disproportionate and violative of Articles 14 and 19(1)(g) of the Constitution of India. He submitted that the petitioner should be allowed to bid as an OEM so that it can be technically evaluated without prescribing the turnover of Rs.33.00 Crores and the tender be proceeded further in accordance with law.

2.11 He relied upon the decision of the Chhattisgarh High Court in the case of ***Adhishri Swa Sahayata Samuh Through its Director Rajni Rajak v. State of Chhattisgarh through Secretary, Heath Department and Others, 2026 SCC OnLine Chh 6697.***

3. On the other hand, Mr. Jivesh Tiwari, learned Central Government Standing Counsel appearing for the respondent has drawn our attention to the relevant chronology of the procurement process initiated by respondent in the following manner:-

EVENT	**DETAILS**
Tender published on GeM	17.07.2025
Bid opening date was scheduled on	16.08.2025
Bidders annual turnover criteria as per RFP	2 Cr (i.e. 6.06% of Bid value) Gem: 0-50%
Original OEM Annual Turnover (ATO) criteria as per RFP	₹48 Cr (150% of bid value)
Revised ATO for OEM based on a representation	₹33 Cr (100% of bid value)
Average ATO of M/s Althion Tech Innovation Pvt Ltd	As Bidder: 75,22,796.00 only (*75.22 Lakh) As OEM: 75,22,796.00 only

	(*75.22 Lakh) i.e. 2.27% of bid value of OEM ATO
Representation recd, on GeM Portal	20.07.2025
Email representation recd from M/s Althion Tech Regarding Exemption from OEM turnover criteria	07.08.2025
Reply M/s Althion, tech fwd through Email	13. 08 2025.
Reply to representation and corrigendum	20.01.2026
Bid opened on GeM Portal	05.02.2026
After initial scrutiny shortfall documents were intimated to the firms to submit the deficient documents	23.04.2026, 30.04.2026 & 12.05.2026
OA sheet approved after scrutiny of documents by CFA DGAFMS	19.05.2026
Detailment of TEC of acceptable firms is OA sheet BOO	21.05.2026
TEC report received from BOO	14.07.2026
Present status	TEC due for CFA approval. Hold for further process as per intimation of Hon'ble High Court of Delhi

4. According to him, the procurement process commenced with the publication of the bid. Thereafter, representations submitted by the various participating firms, including the petitioner were duly examined. Technical inputs from the concerned specialist were obtained before replying to the representations and accordingly, bid opening was undertaken only thereafter. During the course of procurement process, corrigenda were issued whenever required and the procurement thereafter progressed through scrutiny of bid documents, constitution of the Technical Evaluation Committee and preparation of the Technical Evaluation Report.

5. He submitted that the petitioner participated in the present procurement not merely as a bidder but also as the OEM of the equipment offered by it. Consequently, the petitioner was required to satisfy both the prescribed Bidder Average Annual Turnover as well as the prescribed OEM Average ATO. Since the petitioner itself projected its own firm as the OEM, it was mandatorily required to satisfy the OEM eligibility conditions prescribed in the tender and could not seek exemption therefrom. The petitioner's bid was rejected as it failed to satisfy the prescribed bidder average annual turnover as well as the OEM average Annual Turnover criteria.

6. He highlighted the fact that as per the Office Memorandum (OM) dated 20.09.2016, in procurement relating to public safety, health, critical security operations and equipment, the respondent has an option that criteria relating to prior turnover and prior experience in favour of MSE may not be relaxed wherever adequate justification exists. According to him, the procurement in the present case relates to Ultra Pure RO Water Plants for Hemodialysis which constitute life-support medical equipment directly connected with patient care of Armed Forces personnel. The respondents have therefore, acted strictly in accordance with the aforesaid OM while prescribing and retaining the turnover criteria. He submitted that OEM average turnover criterion was prescribed to ensure that the participating OEM possesses adequate financial stability, manufacturing capability and organizational infrastructure to execute the contract successfully. The criterion would further ensure successful installation and commissioning of the equipment, uninterrupted support during the warranty period of five years, executed comprehensive annual maintenance contract for the

subsequent five years, continuous availability of spare parts, uninterrupted after-sales service and reliable technical support throughout the operational life of the equipment.

7. He stated that considering that DGAFMS procures capital medical equipment for deployment in various Armed Forces hospitals across the country, the prescribed turnover criterion has a direct nexus with the bid value, protection of the public exchequer, uninterrupted patient care and operational readiness of the Armed Forces Medical Services. He stated initially the OEM average annual turnover was prescribed as Rs.48.00 Crores, being approximately 150% of the bid value. However, considering the representation from participating firms, the respondents reduced the said criterion to Rs.33.00 Crores being approximately 100% of the bid value. The aforesaid relaxation was carried out after obtaining concurrence of the Integrated Financial Adviser ("IFA") and approval of the Competent Financial Authority ("CFA"), with the object of encouraging wider participation while simultaneously safeguarding the requirements of the procurement.

8. He stated despite the aforesaid relaxation, the petitioner's average annual turnover as OEM is only Rs.75.22 Lacs, which is substantially lower than the prescribed OEM average annual turnover of Rs. 33 crores and is even less than the approximate value of a single equipment of Rs.2.5 crores (approx.) under the present procurement. He stated that 13 Ultra Pure RO plants are required to be supplied, installed and commissioned within the stipulated delivery period of four months, followed by warranty support and comprehensive annual maintenance contract for a total period of five years.

The petitioner's financial credentials do not inspire confidence regarding its capability to execute a procurement of such magnitude and thereafter provide uninterrupted support throughout the operational life of the equipment.

9. He stated that the technical literature submitted by the petitioner itself reflects a maximum filtration capacity of only 2500 liters per hour, whereas the model quoted by the petitioner, namely BM-1500, possesses a capacity of only 1500 liters per hour. Thus, the equipment offered by the petitioner is technically non-compliant.

10. As per him insofar as the reliance placed by the learned counsel for the petitioner on Clause 5 of the tender document is concerned, the same deals with purchase preference available to eligible MSE. He stated that said clause regulates the manner in which purchase preference is to be extended at the stage of placement of the Supply Order amongst otherwise eligible and qualified bidders. The clause does not override the eligibility criteria contained in Clauses 1 to 3 nor does it dispense with compliance thereof. Unless a bidder first satisfies the prescribed eligibility conditions, successfully qualifies during technical evaluation and remains otherwise eligible for consideration, the stage of extending Purchase preference under Clause 5 does not arise.

11. He also highlighted the fact that a conjoint reading of the bid document leaves no manner of doubt that the tender has been structured in a chronological manner. Every bidder is first required to establish eligibility under clause 1 to 3. Thereafter, the bidder undergoes further evaluation including assessment of technical responsiveness and past performance. It is

only upon completion of the preceding stages that the question of extending preference under Clauses 4 and 5 arises. The petitioner's attempt to directly invoke Clauses 4 and 5 while completely bypassing the mandatory eligibility requirements is, therefore, contrary to the express scheme of the Bid Document and liable to be rejected. He stated that the petitioner’s entire case proceeds on an erroneous assumption that purchase preference and eligibility are synonymous. The said assumption is contrary to the tender conditions. The purchase preference operates only after scrutiny of documents, verification of eligibility, technical qualification and financial evaluation. In the case of an eligible MSE, the benefit of purchase preference becomes relevant only in accordance with the prescribed procedure after the bidder has successfully qualified through the earlier stages of evaluation, which the petitioner herein has failed during scrutiny of eligibility conditions and technical evaluations.

12. According to him, the petitioner’s case by relying upon the OM dated 10.03.2016 governing the procurement from MSE is misconceived. He stated that the applicable policy itself contemplates that any relaxation or benefit extended to an MSE is subject to the bidder satisfying the prescribed quality requirements and technical specifications of the procurement. As stated above, the petitioner has failed not only to satisfy the prescribed financial eligibility criteria but also failed to satisfy the technical requirement. He has drawn our attention to various documents filed along with the counter affidavit in support of his submissions. He urged that in view of the above submissions and in view of the stand taken by the respondents in the amended counter affidavit, the present petition being without any merit is liable to be dismissed.

ANALYSIS

13. Having heard the learned counsel for the parties, the short issue which arises for consideration is whether in view of the financial turnover condition of Rs.33.00 Crores fixed by the respondent for an OEM bidder, which takes the petitioner beyond the annual turnover criterion of being a micro enterprise under the MSME Act and thus, a criteria petitioner is unable to fulfill, an MSE, the preference stipulated under Clause 5 shall be applicable to the petitioner.

14. There is no dispute that the petitioner is a micro enterprise, which means that the turnover of the petitioner can only be upto Rs.10.00 Crores. The submission of the learned counsel for the petitioner is that as an MSE, the petitioner is entitled to relaxation of the norms in public procurement on prior experience – prior turnover criteria.

15. According to the counsel for the petitioner, the relaxation of Rs.33.00 Crores turnover has not been given to the petitioner. On this, the learned counsel for the respondent has primarily relied upon the OM dated 20.09.2016 to state that where the procurement of items relating to public safety, health, critical security operations and equipment, the procurement entities may not relax the criteria relating to prior turnover and prior experience wherever adequate justification exists. It the case of the respondent that the annual turnover criteria for an OEM was relaxed from Rs.48.00 Crores to Rs.33.00 Crores, and as the procurement relates to health and safety, the relaxation of prior turnover was not given in respect of the tender in question. In that sense, a micro enterprise shall not be eligible for submitting the tender in question. The said plea is appealing to us.

16. At this stage, we may refer to the decision as relied upon by the learned counsel for the petitioner in ***Adhishri Swa Sahayata Samuh (supra)*** wherein the issue was that the respondent authority floated a tender dated 19.02.2026 on the GeM portal for providing dietary services, having an estimated value of Rs.60.00 Lacs for a period of one year, with an Earnest Money Deposit (EMD) of Rs.60,000/-. As per the eligibility conditions, bidders were required to have a minimum average annual turnover of Rs.50.00 Lacs for the preceding three years. However, the bid document itself expressly and unequivocally provided that if the bidder is an MSE as per the latest orders issued by the Ministry of MSME, the bidder shall be granted complete relaxation from the eligibility criteria relating to both 'Experience Criteria' and 'Bidder Turnover,', subject to meeting the quality and technical specifications.

17. It was contended on behalf of the petitioner therein that the petitioner is a registered MSE which fully satisfied the conditions for availing such relaxation and duly uploaded all supporting documents in proof thereof. The respondent authorities failed to extend the benefit of such relaxation to the petitioner, which became the subject matter of the writ petition before the High Court. It was submitted that the cumulative effect of the wrongful denial of MSME benefits, arbitrary evaluation, rejection of representation on untenable grounds, and discriminatory conditions had vitiated the entire tender process and rendered it unsustainable in law. It was stated on behalf of the respondent therein that the petitioner was not entitled to the benefit of MSE relaxation in terms of the applicable rules governing the procurement in the State. In this regard, the High Court had in paragraphs 16-17 stated as under:-

"16. Upon consideration of the rival submissions and on a close scrutiny of the record, this Court finds that the bid document itself unequivocally provides for complete relaxation to Micro and Small Enterprises (MSE) in respect of experience and turnover criteria. The petitioner, being a registered MSE as evidenced by Annexure P/4, was prima facie entitled to avail such benefit. However, the respondents have failed to extend the said relaxation and have instead adopted a course of action which effectively nullifies the very concession expressly provided in the tender conditions.

17. This Court is of the considered opinion that once a relaxation is consciously incorporated in the tender document, the same cannot be diluted, ignored, or selectively applied at the stage of evaluation. The action of awarding only 10 marks under the turnover criteria, despite the petitioner's entitlement to relaxation, amounts to a patent arbitrariness and defeats the principle of a level playing field in public procurement."

In this judgment, the tender conditions stipulate complete exemption to MSE and High Court concluded that respondent had failed to implement the said relaxation contrary to the tender conditions.

18. It may stated here that this judgment is clearly distinguishable. In the said case, the OM dated 20.09.2016, on which reliance has been placed by the learned counsel for the respondent (in this case), that relaxation in annual turnover shall not be applicable in the procurement relatable to health, was not pleaded. The said OM contemplates that relaxation cannot be given in respect of the health related procurements if the adequate justification exists. The justification given in the case in hand, is that the total bid value is about of Rs.33.00 Crores, the annual turnover must be Rs.33.00 Crores, i.e. 100% of the bid value. In any case, the law in this regard is settled that the author of the tender floating authority is the best person to interpret the terms of the

tender. We can, therefore, not accept the submission of petitioner that clause 5, will override the earlier clauses of tender prescribing turnover criteria. We may refer the judgment of the supreme court in paragraph nos. 19.2 & 36 in the case of ***Agmatel India Private Limited v. Resoursys Telecom and Others, (2022) 5 SCC 362,*** which we reproduced as under:-

> *"19.2. Before concluding on the matter, the High Court observed, with reference to the decision of this Court in Tata Cellular v. Union of India [Tata Cellular v. Union of India, (1994) 6 SCC 651] , that the tender floating authority was the best person to interpret the terms of the tender but the said authority cannot act arbitrarily, whimsically or contrary to the terms and conditions of the tender. The High Court reiterated that in the first place, the terms and conditions were clear and if at all they were ambiguous, it could not be left to the option of tender floating authority to interpret it in a manner which is contrary to their plain meaning. The High Court said thus : (Resoursys Telecom case [Resoursys Telecom v. Navodaya Vidyalaya Samiti, 2021 SCC OnLine Del 4532] , SCC OnLine Del para 47)*
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> > *"47. We are conscious of the scope of judicial scrutiny in tender matters. We are also conscious that the tender floating authority is best person to interpret the terms of the tender, as they know what best is the requirement and how to achieve the same. (See Tata Cellular v. Union of India [Tata Cellular v. Union of India, (1994) 6 SCC 651]). However, the authorities cannot act arbitrarily, whimsically and contrary to the terms and conditions of the tender. As noticed hereinabove, the terms and conditions of the tender are clear. However, even if the terms of the tender are unclear and ambiguous, can it be left to the option of the tender floating authority to interpret it in a manner which is contrary to their plain meaning? The answer is "No"."*
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> *xxx xxx xxx*

36. The same aspects apply to the observations regarding "contra proferentem rule" as referred by the High Court with reference to United India Insurance [United India Insurance Co. Ltd. v. Orient Treasures (P) Ltd., (2016) 3 SCC 49 : (2016) 2 SCC (Civ) 14] . The said rule was referred by this Court while not accepting the argument made on behalf of the insured and while observing that the said rule had no application, when the language of the relevant clauses was plain, clear and unambiguous. We may, however, observe that even from the extracted part of the principles related with the "contra proferentem rule", as reproduced by this Court from the Halsbury's Laws of England, it is clear that the said rule was applied in the case of ambiguity in the insurance policy because the policies are made by the insurer and its ambiguity cannot be allowed to operate against the insured. This rule, in our view, cannot be applied to lay down that in case of any ambiguity in a tender document, it has to be construed in favour of a particular person who projects a particular viewpoint. The obvious inapplicability of this doctrine to the eligibility conditions in a notice inviting tender could be visualised from a simple fact that in case of ambiguity, if two different tenderers suggest two different interpretations, the question would always remain as to which of the two interpretation is to be accepted? Obviously, to avoid such unworkable scenarios, the principle is that the author of the tender document is the best person to interpret its documents and requirements. The only requirement of law, for such process of decision-making by the tender inviting authority, is that it should not be suffering from illegality, irrationality, mala fides, perversity, or procedural impropriety. No such case being made out, the decision of the tender inviting authority (NVS) in the present case was not required to be interfered with on the reasoning that according to the writ court, the product "smartphone" ought to be taken as being of similar category as the product "Tablet".

19. There is no dispute that annual turnover of the petitioner is Rs.75.22 Lacs, much below the turnover of Rs. 33 crores stipulated in the tender

document and also much below the tender value. In that sense, the petitioner is not meeting the turnover requirement. Such requirement cannot be relaxed for a procurement relating to public health and safety, in terms of the aforesaid OM.

20. That apart, we note that the bid document at page 35 specifically provides with regard to exemptions of years of experience and turnover which specifically says 'No'. In that sense, the exemption from turnover would not be available to a bidder.

21. Insofar as the plea of MSE purchase preference is concerned, the same would be applicable in terms of Clause 5. The Clause 5 of the tender document is reproduced as under:-

> *"Purchase preference will be given to MSEs having valid Udyam Registration and whose credentials are validated online through Udyam Registration portal as defined in Public Procurement Policy for Micro and Small Enterprises (MSES) Order, 2012 dated 23.03.2012 issued by Ministry of Micro, Small and Medium Enterprises and its subsequent Orders/Notifications issued by concerned Ministry. If the bidder wants to avail themselves of the Purchase preference, the bidder must be the manufacturer/OEM of the offered product on GeM. Traders are excluded from the purview of Public Procurement Policy for Micro and Small Enterprises and hence resellers offering products manufactured by some other OEM are not eligible for any purchase preference. in respect of bid and Buyer will decide Services, bidder must be the Service provider of the offer of the offered Service. Relevant documentary in this regard shall be uploaded along with the bid in respect of the offered product or service and be eligibility for purchase preference based documentary evidence submitted, while evaluating the bid. If L-1 is not an MSE and MSE Seller (s)*

has/have quoted price within L-1+ 15% (Selected by Buyer) of margin of purchase preference /price band defined in relevant policy, such MSE Seller shall be given opportunity to match L-1 price and contract will be awarded for 25% (selected by Buyer) percentage of total quantity. The buyers are advised to refer the OM No. F.1/4/2021-PPD dated 18.05.2023 OM No.14_2021_PPD dated 18.05.2023 for compliance of Concurrent application of Public Procurement Policy for Micro and Small Enterprises Order, 2012 and Public Procurement (Preference to Make in India) Order, 2017. Benefits of MSE will be allowed only if seller is. validated on-line in GeM profile well validated and approved by Buyer after evaluation of documents submitted."

22. The submission of the learned counsel for the petitioner is that while evaluating the bid if the L-1 is not an MSE and MSE seller has /have quoted price within L-1+ 15% of margin of purchase preference /price band defined in relevant policy, such MSE Seller shall be given opportunity to match L-1 price and the contract will be awarded for 25% of total quantity. By relying upon the aforesaid provision, it is contended by the learned counsel for the petitioner that said preference should have been given to the petitioner herein. He, by referring to the fact that the petitioner's bid has been rejected on technical evaluation, due to not meeting the turnover criteria stated, the same is illegal and arbitrary.

23. We are not in agreement with the submission made by the learned counsel for the petitioner, for the simple reason till such time the petitioner crosses the hurdle of meeting the turnover criteria of Rs.33.00 Crores, he cannot seek the benefit of purchase preference. On this, the submission of the learned counsel for the petitioner is that such preference is available to an MSE/micro enterprise and the petitioner being micro enterprise, the

benefit must follow to the petitioner. Though, this plea looks appealing on a first blush, but on a deeper consideration, when the petitioner is not meeting the financial turnover criteria, the relaxation cannot be given to the petitioner, merely because the petitioner is a micro enterprise, the purchase preference shall not be applicable in the case of the petitioner. There appears to be an anomaly, which the respondent could not foresee, while incorporating the Clause 5 in the manner they have done to indicate that purchase preference shall be applicable to an MSE. That apart, if the Clause 5 is read meaningfully, it means that the purchase preference shall be applicable only to those enterprises, which meet the threshold turnover of Rs.33.00 Crores, which in any case, shall be small enterprises and not micro.

24. Additionally, the learned counsel for the petitioner could not answer the stipulation in the bid document at page 35, which clearly states that MSE exemption for years of experience and turnover shall not be applicable to a bidder. If that be so, the Clause 5 must necessarily be read to mean that purchase preference shall not be applicable to micro enterprises as it does not meet turnover criteria of Rs.33.00 Crores.

25. We find that the bid which was issued in the year 2025 has still not been completed. It is the high time as the subject matter of the bid, being relatable to the health, the process of procurement must attain finality as early as possible.

26. In view of our above discussion, we are of the view that in the given facts of this case, the petition is liable to be dismissed. We order accordingly.

27. Before parting we must state that it is high time that the respondent shall correct the anomaly which has crept in the tender document, as highlighted by us and correct it for future tenders. No costs.

V. KAMESWAR RAO, J

MANMEET PRITAM SINGH ARORA, J

AUGUST 20, 2026
M