



2026:DHC:4108-DB



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

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*Judgment reserved on: 08.04.2026*

*Judgment pronounced on: 11.05.2026*

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**W.P.(C) 4147/2026, CM APPL. 20278/2026, CM APPL. 20279/2026,  
CM APPL. 20280/2026 & CM APPL. 22033/2026**

M/S SAPPHIRE MEDIA LIMITED .....Petitioner

Through: Mr. Vikas Singh, Sr. Adv. with  
Mr. Varun Singh, Ms. Deepika  
Kalia, Mr. Sudeep Chandra,  
Ms. Kajal Gupta, Mr. Deepashu  
Shakargaye, Ms. Urvashi  
Chauhan, Ms. Khushi, Advs.

versus

NBCC SERVICES LIMITED & ANR. ....Respondents

Through: Mr. N Prabhakar, Mr. Uday  
Sharma & Mr. Shailesh  
Sharma, Advs. for NBCC  
Mr. Nakul Sehgal & Mr. Prem  
Kandpal, Advs. along with AR  
of R-2.

**CORAM:**

**HON'BLE MR. JUSTICE ANIL KSHETARPAL**

**HON'BLE MR. JUSTICE AMIT MAHAJAN**

### **J U D G M E N T**

**AMIT MAHAJAN, J.**

1. By the present petition, the Petitioner challenges the disqualification of its Technical Bid, communicated *vide* email dated 28.03.2026 pertaining to the Tender No. NSL/CEO/IIAC/NIT/2026/845 for “*Interior and Fitout work for IIAC at 4<sup>th</sup> & 5<sup>th</sup>, Tower A, World Trade Centre, Nauroji Nagar, New*



Delhi” for “India International Arbitration Centre issued by Respondent No. 1.

2. Briefly stated, the relevant facts circumscribing the adjudication of the present petition are as follows:

2.1. On 14.03.2026, Respondent No. 1 issued a tender for Interior and Fitout work for the India International Arbitration Centre. The last date and time of submission of the online tender was up to 23.03.2026 by 11 PM. The estimated cost of the work was ₹31,64,86,727/-. As per the Notice Inviting Tender (‘NIT’), the eligibility criteria required the bidder to furnish, *inter alia*, in Form E, a self-certified Bank Solvency Certificate issued by a Nationalised or Scheduled Bank for an amount that was not less than 40% of the estimated cost of work and issued within 6 months from the original last date of submission of tender. The relevant clause is reproduced as follows:

*“Self-Certified copy of Bank Solvency Certificate issued from Nationalized or any Schedule Bank should be one in number for at least 40% of the estimated cost of the project put to tender. The certificate should have been issued within 6 months from original last date of the submission of the tender.”*

2.2. The Petitioner submitted its comprehensive bid including a financial offer of ₹20,67,29,130.08/- on 22.03.2026. Along with the Bid, the Petitioner submitted two solvency certificates – one issued by Axis Bank dated 30.08.2025 and another issued by Kotak Mahindra Bank dated 12.03.2025. By communication dated 24.03.2026, Respondent No. 1 issued certain technical objections and sought clarifications regarding the Petitioner’s financial documentation. Amongst other things, the communication dated 24.03.2026 specified



that the Bank Solvency Certificate submitted by the bidder/Petitioner was not in line with the uploaded NIT. The same is reproduced as follows:

*“Bank solvency certificate is submitted by the bidder, however the submitted solvency certificate is not inline with the uploaded NIT “Self-Certified copy of Bank Solvency Certificate issued from Nationalized or any Schedule Bank should be one in number for at least 40% of the estimated cost of the project put to tender. The certificate should have been issued within 6 months from original last date of the submission of the tender”, the bank solvency certificate submitted is beyond the period of 6 months earlier from the date of the submission of the NIT (Expired). Further, solvency certificate submitted by the bidder is in the name of NBCC (India) limited and maha Mumbai metro operation limited. Revised solvency certificate to be submitted issued by the bank from the date prior to the last date of the submission of the Tender as per NIT.”*

2.3. The clarification sought required the Petitioner to submit query related documents by 25.03.2026 up to 5 PM positively. In response thereof, the Petitioner submitted two certificates – one issued by Kotak Mahindra Bank dated 23.03.2026 (₹35 crores) and another issued by PNB dated 11.02.2026 (₹15 crores). On 28.03.2026, Respondent No. 1 issued an email, thereby disqualifying the Petitioner for “*not meeting the eligibility criterion*” without assigning any reasons. Aggrieved by the same, the Petitioner has filed the present writ petition.

3. The learned Senior counsel for the Petitioner submitted that the Solvency Certificates submitted by the Petitioner at the stage of clarification fully complied with the conditions stipulated in the tender. He submitted that the revised Solvency Certificates – one from Kotak Mahindra Bank (₹35 crores) dated 23.03.2026 and other from



Punjab National Bank ('PNB') (₹15 crores) dated 11.02.2026 independently satisfied the criterion and also exceeded the 40% financial threshold demanded by Clause 2(B)(iii) of the NIT. He submitted that in such circumstances, the Respondent's decision to reject the Petitioner's bid is patently arbitrary, perverse and the same defeats the primary objective of maximising public value through competitive bidding.

4. He submitted that once the Respondent admitted that clarificatory documents could be used to cure defects, it was not open to them to simply reject the certificate issued by PNB merely because it was a fresh document. He submitted that Note 4 to Clause 20 of the NIT, by itself, stipulated that *no fresh document other than in the form of clarification/revision in respect of an already submitted document shall be accepted*. He submitted that by that standard, the PNB certificate constituted a valid '*revision*' of the financial strength documentation that was already placed on record.

5. He relied upon the counter affidavit of Respondent No. 1 to argue that as per Respondent No. 1's own admission, the certificate issued by PNB fulfilled the criteria stipulated in the tender. He submitted that the purpose of Solvency Certificate is only to demonstrate that the bidder possessed the requisite financial capacity and the same was adequately done by the PNB certificate. He submitted that in such a scenario, rejecting the PNB certificate merely because it was "*new*" despite having invited the Petitioner to submit a revised solvency certificate is patently arbitrary.



6. He submitted that even otherwise, the Kotak Mahindra Bank certificate dated 23.03.2026 was a direct clarification and revision of the earlier certificate provided by the same bank. He submitted that the primary ground taken by Respondent No. 1 to reject the certificate issued by Kotak Mahindra Bank stemmed from a misreading of Clause 2(B)(iii) of the NIT which provided that “*the solvency certificate....should have been issued within 6 months from the original last date of submission of the tender.*” He submitted that Respondent No. 1 is attempting to read into the said clause a requirement that the balance sheets/financial data on which the bank bases the certificate must also be from the last 6 months and consequently the averment that the certificate should have highlighted the solvency of the Petitioner with effect from 23.09.2025 as against 23.03.2026 is an illegal *post facto* addition to the tender terms.

7. He submitted that the requirement stipulated is the date of issuance as opposed to the date of the underlying bank records. He submitted that Respondent No. 1’s insistence on base data constitutes an impermissible alteration to the NIT, and the same has been urged only with a view to exclude the Petitioner. He submitted that the Kotak Mahindra Bank Certificate in the end also stated that the same “*is valid for 6 months from the date of issuance.*” He consequently submitted that said certificates evidenced that the Petitioner was solvent on the date of issuance of the certificate.

8. He submitted that even if this Court were to consider the objections of Respondent No. 1, it is apparent from a perusal of the



solvency certificate submitted by Respondent No. 2 that the same was also not in terms of 'Form E' despite which the same has been accepted. He submitted that the solvency certificate submitted by Respondent No. 2 does not say if Respondent No. 2 is solvent on the said date of issuance but provides that the certificate was based on "*last thirteen years as per bank record.*"

9. He submitted that the financial bid of the Petitioner is of ₹20,67,29,130.08/- which is substantially lower than the financial bid of Respondent No. 2 which was at ₹21,80,59,354/-. He relied upon the judgment of the Hon'ble Apex Court in the case of *Shanti Construction (P) Ltd. v. State of Odisha : 2025 SCC OnLine SC 2368* and submitted that the primary objective of any tender process is maximization of public value through a process that is fair, transparent and competitive. He submitted that the tender evaluation committee is expected to apply its mind reasonably to the information provided so as to gain maximum benefit for the public exchequer. He consequently prayed that the present petition be allowed and Respondent No. 1 be directed to consider the Petitioner's financial bid and declare the Petitioner as L1 bidder.

10. The learned counsel for Respondent No. 1 submitted that the present petition is without any merit and does not warrant any interference by this Court. He submitted that in response to the clarification sought by Respondent No. 1, the Petitioner submitted two solvency certificates – one by Kotak Mahindra Bank dated 23.03.2026 and the other by PNB dated 11.02.2026. In relation to the certificate



issued by the Kotak Mahindra Bank, it was submitted that while the certificate *per se* was dated 23.03.2026, the same only evidenced the solvency of the Petitioner as on 31.03.2025 and not with effect from 23.09.2025 as required and up to 23.03.2026.

11. Insofar as the certificate issued by PNB is concerned, the learned counsel for Respondent No. 1 submitted that the said certificate though fulfilled the criterion stipulated in Clause 2(B) of the NIT, the same was a new document which had neither been uploaded online nor did it form part of the original tender. He submitted that the “revision” as stipulated by the communication dated 24.03.2026 only sought revision in respect of the documents that had already been filed and no new document was required to be filed.

12. The learned counsel on behalf of Respondent No. 2 submitted that the present petition ought to be dismissed as no *mala fide* has been shown. He submitted that as per paragraph 19(i) of the NIT, the bidder was required to upload “*Self-certified copy of Bank Solvency Certificate- FORM-E*”. He submitted that the question before this Court is not whether the Petitioner was solvent or not but whether the Petitioner complied with the requirement stipulated in the tender documents.

13. He drew the attention of this Court to note 4 under paragraph 19 of the NIT which laid down that “*the bidders are advised to upload complete details with their bids as Technical Bid Evaluation will be done on the basis of documents uploaded on the website by the*



*bidders with the bids. Please note no fresh document other than in the form of clarification/revision in respect of an already submitted document shall be accepted after last date of submission of bids”* and argued that as per the conditions itself, no fresh document could have been filed. He submitted that even the query raised in respect of the previously submitted document stated that the Bank Solvency Certificate was *expired and in different name*. He submitted that the same makes it clear that the query did not pertain to solvency of the Petitioner *per se* and consequently no fresh document in the name of the Petitioner being solvent could have been filed.

14. He submitted that even otherwise, much emphasis has been laid on the PNB certificate that the same ought to have been considered. He submitted that the PNB certificate dated 11.02.2026 was well within the knowledge of the Petitioner at the time when the bid was submitted, and yet the Petitioner chose to not rely upon the same. He submitted that at this stage, when the Tender conditions clearly stipulate that no fresh document ought to be filed, and clause 2(B) of the NIT also requires that only *one* certificate ought to be filed, no deviation from the tender conditions can be made. He submitted that interference in the decision of the tender making authority is only permissible if the decision is marred with *mala fide*.

### **Analysis**

15. Before this Court embarks on the journey to delve into the examination of the merits of the case, at the outset, it is apposite to briefly note the scope of judicial review in matters pertaining to public



auction/tender. It is not in doubt that the terms concerning the invitation to tender and its consequential evaluation thereof primarily falls within the domain of executive discretion. The Tender Evaluation Committee, more often than not, comprises a body of experts who are best suited to determine the financial and technical merits of the bids received. This Court therefore does not sit as a Court of appeal but merely reviews the manner in which the decision was made. For this reason, plausible decisions ought not to be interfered with and latitude also ought to be granted to the State to exercise its executive power. At the same time, it is pertinent to note that the circumspection involved in exercise of jurisdiction does not tantamount to mean that the actions of the State or its instrumentalities are beyond scrutiny. Pertinently, the scope of judicial review in matters relating to tender has been navigated by the Hon'ble Apex Court in several judgments and it has consistently been emphasised that accusations of illegality, irrationality and procedural impropriety would suffice for Courts to assume jurisdiction to remedy such defects. In the case of *State of Punjab v. Mehar Din: (2022) 5 SCC 648*, the Hon'ble Apex Court while considering the principles pertaining to the exercise of judicial interference as evolved over time, observed as follows:

*“21. In Tata Cellular v. Union of India [Tata Cellular v. Union of India, (1994) 6 SCC 651] it was held that judicial review of government contracts is permissible in order to prevent arbitrariness or favouritism. It was fearlessly opined in this case as under : (SCC pp. 687-88, para 94)*

*“94. The principles deducible from the above are:*

*(1) The modern trend points to judicial restraint in administrative action.*



(2) *The court does not sit as a court of appeal but merely reviews the manner in which the decision was made.*

(3) *The court does not have the expertise to correct the administrative decision. If a review of the administrative decision is permitted it will be substituting its own decision, without the necessary expertise which itself may be fallible.*

(4) *The terms of the invitation to tender cannot be open to judicial scrutiny because the invitation to tender is in the realm of contract. Normally speaking, the decision to accept the tender or award the contract is reached by process of negotiations through several tiers. More often than not, such decisions are made qualitatively by experts.*

(5) *The Government must have freedom of contract. In other words, a fair play in the joints is a necessary concomitant for an administrative body functioning in an administrative sphere or quasi-administrative sphere. However, the decision must not only be tested by the application of Wednesbury principle of reasonableness (including its other facts pointed out above) but must be free from arbitrariness not affected by bias or actuated by mala fides.*

(6) *Quashing decisions may impose heavy administrative burden on the administration and lead to increased and unbudgeted expenditure.”*

22. *The exposition of law on the subject has been consistently followed by this Court even in the later decisions holding that superior courts should not interfere in the matters of tenders, unless substantial public interest was involved or the transaction was mala fide. It was consistently stressed by this Court that the need for overwhelming public interest should always be kept in mind to justify judicial intervention in contracts involving the State and its instrumentalities and while exercising power of judicial review in relation to contracts, the courts should consider primarily the question whether there has been any infirmity in the decision-making process.*

23. *This view has been further considered by this Court in Jagdish Mandal v. State of Orissa [Jagdish Mandal v. State of Orissa, (2007) 14 SCC 517] , wherein it was observed as under : (SCC p. 531, para 22)*



*“22. Judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides. Its purpose is to check whether choice or decision is made “lawfully” and not to check whether choice or decision is “sound”. When the power of judicial review is invoked in matters relating to tenders or award of contracts, certain special features should be borne in mind. A contract is a commercial transaction. Evaluating tenders and awarding contracts are essentially commercial functions. Principles of equity and natural justice stay at a distance. If the decision relating to award of contract is bona fide and is in public interest, courts will not, in exercise of power of judicial review, interfere even if a procedural aberration or error in assessment or prejudice to a tenderer, is made out. The power of judicial review will not be permitted to be invoked to protect private interest at the cost of public interest, or to decide contractual disputes. The tenderer or contractor with a grievance can always seek damages in a civil court. Attempts by unsuccessful tenderers with imaginary grievances, wounded pride and business rivalry, to make mountains out of molehills of some technical/procedural violation or some prejudice to self, and persuade courts to interfere by exercising power of judicial review, should be resisted. Such interferences, either interim or final, may hold up public works for years, or delay relief and succour to thousands and millions and may increase the project cost manifold.”*

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***25. The law on the subject is settled that the courts being the custodian of fundamental rights are under an obligation to interfere where there is arbitrariness, irrationality, unreasonableness, mala fides and bias, if any, but at the same time, the courts should exercise the power of judicial review with a lot of restraint, particularly in contractual and commercial matters.”***

(emphasis supplied)

16. From a reading of the judgment as quoted *supra*, it materialises that while there are inherent limitations to the exercise of judicial



review, the power may be invoked to obviate favouritism, arbitrariness, irrationality and unreasonableness.

17. Turning the gaze now to the facts of the present case, it is pertinent to note that post the communication dated 24.03.2026 (whereby clarification was sought from the Petitioner in respect of the solvency certificate submitted as part of the original tender submission) – the Petitioner was invited to submit revised solvency certificate issued by the bank from the date prior to the last date of the submission of the tender. In response thereof, the Petitioner submitted two revised solvency certificates – one issued by Kotak Mahindra Bank dated 23.03.2026 and another issued by PNB dated 11.02.2026.

18. Both the certificates came to be rejected by Respondent No. 1. On the first hand, the certificate from Kotak Mahindra Bank dated 23.03.2026 came to be rejected on the ground that the same only evidenced the solvency of the Petitioner as on 31.03.2025 and not with effect from 23.09.2025 as required and upto 23.03.2026. On the other hand, the certificate dated 11.02.2026 issued by PNB though admittedly considered to be fulfilling the terms of the advertisement also came to be rejected on the ground that it was a *new document* that had neither been uploaded online nor was it a part of the original tender submission.

19. It is the case of the Petitioner that both the revised certificates independently satisfied and vastly exceeded the 40% threshold mandated by the terms of the NIT. It has consequently been emphasised by the Petitioner that the illegal rejection of these two



solvency certificates submitted at the clarification stage is arbitrary and based on a hyper-technical interpretation that defeats the primary objective of maximising public value through competitive bidding.

20. In that regard, before delving into an analysis of the grounds agitated by the Petitioner threadbare, it would be apposite to look into the relevant clause encapsulated in the NIT in relation to submission of bank solvency certificate. The relevant clause is as follows:

*“iii) Self-Certified copy of Bank Solvency Certificate issued from Nationalized or any Schedule Bank should be one in number for at least 40% of the estimated cost of the project put to tender. The certificate should have been issued within 6 months from original last date of the submission of the tender.*

*Note: Bank Solvency Certificate is not required if estimated cost put to tender is up to Rs. 25 Crore.”*

21. From a reading of the same, it transpires that Clause 2(B)(iii) of the NIT only mandated that the certificate should have been *issued* within 6 months from the original last date of the submission of the tender. A bare reading of the clause materialises that the same is vague and does not in unequivocal terms define what the term ‘*issued within 6 months*’ encapsulates. It also unclear whether the term ‘*issued within 6 months*’ mandated the bidder to perchance provide a certificate evidencing the bidder’s solvency for a period between 23.09.2025 – 23.03.2026 or whether the same only required the bidder to provide a certificate that was obtained from the bank within 6 months from the original last date of the submission of the tender.



22. Further, the communication dated 24.03.2026 whereby the Petitioner was invited to submit revised solvency certificate also laid down only the following :

- b. Bank solvency certificate is submitted by the bidder, however the submitted solvency certificate is not inline with the uploaded NIT ***“Self-Certified copy of Bank Solvency Certificate issued from Nationalized or any Schedule Bank should be one in number for at least 40% of the estimated cost of the project put to tender. The certificate should have been issued within 6 months from original last date of the submission of the tender”***, the bank solvency certificate submitted is beyond the period of 6 months earlier from the date of the submission of the NIT (Expired). Further, solvency certificate submitted by the bidder is in the name of NBCC (India) Limited and maha Mumbai metro operation limited.

Revised solvency certificate to be submitted issued by the bank from the date prior to the last date of the submission of the Tender as per NIT.

23. The clarification sought, as reproduced above, only provided that *“the bank solvency certificate submitted is beyond the period of 6 months earlier from the date of submission of the NIT (expired). Further, solvency certificate submitted by the bidder is in the name of NBCC (India) limited and maha Mumbai metro operation limited.”* As is apparent, the said communication is also vague and only provides that the certificates submitted by the Petitioner were beyond 06 months. As is plain from a reading of the communication itself, whether the same necessitated the Petitioner to provide a revised certificate evidencing solvency for a particular period or whether the same only mandated submission of a certificate *obtained* within 6 months from the original last date of the submission of the tender remains enigmatic.



24. From that prism, this Court now turns to inspect the relevant certificates furnished by the Petitioner. Pertinently, at the time of original tender submission, the Petitioner submitted two certificates – one issued by Axis Bank dated 30.08.2025 and addressed to Maha Mumbai Metro Operation Limited, and another issued by Kotak Mahindra Bank dated 12.03.2025 and addressed to Respondent No. 1 based on tangible net-worth as on 31.03.2024. In its communication dated 24.03.2026, Respondent No. 1 only stated that the certificates furnished by the Petitioner were beyond a period of 6 months and were in a different name. The clarification, in unequivocal terms, at no place invited the Petitioner to submit a revised solvency certificate pertaining to a particular period, for instance, to evidence solvency between “23.09.2025-23.03.2026”. Clause 2(B)(iii) of the NIT as well as the clarification merely required the bidder to furnish a certificate ‘issued’ by the bank *within 6 months from original last date of the submission of the tender.*

25. Interestingly, if this Court were to look at the Kotak Mahindra Bank certificate dated 12.03.2025 which formed part of the original tender submission, it is apparent that the same was based on tangible net worth as on 31.03.2024. If it were the mandate of the NIT that the solvency certificate ought to have been based on tangible net worth between 23.09.2025 – 23.03.2026 as claimed by Respondent No. 1 before this Court to reject the revised certificate, they could very well have sought clarification on that aspect as well stating that the submitted certificate only evidenced tangible net worth as on 31.03.2024.



26. On such a conspectus of facts, this Court now turns its attention to the revised certificates furnished by the Petitioner. Insofar as the certificate issued by Kotak Mahindra Bank is concerned, the same was issued on 23.03.2026 - which undoubtedly, in the opinion of this Court, meets the criteria stipulated in the NIT, that is, the *certificate should have been issued within 6 months from original last date of the submission of the tender*. As noted above, no definition was provided as to what the term *date of issuance* stipulated. Further, the clarification too did not provide that the revised certificate ought to have been based on the tangible net worth for a particular period. Solvency certificates are generally based on audited balance sheets and for that reason merely because the certificate noted that the same was based on tangible net worth as on 31.03.2025 as per audited financials provided by the company, the same cannot by itself mean that the revised certificate failed to meet the criteria stipulated in the NIT, particularly in the absence of any unambiguous directions provided in the NIT itself or the communication dated 24.03.2026. The argument thus taken by Respondent No. 1 that while the certificate *per se* was dated 23.03.2026, the same only evidenced the solvency of the Petitioner as on 31.03.2025 and not with effect from 23.09.2025 as required and up to 23.03.2026, in the opinion of this Court, holds no water.

27. Even so, assuming that the certificate issued by Kotak Mahindra Bank dated 23.03.2026 failed to meet the requisite criteria, admittedly as per the case of Respondent No. 1 itself, the certificate dated 11.02.2026 issued by PNB was in accordance with the terms of



the NIT. The only ground taken by Respondent No. 1 to reject the said certificate is that the PNB certificate was a new document which had neither been uploaded online nor did it form part of the original tender. It has been emphasised that the term “revision” as stipulated by the communication dated 24.03.2026 only sought revision in respect of the documents that had already been submitted and no *new* document was required to be filed.

28. As far as the contention in relation to the certificate issued by PNB is concerned, this Court finds itself at odds with the stance taken by Respondent No. 1. The PNB certificate submitted by the Petitioner was in the nature of clarification and was submitted pursuant to Respondent No. 1 inviting the Petitioner to submit *revised solvency certificate issued by the bank from the date prior to the last date of the submission of the tender as per NIT*. Once Respondent No. 1 themselves invited the Petitioner to submit a revised document, and the same was in the nature of clarification, the PNB certificate could not have been rejected merely on the ground that it was a *fresh/new* document when it otherwise fulfilled the other terms of the NIT. Such hyper-technical objections to reject the bidder, in the opinion of this Court, defeats the very objective of a tender process which is to encourage maximum participation in a fair manner.

29. It has consistently been emphasised that the chief objective of a tender process is maximization of public value through a fair, transparent and competitive tender process. Bearing the aforesaid principle in mind, the tender evaluation committee is expected to sift



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through the material in a manner that derives maximum benefit for the public exchequer. Consequently, exclusion of bidders merely on a myopic view or on hyper-technical grounds would be akin to defeating the very object of a tender process (Ref. *Shanti Construction (P) Ltd. v. State of Odisha and Others: 2025 SCC OnLine SC 2368; MDC Pharmaceuticals Ltd. v. Union of India: 2022 SCC OnLine Del 488*).

30. In the light of the foregoing, the disqualification of the Petitioner's technical bid *vide* email dated 28.03.2026 is set aside. Respondent No. 1 is, therefore, directed to consider the bid of the Petitioner in terms of the conditions stipulated in the NIT and thereafter take appropriate decision to award the tender to the best suited bidder.

31. The present petition is disposed of in the aforesaid terms.

**AMIT MAHAJAN, J.**

**ANIL KSHETARPAL, J.**

**MAY 11, 2026**

“SS”/“SK”