**IN THE HIGH COURT AT CALCUTTA**

**(Constitutional Writ Jurisdiction)**

**APPELLATE SIDE**

**Present:**

**The Hon'ble Justice Krishna Rao**

**W.P.A. No. 6836 of 2026**

**Sanjay Kumar Agarwal**

**Vs.**

**Steel Authority of India Limited (SAIL) & Ors.**

Mr. Sakya Sen, Sr. Adv.
Mr. Ankan Rai
Mr. Sarosij Dasgupta
Ms. Nabanita Manna
Mr. Ratnesh Kr. Rai
Ms. Sakshi Kejriwal
Ms. Vipra Gang
Ms. Devanshi Deora

....For the petitioner.

Mr. Jishnu Chowdhury, Sr. Adv.
Mr. Suddhasatva Banerjee
Mr. Sooriya Ganguli
Mr. Somdutta Bhattacharyya
Mr. Mohit Dong

....For the respondent nos. 1 to 3.

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Mr. Ayan Poddar
Mr. Soham Dutta
Mrs. Yashodhara B. Roy
Ms. Shweta Bharti
Mr. Binsy Susan
Mr. Akshay Sharma
Ms. Shweta Sahu
Ms. Khushbu Turki
Ms. Anjali Shaw
Ms. Darshita Sethia
Mr. Aditya Sharma

....For the respondent no.5.

Mr. Ajay Chaubey
Mr. Madhu Jana
Ms. Prity Panja
Ms. Paromita Indu

....For the respondent no.6.

Mr. Jishnu Saha, Sr. Adv.
Ms. Trisha Mukherjee
Mr. Chetan Kr. Kabra
Ms. Suhani Diwedi

....For the respondent no.7.

Hearing Concluded On : 06.08.2026

Judgment Delivered On : 01.09.2026

Judgment Uploaded On : 01.09.2026

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**Krishna Rao, J.:**

**1.** The petitioner has filed the present writ petition praying for a mandamus upon 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, to reconsider the bid of the petitioner and offer the petitioner to match the bid of the L1 bidder and to recall the Letter of Intent (LOI) issued in favour of the added respondent.

**2.** The petitioner is a registered firm under the provisions of Micro Small and Medium Enterprises Act and is running a proprietorship business of handling and processing of slag and scrap for major steel plants in India.

**3.** The respondent no.1 has floated a notice inviting tender dated 5th December, 2025, through the portal being Government e-Marketplace (hereinafter referred to as "GeM"), the respondent no.5 herein for the purpose of handling, processing and management of raw/material/ scrap/slag as well as for other miscellaneous job. Clause 16 of the invitation to the bid relating to bid security/ earnest money deposit grants exemption to MSMEs to furnish earnest money deposit and in lieu thereof a bid securing declaration as per format of Apendix-1 is required to be submitted by the prospective bidder who is a registered MSME unit to be considered eligible for participation in the tender and such exemption was

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granted to the petitioner based on self-certified copy of UDYAM Registration Certificate.

**4.** Clause 19 also provides relaxation in financial turnover criteria for MSMEs. The petitioner has participated in the tender process and submitted certificate of incorporation, along with MSME certificate and the current trade license. The petitioner being an MSME unit have taken the benefit of the Clause in the tender relating to reduce financial turnover as stipulated in Clause 19 and submitted documents showing his turnover as Rs. 60 Crores (approx.) which taking into consideration the relaxation offered by the bid documents makes the petitioner eligible for participation. The petitioner was qualified in the techno commercial stage and was called upon to submit its financial bid. The respondents have invited the petitioner to participate in reverse auction for the selfsame tender, which was scheduled to start from on 10:00 AM on 26th February, 2026 and end at 6:00 PM on 27th February, 2026.

**5.** Upon opening of the financial bid, each and every technically qualified bidder was asked to participate in the Reverse Auction Process through the GeM Portal, save and except H1 bidder. The reverse auction was concluded on 3rd March, 2026 and result of the same was published on the website of the respondents wherein it was found that the final bid value of the petitioner was Rs. 1,55,34,01,218.49 in the reverse auction process, which was only 0.5% higher from the L1 bidder. The L1 bidder is

the added respondent and L2 bidder is one FSNL Private Limited who had submitted their financial bid at Rs. 1,55,26,83,638.14 and Rs. 1,55,29,16,575.50 respectively in the reverse auction result.

**6.** Mr. Sakya Sen, Learned Senior Advocate, representing the petitioner submits that as per Clause 7 of the General Condition and Clause 14 of the Additional terms and conditions forming part of the GCC of the contract, read with the Public Procurement Policy for Micro and Small Enterprises Order dated 23rd February, 2012, issued by the Government of India, the petitioner being a MSE bidder is entitled to get relaxation in its financial bid, in view of the Public Procurement Policy for MSEs Order, 2012. If the quoted price of the petitioner falls within 15% band of the Lowest Bidder, the petitioner becomes directly eligible to match the price of the lowest bidder and is further entitled to be considered for the Letter of Award or work order in accordance with the said policy, read with the guidelines of the respondents.

**7.** Mr. Sen submits that the financial bid of the petitioner is within 15% of both the L1 and the L2 bidders, the petitioner is legally entitled to be declared as the lowest bidder or at least be given a chance or opportunity to match the price of the L1 bidder. As no offer was provided to the petitioner, the petitioner has offered his willingness to match the price of the lowest bidder shown in the details in terms of the tender conditions, read with guidelines of the respondents and the policy of the Government

of India. The petitioner has also informed the respondents to consider the case of the petitioner, who is registered under the MSME Act and to issue LOA and LOI in favour of the petitioner.

**8.** Mr. Sen submits that the petitioner has made representation and on 9th March, 2026, the petitioner has received an e-mail from the help desk of the respondents informed the petitioner that the petitioner has not obtained MSE/MII purchase preference during the submissions of bid and thus the petitioner is not entitled to avail such preference at the later stage. On 10th March, 2026, the petitioner has clarified that the petitioner has participated in the tender as MSE and the order dated 23rd February, 2012, issued by the Government of India provides for such purchase preference to the eligible MSE bidders in public procurement and rejection of the offer of the petitioner to match the L1 bidder, during the tender process effectively deprives the right of the petitioner which is specifically provided in the policy.

**9.** Mr. Sen submits that the petitioner has submitted its bid with UDYAM Registration Certificate along with declaration that the petitioner is a registered MSME and the petitioner was permitted to submit bid without Earnest Money Deposit (EMD). The petitioner has submitted financial credentials of a turnover of Rs. 60 Crores (approx.) taking the advantage of the Clause 19 of the invitation to bid granting exemption from financial turnover stipulated in the eligibility criteria in case of an MSME unit.

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**10.** Mr. Jishnu Chowdhury, Learned Senior Advocate, representing the respondent nos.1, 2 and 3 submits that the petitioner has not obtained the MSE/MII purchase preference during the submission of bid and finds that the added respondent is L1 bidder and thus work order is issued in favour of the added respondent. He submits that the petitioner has not submitted MSE/ MII purchase preference during submission of bid and thus the petitioner is not entitled to avail such preference at the later stage.

**11.** Mr. Chowdhury submits that the tender process on the GeM Portal is system-driven and automated. Unless the bidder explicitly selects the MSE purchase preference option, the system will automatically treat the bidder as a non-MSE bidder for purchase of awarding purchase preference. He submits that exemption from EMD may be a benefit granted to MSEs, it does not automatically imply that the petitioner exercised the purchase preference option. In support of his submissions, he has relied upon the judgment in the case of ***GTI Infotel Private Limited Vs. Hindustan Petroleum Corporation Ltd.*** reported in ***2024 SCC OnLine Bom 3467***.

**12.** Mr. Chowdhury submits that the Court should refrain from imposing its decision over the decision of the employer as to whether or not to accept the bid of a tender. The Court does not have the expertise to examine the terms and conditions of the present day economic activities of the State.

He has relied upon the judgment in the case of ***N.G. Projects Limited vs. Vinod Kumar Jain and Others*** reported in ***(2022) 6 SCC 127***.

**13.** Mr. Jishnu Saha, Learned Senior Advocate, representing the added respondent submits that the petitioner has not submitted its bid with UDYAM Registration Certificate along with declaration that the petitioner is a registered MSME. He submits that after opening of bids, the respondents find that the added respondent is an L1 and accordingly, the respondents have issued work order to the added respondent.

**14.** Mr. Saha submits that on receipt of the work order, the added respondent has procured materials and invested huge amounts to execute the work order issued to the petitioner and at this stage, if this Court interfere with the decision of the authorities and set aside the work order of the added respondent, the added respondent will suffer severe financial loss without any fault.

**15.** Mr. Saha by referring Clause 3 of the guidelines dated 23rd March, 2012, submits that as per the said Clause, the Central Government and Public Sector Undertaking shall set an annual goal of procurement from MSE from the financial year 2012-2013 and onwards with the objective of achieving an overall procurement of minimum of 20 percent of total annual purchases of products produced and services rendered by MSE in a period of three years. He submits that the respondents have to ascertain

whether the said goal is achieved or not. Merely the bidder is an MSE shall not be given benefits in all bid process.

**16.** Mr. Saha further referred Clause 6 of the said guidelines and submits that in tender participating MSE quoting price within price band of L1+15 % shall also be allowed to supply a portion of requirement by bringing down their price to L1 price in a situation where L1 price is from someone other than MSE and MSE shall be allowed to supply up to 20% of the total tender value. He submits that as per the said clause, the MSE can only be allowed to supply 20% of the total tender value and not the entire.

**17.** Mr. Saha has relied upon the judgment in the case of ***Lifecare Innovations Pvt. Ltd and Another Vs. Union of India and Others*** reported in ***2025 SCC OnLine 436*** and submits that the existing legal regime of public procurement from MSE can now be identified as mandating that initially setting annual goals of procurement for a period of three years and thereafter mandating yearly procurement of a minimum of 25% of the procurement by the ministries, departments and public sector undertakings.

**18.** Mr. Ayan Poddar, Learned Advocate, representing the GeM, being the respondent no. 5 submits that on receipt of the request of the petitioner, the GeM has checked the portal and upon checking it was found that the SAIL has not opted the MSE/MII purchase preference during the bid

creation as a result of which the petitioner could not avail the MSE/MII purchase preference during participation.

**19.** Clause 16 of the of the bid document reads as follows:

> ***16. Bid security/ Earnest Money deposit***
>
> - *An interest-free Earnest Money Deposit (EMD) or Bid Securing Declaration (as per format of Appendix – 1) in place of EMD, where bidders are exempt from submission of EMD as per extant government guidelines (e.g. MSMEs, etc.), is required to be submitted with the bid, by the interested bidders for their bid to be considered eligible for participation.*
>
> - *Micro & Small Enterprises (MSEs)/PSUs/ Government Undertakings and Co-operative Societies/ Start-ups as recognized by the Department for Promotion of Industry and Internal Trade (DPIIT) etc., shall be exempted from submission of EMD as per extant Government policy. For MSEs, the exemption will be extended base on:*
>
>  - *Self-certified copy of Udyam Registration Certificate (UCR);*
>
>  - *The concerned MSE is registered in the MSME databank and*
>
>  - *MSE is registered for the given scope of job/procurement.*
>
> - *In case of Consortium, EMD can be submitted by Leader or any member of the consortium. Consortium bidder will be exempted from submitting Bid security only if each and every individual member is exempted (as per extant Government Guidelines existing on the date of BID*

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*submission). In case even one member is not exempted, the consortium as a whole shall be required to submit the stipulated Bid security along with their Bid.*

- *The value of the Earnest Money Deposit (EMD) to be submitted is: ₹70 Lakhs/-.*

- *In case of the Bid Security is submitted in the form of Demand draft, Banker's Cheque, Bank Guarantee (BG) or fixed Deposit Receipt (FDR), scanned copy of the same shall be uploaded by the bidder in the online bid and original document will have to be submitted directly to SAIL-ISP, Burnpur within 5 working days of bid opening, failing which the bid may be treated as incomplete and may lead to rejection of the bid by SAIL-ISP, Burnpur without making any reference to the bidder.*

- *The Original Bid Security shall be submitted physically in sealed envelope superscribed with RFx no., GeM bid no. And due date to: GM-Contract Cell, Contract Cell, KIND ATTENTION – Shri Rajanikanta Rath, GM-Contract Cell, SAIL-ISP, BURNPUR, WEST BENGAL- 713325.*

- *In case of Online payment of Bid Security, bidder shall provide the Online transaction details in their online bid as proof of submission of Bid Security to SAIL-ISP, Burnpur. The online payment of Bid Security amount should be received in SAIL-ISP, Burnpur's bank account on or before the Bid closing date and time failing which the offer will be rejecred outright without any further reference. Bid security will not be in cash.*

| ***SAIL-ISP, Burnpur's Bank account Details for Online submission of Bid Security*** | |
|---|---|
| *Name* | *SAIL-ISP, Burnpur* |

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| | |
|---|---|
| *Bank* | *State Bank of India* |
| *Branch* | *BURNPUR, WEST BENGAL-713325* |
| *Account Number* | *10981831604* |
| *IFSC Code* | *SBIN0000049* |

The petitioner has submitted his bid without EMD as the petitioner is a registered MSE having UDYAM Registration Certificate issued by the competent authorities. It is not denied by the respondents that the petitioner is not an MSE. The contention of the respondents that the petitioner has not obtained the MSE/MII purchase preference during submission of bid.

**20.** Clause 14 of the Additional Terms and Conditions of the contract provides that "*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".*

The reverse auction for the tender concluded on 3rd March, 2026 and the same was published in the website of the respondents. The final bid value of the petitioner was Rs. 1,55,34,01,218.49. The added respondent being the L1 bidder has submitted its financial bid at Rs.1,55,26,83,638.14. As per the terms and conditions of the tender documents in case L1 is non-MSE, preference is to be given to MSE/MII to

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match with L1+15% with acceptance of MSE party. The said conditions of contract have not been followed by the respondents on the pretext that the petitioner has not obtained the MSE/ MII purchase preference.

**21.** The Respondent no.5, namely, GeM authorities by a communication dated 9th March, 2026, informed to the petitioner which reads as follows:

> *"**GeM Helpdesk** <helpdesk-gem@gem.gov.in> Mon, Mar 9, 2026 at 9:56 AM*
> *To: mtpc.arun@gmai.com*
>
> *Dear Sanjay,*
>
> *Greetings from GeM!*
>
> *This email is in reference to the concern regarding "Request for Award of Work under MSE Purchase Preference Policy"*
>
> *We regret the inconvenience caused.*
>
> *We completely understand your concern and will surely help you with the same.*
>
> *We would like to inform you that upon checking buyer not opt the MSE/MII purchase preference during bid creation as result bidder not avail the MSE/MII purchase preference during participation. Hence buyer is not eligible to send the price match request. Kindly proceed accordingly.*
>
> *We always recommend to retain the same subject line and the Ticket ID for any communication regarding the concern raised. Email sent to any other email IDs will not be monitored.*
>
> *If you need any further assistance related to any other query on GeM, please feel free to reach through various channels-*
>
> *Mail us at: helpdesk-gem[at]gov[dot]in*
> *Toll Free Numbers (Inbound): Call*
> *1800-419-3436/ 1800-102-3436*
>
> *HelpDesk Walk-In-Address:*
> *2nd Floor, Jeevan Tara Building, 5 – Sansad Marg, Near Patel Chowk, New Delhi – 110001*
> *Gemmy Chat – (Available at our homepage, left hand side at the bottom. https://gem.gov.in/).*

*Regards,*
*Shalu*
*GeM Helpdesk."*

**22.** From the communication of the respondent no.5, it is clear that SAIL has not opted the MSE/MII purchase preference during creation of bid due to which the petitioner could not avail the MSE/MII purchase preference during participation. The stand taken by the SAIL is contrary but the SAIL has not denied the information provided by the GeM to the petitioner dated 9th March, 2026, or the SAIL has not produced any documents to established that the SAIL has opted MSE/MII purchase preference while creation of bid.

**23.** The GeM portal has been developed for the Government to mitigate to a completely transparent online bidding process with minimal human intervention. Adoption of technology is always preferred since its purpose is to increase efficiency, ease of doing any work, and also to reduce inefficiency and corruption which may result on account of greater human intervention. At the same time, it would be of no use, if the technology as deployed has such inbuilt limitations and lacks flexibility to deal with exceptional situations. The case of the petitioner is of exceptional circumstances as the SAIL has not opted the MSE/MII purchase during bid creation for which the GeM portal does not have the facilities to consider the petitioner as MSE/MII though the petitioner has disclosed its

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UDYAM Registration Certificate and the SAIL has exempted to deposit Earnest Money Deposit.

**24.** The added respondent relied upon Clauses 3 and 6 of the guidelines dated 23rd March, 2012, issued by the Ministry of Micro, Small and Medium Enterprises which reads as follows:

> *"**3**. Mandatory procurement from Micro Small and Enterprises.– (1) Every Central Ministry or Department or Public Sector Undertaking shall set an annual goal of procurement from Micro and Small Enterprises from the financial year 2012-13 and onwards, with the objective of achieving an overall procurement of minimum of 20 percent, of total annual purchases of products produced and services rendered by Micro and Small Enterprises in a period of three years.*
>
> *(2) Annual goal of procurement also include sub-contracts to Micro and Small Enterprises by large enterprises and consortia of Micro and Small Enterprises formed by National Small Industries Corporation.*
>
> *(3) After a period of three years i.e. from 1st April 2015, overall procurement goal of minimum of 20 per cent shall be mandatory.*
>
> *(4) The Central Ministries, Departments and Public Sector Undertakings which fail to meet the annual goal shall substantiate with reasons to the Review Committee headed by Secretary (Micro, Small and Medium Enterprises), constituted in Ministry of Micro, Small and Medium Enterprises, under this Policy.*
>
> ***6.** Price quotation in tenders. % (1) In tender, participating Micro and Small Enterprises quoting price within price band of L1 + 15 per cent shall also be allowed to supply a portion of requirement by bringing down their price to L1 price in a situation where L1 price is from someone other*

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*than a Micro and Small Enterprise and such Micro and Small Enterprise shall be allowed to supply up to 20 per cent of total tendered value.*

*(2) In case of more than one such Micro and Small Enterprise, the supply shall be shared proportionately (to tendered quantity)"*

The other terms of the bid documents provided that:

"***Other Terms:***

*The bid cannot be spilt. 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."*

Clause 14 of the Additional Terms and Conditions of the contract reads as follows:

"***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."*

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**25.** The added respondent having knowledge about the said terms and conditions of the bid documents had participated in the said tender process without any objection. The Hon'ble Supreme Court in the case of ***Lifecare Innovations Pvt. Ltd. (supra)*** considered Clauses 2, 3, 5, 8, 11, 12 and 13 of the guidelines dated 23rd March, 2012 and passed the following directions upon the authorities:

> ***"38.*** *In this view of the matter, apart from the earlier direction relating to mandatory procurement, we also direct the authorities under the Act, including the Review Committee and in particular the Grievance Cell, which is specifically entrusted with the obligation to redress "imposition of unreasonable conditions in tenders floated by Government Departments or agencies that put Micro and Small Enterprises at a disadvantage" to examine limits of minimum turnover clauses and issue necessary and appropriate policy guidelines.*
>
> ***39.*** *Having considered the matter in detail, this writ petition is disposed of directing:*
>
> > *(a) the Public Procurement Policy for Micro and Small Enterprises (MSEs) Order, 2012 has force of law as it is formulated in exercise of power under Section 11 of the Act and also encapsulates the purpose and object of the Act;*
> >
> > *(b) though there is no mandatory minimum procurement 'right' for an individual MSE there is certainly a statutorily recognized obligation on the authorities and the bodies under the Act and the Procurement Order, 2012 to implement the mandate which is subject to judicial review;*

*(c) the judicial review will primarily ensure proper constitution and effective functioning of the authorities the National Board for MSMEs, the Advisory Committee, the Facilitation Council, the Review Committee and the Grievance Cell and leave the policy and decision making to them.*

*(d) the respondents, and in particular, the Review Committee constituted under clause 12 of the Procurement Preference Policy 2012 to examine the issue of mandatory procurement of 25 per cent of goods and services by the Government, and its instrumentalities from MSEs under clause 3 of the Policy in the context of clause 11 providing for reservation of specific items for procurement and take such action as is necessary for effective implementation of the Policy within a period of 60 days from the date of our order; and*

*(e) the respondents, including the Review Committee and in particular the Grievance Cell, shall examine and declare limits of the minimum turnover clauses with respect to MSEs and issue appropriate policy guidelines within a period of 60 days from the date of our order.*

***40.** With these directions the writ petition is disposed of. There shall be no order as to costs."*

**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.

**29. WPA No. 6836 of 2026** is **allowed.**

Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court.

Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.

**(Krishna Rao, J.)**