2026:DHC:5745-DB

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
% *Judgment reserved on: 07.07.2026*
Judgment pronounced on: 20.07.2026
Judgment uploaded on: 20.07.2026

\+ W.P.(C) 8368/2026, CM APPL. 39327/2026 & CM APPL. 39328/2026

SKYLARK INFRA ENGINEERING PVT LTD .....Petitioner
Through: Mr. Amit Sibbal, Sr. Adv., Mr. Rajiv Nayar, Sr. Adv. with Ms. Priyanka Dagar, Mr. Ajay Dabas, Mr. Deepanshu Yadav and Ms. Manjarika Das, Advs.

versus

MUNICIPAL CORPORATION OF DELHI ....Respondent
Through: Mr. Mukul Rohtagi, Mr. Shailesh Madiyal, Mr. Balbir Singh, Sr. Advs. along with Mr. Sanjay Vashishtha, Standing Counsel, Mr. Shankey Agarwal, Mr. Toshiv Goyal, Mr. Siddhartha Goswami and Mr. Siddharth Agrawal, Advs

CORAM:
HON'BLE MR. JUSTICE ANIL KSHETARPAL
HON'BLE MS. JUSTICE SHAIL JAIN

JUDGMENT

ANIL KSHETARPAL, J.:

A. INTRODUCTION:

1. By way of the present Petition filed under Article 226 of the Constitution of India, the Petitioner seeks issuance of an appropriate writ quashing the Notice Inviting Tender (NIT) dated 05.06.2026[1]

[1] Hereinafter referred to as 'Impugned NIT'

issued by the Respondent and directing the Respondent to permit the Petitioner to participate in the tender process and consider/accept its bid, on account of the technical eligibility criteria prescribed thereunder being arbitrary and irrational.

2. In essence, the present challenge is raised against the requirement of minimum 122 lanes under a single contract for a minimum period of two years (24 months) with each contract having a minimum duration of one year[2].

3. Accordingly, the issue that arise for consideration of this Court is whether the impugned technical eligibility criteria highlighted under Paragraph No.8 of this judgment, is arbitrary or violative of Article 14 and 19(1)(g) of the Constitution, thereby warranting interference of this Court in exercise of its power of judicial review governing public tenders.

B. <u>BRIEF BACKGROUND</u>:

4. It is the case of the Petitioner that the restrictive condition requiring experience of minimum 122 lanes was previously introduced by the Respondent for the first time *vide* NIT dated 07.02.2024, for a similar scope of work involving Radio Frequency Identification (RFID) ecosystem, wherein the Petitioner's Joint Venture (JV) was declared as the H-1 bidder.

5. However, since no Letter of Intent (LoI) came to be issued in its favour, the JV filed ***W.P.(C) 2492/2025*** captioned ***Sahakar Global***

[2] Hereinafter referred to as 'Impugned Eligibility Criteria'.

Limited JV and Anr. v. Municipal Corporation of Delhi. In reply to the said petition, the Respondent categorically took a stand that they have reconsidered the matter, and shall continue with the Petitioner's JV, who was also the existing incumbent, at their proposed toll fees until the fresh tender is issued, since according to them the condition so imposed was anti-competitive.

6. Following which a fresh NIT dated 14.05.2025 came to be issued excluding the restrictive condition, however, before any bidding could be initiated, the same came to be withdrawn by the Respondent. Pursuant thereto, the Respondent passed the Corporate Resolution No. 32 dated 10.07.2025, expressly omitting the prescribed eligibility condition of having experience of minimum 122 lanes.

7. Thereafter, the Respondent herein issued NIT dated 05.06.2026, by way of a two-tier bid system, for 'Engagement of a Contractor by MCD for Toll Tax & Environment Compensation Charge (ECC) Collection at border points from specified commercial vehicles entering Delhi and upgrade the existing RFID system to the Multi Lane Free Flow (MLFF) based collection'.

8. While issuing the NIT, Respondent prescribed the following relevant experience, which a bidder must possess in order to be technically compliant. The eligibility criteria read as follows:

> "***Relevant Experience:*** *The Applicant/bidding Firm must have prior relevant experience of toll/entry tax collection, operation through manual and semi-automated/electronic toll collection technologies in the last five financial years ending March 2026:-*
>
> ***The proposed contract involves handling of 154 toll plazas containing 244 lanes; therefore, the Applicant/bidding firm must have experience of operating minimum 50% of total Toll Lanes***

<u>mentioned above under a single contract (i.e. minimum 122 lanes under a single contract) for minimum total period of two years (24 months), with each contract having a minimum duration of one year. In case of bidding JV firm, the non-lead member shall have experience of operating minimum 10% of total Toll Lanes mentioned above under a single contract for the time period as mentioned above.</u>"

(emphasis supplied)

9. Aggrieved by the inclusion of the aforesaid eligibility criteria, the Petitioner has approached this Court seeking our indulgence.

10. Before proceeding towards the arguments advanced by the parties herein, we deem it necessary to note that this Court after hearing the arguments of parties herein on 07.07.2026, directed the Respondent to file an Affidavit disclosing the number of bidders who have met the Impugned Eligibility Criteria.

11. Pursuant thereto, the Respondent *vide* Affidavit dated 08.07.2026, disclosed that 3 out of 7 bidders have successfully qualified the threshold requirement of having experience in executing 122 lanes under a single contract. The details of all the bidders, who participated in the Impugned NIT, and their respective status at the technical stage is reproduced hereunder:

S. No.	Applicant/Bidders	Status
1.	M/s Eagle Infra India Ltd.	**Would have technically qualified,** however, rejected as already debarred by PWD, Maharashtra vide Circular dated 23.06.2026
2.	M/s Inderdeep Infra India Ltd.	**Technically Qualified**
3.	M/s IRB Infrastructure Developers Ltd.	**Technically Qualified**

4.	M/s Sahakar Global Ltd.	**Technically Qualified**
5.	M/s Jaypee Infratech Limited	Non Responsive Bid due to lack of adequate documents hence, rejected
6.	M/s Sri Sai Enterprises and Developers Pvt. Ltd.	Not Qualified
7.	M/s Skylark Infra Engineering Pvt. Ltd.	Not Qualified

C. <u>CONTENTION OF THE PARTIES</u>:

12. Learned senior counsel representing the Petitioner have made the following submissions:

12.1. At the outset, learned senior counsel, while highlighting the distinction between conventional tolling and scope of the Impugned NIT, has argued that principal object of the tender is transition to a technology-driven MLFF system, involving integration of technologies such as RFID and Automatic Number Plate Recognition (ANPR). Consequently, prior experience of operating conventional toll lanes under a single contract has no rational nexus with the technical capabilities required for implementation of the project.

12.2. It is the case of the Petitioner that it has successfully operated toll collection and ECC management works at the exact same 154 border points from the year 2021 to 2026, as a 37% JV partner with M/s Sahakar Global Ltd., until the Impugned NIT came to be issued, evidencing that it has deep site-specific knowledge of these exact plazas, as such excluding it merely for lack of experience in single 122 lane contract is unjust and contrary to the public interest.

12.3. It has been argued that the Impugned Eligibility Criteria is contrary to the Respondent's own Resolution dated 10.07.2025 and the stand taken by it in ***Sahakar Global Limited*** *(Supra)*, wherein the 122-lane requirement was acknowledged to be restrictive, anti-competitive and an unnecessary entry barrier. Its reintroduction, without any change in circumstances or technical justification, is alleged to be manifestly arbitrary and violative of Article 14 of the Constitution.

12.4. Learned senior counsel has also made reference to the following table, in order to show its prior experience in managing toll plazas:

Financial Year	**Toll Revenue**	**No. of Plazas**	**No. of Lanes**
2025-26	3422.97	53	656
2024-25	2683.71	71	937
2023-24	2678.98	61	756
Total	**8785.66**	**185**	**2349**

12.5. With respect to the criteria prescribing one single contract, it has been further submitted that the NHAI and UPEIDA routinely award short-term contracts ranging from three months to one year for comparatively lower number of lanes. It is the case of the Petitioner that it has recently been declared prequalified in Category-I by NHAI after evaluating its technical and financial capabilities. Thus, managing multiple contracts simultaneously requires equal, if not greater, expertise than executing a single contract, rendering the impugned condition arbitrary and exclusionary.

12.6. It has been highlighted that the Respondent had previously defended the removal of the single-contract lane condition on the premise of affording a level playing field to all capable players. On the contrary, the present cosmetic modification in the Impugned NIT artificially narrows the field of competition, effectively restricting participation to a select class of legacy operators and creating conditions conducive to cartelization, thereby causing prejudice to the public exchequer.

12.7. Lastly, it is submitted that the impugned eligibility condition imposes an unreasonable restriction on the Petitioner's fundamental right to carry on trade and business under Article 19(1)(g) of the Constitution. By arbitrarily shutting out competent entities with proven multi-project operational experience, the Impugned Eligibility Criteria operates in a disproportionate manner, restricts effective competition and undermines the principles of fair public procurement.

12.8. In support of its arguments, reliance has been placed on judgment of this Court in ***M/s Dhingra Constructions Co. v. MCD & Ors.***[3] and ***Vinishma Technologies Pvt. Ltd. v. State of Chattisgarh and Anr.***[4].

13. *Per contra*, learned senior counsel representing the Respondent, have made the following submissions:

13.1. At the outset, it has been argued that the challenge in the present Petition is struck by doctrine of estoppel on two aspects.

[3] 2004:DHC:17905-DB
[4] 2025 SCC OnLine SC 2119

Firstly, the Petitioner as part of a JV, had participated in NIT dated 07.02.2024 which also prescribed the very same eligibility criteria of experience of operating 122 lanes, however, since it emerged as the H-1 Bidder having participated in a JV, no challenge was raised at that stage. Secondly, the Petitioner despite challenging the Impugned Eligibility Criteria had proceeded to participate in the present tender process.

13.2. It has been argued that the Impugned NIT has been issued in furtherance of the directions of Supreme Court by way of its Order dated 21.01.2026 in ***W.P.(C) 13029/1985*** captioned ***M.C. Mehta v. Union of India & Ors.***, based on the report of the Commission for Air Quality Management (CAQM) dated 20.01.2026 recommending, *inter alia*, installation of ANPR cameras and RFID-enabled MLFF systems at all border entry points in Delhi.

13.3. In compliance therewith, the Respondent is required to implement the MLFF system by October 2026. It is contended that, under Article 144 of the Constitution, the Respondent was bound to give effect to the aforesaid directions.

13.4. It is the case of the Respondent that the Impugned NIT is qualitatively different from the earlier RFID-based tenders, as it envisages a technology-driven MLFF ecosystem involving Toll Tax and ECC collection across 154 border points comprising 244 toll lanes through RFID integration, ANPR systems, real-time transaction processing, centralized monitoring, revenue reconciliation and a unified Management Information System (MIS).

13.5. Considering that more than 4.12 crore commercial vehicles entered Delhi during 2025, generating millions of real-time transactions, prior experience of operating a project of comparable scale under a single contract is stated to be essential.

13.6. Further, it is argued that experience gained under multiple independent contracts cannot be equated with managing one integrated project, as such contracts ordinarily operate through different software platforms, reporting structures, databases, operational protocols and accountability mechanisms.

13.7. Learned senior counsel has contended that the inclusion of Impugned Eligibility Criteria is a policy decision and such policy decisions fall within the domain of the tendering authority and are not amenable to judicial review unless shown to be arbitrary, *mala fide* or actuated by extraneous considerations. Accordingly, the Petitioner cannot dictate the eligibility conditions of the impugned NIT.

13.8. Replying to the contention of the Petitioner that the Impugned Eligibility Criteria is anti-competitive, learned senior counsel contended that several infrastructure projects across the country, including the Agra-Lucknow Expressway, Delhi-Vadodara Expressway, Eastern Peripheral Expressway, Amritsar-Jamnagar Expressway, Western Peripheral (KMP) Expressway, Outer Ring Road, Hyderabad, Purvanchal Expressway, Samruddhi (Mumbai-Nagpur) Expressway and Trans-Haryana Expressway, prescribe and operate projects involving 122 or more toll lanes. Moreover, similar lane-based eligibility conditions are also operational in the States of Telangana, Maharashtra and West Bengal.

13.9. Lastly, it has been argued that these projects are being executed by several experienced entities, including Eagle Infra Ltd., IRB Infrastructure, Sahakar Global Ltd., RK Jain Pvt. Ltd., Datar Security Services, Shri Sai Enterprise, Path India Ltd., Maple Highways, Inderdeep Constructions, Roadway Solutions India Infra & Fastgo Infra Pvt. Ltd. and Ashmi Road Carriers Pvt. Ltd. Consequently, the Impugned Eligibility Criteria neither restricts competition nor limits participation to only two or three bidders, as contended by the Petitioner.

13.10. In support of their submissions, reliance has been placed on ***Raunaq International Ltd. v. I.V.R. Construction Ltd. and Ors.***[5], ***Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corporation Ltd and Anr.***[6], ***Meerut Development Authority v. Association of Management Studies and Anr.***[7], ***Michigan Rubber (India) Ltd. v. State of Karnataka and Ors.***[8] and ***Sabre Glbl Inc. v. Air India Ltd. and Anr.***[9].

14. Learned senior counsel for the Petitioner in their rejoinder argument, have reiterated that the requirement of prior experience of operating 122 toll lanes under a single contract bears no rational nexus with the object of the tender. If the objective is to ensure capability to

[5] (1991) 1 SCC 492
[6] (2016) 16 SCC 818
[7] (2009) 6 SCC 171
[8] (2012) 8 SCC 216
[9] 2021 SCC OnLine Del 5014

manage a large volume of toll lanes and data, the mode of acquiring such experience, whether under a single contract or multiple contracts, is immaterial, rendering the Impugned Eligibility Criteria arbitrary.

D. <u>ANALYSIS AND REASONING</u>:

15. Heard learned senior counsel representing the parties and perused the material placed on record.

16. At the outset, we must highlight that the law pertaining to interference of a writ Court in tender matters is no longer *res integra*. The Supreme Court through its precedents has settled that the award of contracts by the State or its instrumentalities is essentially a commercial function. Hence, the Courts do not sit in appeal over the merits of tender conditions, but merely examine the legality of the decision-making process, to identify whether such process is vitiated by arbitrariness, *mala fides*, discrimination or irrationality of the Wednesbury standard. [Ref: ***Vinishma Technologies Pvt. Ltd.*** *(Supra)*]

17. The Supreme Court in ***Tata Cellular v. Union of India***[10], observed that the State, while exercising contractual powers, must be afforded necessary "play in the joints", subject only to the requirement that the decision be free from arbitrariness, *mala fides*, bias or irrationality.

18. In ***Michigan Rubber (India) Ltd.*** *(Supra)*, the Supreme Court while dealing with the powers of executive observed that fixing terms

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[10] (1994) 6 SCC 651

and conditions, including eligibility criteria of a tender, falls within the domain of the executive and the Courts shall only interfere if such condition is *mala fide*, arbitrary, irrational and against public interest.

19. The Supreme Court in ***Jagdish Mandal v. State of Orissa***[11], crystallised the limited scope of judicial review in tender matters and framed classic three question test:

i. is the process adopted or decision made *mala fide* or intended to favour someone? or

ii. is it so arbitrary and irrational that no responsible authority acting reasonably and in accordance with law could have reached it? and

iii. is public interest affected?

If the answer to the aforementioned question is in negative, there should be no interference under Article 226 of the Constitution.

20. It is of equal importance to highlight that judicial restraint does not imply abdication. The Supreme Court in ***Reliance Energy Ltd. v. Maharashtra State Road Development Corporation Ltd.***[12], highlighted that Article 14 of the Constitution permeates even contractual dealings of the State. Tender conditions and evaluation norms must exhibit legal certainty, transparency and a level playing field, so that similarly situated bidders compete on equal terms.

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[11] (2007) 14 SCC 517
[12] (2007) 8 SCC 1

Vagueness, undisclosed criteria or shifting benchmarks may invite judicial correction where they result in discriminatory treatment.

21. From a perusal of the aforementioned precedents, it is sufficiently clear that the scope of judicial review is limited only to examination of whether or not the tender process is vitiated by arbitrariness, *mala fides*, irrationality, discrimination or is contrary to public interest. Applying the aforesaid principle, this Court proceeds to examine whether the Impugned Eligibility Criteria suffers from arbitrariness, illegality or irrationality.

22. The primary contention of the Petitioner pertains to the Impugned Eligibility Criteria being arbitrary and anti-competitive bearing no rational nexus with the object of the Impugned NIT. However, we are unable to accept the said contention.

23. In our view the contention of the Respondent that unlike a conventional toll collection contract, the present NIT envisages implementation of an integrated MLFF system across 154 border points comprising 244 toll lanes, involving RFID and ANPR integration, centralized monitoring, real-time transaction processing and a unified MIS, holds the ground. Considering that more than 4.12 crore commercial vehicles entered Delhi during 2025, the Respondent was justified in prescribing experience commensurate with the scale and complexity of the project.

24. Hence, the requirement of prior experience under a single integrated contract cannot be termed arbitrary. Experience gained under multiple independent contracts cannot necessarily be equated

with managing a single integrated project, since such commercial assessment lies within the exclusive domain of the tendering authority.

25. Similarly, the Petitioner's contention of previous experience of operating the same 154 border points as a JV partner is equally untenable, since it does not entitle the Petitioner to relaxation of eligibility condition. Such experience cannot override uniformly applicable criteria, failing which the principle of equal treatment amongst bidders would itself stand compromised.

26. In addition, the Petitioner's claimed experience was not acquired in its individual capacity as a bidder, rather as a constituent of a JV. The capacity, in which Petitioner participated and subsequently executed the previous contracts, is of assumed relevance, because M/s Sahakar Global Ltd., the lead partner of the Petitioner's JV, has now opted to participate in the Impugned NIT as a solo bidder. Resultantly, the ineligibility of the Petitioner is not a result of the alleged arbitrariness in inclusion of Impugned Eligibility Criteria, rather it stems from the Petitioner's inability to fulfil the prescribed criteria independently, following the discontinuation of the JV.

27. In this regard, it becomes equally significant to note that the Impugned NIT has been issued pursuant to the recommendations of CAQM and the directions of the Supreme Court *vide* Order dated 20.01.2026, requiring implementation of the MLFF system by October 2026. In view of the strict timeline fixed by the Supreme Court, the Respondent cannot be expected to take a chance by awarding a technologically new and complex project to an entity

lacking the experience considered necessary. Hence, the Impugned Eligibility Criteria is a legitimate safeguard to ensure timely implementation.

28. The reliance placed upon the Respondent's earlier Resolution dated 10.07.2025 and its stand in ***Sahakar Global Limited*** *(Supra)* is equally misplaced. The earlier tender was related to an RFID-based system, whereas the Impugned NIT envisages implementation of the MLFF system pursuant to the recommendations of the CAQM and the directions of the Supreme Court. Therefore, the Respondent was justified in revisiting its policy and prescribing revised Impugned Eligibility Criteria.

29. We also find no merit in the contention that the Impugned Eligibility Criteria is anti-competitive. The Affidavit dated 08.07.2026 filed by the Respondent, makes it evident that three bidders fulfilled the said Criteria, with one additional bidder who would have qualified, had it not been debarred by PWD, Maharashtra. Further, the existence of several infrastructure projects across the country involving operation of 122 or more toll lanes makes it clear that the Impugned Eligibility Criteria is neither tailor-made nor unduly restrictive.

30. Similarly, the challenge founded upon Article 19(1)(g) of the Constitution is equally untenable. The Impugned NIT merely prescribes eligibility for participation in a public tender and does not prohibit the Petitioner from carrying on its business. Such a stipulation cannot be regarded as an unreasonable restriction merely because the Petitioner is unable to satisfy it.

31. This Court is equally unable to accept that the Impugned Eligibility Criteria is contrary to public interest. Public interest in public procurement lies not merely in widening participation but equally in ensuring timely and efficient execution of projects involving substantial public infrastructure and revenue. Thus, the Impugned Eligibility Criteria advances public interest rather than defeating it.

32. It is well settled that policy decisions must evolve with changing technological and operational requirements. The Government is entitled to modify eligibility conditions to meet the demands of a project. Such decisions are intended to serve the larger public interest and not the commercial interests of individual bidders. The Court cannot compel dilution of an eligibility criterion merely to enlarge the field of competition while putting the public interest at stake, especially in view of the challenging air quality of the region of NCT of Delhi.

33. The Petitioner's financial strength and its Category-I prequalification by the NHAI undoubtedly establish its credentials. However, they cannot substitute the specific experience requirement prescribed under the Impugned NIT. This Court in exercise of its writ jurisdiction cannot rewrite the eligibility conditions framed by the tendering authority.

E. <u>CONCLUSION</u>:

34. In view of the foregoing analysis and discussion, this Court does not find merit in the challenges raised by the Petitioner in the present Petition.

35. In the considered view of this Court, the Respondent has demonstrated a rational basis for prescribing the Impugned Eligibility Criteria, which bears a direct nexus with the object of ensuring timely implementation of the MLFF system within the timeline mandated by the Supreme Court. Hence, the Impugned Eligibility Criteria is not violative of Article 14 and 19(1)(g) of the Constitution nor is it vitiated by arbitrariness, *mala fides*, discrimination or irrationality.

36. Accordingly, the present Petition is dismissed. The pending applications also stand closed.

ANIL KSHETARPAL, J.

SHAIL JAIN, J.

JULY 20, 2026
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