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2026 SCC OnLine SC 2126

In the Supreme Court of India

(BEFORE J.B. PARDIWALA AND K. VINOD CHANDRAN, JJ.)

Hardev Construction Private Limited ... Appellant(s);

Versus

Union of India and Others ... Respondent(s).

Civil Appeal No. of 2026 (Arising out of SLP (C) No. 25855 of 2026)

§

Decided on October 12, 2026

Advocates who appeared in this case :

Mr. A.K.de, Adv., Ms. Ananya De, Adv., Mr. S. prakash, Adv., Mr. Chandrakanta Sahoo, Adv., Mr. Pramit Saxena-1935, AOR, For Petitioner(s)

Mrs. Nina R. Nariman, Adv., Mr. Mukesh Kumar-3438, AOR, Ms. Padmja Mishra, Adv., Ms. Jayam Singh Chauhan, Adv., Ms. Shambhavi Singh, Adv., Ms. Kanchan Kumari Gupta, Adv., Mr. Vedarth Shivhare, Adv., Ms. Kavita Chaturwedi, Adv., Mr. Rajesh Kumar, Adv., Mr. Madhup Kumar Tiwari, Adv., Mr. Kanakamedala Ravindra Kumar, A.S.G., Ms. Vidushi Pandey, Adv., Mr. Purnendu Bajpai, Adv., Mr. Parmod Kumar Vishnoi, Adv., Mr. Amrish Kumar-2986, AOR, Dr. Arun Kumar Yadav, Adv., For Respondent(s)

The Judgment of the Court was delivered by

K. VINOD CHANDRAN, J.:— Leave granted.

2. The appellant's bid for the project '*Engineering Procurement and Construction (EPC) of Construction of guide bunds, Launching Aprons and Associated River Protection Works etc. in connection with Bikramshila-Katareah New Line Rail Link Project on EPC Mode"-Bid/Package No. ECR-CAO-C-S-EPC-05-25-26 dated 06.01.2026*' was rejected for reason of non-submission of original of the Bid Security furnished; stipulated *vide* Clause 2.20.6 (ii) of the Request For Proposal (RFP), as indicated in the e-portal of the respondent, a copy of which is produced at Annexure P3. The Division Bench of the Patna High Court affirmed the rejection, which is impugned in the instant appeal.

3. We heard Sri A.K. De, learned Counsel for the appellant, Sri Kanakamedala Ravindra Kumar, learned A.S.G. for the respondent-Ministry of Railways and Ms. Nina R. Nariman, learned Counsel for the 3rd respondent, who was the successful tenderer.

4. Learned Counsel for the appellant points out that the rejection was only on the ground that the appellant had not submitted the

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original of the Bid Security furnished, which in the case of the appellant was submitted through the e-payment Gateway of Authority. The Bid Security was remitted to the account of the respondent through e-payment, the receipt of which in the digital form was scanned and uploaded along with the bid.

5. Learned A.S.G. for the respondent-Ministry of Railways, however, points out that Clause 2.20.6(ii) specifically requires the original to be submitted, and in that circumstance, the rejection was proper. Learned Counsel for the 3rd respondent relied on the decision in *Prakash Asphaltings and Toll Highways (India) Ltd.* v. *Mandeepa Enterprises*[1] to argue that the awarder is the best equipped to understand and appreciate its requirements and interpret bid documents and the Constitutional Courts should defer to such understanding and appreciation of the tender documents. There is no elbow room insofar as producing the original documents, is the 3rd respondent's contention.

6. Learned Counsel for the appellant also points out that his financial bid was far lower than that of the 3rd respondent and this causes loss to the exchequer. Learned A.S.G. alertly points out that there was no opportunity to compare the financial bids, since the appellant had failed in its technical bid at the inception, for non-production of the required original receipt, and in that circumstance, the appellant's financial bid was never opened.

7. Clause 2.20.6 of the RFP, produced as Annexure P1, speaks of submission of Bid Security in the form of Bank Guarantee/Account Payee Demand Draft/Fixed Deposit Receipt/Banker's Cheque/e-payment Gateway of Authority. It is also stipulated in Clause 1 that a scanned copy of the same shall be uploaded on e-Procurement Portal while applying for the tender. There is no dispute that the appellant made payment of the Bid Security by means of e-payment and the rejection was only on the ground of violation of Clause (ii). Clause (ii) prescribes that the form in which the Bid Security is furnished, should be delivered in person, physically, to the official nominated, as indicated in the tender document. The appellant's contention is that there is no question of production of an original, since the payment has already gone into the coffers of the respondents and the digital receipt has been uploaded along with the tender document.

8. We are perfectly in agreement with the contention of the appellant, especially looking at the various forms in which the Bid Security can be furnished; a Bank Guarantee/Account Payee Demand Draft/Fixed Deposit Receipt/Banker's Cheque, unless physically furnished to the respondent, there can be no lien exercised on the Bid Security. It is, hence, the stipulation that at the time of application, the

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scanned copy should be uploaded and later the original should be handed over to the nominated official. Insofar as the appellant is concerned, the money was deposited to the account of the respondents and there is nothing further required to be produced insofar as the e-payment made, especially when the digital payment receipt had been uploaded along with the bid document.

9. *Prakash Asphaltings and Toll Highways (India) Ltd.*[1] was a case in which a tender was invited for toll collection. When the financial bid was opened, tenderers whose technical bid was found to be qualified; three of them, had quoted in crores while one had quoted a paltry amount of Rs. 9,72,999/-. The contention raised was that this was a *bona fide* mistake, and the financial bid indicated only the collection of a single day and if it is worked out for the total contract of 1095 days, it would be Rs. 100.65 crores and then their bid would be the highest. It was in this context that this Court held that the words used in the tender documents cannot be ignored or treated as redundant or superfluous. The tenderer was required to give the total collection for the contract period and an omission insofar as submitting a paltry amount, even if inadvertent, cannot be explained by putting forth the contention that the bid was mistakenly quoted at the per day rate. It is also pertinent that this Court in the aforesaid decision, while cautioning the Constitutional Court's to defer to the understanding and appreciation of the tender documents, also carved out an exception insofar as *mala fide and* perverse understanding or appreciation of the documents, especially in the application of the terms of the tender document.

10. We are convinced that here, there is a clear perversity; insofar as an e-payment was made, as required by the tender document, the digital receipt of which was scanned and uploaded, rejected only since the original was not produced; which is an impossibility. Rigid adherence to the letter of a document cannot be countenanced, especially when there is a clear impossibility in compliance of the same. As we noticed, Bid Security, when furnished in all other forms, cannot be enforced, unless the original comes into the hands of the respondents. However, insofar as the e-payment is concerned, the money has already been transferred to the account of the respondents, and they have full control over it.

11. We, hence, set aside the impugned order and direct the contract to be awarded to the appellant herein.

12. We have been informed by the learned Counsel for the appellant that after rejection, the amounts deposited in the e-portal was refunded to the appellant. In that circumstance, the respondent Nos. 1 and 2 would facilitate either a measure of e-payment within a period of two

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weeks from today, and if there is any technical difficulty, then the appellant shall be required to submit the amounts in any other form within a further period of two weeks. On the submission of the Bid Security, the appellant's financial bid shall be opened to be considered along with the other bids and the tender finalized, in accordance with the other tender conditions stipulated.

13. The appeal stands allowed with the above directions.

14. Pending application(s), if any, shall stand rejected.

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[1] (2026) 4 SCC 310

[§] 2026 INSC 1110

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