



2025:DHC:7908-DB



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

% Judgment reserved on: 03.09.2025
Judgment delivered on: 10.09.2025

+ W.P.(C) 15511/2024 & CM APPL. 65140-42/2024, CM APPL. 69226/2024, CM APPL. 73017/2024 & CM APPL. 75203/2024

A2Z INFRA ENGINEERING LIMITED & ANR. ...Petitioners

versus

BHARAT SANCHAR NIGAM LIMITED & ORS. ...Respondents

Advocates who appeared in this case:

For the Petitioners : Mr. Puneet Agarwal, Ms. Sakshi Bisht, Mr. Yuvraj Singh & Mr. Chetan Kumar Shukla, Advocates.

For the Respondents : Ms. Nalin Kohli, Senior Advocate with Ms. Leena Tuteja & Ishita Kadyan, Advocates for R-1.

Mr. Manish Paliwal, Advocate for R-2.

Mr. Nilava Bandopadhyay, Mr. Adhip Kumar Ray & Mr. Sahil Kumar Purvey, Advocates for R-3.

Mr. Vivek Chib, Senior Advocate with Mr. Vikhyat Oberoi, Ms. Mansi Gupta, Ms. Nishita Gupta, Mr. Shivam Prakash, Mr. Ravi Sharma, Mr. Siddharth Sunil and Ms. Priyanka Prasanth, Advocates for R-4.

Mr. Rohan Chawla & Ms. Ananya Narain Tyagi, Advocates for-5.

Mr. Amit Dhingra, Mr. Rohit Mahajan & Mr. Siddharth Agrawal, Advocates for R-6.

Mr. Chetan Sharma, ASG with Mr. Anil Seth, Mr. Udit Seth, Mr. Amit Gupta, Mr. Divyanshu Singh, Mr. Shubham Sharma, Mr. Naman & Mr. Vikram Aditya Singh, Advocates for RVNL.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA



J U D G M E N T

TUSHAR RAO GEDELA, J.

1. Present petition has been filed under Article 226 of the Constitution of India, 1950 seeking setting aside of the impugned decisions dated 05.11.2024 and 07.11.2024 and the decision of respondent no.1/Bharat Sanchar Nigam Limited (hereinafter referred to as “BSNL”) in not considering the bid of the Consortium led by respondent no.2/Bharat Electrical Limited (hereinafter referred to as “*respondent no.2/BEL*”) of which petitioner no.1 (hereinafter referred to as “*the petitioner*”) is a part, in respect of the Tender floated on 15.02.2024 by BSNL. The petitioner further seeks a direction to the BSNL to consider the bid submitted by the Consortium led by respondent no.2/BEL in accordance with the terms of the said Tender. The petitioner also seeks a direction to the BSNL to conduct an appropriate enquiry into the act of belatedly introducing the stipulation i.e. on 30.05.2024 and thereafter, purposely excluding the bid of the Consortium led by respondent no.2/BEL.

2. As per the petitioner, BSNL issued Tender No. MM/BNO&M/BN-III/T-791/2024 on 15.02.2024 for Development (Creation, Upgradation, and Operation & Maintenance) of the middle mile network of Bharat Net on Design, Build, Operate and Maintain (DBOM) Model (hereinafter referred to as “*Tender 2024*”). The Tender 2024 consisted of work in sixteen (16) packages corresponding to different States and Union Territories in the country. The total contract value of the tender is approximately Rs.65,000 crores. The project is of national importance as it envisages laying of the infrastructure for broadband connectivity in the rural areas of the country, including its operations and maintenance for the next ten years.

3. The packages in the Tender 2024 are classified into two broad



Categories - Category-1 (Package nos. 1 to 8) and Category-2 (Package nos. 9 to 16). Category-1 was further sub-divided into two sub-categories, that is, Category-1A (Package nos. 1 to 4) and Category-1B (Package nos. 5 to 8). The Tender 2024 in Clause 5.6 contained a limit on the number of packages a bidder can bid in a particular category as well as overall limit.

4. At the outset, it is pertinent to mention that the issue involved in the instant petition arises from the Tender 2024 floated by the BSNL for (DBOM) Model which was also the subject matter of challenge in writ proceedings bearing W.P.(C) 15518/2024 titled "*Pace Digitek Private Limited & Anr. vs. Bharat Sanchar Nigam Limited & Ors.*" before this Court, albeit concerning different packages, and had been adjudicated upon *vide* judgment dated 02.07.2025.

5. The brief facts, peculiar and germane to the present *lis*, leading to the filing of the present instant petition are as under:

- a) In 2013, BSNL floated Tender No. CA/CNP/NFS-OFC/T-441/2013 (hereinafter referred to as "*Previous Tender*") for the procurement, supply, trenching, laying, installation, testing, and maintenance of Optical Fibre Cable (hereinafter referred to as "*OFC*"), PLB Duct, and accessories for constructing an exclusive optical NLD backbone and optical access routes on a turnkey basis for the Defence Network. The respondent no.6/M/s. Sterlite Technologies Limited (hereinafter referred to as "*M/s. Sterlite*") bid for the NFS project as an OFC manufacturer, leveraging the credentials of the petitioner. Pursuant to this, the petitioner claims to have entered into a Teaming Agreement dated 13.06.2014, with M/s. Sterlite, demonstrating joint and several liability as part of the



contract award. Furthermore, the petitioner also claims that the Advance Purchase Order dated 24.07.2014 issued by BSNL to M/s. Sterlite (the lead bidder of the Consortium of M/s. Sterlite and the petitioner) explicitly designated petitioner as the EPC partner of M/s. Sterlite for project execution.

b) On 15.02.2024, BSNL issued Tender 2024 towards which the petitioner made its bid on 06.08.2024, as part of a Consortium of respondent no.2/BEL (Lead Bidder) along with respondent no.3/Vishwa Samudra Engineering Limited (Consortium member).

c) It is stated that the last date for submission of the bids was 30.05.2024. However, the said due date was extended, and Note 8 which forms part of the Amended Table A, Clause 2.1(f) of Section IVA of the Special Instructions to Bidder and Special Conditions of Contract was further amended by way of Amendment No.23. It is further stated that the said amendment was brought to the Tender 2024 without any prior intimation to the bidders thereby altering the eligibility requirements.

d) On 04.11.2024, BSNL made certain oral queries regarding the eligibility of the petitioner as a Consortium partner of the respondent no.2/BEL. The petitioner claims that it had responded to the queries *vide* response dated 04.11.2024 providing requisite clarifications wherein it had stated its experience as a Consortium partner in the Previous Tender.

e) Despite the aforesaid clarifications, BSNL rejected the bid of the petitioner declaring it technically non-responsive for Package



13 on 05.11.2024. On 07.11.2024, Financial bid for Package 13 was opened and M/s. Sterlite was declared as L1 bidder in the said package of the Tender 2024.

f) Thus, the substance of the present writ petition has been preferred challenging the impugned decisions dated 05.11.2024 and 07.11.2024 by the BSNL.

6. We have heard the learned counsel appearing for the respective parties and with their able assistance, minutely examined the tender documents and other ancillary and incidental records of the case.

7. Essentially, three primordial questions appear to be central to the dispute at hand, these being, (i) whether the petitioner was a Consortium partner or member with M/s. Sterlite in respect of the Previous Tender; (ii) whether the experience certificate issued by the tendering authority in respect of award of contract of Previous Tender could be made use of by the petitioner claiming to be a Consortium partner for the said tender; and (iii) whether the amended Note 8 of the Tender 2024 did not preclude or disentitle the petitioner for claiming benefit of the experience certificate issued for execution of project under the Previous Tender.

8. For rendering opinion on the aforesaid questions, it would be necessary for us to closely scrutinize the provisions of Previous Tender. For the purpose of completeness, it is to be noted that the Previous Tender was floated for the procurement, supply, trenching, laying, installation, testing, and maintenance of Optical Fibre Cable (hereinafter referred to as “OFC”), PLB Duct, and accessories for constructing an exclusive optical NLD backbone and optical access routes on a turnkey basis for the Defence Network. Clause 13 of the Previous Tender provided for eligibility conditions of the bidders. Clause



13.1.1 clearly indicated that the bidder should be either an “*EPC Contractor*” or an “*OFC Manufacturer*”, where EPC stands for Engineering, Procurement and Construction and OFC stands for Optical Fibre Cable Manufacturer. Clearly, the Previous Tender did not envisage any entity other than EPC Contractor **or** OFC Manufacturer to be eligible to bid. Logically, a Consortium as an entity was implicitly barred or prohibited from submitting its bid in the Previous Tender. Clause 13.1.3 and 13.1.4 provide for the meaning of “*who would be an EPC Contractor or the OFC Manufacturer*” respectively. Furthermore, the other Clauses from 13.2 till 13.5 provided for other eligibility criteria specific to ‘EPC Contractor’ or ‘OFC Manufacturer’.

9. Clause 13.6 and 13.7 are relevant in the context of the dispute raised and the submissions addressed on behalf of the petitioner. Clause 13.6 provides that in case the bidder is an OFC Manufacturer, he will be required to choose an EPC Contractor as his partner after being declared as L1 in such manner that the EPC Partner need to fulfil all the eligibility conditions of the tender in Clauses 13.3.3, 13.4.2 and 13.5.2. It was also stipulated that in tune with the Previous Tender requirements, a Teaming Agreement between the bidder, i.e., the OFC Manufacturer and its partner was required to be submitted within two weeks of declaration of L1 status. Clause 13.6.1 mandated that in case the bidder fails to submit the requisite documents aforestated within the time period stipulated or the documents do not fulfil the qualifying requirements, the EMD furnished by the bidder (OFC Manufacturer) will be forfeited and the bidder would be debarred from participation for a period of two years.

10. Conversely, Clause 13.7 provided for the identical requirements/stipulations as contained in Clause 13.6 except in place of OFC



Manufacturer, Clause 13.7 provided EPC Contractor to be the bidder. Similar proviso of EMD forfeiture and debarment from participation for a period of two years was also stipulated.

11. From the aforesaid clauses, it is manifest that the Previous Tender implicitly ousted a Consortium as an entity which was entitled to participate in the tender process.

12. The records reveal that insofar as the Previous Tender is concerned, M/s. Sterlite had submitted its bid as OFC Manufacturer with the petitioner as its EPC Contractor strictly in terms of Clause 13.6. Ostensibly, the EMD was furnished by M/s. Sterlite alone. The records also indicate that in compliance with Clause 13.6, M/s. Sterlite had furnished to the tendering authority all the documents required and stipulated in Clauses 13.3.3, 13.4.2 and 13.5.2 *qua* the petitioner. It is also pertinent to note that the Teaming Agreement dated 13.06.2014 was executed between M/s. Sterlite and the petitioner and was also furnished by M/s. Sterlite to BSNL. It is clear that the aforementioned clauses brook of no ambiguity and conclusively point out that the petitioner could not form any Consortium with M/s. Sterlite. Even otherwise it is trite that the tender issuing authority is the best person to understand and appreciate its requirements and interpret its documents so long as there are no *mala fides* or arbitrariness. It is judicially well recognized that the government must have freedom of contract and thus, is also entitled to interpret the terms and conditions engrafted by it in a particular tender. The Hon'ble Supreme Court in ***Agmatel India Private Limited vs. Resoursys Telecom and Ors., (2022) 5 SCC 362*** has held that the author of the tender document is taken to be the best person to understand and appreciate its requirements; and if its interpretation is manifestly in consonance with the language of the tender, the



Court would prefer to keep restraint. It was also observed that even if the interpretation is not acceptable to the Constitutional Court, that, by itself, would not be a reason for interfering with the interpretation given.

13. In the aforesaid background of the relevant clauses of Previous Tender, it would be significant to now consider the provisions of Tender 2024. According to Clause 2.1(a) of Section IV-A of the Special Instructions to Bidder and Special Conditions of Contract, respecting the Eligibility Conditions of the bidder, Tender 2024 provides that the bidder may be a single entity or a group of entities i.e. “Consortium” coming together to implement the project. It further provided that a bidder applying individually or as a member of Consortium, as the case may be, cannot be a Member of another bidder applying for the same package. It was clarified that the term “*bidder*” would apply to both, a Single Entity and the Consortium as well.

14. It is not disputed, rather admitted, that there were a number of amendments to the Notes appended to various clauses of the Tender 2024. An amendment no.23 was carried out to Note 8 of Section IV-A, Clause 2.1(f) in Table ‘A’ regarding Eligibility Criteria to the Tender 2024 on 30.05.2024. The pre-existing Note 8 prior to 30.05.2024 and the amended Note 8 is extracted hereunder for clarity. The same read thus:-

“23.4 Section-IV-A, Clause-2.1(f), Table-A regarding Eligibility Criteria (As per Amendment#8):

Note-8 below the Eligibility criteria at No.4 (Technical Capability):

Note-8: If any project has been executed in the consortium, the lead bidder and the consortium partners can use the same project experience for qualification individually, if not participating as the partner of same consortium. If they are participating as the consortium partners, then the experience shall be considered only once.

Further AMENDED as below:

Note-8: If any project has been executed in the consortium, the lead bidder



and the consortium partners can use the same project experience for qualification individually, if not participating as the partner of same consortium. If they are participating as the consortium partners, then the experience shall be considered only once. However, other than consortium experience, the experience from any type of joint execution, like “teaming agreement, sub-contracting (including any EPC partnerships), backend partnership” shall not be considered.

[emphasis supplied]

15. Note 8 hitherto before the amendment dated 30.05.2024 provided that if the project in respect of which the experience is proposed to be relied upon, has been executed as a Consortium, the lead bidder as well as the Consortium partners were entitled to utilize the experience for qualification individually, provided that they are not participating as partners of the same Consortium. It was clarified that if the members are participating as Consortium partners in respect of Tender 2024, then the experience shall be considered only once. The amendment dated 30.05.2024 added further restriction over and above the prescription already contained in the pre-existing Note 8 as found prior to 30.05.2024. Post amendment dated 30.05.2024, the Tender 2024 prohibited consideration of experience from any type of joint execution, like “Teaming Agreement, sub-contracting including EPC partnership, backend partnership” other than Consortium experience.

16. The finally amended Note 8 dated 30.05.2024 carries great significance and impact on the eligibility conditions prescribed by Tender 2024. The addition of further prohibition of consideration of experience other than Consortium experience, in the present circumstances, may entail the petitioner from utilizing the experience it gained while executing the project under Previous Tender alongwith M/s. Sterlite. Plainly, Note 8 clarifies that an entity



which relies upon previous experience to satisfy the eligibility criteria, would be precluded from taking advantage of such experience if not gained as a lead member of the Consortium or its participating members. Significantly, any experience involving Teaming Agreements or sub-Contracting Agreements, including EPC Partnership or even Backend Partnership of any nature whatsoever, is specifically barred from consideration. It is in this light that Note 8 is of utmost importance for consideration while rendering an opinion in the present dispute. It is also relevant to note that no challenge has been laid by the petitioner to the amended Note 8, though it was a part of the Tender 2024 from 30.05.2024 onwards. The fact that the petitioner had submitted its bid on 06.08.2024 is also a relevant consideration given the fact that petitioner had definite knowledge of the amendment to Note 8.

17. In that backdrop, it would now be relevant to examine the arguments addressed by Mr. Puneet Aggarwal, learned counsel on behalf of the petitioner. Learned counsel for the petitioner emphasized that the petitioner and M/s. Sterlite had entered into a Consortium agreement much prior in time to the submission of the bid. He also emphasized that the Teaming Agreement dated 13.06.2014 was entered into between both the parties as Principal to Principal, however the oral understanding between both the parties was in the nature of a Consortium. In order to buttress the submission that both the parties had worked in tandem and executed the project under Previous Tender as Consortium members, he relied upon the following facts:-

- a) Affidavit of Joint and Several Liability in accordance with Clause 25.1.10 of the Previous Tender and the Letter of Undertaking executed by the petitioner and M/s. Sterlite.
- b) Teaming Agreement dated 13.06.2014.



- c) Integrity Pact.
- d) Purchase Order dated 24.07.2014 indicating in Column 4.1, the name of petitioner.
- e) The Experience Certificate dated 19.03.2024 issued by BSNL *qua* the project under Previous Tender.

18. So far as the amended Note 8 is concerned, learned counsel submits that the need to challenge the said Note does not arise since the petitioner asserts itself to be the Consortium partner or member having gained that experience in the project executed under Previous Tender alongwith M/s. Sterlite. Thus, according to the learned counsel, the bar or a prohibition contained in amended Note 8 precluding the experience other than the experience gained as Consortium partner or member, does not, *ipso facto*, apply at all to the petitioner.

19. On the other hand, Mr. Nalin Kohli, learned senior counsel appearing for BSNL contended that (i). The Lead Bidder i.e. respondent no.2/BEL has not laid any challenge to the rejection of the said bid; (ii). The petitioner having participated in the entire tender culminating in the rejection of its bid as non-responsive, that too despite the amendment in Note 8, cannot maintain a challenge to the impugned rejection order without challenging the amendment to Note 8; and (iii) It is trite that the tender issuing authority alone is competent to interpret the tender conditions and take a commercial decision in its best interest.

20. Mr. Amit Dhingra, learned counsel appearing for M/s. Sterlite vehemently contended that insofar as Previous Tender is concerned, there was no Consortium in existence between the petitioner and M/s. Sterlite. Equally, he stoutly denied any oral agreement to form a Consortium. His contention



was that M/s. Sterlite had, as a “Bidder”, submitted its bid strictly in accordance with Clause 13.6 of the Previous Tender as also the other sub-clauses of Clause 13. In compliance with the Clauses 13.3.3, 13.4.2 and 13.5.2 of the Previous Tender, M/s. Sterlite had furnished to the tendering authority all the documents required and stipulated *qua* the petitioner. Even the Purchase Order dated 24.07.2014 was issued in the name of M/s. Sterlite and indicated the name of the petitioner only as the ‘EPC Partner’ and not a ‘Consortium Partner’ or its ‘Member’. He contended that EMD was furnished only by M/s. Sterlite and the risk of forfeiture of EMD and blacklisting was entirely that of M/s. Sterlite, as per the clauses of Previous Tender. He also pointed out that the petitioner has not placed on record any document to establish a Consortium between the petitioner and M/s. Sterlite, muchless any understanding of that nature. According to him, mere oral submissions without any supporting document are neither here nor there. Learned counsel had also referred to certain documents like the Teaming Agreement dated 13.06.2014 and the Contract dated 22.08.2014, entered into between the petitioner and M/s. Sterlite, to indicate that the petitioner was only to execute work of upto 2500 kms. He submitted that even *qua* this 2500 kms, the petitioner was only able to complete 213 kms. Upon a dispute raised by M/s. Sterlite, it was compromised and settled between the parties on 14.12.2018, wherein the petitioner agreed to indemnify the risk M/s. Sterlite would undertake while getting the remaining work completed through a third party. He also pointed out that the Integrity Pact referred to by the petitioner contained the signatures of the officials of petitioner and did not contain the signatures of M/s. Sterlite. Thus, he contends that there was no Consortium at all.

21. Mr. Vivek Chib, learned senior counsel appearing for respondent



no.4/HFCL Limited alluded to Previous Tender's document at page 590, particularly to Note 225, wherein a clarification as to which entity the Previous Tender referred to as "*Lead Bidder*", was sought. The BSNL specifically clarified that there is no such entity as the Lead Bidder and it was referable only to a Bidder. He contended that even the tendering authority by way of such clarification had understood and made it known that there is no entity as "*Lead Bidder*" and it only envisaged a "*Bidder*". Read in that manner, he contended that Clauses 13.6 and 13.7 ought to be construed accordingly, leaving no scope for any Consortium at all.

22. Mr. Rohan Chawla, learned counsel appearing for respondent no.5/Polycab India Limited referred to Article 22 of the Contract dated 22.08.2014 executed between the petitioner and M/s. Sterlite. He emphasized that the said covenant reveals the relationship between the petitioner and M/s. Sterlite is on principal to principal basis. Clause (2) of Article 22 of the contract executed between the petitioner and M/s. Sterlite clearly envisaged that neither the petitioner nor its employees or agents etc. directly or by implication represent themselves as the agent, joint venture, partner or representative of M/s. Sterlite unless expressly provided in the contract. He submitted that in view of the said Article, there is no manner of doubt that the relationship between the petitioner and M/s. Sterlite was not in the nature of a Consortium or a joint venture and thus, the arguments of the petitioner are contrary to the documents on record.

23. In rejoinder, learned counsel for the petitioner reiterated the stand already taken.

24. After having construed Clause 13 of Previous Tender in paragraphs 9 to 12 above, we need to only examine whether the petitioner can have any



grievance at all regarding its bid being declared “non responsive” *vide* the impugned decision dated 05.11.2024.

25. The mainstay of the arguments of the petitioner was with respect to establishing that a Consortium existing between the petitioner and M/s. Sterlite, based whereon and on the purported oral understanding, M/s. Sterlite submitted its bid under the Previous Tender. There are multiple fallacies in such arguments.

26. *Firstly*, there is nothing on record to even remotely suggest existence of a Consortium, muchless an assumption or presumption of the one. The sum total of the arguments is based on inferential presumptions. *Secondly*, there is a strong and unequivocal denial of existence of a Consortium by none other than M/s. Sterlite, which was the OFC Manufacturer and L1 bidder in the Previous Tender. M/s. Sterlite was the only other partner of the Teaming Agreement dated 13.06.2014. Thus, if the only other partner denies any understanding in the nature of a Consortium, the petitioner, unilaterally, cannot thrust any such agreement, oral or otherwise, upon M/s. Sterlite. Considered in the light of these facts, equally, this Court is unable to believe existence of any Consortium or any agreement or understanding of such nature. *Thirdly*, the tender documents and other records containing the name of petitioner appear to have been furnished by M/s. Sterlite alongwith its bid purely in compliance of Clauses 13.3.3, 13.4.2 and 13.5.2 of Previous Tender and in terms of the instructions as per Clause 13.6 of Previous Tender, only as a bidder and not a Consortium partner. Therefore, that by itself would not and cannot vindicate the argument that petitioner was inducted as a Consortium partner, that too, against the specific terms of the Previous Tender. *Fourthly*, it is also incongruous to expect that there existed a Consortium prior to M/s.



Sterlite bidding under the Previous Tender inasmuch as, if any such Consortium existed, it would not be eligible to participate in the tender process. We have already held in the preceding paragraphs that, by implication, Consortiums were barred from submitting their bids. Pertinently, this fact is not denied by any of the parties. *Fifthly*, it is trite that documentary proof excludes oral. In other words, as against the Tender conditions, like Clause 13 and its sub-clauses, clearly specifying only one bidder i.e., either OFC Manufacturer (Clause 13.6) or EPC Contractor (Clause 13.7) read with the mandate of Clauses 13.3.3, 13.4.2 and 13.5.2 and requirement of M/s. Sterlite to submit the Teaming Agreement after declaration as L-1, the contention that there pre-existed an oral Consortium agreement is not only hard to believe but legally impermissible to be urged in these circumstances.

27. Much of the arguments were predicated on the documents furnished like the undertaking by way of an affidavit as per Clause 25.1.10 of the Previous Tender, deposing joint and several liability having been furnished by both, the petitioner as well as the M/s. Sterlite; the Teaming Agreement dated 13.06.2014; the Integrity Pact; the Purchase Order dated 24.07.2014 and the Experience Certificate dated 19.03.2024 issued by BSNL to M/s. Sterlite to persuade us into believing that a Consortium indeed existed.

28. As observed earlier, most of the above referred documents were submitted by M/s. Sterlite in compliance of Clause 13.6 and other clauses of the Previous Tender, which, *ipso facto*, would not lead to the inference, muchless a definitive conclusion, that there indeed existed a Consortium. Teaming Agreement is a document regarding the *inter se* status of the parties which does not reflect or suggest any Consortium at all. The Integrity Pact has been signed only by the representative of petitioner and not M/s. Sterlite, and



thus, does not indicate any meeting of minds regarding any Consortium. The Advanced Purchase Order is in the name of M/s. Sterlite and only recognises the petitioner as an EPC partner and not a Consortium Member or partner. So far as the affidavit is concerned, it is obvious that BSNL, for protection and in the interests of its Project, would need assurance from the Bidder to bind its partner, whether EPC Contractor or the OFC Manufacturer, in terms of Clauses 13.6 or 13.7, as the case may be. This document would surely not mean that BSNL recognised petitioner as a Consortium member. Thus, even this affidavit is of no relevance to establish existence of Consortium. Emphasis was also laid upon the Experience Certificate dated 19.03.2024 issued by BSNL to M/s. Sterlite to contend that such certificate also indicated that M/s. Sterlite and petitioner were Consortium members/partners. We are unable to accede to this contention for the reason that the said certificate is only a recognition of the work executed and does not even remotely indicate the nature of relationship (a Consortium) existing *inter se* parties. Since the petitioner had executed the work as awarded to M/s. Sterlite under the Previous Tender, the Certificate also contained the name of the petitioner. Nothing more and nothing less can or ought to be inferred from it.

29. *Ab supra*, the contention of the petitioner regarding existence of a Consortium or any agreement in the nature of a Consortium, between itself and M/s. Sterlite is unmerited, unacceptable and unpalatable and hence, rejected.

30. This brings us to the issue of amended Note 8 of the Tender 2024. As noted earlier, the petitioner has not challenged the amendments to Note 8 and according to us, it is a fatal error. Pursuant to our observations and opinion in paragraphs 26 to 28 above, coupled with the finding that there existed no



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Consortium between the petitioner and M/s. Sterlite, manifestly the petitioner is barred from utilising the Experience Certificate dated 19.03.2024. Having not challenged the amendments to Note 8 or the Note 8 itself, particularly in the context of our above observations, the submission that there was no requirement to challenge the same is meritless.

31. As a necessary sequitur, we do not find any merits in the petition and the same is dismissed alongwith pending applications, if any. However, no order as to costs.

TUSHAR RAO GEDELA, J

DEVENDER KUMAR UPADHYAY, J

SEPTEMBER 10, 2025/rl