IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION (LODGING) NO.29675 OF 2026

Consortium comprising HAL Offshore Limited,]
Eagle Holding Pte. Ltd. and PT Duta Marine,]
having its office at 32 Corporate Avenue,]
4th Floor, B Wing, Near Paper Box Industry,]
Off. Mahakali Caves Road, Andheri (East),]
Mumbai – 400093.] .. **Petitioner**

Versus

1. Oil and Natural Gas Corporation Limited,]
having its office at Central LSTK Procurement]
Department, CPD Mumbai Region, 15th Floor,]
Maker Tower-E, Cuffe Parade, Mumbai-400005]
and also at Engineering & Projects Excellence]
Centre (EPEC), 4th Floor, 11 High Office,]
Sion-Bandra Link Road, Mumbai – 400017.]

2. Shapoorji Pallonji Energy O & M Solutions]
Private Limited,]
having its office at SP Centre,]
41/44 Minoo Desai Marg, Colaba,]
Mumbai-400005.] .. **Respondents**

Mr. Janak Dwarkadas, Senior Advocate, with Mr. Akash Loya, Ms. Gathi Prakash, Ms. Priyanka Desai, Ms. Shivani Varade and Ms. Vidushi Trivedi, Advocates, i/by Cyril Amarchand Mangaldas, for the Petitioner.

Mr. D.J. Khambata, Senior Advocate, with Ms. Nishita Gupta, Ms. Chitra Rentala, Mr. Parikshith K., Mr. Treenok Guha and Ms. Yashita Bhardwaj, Advocates, i/by Trilegal, for Respondent No.1.

Mr. Akshay Doctor with Ms. Farida Dholkawala, Mr. Sahil Hariyani and Ms. Asha Gokhale, Advocates, i/by Desai & Diwanji, for Respondent No.2.

CORAM : RAVINDRA V. GHUGE, ACJ. & GAUTAM A. ANKHAD, J.

RESERVED ON : 31st August, 2026

PRONOUNCED ON : 7th September, 2026

JUDGMENT : { Per Gautam A Ankhad, J }

1. Rule. Rule is made returnable forthwith. The matter is heard finally with the consent of the learned counsel appearing for the parties.

2. Respondent No.1 is developing an Offshore Oil and Gas Field project, called the R-Series Fields, for which it requires (i) two new well platforms, one riser platform named RJP, bridge-connected to the existing R-10A platform; and (ii) a Mobile Offshore Production Unit (**MOPU**) connected to the riser platform for receiving and processing well fluids from the oil field. The MOPU is required to house oil and gas processing facilities, power generation and supply facilities for the 'well head platforms' within the R-Series Fields, including facilities for operating pumps and other equipment. Accordingly, Respondent No.1 issued two tenders:

(i) Tender No. ZW1GC25002 dated 25th October, 2025 (**LSTK Tender**); and

(ii) Tender No. ZW1GC26001 dated 7th January, 2026 for hiring of MOPU (**subject Tender** or **MOPU Tender**).

The two tenders are separate, but interfacing and interlinked tenders, each having distinct scope of work and forming part of the overall development of the R-Series Fields.

3. The Petitioner has filed the present Petition impugning the rejection of its technical bid by Respondent No.1 vide letter dated 21st August, 2026 in respect of the MOPU Tender.

4. In brief, the relevant dates and sequence of events for the purposes of this Petition are stated as under:-

(i) On 7th January, 2026, Respondent No.1 floated the MOPU Tender. The time for the bidders to submit the bid was extended on several dates. On 29th April, 2026, the Petitioner, a Consortium comprising of HAL Offshore Limited, Eagle Holding Pte. Ltd. and PT Duta

Marine, Indonesia, executed a Memorandum of Understanding (**MoU**) for participating in the MOPU Tender.

(ii) On 18th May, 2026, the Petitioner submitted its technical bid and on 2nd June, 2026, its financial bid. On 3rd June, 2026, Respondent No.1 opened the technical bids. There were only two bidders, namely, the Petitioner and Respondent No.2.

(iii) In July, 2026, Respondent No.1 sought two rounds of clarifications from the Petitioner on several issues, including the technical experience of PT Duta Marine. The Petitioner responded to the queries and furnished the requisite documents.

(iv) On 17th August, 2026, a third round of clarification was sought by Respondent No.1 regarding the ‘Role and scope of work’ mentioned by the Petitioner in the table forming a part of the MoU executed between the Consortium members, particularly in relation to the experience of HAL Offshore Limited and Eagle Holding Pte. Ltd. Respondent No.1, *inter alia*, stated that the said consortium members had not independently demonstrated Fleet experience (**Fleet Experience**) and Operation and Maintenance experience (**O&M Experience**) under Clause B.1.2.1(a)-I-(ii) of the Bid Evaluation Criteria (**BEC**) and called upon the Petitioner to furnish the necessary documents by 3:00 p.m. on 19th August, 2026.

(v) On 19th August, 2026, the Petitioner protested against the short timeline placed by Respondent No.1 to furnish its clarification. However, it responded, *inter alia*, stating that Respondent No.1 had required bidders to submit an MoU in the prescribed format only to ascertain the percentage distribution of the bid value. Consequently, the activities identified in the MoU could not retrospectively be used to evaluate each Consortium member, individually against the clauses of BEC and no such requirement was stipulated in the Tender. The Petitioner disputed Respondent No.1's interpretation that the table mentioned the MoU is the representation of distribution of scope of work against which the qualification of individual member of the

Consortium will be evaluated. The Petitioner maintained that its offer was technically qualified and commercially competitive and that its acceptance would further the principle of maximum competition.

(vi) On 19th August, 2026, Respondent No.1 filed Caveats in this Court in respect of any proceedings that might be initiated by either bidder, in the event of rejection of their bid.

(vii) On the same day, i.e., 19th August, 2026, the Petitioner, by its email addressed to the Chief Vigilance Officer of Respondent No.1, invoked the Independent External Monitors (**IEM**) framework and placed on record its apprehensions regarding the ongoing bid evaluation process. Further representations were also made by the Petitioner to IEM on 19th and 20th August, 2026.

(viii) On 21st August, 2026, Respondent No.1 rejected the Petitioner's bid on the ground that it was technically not acceptable. The relevant portion of the rejection letter reads as follows:

> "*Sir,*
> *With reference to subject tender and offer, it is*

hereby informed that bid against the referred tender has been rejected due to the reason mentioned as under:

> *"The Bidder (Consortium) has submitted a letter titled "Post Bid Clarification – Against 3rd Round of Query", Document No. HAL / OFFER / HIRING MOPU-RJP PLATFORM / ZW1GC26001 / 25-26, dated 19.08.2026.* ***However, the Bidder has not submitted the requisite supporting documentary evidence of experience for activities (Role & Scope of work to be performed) by the respective Consortium Members, as specified in the MoU submitted by the Bidder (Consortium), i.e. (1) Fleet Experience and (2) Operation & Maintenance (O&M) Experience of M/s. HAL Offshore Limited and (2) Operation & Maintenance (O&M) Experience of M/s. Eagle Holding Pte. Limited, as required under Technical BEC Clause B.1.2.1(a)-II, in conjunction with B.1.2.1(a)-I-(ii) and ITB Clause 7.14.***
>
> *In view of above evaluation, the Bidder (consortium) is technically not acceptable under BEC Clause B.1.2.1(a)-II.*
>
> *Hence, the offer submitted by the Consortium comprising M/s. HAL Offshore Limited, India; Eagle Holding Pte. Ltd., Singapore; and PT Duta Marine, Indonesia, with M/s. HAL Offshore Limited, India as the Consortium Leader, is TECHNICALLY NOT ACCEPTABLE."*

It is informed that bidder can review the above reason for rejection of bid and raise a one-time representation to challenge rejection for any incorrect disqualification within 48 hours of this intimation. However, any additional/new documents/information/details submitted with representation, will not be considered for evaluation."

(ix) On 23rd August, 2026, the Petitioner filed its one-time representation before Respondent No.1 to challenge the rejection of its technical bid. The Petitioner called upon Respondent No.1 to consider its earlier representation dated 19th August, 2026 pending before the IEM before proceeding further with the tender. The Petitioner also requested for a hearing before the financial bid of Respondent No.2 was opened and awarded.

(x) On 24th August, 2026, Respondent No.1 opened the financial bid of Respondent No.2.

(xi) On 25th August, 2026, a hearing was held before the IEM on the Petitioner's representations dated 19th August, 2026, 20th August, 2026 and 24th August, 2026.

(xii) On 27th August, 2026, the IEM issued its advisory opinion and declined to intervene in the MOPU Tender process. It clarified that the IEM shall not be made Respondents in any legal proceedings and that their opinion is non-binding. The opinion, *inter alia*, recorded that the Petitioner's bid did not meet the stipulated BEC requirements and that there was no material indicating any unfairness in the bid evaluation process.

(xiii) It is in this backdrop that the present Petition came to be filed on 27th August, 2026.

SUBMISSIONS ON BEHALF OF THE PETITIONER

5. Mr. Dwarkadas, learned senior counsel appearing for the Petitioner, submits that the Petitioner's bid could not be rejected on the ground that:

(i) HAL Offshore Limited, the lead Consortium member, had not submitted supporting documents demonstrating its Fleet experience and O&M experience; and

(ii) Eagle Holding Pte. Ltd., the second Consortium member, had not submitted supporting documents demonstrating its O&M experience.

6. The Petitioner's disqualification is on hyper-technical grounds and is contrary to the terms of the Tender. He submits that Clause B.1.2.1(a)-II of the BEC requires, *inter alia*, that:

(a) The leader of the Consortium shall have a minimum of 26% stake in terms of bid value;

(b) Each member of the Consortium shall be jointly and severally liable to Respondent No.1; and

(c) For this purpose, the role and scope of work to be performed by the respective Consortium members, expressed as a percentage of bid value, should be indicated in the MoU. This is to ascertain the percentage of value distribution only. The activities identified in the MoU cannot be retrospectively used to evaluate each Consortium Member against the BEC clauses.

7. Our attention is then invited to Column 3 of the table in the MoU. It is contended that the intent of assigning percentage of bid values in the MoU is to regulate financial responsibility. It does not mean that the percentage of bid value has any bearing on the technical experience of the Consortium as a whole. The past technical experience demonstrated by a Consortium member cannot be disregarded.

8. Clause B.1.2.1(a)-II, read with Clause 2.1.1 of the

BEC, expressly provides that, notwithstanding the joint and several liability of the Consortium members, the leader of the Consortium, i.e., HAL Offshore, is to undertake primary responsibility for executing the Scope of Work under the Tender. Thus, Respondent No.1's interpretation of ITB Clauses 1.3.4 and 7.14(j), read with BEC Clause 2.1.3, is inconsistent with BEC Clauses B.1.2.1(a)-II and 2.1.1. The provisions must be construed harmoniously and so long as any one of the Consortium members has demonstrated the requisite technical experience, including Fleet experience and O&M experience, the Petitioner cannot be disqualified.

9. Lastly, it is submitted that the financial bid of Respondent No.2 was opened with undue haste and that the sequence of events of August, 2026 indicates that the decision to reject the Petitioner's bid was premeditated. In any event, the Petitioner ought to be permitted to place its financial bid before this Court in a sealed envelope, so as to enable Respondent No.1 to obtain the most competitive price, given that the contract is proposed to be awarded for a period of twelve years. In support of the above submissions, reliance is placed upon the judgments in ***Atasha Ashirwad Builders (J.V.), Nagpur v. State of Maharashtra***

and Ors.[1], ***New Horizons Limited & Anr. v. Union of India & Ors.***[2], and ***Jai Bholenath Construction v. The Chief Executive Officer, Zilla Parishad, Nanded & Ors.***[3].

SUBMISSIONS ON BEHALF OF RESPONDENT NO.1-ONGC

10. On the other hand, Mr. Khambata, learned senior counsel for Respondent No.1 submits that the successful contractor is required to undertake, *inter alia*, project management, engineering, procurement, fabrication, testing, pre-commissioning, installation, commissioning, start-up and operation of MOPU oil and gas facilities for handling well fluids from the R-Series Fields, together with the associated facilities and services. The MOPU Tender is complementary to the LSTK Tender. The interface between the two Tenders is recognized in Clause 1.1 of the Scope of Work of MOPU Tender.

11. Mr. Khambata submits that the Petitioner's bid is correctly rejected as it did not meet an essential technical criterion. The Petitioner had full knowledge that BEC Clauses B.1.2.1(a)-II and 2.1.3 as also Clauses 1.3.1, 1.3.3, 1.3.4 of ITB of the MOPU

1 *2010 SCC OnLine Bom 1545*
2 *(1995) 1 SCC 478*
3 *Civil Appeal No.4140 of 2022 (Special Leave Petition (C) No.7150/2022)*

Tender expressly links the activity allocated to a particular Consortium member with that member's own eligibility and experience. The MoU dated 29th April, 2026 constitutes an *inter se* declaration of the respective roles, scope of work and percentage participation of the three Consortium members.

12. Mr. Khambata submits that, notwithstanding the aforesaid allocation, Clause 31 of the ITB provides that the contract will be awarded only to a bidder whose bid is determined to be in "full conformity" with the bid documents. Despite an opportunity on 17th August, 2026 to furnish the requisite documents, the Petitioner did not file any documents to demonstrate the requisite Fleet Experience and O&M Experience of HAL Offshore; or the requisite O&M Experience of Eagle Holding, corresponding to the activities expressly allocated to them under the MoU. The Petitioner relies solely upon the experience of PT Duta Marine for satisfying both technical requirements, while the participation of HAL Offshore and Eagle Holding is merely financial in nature. In view of the Petitioner's failure to furnish the experience credentials of HAL Offshore and Eagle Holding for the activities specifically allocated to them under the MoU, the rejection of the Petitioner's

bid was justified. Reliance on PT Duta Marine's experience does not cure the deficiency, particularly since the scope of PT Duta Marine is only 10%.

13. Mr. Khambata submits that after the rejection of its bid, the Petitioner sought permission to alter the roles and responsibilities of the respective Consortium members specified in the MoU in its representation before the IEM so as to align them with terms of the Tender. He submits that such a post-bid modification is impermissible under Clause 7.14(j). This position is also wholly inconsistent with the Petitioner's contention that the experience of PT Duta Marine alone is sufficient, irrespective of the activities allocated to HAL Offshore and Eagle Holding. Reliance is placed upon the judgments in ***Prakash Asphaltings and Toll Highways (India) Ltd. vs. Mandeepa Enterprises & Ors.***[4] and ***N. G. Projects Ltd. vs. Vinod Kumar Jain***[5] to submit that a writ Court ought to defer to the tendering authority's interpretation of the bid documents and this Court ought not to interfere in infrastructure contracts involving highly specialised and technical requirements. It is further submitted that, if the Petitioner considers its exclusion

4 (2026) 4 SCC 310
5 (2022) 6 SCC 127

wrongful, it has an alternative remedy of seeking damages before the Civil Court. Hence, the Petition ought to be dismissed with costs.

SUBMISSIONS ON BEHALF OF RESPONDENT NO. 2

14. Mr. Doctor, learned counsel appearing for Respondent No.2, supports the submissions advanced by Mr. Khambata. He submits that technical eligibility must be assessed on the basis of the documents submitted with the bid and that any attempt to modify the bid thereafter would be contrary to the terms of the Tender. He further submits that the price bid submitted by Respondent No.2 is confidential and ought not to be disclosed, particularly when the Petitioner's technical bid has already been rejected. Hence the question of this Court accepting the Petitioner's financial bid in a sealed cover does not arise.

REASONS

15. The Petitioner's bid has been rejected by Respondent No.1 on the ground that the Petitioner did not submit the experience related documents of its consortium members. We can dismiss the

petition on this limited ground. However, since several arguments have been advanced before us including as to why the documents were not required under the Tender and that the impugned rejection is invalid, we shall deal with the same.

(I) Respondent No.1 has complied with the Principles of Natural Justice.

16. The Petitioner alleges that the rejection of its technical bid was premeditated and hurriedly done to eliminate competition. It was not furnished with a proper opportunity and was given less than 2 days to respond. We are unable to accept this submission.

17. The chronology of events itself demonstrates that Respondent No.1 did not hurriedly proceed to precipitate the issue against the Petitioner. The bid opening had itself been extended on six occasions, from 17th February, 2026 to 3rd June, 2026. The Petitioner had adequate time to arrange and submit its eligibility documents related to its previous experience.

18. In July 2026, two rounds of clarification were sought by Respondent No.1 on several aspects. The Petitioner responded to

those queries and furnished documents. Thereafter, upon further scrutiny of the bid and the MoU submitted by the Petitioner, Respondent No.1 raised a third clarification on 17th August, 2026. This related to a specific deficiency. Respondent No.1 required documentary evidence of the past experience of HAL Offshore Limited and Eagle Holding Pte. Ltd. for activities allocated to them under their MoU. The Petitioner was given time until 3:00 p.m. on 19th August, 2026 to respond with the supporting material necessary to satisfy the Tender conditions. Instead of furnishing the documents, the Petitioner disputed the interpretation placed by Respondent No.1 on the Tender conditions and stated, in substance, that the requirement was not applicable to the individual Consortium members.

19. The Petitioner’s attempt to portray the third clarification as a belated demand or a new technical requirement is wholly misconceived. The documents sought by Respondent No.1 were basic supporting documents, such as the relevant Purchase Orders and/or Contracts, which ought to have been readily available with the concerned Consortium members and, more importantly, were required under BEC Clause B.1.2.1(a)-II for submission along

with the technical bid itself. The third clarification was thus an opportunity afforded by Respondent No.1 to the Petitioner to substantiate the technical eligibility. Thereafter, reasons were also furnished for the rejection. In our view, the requirements of procedural fairness stood satisfied.

20. The Petitioner thereafter invoked the IEM mechanism. A hearing was thereafter held before the IEM on 25th August, 2026, following which the IEM in its non-binding advisory opinion recording that the Petitioner's bid did not meet the stipulated BEC requirements and that there was no material indicating unfairness in the evaluation process. The allegations of biased evaluation of the Petitioner's bid and the apprehension of third party intervention aimed at disadvantaging the Petitioner were rejected by the IEM holding that it did not substantiate the allegations nor offered any comments in support of the same before the IEM.

21. In these circumstances, the reliance placed upon by Mr. Dwarkadas on ***Jai Bholenath Construction*** is misplaced. In that case, the Appellant was found to be the lowest bidder, but the LOI was not issued in its favour. The bid of respondent no.4 therein

was accepted when at the time of opening the technical bids, the said respondent was disqualified. Hence, the Hon'ble Supreme Court held that there was flagrant violation of Natural Justice and arbitrary exercise of power. No such circumstances exist here. In this case, we do not find that any principles of Natural Justice have been violated as the Petitioner was given a notice, called upon to furnish the relevant material and informed of the reason for its rejection.

II. The Tender conditions expressly require the experience of the respective Consortium members to correspond to the activities undertaken by them.

22. We now turn to the central question, i.e. whether the experience of one Consortium member can be relied upon in respect of an activity which, under the Consortium's own bid and MoU has been allocated to another Consortium member? For convenience, relevant clauses relied upon by the parties are extracted:

<u>Instruction to Bidder (ITB) Clauses</u> :

ITB Clause - 1.3.1

Where consortium bids are allowed, leader and members of consortium should themselves meet the experience criteria covering the respective activities of work to be performed by them on their own and not through any other *arrangement like through Supporting Company, Parent / Subsidiary / Sister Subsidiary / Co-Subsidiary / Technical Collaboration / Sub-contracting. Necessary documentary evidence to this effect should be submitted with techno-commercial bid.*

…………………

ITB Clause - 1.3.3

The MoU should clearly define the role/scope of work to be performed by each constituent and should clearly define the leader of the Consortium. All the members of the Consortium must resolve and affirm in the MoU that each party shall be jointly and severally liable to ONGC for any and all obligations and responsibility arising out of the Contract and for discharging all obligations under the Contract. MoU signed between the members of the Consortium shall form part of the contract. In case of award of contract, the MoU shall be kept valid through the entire contract period, including extensions, if any. After award of contract, no alterations/modifications would be permitted in the MoU.

ITB Clause - 1.3.4

Only that consortium member who has undertaken a particular activity in execution of a contract shall be considered as having technical experience of that particular activity.

ITB Clause - 7.14

Joint venture bids and consortium bids where consortium bids are specifically allowed as per provisions under Clause 1.3 above.

…………………

(j) No alteration or modification in the constituents or composition of a Consortium shall be permitted after submission of bid and also after award of the Contract during currency of the contract. A constituent of the Consortium shall be allowed to undertake and carry out only that activity for which

that constituent has been evaluated and qualified technically.

ITB Clause - 31.0 AWARD CRITERIA

The purchaser will award the contract to the successful bidder whose bid has been determined to be in full conformity to the bid documents and has been determined as the lowest evaluated bid.

<u>Bid Evaluation Criteria (BEC) Clauses</u> :

B.1.2.1(a)-I-(ii)

1. Fleet Experience

Bidder shall demonstrate experience of Owning/Leasing of FPSO or MOPU or FPU of not less than 3 (Three) years in the past 15 years through 1 (one) or more contracts.

…………………..

2. Operation & Maintenance (O&M) Experience

The Bidder shall demonstrate experience for Operation & Maintenance of FPSO or MOPU or FPU of not less than 03 (Three) Years in the past 15 years through 01 (one) or more contracts.

…………………..

B.1.2.1(a)-II

Where consortium bids are allowed, leader and members of consortium should themselves meet the experience criteria covering the respective activities of work to be performed by them on their own and not through any other arrangement like through Supporting Company, Parent / Subsidiary / Sister Subsidiary / Co-Subsidiary / Technical Collaboration / Sub-contracting. Necessary documentary evidence to this effect should be submitted with techno-commercial bid.

The members of consortium shall decide the Leader of consortium. The leader of consortium shall have *minimum 26% stake in terms of bid vide, as reflected in the MOU executed by the consortium members. Each member of consortium shall remain jointly and severally liable to ONGC.*

For the purpose of the role and scope of work to be performed by the respective consortium members expressed as a percentage of bid value should be indicated in the Memorandum of Understanding (MOU) submitted along with techno-commercial bid as per format provided in the tender*.*

2.1.1 Notwithstanding the provisions that the members of consortium shall be jointly and severally liable to ONGC, the leader of consortium should undertake unconditional acceptance of primary responsibility of executing the entire 'Scope of work' of this tender. This confirmation should be submitted along with the techno-commercial bid.

2.1.2 A constituent of the Consortium shall not be permitted to participate either in an individual capacity as a bidder or as a member of another Consortium in the same tender.

2.1.3 ***Only that consortium member who has undertaken a particular activity in execution of a contract shall be considered as having technical experience of that particular activity.***

Note : For detailed conditions on consortium bid refer clause 1.3 & 7.14 of ITB."

23. The above provisions, when read together, discloses a consistent contractual scheme. Clause B.1.2.1(a)-I prescribes the substantive technical experience required in respect of Fleet Experience and O&M Experience. ITB Clauses 1.3.1, 1.3.3, 1.34,

7.14(j) and BEC Clause B.1.2.1(a)-II then prescribes how those experience requirements are to operate when the bidder is a Consortium. The requirement is therefore activity-specific as well as member-specific. The scheme emerging from the clauses quoted above is as follows:

(i) the Consortium member must itself possess the requisite experience for the activity which it has undertaken to perform;

(ii) the experience of one Consortium member cannot be attributed to another member, which has undertaken a different activity;

(iii) the activity allocated to a Consortium member must correspond to the technical qualification for which that member has been evaluated;

(iv) the Consortium is required to furnish documents demonstrating the experience of the concerned member; and

(v) the allocation of responsibilities contained in the MoU is not an inconsequential or merely financial arrangement. It identifies the role and scope of work of each constituent and forms part of the contractual framework.

Clause 7.14(j) reinforces this interpretation by expressly providing that a constituent *"shall be allowed to undertake and carry out only that activity for which that constituent has been evaluated and qualified technically."* Thus, the Tender conditions establish a deliberate linkage between the activity allocated to a Consortium member, the technical experience of that member, and the activity which that member will perform.

24. Mr. Dwarkadas has relied upon BEC Clause 2.1.1, which requires the Consortium leader to undertake unconditional primary responsibility for execution of the entire scope of work. Mr. Khambata submits that Clause 2.1.1 concerns the responsibility of the Consortium leader vis-à-vis Respondent No.1 for execution of the entire contract. It does not state that the technical experience of one Consortium members can be switched *inter se*. Nor does Clause 2.1.1 contain any language overriding any of the other BEC or ITB Clauses. We find Mr. Khambata’s submission reasonable and find no inconsistency between Clause 2.1.1 and the requirement

of individual experience. A Consortium may have a leader who bears primary and unconditional responsibility for the entire contract while, at the same time, each member must also possess the experience required for the particular activity which it has undertaken to perform, which it has jointly and severally agreed to perform with others.

25. The Petitioner's MoU specifically identifies the role, scope of work and percentage of participation of each Consortium member. For convenience, the relevant Clause (ii) of MoU delineating the works to be done by the Consortium partners of the Petitioner is also extracted:

“(ii)

Sl. No.	***Name of the Consortium Member who will carry out the activity***	***Activities*** ***(Role & Scope of Work to be performed)***	***Cross reference within the bid offer, where supporting documents are submitted***	***Scope of work / activity to be performed, expressed a a (%) of Bid Value***
1	***HAL Offshore Limited, India***	*1. Ownership/Leasing of MOPU, Top side Conversion & Bareboat Charter* *2. Over all Project Management.* *3. Bid Bond and PBG* *4. Production O&M*	*Section 1.G(A)*	*70 %*
2	***Eagle Holding Pte. Limited, Singapore***	*Marine modifications of MOPU and Marine & Production related Operations & Maintenance Services*	*Section 1.G(B)*	*20 %*

3	***PT Duta Marine, Indonesia***	*1.* *2.*	*Technical support for Conversion to MOPU Production related O&M*	*Section 2*	*10 %*

26. The Petitioner itself represented in its bid that HAL Offshore and Eagle Holding would undertake specified technical activities. Once the Petitioner itself made this allocation, Respondent No.1 is required to ascertain the experience mentioned in the bid. The Petitioner's contention that the MoU merely records the financial participation of the Consortium members cannot be accepted on a plain reading of the MoU. That HAL Offshore and Eagle Holding having 70% and 20% share, respectively, in the bid value declared the activities and works to be performed by them in the table quoted above. A perusal of the works mentioned in *"Activities (Role & Scope of the Work to be performed)"* in the table mentioned in the MoU clearly shows that these are substantive and components of the work contemplated under the Tender. They cannot be characterized as functions which are purely financial in nature. More importantly, the activities allocated to HAL Offshore and Eagle Holding bear a direct relationship to the technical experience prescribed under Clause B.1.2.1(a)-I, namely owning/leasing of MOPU and its O&M experience. The Petitioner

in its third clarification reply dated 19th August, 2026 specifically admits to the lack of technical experience of HAL Offshore and Eagle Holding, the relevant portion of which reads as under:

> *"6. ONGC must realize that this is a capital intensive project and in the bid there is no format or document other than the Consortium MoU to declare the financial aspect of the work to be performed by the Consortium.* ***Accordingly, the activities specified by Member 1 and Member 2 are of financial in nature and corresponds to the financial investment to be undertaken and corresponding receipt of remuneration from Consortium. In view of the above Member 1 and Member 2 are ought to be evaluated against the financial aspect only and Member 3 ought to be evaluated against technical and financial aspect****."*

This response is crucial as it demonstrates that the Petitioner's interpretation is not borne out from the terms of the Tender. Respondent No.1 has prescribed a specific standard that a member undertaking a particular activity must itself have undertaken that activity. The interpretation adopted by Respondent No.1 does not introduce an additional eligibility requirement, nor does it amount to an arbitrary reading of the Tender. We consequently find no perversity or irrationality in the view taken by Respondent No.1.

27. This is also an area in which a Writ Court cannot interfere. The tender has been framed by Respondent No.1 for a

technically specialised offshore oil and gas project. Respondent No.1 is best placed to assess the technical significance of the experience requirements. This law is well settled as held by the Hon'ble Supreme Court in several judgments including ***N.G. Projects Ltd. v. Vinod Kumar Jain***[6]***, Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd.***[7]*,* and ***Association of Registration Plates v. Union of India***[8]. This is a commercial contract and the writ Court is not sitting as an appellate authority. The afore-mentioned judgments also reiterate that judicial review examines the legality of the decision-making process and not whether another interpretation could also have been adopted. We do not find that the interpretation of Respondent No.1 is perverse, arbitrary, *mala fide* or such that no reasonable authority could have adopted it. In ***N.G. Projects***, the Hon'ble Supreme Court has also emphasised the need for restraint in matters of infrastructure projects while exercising its jurisdiction under Article 226 of the Constitution of India. The decision of Respondent No.1 thus falls within the permissible bounds of contractual and technical evaluation. In the absence of any demonstrated illegality, perversity, arbitrariness or *mala fide*

6 *(2022) 6 SCC 127*
7 *(2016) 16 SCC 818*
8 *(2005) 1 SCC 679*

exercise of power, there is no occasion for interference under Article 226 of the Constitution of India.

28. The decisions relied upon by the Petitioner do not alter this conclusion. In ***New Horizons Limited***, the Hon’ble Court was considering whether the joint venture firm ***(New Horizons Limited)*** which had submitted a bid, was eligible. The Joint Venture company was established by Thomson Press (India) Limited (TPI), Living Media (India) Limited (LMI), World Media Limited (WML) and Integrated Information Pvt. Ltd. (IIPL). The issue considered by the Hon’ble Supreme Court was whether experience of one of its constituents or shareholder could be counted as the necessary experience required by the tenderer. The Tender Evaluation Committee had rejected the Joint Venture’s bid without reasons. The facts therein pertained to an entirely different contractual structure, ie. a joint venture which has a separate legal identity. There were no clauses in the NIT therein which delineated the role and scope of work *inter se* the constituents. In that context, the Hon’ble Court set aside the rejection. The tender clauses involved therein were substantially different. In the present case, the Tender itself expressly requires individual Consortium members to possess

experience corresponding to their respective activities. Likewise, the judgment of a Co-ordinate Bench of this Court in ***Atasha Ashirwad*** does not assist the Petitioner since there is no question here of reducing experience in proportion to investment or profit sharing. The tender in the present case itself establishes the nexus between the activity undertaken and the experience required.

III. The subsequent attempt by the Petitioner to modify the MoU and re-allocate the work *inter se* cannot be permitted.

29. The Petitioner cannot contend that the allocation of activities in the MoU was irrelevant for purposes of technical eligibility and simultaneously, seek permission to alter that very allocation when it became apparent that the existing allocation did not satisfy the tender requirements. The two positions are mutually inconsistent. Before the IEM, the Petitioner sought permission to modify the roles and responsibilities of the Consortium members set out in the MoU so as to align them with Respondent No.1's requirements.

30. Clause 7.14(j) of the ITB provides that no alteration or modification in the constituents or composition of a Consortium

shall be permitted after submission of the bid. It also provides that a constituent shall be allowed to undertake only that activity for which it has been evaluated and technically qualified. The prohibition is not merely procedural. It is an essential term of the Tender. In any case, the Petitioner's request for re-allocation of work under the MoU is not a clarification of an existing bid. It would alter the substance of the bid. Such a change is barred under Clause 7.14(j) of the Tender.

31. The judgment of the Hon'ble Supreme Court in ***Prakash Asphaltings*** makes it clear that a power to seek clarification cannot be enlarged into a power to permit rectification or modification where the tender conditions prohibit such modification. The relevant portion of the said judgment is extracted:

> *"34. ……………… Clause 5-B(v) says that during the process of evaluation of bids, the notice inviting authority may summon and seek clarification/information on additional supporting documents or original hard copies against any of the documents which are already submitted/uploaded on the web portal. In the event, these are not produced by the intending bidders within the stipulated time frame, their proposals will be liable for rejection.*
>
> *35. The Division Bench of the High Court has interpreted this clause in a broad way to include rectification of bona fide mistakes in quoting BOQ rates by the bidders. In our view, this will be stretching things a bit too far. This provision is meant to empower the notice*

inviting authority to seek clarification or further information regarding any document filed by a bidder. This cannot be interpreted so broadly as to include rectification of the BOQ rates which is governed by Clause 4(g) of the notice inviting electronic bid putting a complete embargo to any change in the template of BOQ; the prohibition is specific: change in the template of BOQ will not be accepted under any circumstances.

…………………………………

46. *Applying the above legal principles to the facts of the present case, we are of the view that the Division Bench of the High Court clearly fell in error in directing Respondents 2 to 4 to allow rectification of the financial bid of Respondent 1 by treating the amount offered by it as the per day figure and on that basis to compute the total amount for the entire contractual period of 1095 days. Such an exercise is clearly impermissible, having regard to the terms and conditions of the contract which are required to be understood on the anvil of this Court's judgments……………*

49. *The expression "public interest" in the arena of commercial transactions cannot and should not be confined to any straitjacket definition. While benefit or accrual of more revenue to the public exchequer is certainly an important aspect, equally important, if not more, is adherence to the rules and conditions of tender; sanctity of the tender process being paramount and should be maintained at all costs."*

32. The Petitioner's request that its financial bid be accepted in a sealed cover cannot be accepted. Once the technical bid of the Petitioner is rejected on account of failure to satisfy an essential technical eligibility condition, its financial bid becomes

irrelevant. Clause 31.0 contemplates consideration of the financial bid only of a bidder whose bid is in full conformity with the Tender conditions. The confidentiality of the financial bid of Respondent No.2 also militates against the course suggested by the Petitioner. The Court cannot re-write the terms of the Tender merely because the Petitioner submits that its price may be more competitive.

CONCLUSION

33. On an overall consideration of the matter, we find that the interpretation adopted by Respondent No.1 is consistent with the language of Clauses of Tender and cannot be said to be perverse or irrational. Hence, **Writ Petition (Lodging) No.29675 of 2026 is dismissed**. Rule is discharged.

[GAUTAM A. ANKHAD, J.] **[ACTING CHIEF JUSTICE]**