REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 4248 OF 2017
(Arising out of SLP (C) No. 6695 of 2017)

CHHATTISGARH STATE INDUSTRIAL DEVELOPMENT CORPORATION LTD AND ANR. ..APPELLANT(S)

VERSUS

M/S AMAR INFRASTRUCTURE LTD. AND ORS. ..RESPONDENT(S)

WITH

CIVIL APPEAL NO(S). 4251 OF 2017
(Arising out of SLP (C) No. 7723 of 2017)

O R D E R

1. Leave granted.

2. The appeals have been preferred by Chhattisgarh State Industrial Development Corporation Ltd. (in short, 'the CSIDC') and M/s. Raipur Construction Pvt. Ltd. being aggrieved by the judgment and order dated 14.02.2007 passed by the High Court of Chhattisgarh in Writ Petition (C) No.1053 of 2016 thereby allowing the same and quashing the

contract given to M/s. Raipur Construction Pvt. Ltd. by the CSIDC with respect to the work of "upgradation of infrastructure *i.e.* roads, drainage system and water supply in Sirgitti under Modified Industrial Infrastructure Up-gradation Scheme (MIIUS) at Sirgitti, Bilaspur."

3. Tender was floated by the CSIDC on 3.11.2015 for the aforesaid work within the stipulated time period of 18 months and tenders were invited online, to be submitted by 12.01.2016.

4. A writ petition bearing WP(C) No.227 of 2016, was filed challenging the notice inviting tenders issued by the CSIDC and the same was dismissed vide order dated 2.2.2016 by the High Court of Chhattisgarh, Bilaspur. The online bids were submitted. The CSIDC opened the tenders for determining whether the bidders satisfied the pre-qualification criteria. Based upon the information supplied by the bidders, the CSIDC prepared charts of technical evaluation documents in the form of Annexures 'A' 'B' 'C' and 'D' which were signed by the Chief Executive Engineer and placed before the Tender Evaluation Committee

in its meeting held on 03.03.2016. The CSIDC filed a Technical Evaluation Sheet as Annexures R-4/3 and 5/3 which was placed before the Technical Evaluation Committee whereas the petitioner in the High Court *i.e.* M/s. Amar Infrastructure Ltd. filed the document "Annexure P-4" as technical evaluation document.

5. It is pertinent to mention here that the documents of technical evaluation filed by CSIDC were signed by the Executive Engineer and the document filed by M/s. Amar Infrastructure Pvt. Ltd. as Annexure P-4 does not bear signatures of any official.

6. On 3.3.2016, Tender Evaluation Committee considered the matter and had drawn the minutes which is signed by Mr. S. Rajgire, Executive Engineer Division-IV, Mr. G.V.S.P. Rao, Deputy Manager (Accounts) and Mr. Abdul Shakil, Chief Engineer. Two bidders namely; M/s. Arcons Infrastructure Pvt. Ltd., Chhindwara and M/s. Raipur Construction Pvt. Ltd. were found qualified. It has been opined by the Evaluation Committee that they fulfill all the requisite qualifications. Hence, it was resolved unanimously to open

the financial bids of the aforesaid two bidders. The financial bids were ultimately opened on 5.3.2016. The bid submitted by M/s. Raipur Construction Pvt. Ltd. was ranked as L-1 as compared to that of M/s. Arcons Infrastructure Pvt. Ltd. Chhindwara whose bid was ranked as L-2. Ultimately the bid L-1 of M/s. Raipur Construction Pvt. Ltd. had been accepted on 8.7.2016 and work order had been issued by the CSIDC to M/s. Raipur Construction Pvt. Ltd.

7. The petitioner/respondent herein, namely, M/s. Amar Infrastructure Ltd. was disqualified on the ground that its construction experience was not found as per the requisite criteria indicated in experience certificate, quantity of DLC (M-10) *i.e.* 3194 cum submitted under the key activities of construction experience of requisite quantity of work done was not in accordance with the nomenclature of PWD SOR. In the nomenclature of DLC in SOR there was no M-20 type of concrete, as such the amount of DLC as presented in the certificate had been rejected.

8. It is pertinent to mention that Writ Petition No.664 of 2016 was filed before the High Court of Chhatisgarh at

Bilaspur by M/s. B.B. Verma, who was also one of the unsuccessful bidders, against the CSIDC and others. In the said writ petition, the CSIDC had filed its reply dated 14.3.2016 and had submitted the document dated 3.3.2016 i.e. the chart containing technical evaluation in which the aforesaid facts were mentioned. The writ petition preferred by M/s. B.B. Verma was ultimately dismissed by the High Court of Chhatisgarh vide order dated 15.03.2016.

9. However, M/s. Amar Infrastructure Ltd. filed a representation on 1.4.2016 not against the successful bidder but against M/s. Arcons Construction Pvt. Ltd. to the effect that it had been found eligible for opening financial bid despite not having a Hot Mix –Plant. After the writ petition in question was filed on 8.4.2016 in the High Court, reply was filed by the CSIDC on 7.7.2016.

10. The High Court, considering the discrepancy in the document of technical evaluation which was filed by the M/s. Amar Infrastructure Limited and the one filed by the CSIDC, had vide order dated 28.07.2016 directed the Superintendent of Police, Raipur to depute an independent

and competent officer from the Cyber Crime Cell of the State Police to inspect, examine and analyse the data available on the computer of the CSIDC and to determine the following points:

> **"1. What was the initial bid document e-filed by Respondent No.6.**
> **2. Whether in the tender document submitted by respondent no.6, the list of plant and machinery contained hot mix plant or not? Whether said list was certified by the authorised signatory or not?**
> **3. The concerned Officer will after examining the documents also determine whether the document Annexure-P/4 has been prepared on the computer of the CSIDC or not?**
> **4. The officer shall also intimate the date of preparation of the document Annexure R4,5/3 filed by the CSIDC and clearly intimate when the document was initially prepared and if any changes were made to this document then on what date. Report be submitted to this Court within a period of 6 weeks from today."**

11. Pursuant to the order, the report was filed in the High Court on 9.11.2016. The report submitted by the Cyber Crime Cell is extracted hereunder:

> **"In the compliance of above command, three hard disks were confiscated and tested from the computers of CSIDC by the Cyber Specialist Police headquarters, Raipur and a document was received by the help of chips. After testing following results were obtained:**

1. Information related to point no.01 is attached in page 115.

2. Information related to point no.02 is attached on 115 page and on page no. 57 a list of all documents in e-tender created through respondent no.6 are present which does not contain any mentioning of hot mix plant and in this list a seal of company and signature is used in the place of authorised signatory.

3. According to the compliance of information on point no.3 and no.4 a hard disk was confiscated from computer no.3 which has a description as follows:

(A)of Hitachi Company S/R no. 0138264JPT3MAOCOA, 30 G.B.
(B)of HC Company S/R No. 0A33535BS19570C7A, 164G.B.
(C)of Western Digital Company S/R No.WCAYUA915673, 164 G.B.
Confiscated Hard disk was tested by Cyber Crime Expert.
The information of point no. 03 and 04 of the Test report is as follows:

Point No. (3) – Document Annexure P/4 is created on the computer of CSIDC, which is located in the Computers' Hitachi Company hard disk who's S/R No. is OA 39264JPT3MAOCOA, 320 G.B. in the file named Annexure -Bb, Last modified Date -06.03.2016. Time :-4.46 P.M. the found file is of 80 K.B. which contain 08 pages. The information related to annexure: P/4 was found in the page nos.6,7,8.

The information related to point no. (4) is found in the file Annexure -A Last modified Date : 14.01.2016 Time 12.33 P.M. which was located in the CSIDC hard disk of Hitachi Company who's serial no.

is 0A39264JPT3MAOCOA, 320 G.B. According to which document Annexure R-4, 5/3 is presented in respected court which is a "Technical Evaluation" chart and in the column of tender form price in the column no.2 of the tender form, the D.D. number deposited by the companies taking place in tender is clearly mentioned as well the name of the banks are clearly mentioned. But the file obtained from the hard disk "technical evaluation" chart who is named as Annexure R-4, 5/3 contains only the D.D. No and does not contain any bank name, in this way, both files have differences in them.

The information related to "Technical Evaluation" Chart Annexure "B" is located in the file named Annexure -B, Last modified Date : 04-07-2016 time-02.08 P.M. which is situated in the Hitachi Company Hard disk who's S/R No. is 0A39264JPT3MAOCOA, 320 G.B. the sixe of the file is 24 K.B. and contains 02k pages. The attachment for Supreme Court and file found in Hard disk have no differences.

The information related to "Technical Evaluation" Chart Annexure "C" is located in the file named Annexure -C, Last modified Date: 04.07.2016 time – 02.09 P.M. which is situated in the Hitachi Company Hard disk who's S/R no. is 0A39264JPT3MAOCOA, 320 G.B. the size of the file is 29.7 K.B. andk contains 02 pages. The attachment for Supreme Court and file found in Hard disk have no differences.

The perusal of Document Test reports (I/pages) and C.D.'s as well as chips concluded by the Cyber Cell Specialist is submitted.

Attachment : As per above points."

12. The report was filed on 11.11.2016 and the High Court has found that the document which were placed on record; one filed by the CSIDC and other filed by the appellant were substantially different with respect to the fact whether Hot Mix Plant was owned by M/s. Arcons Infrastructure Pvt. Ltd. and also that modification had been made in the document on 4.7.2016. Thus, the High Court had opined that L-2 tenderer basically was not qualified to participate and had been made to qualify for opening of its financial bid in order to give the contract anyhow or somehow to M/s. Raipur Construction Pvt. Ltd. It concluded that M/s. Arcons Infrastructure Pvt. Ltd. was illegally included in the qualified list of bidders by the Technical Evaluation Committee in its meeting dated 3.3.2016, and thus, the contract granted to M/s. Raipur Construction Pvt. Ltd. has been quashed and at the same time further police investigation has been ordered so as to fix the responsibility for the manipulations made in the document filed by the CSIDC and/or by M/s. Amar Infrastructure Ltd.

13. Aggrieved thereby the appeals have been preferred in

this Court.

14. Mr. Mukul Rohatagi, learned Attorney General alongwith Mr. Apoorv Kurup, Mr. A.C. Boxipatro and Mr. Ashish Kumar Sinha, appearing on behalf of the appellants submitted that there is no manipulation in the Technical Evaluation Bid Sheet and pre-qualification criteria was fulfilled by both the tenderers whose financial bids were opened. Owning Hot Mix Plant was not a mandatory condition and thus it could not be said that the technical evaluation was illegal in any manner whatsoever. The financial bids of the qualified tenderers were required to be opened and Hot Mix Plant was not in the list of plant and equipments which were necessary to be possessed to qualify at the pre-qualification stage.

15. It was also submitted by the learned Attorney General that the High Court has unnecessarily doubted the documents of Technical Evaluation Sheet placed on record by the CSIDC. It had been filed within seven days of the finalisation of the financial bid in the High Court of Chhattisgarh at Bilaspur in the writ application which was

preferred by M/s. B.B. Verma which was dismissed on 15.3.2016 relying upon the very same documents which have been filed by the CSIDC in the instant writ application also. The document which has been filed by M/s. Amar Infrastructure Pvt. Ltd. is not signed by anybody and even if taken to be an assessment made with respect to the entire tender documents by CSIDC, hot mix plant being not a pre-requisite and essential to be possessed for opening of the financial bid, the reasoning employed by the High Court that L-2 was got qualified only in order to ensure that financial bid of L-1 could be opened so that it would not be left as the only tenderer, whose financial bid then could not have been opened being only bidder in the fray and re-tendering would have been necessitated, falls down.

16. Mr. Garvesh Kabra, learned counsel appearing on behalf of the respondent ingeniously submitted that other tenderer had been disqualified namely; M/s. Anil Buildcon (I) Pvt. Ltd. on the basis of not possessing the requisite 'concrete paver' and it is apparent from the Technical Evaluation Sheet filed by the respondent as P-4 that the L-2 tenderer

M/s. Arcons Infrastructure Pvt. Ltd. did not possess Hot Mix Plant at the time of submitting the tender which fact was noted in the requisite column of the evaluation sheet (P4). He has also submitted that it was necessary to submit all the documents alongwith the tender forms including what were mentioned in Schedule D Section V. Thus, it was submitted by the learned counsel that there had been manipulation made at the instance of the CSIDC as Technical Evaluation Sheet filed by CSIDC does not tally with the technical evaluation document filed by the petitioner before the High Court. It appears that manipulation had been done in the document as observed by the High Court on 4th July, 2016. The High Court has rightly disqualified L-2, and thus it became necessary to invite the fresh bids as per the prevailing norms. Consequently, the order had been passed by the High Court, keeping in view the report of the Cyber Crime Cell. Hence no case for interference is made out in the appeals. The order passed by the High Court is on proper consideration.

17. In order to appreciate the rival submissions, it is

necessary to consider the tender document itself and the requirements for pre-qualification. Whether having Hot Mix Plant was necessary qualification? In the tender document, list is given, the same is extracted as under :

> **"(a) Only Schedule A and Section 1 of Schedule D are to be filled & signed by the tenderer**
> **(b) <u>All the certificates as per pre qualification criteria shall be appended with relevant forms of schedule "D"</u>.**
> **1. PART ONE (CSIDC F-I)-(Attached herewith, to be submit along the tender)**
>
> **(a) Press notice & corrigendum**
> **(b) Detailed NIT**
>
> **Part(b)**
>
> **(a) Schedule A**
> **(i) Cost Abstract**
> **(ii) Bill of Quantities**
> **(b) Schedule B- NIL**
> **(c) Schedule C-NIL**
> **(d) Schedule D**
> **Section 1....Technical tender forms**
> **(i) Letter of Technical Tender**
> **(ii) Tenderer's Information Sheet**
> **(iii)Annual Turnover**
> **(iv) Specific Construction Experiences**
> **(v) Declaration**
> **(vi)Check list for Technical tender evaluation**
>
> **Section II. Scope of work**
> **Section III. Technical specifications of work**
>
> **Section IV. Special conditions of contract**
> **Section V. List of approved makes."**

(emphasis added by us)

18. The tender inviting notice requires certain documents to be mandatorily submitted online. The list of the documents as contained in para 1 of the tender notice is extracted hereinbelow:

> **"It is mandatory to submit the following online:**
>
> **(A)Details of Earnest money in FD (in favour of M.D.C.S.I.D.C. Raipur) from any nationalised bank.**
>
> **(B) Valid registration of CT/ VAT and VAT clearance certificate/ it return acknowledgment.**
>
> **(C) Letter of technical tender.**
>
> **(d) Tender's information sheet.**
>
> **(E) Specific Construction Experience.**
>
> **(F) Construction Experience in key activities.**
>
> **(G) <u>List of key plants & equipment certificate, available with the bidder/lease or rented. (List enclosed)</u>.**
>
> **(H) Declaration check list for technical tender evaluation.**
>
> **(I) All desired document should be attested by Notary.**
>
> **(J) All desired document scan copy submitted to Online should also to be submitted physically by post in separate envelope. Any additional documents which are not submitted online but submitted physically will not be accepted.**

(K) PAN No. details.

(L) Copy of valid registration in CGPWD/Central/State/Semi Govt. Of India or PSU of appropriate clause.

(M) Tenderer has to submit audited balance sheets of their financial turn over/accounts along with profit & Loss account for the any three (3) year out of last five (5) years.

(N) The contractor shall submit list of works which are in hand.

(O) Affidavit in Original should be in prescribed format regarding that given all the informations are true must be attached on Rs.100/- Non judicial stamp paper."

(emphasis added by us)

19. It is apparent that list of plant and machinery as "available" with the bidder, on lease or rented, was to be enclosed. It is apparent that L-2 did not mention that Hot Mix Plant was available with it. It has to be considered whether Hot Mix Plant was necessary for opening of the financial bid.

20. The detailed notice inviting tenders required a tender to be submitted in three envelopes in the following manner:

"SUBMISSION OF TENDER DOCUMENTS	**1. Tender documents to be submitted in three envelopes marked A,B & C on line as per mentioned key dates on portal of https://csidc.cgeprocurenment.gov.in** **Envelope A will contain earnest money** **Envelope B technical qualification/ details required for qualification as per NIT and other details** **Envelope C shall have financial offer.** **2. For technical qualification, eligibility criteria an earnest money the document submitted on line shall only be treated as final submission of document. Any physical submission of extra paper/ document shall not be taken for consideration for Technical qualification/ eligibility criteria.**
PLACE AND DATE OF OPENING OF TENDER	**The tenders shall be opened at the office of Managing Director, CSIDC, First Floor, Udyog Bhawan, Ring Road no. 1, Telibandha, Raipur 9C.G.) as mentioned in key dates. After that Envelop (C) of only eligible applicants will be opened on the same day or any suitable date of the qualified tenderers**

	only.

21. In tabular form the originally scheduled dates were given for opening the envelopes which is extracted hereinbelow :

Seq. No.	CSIDC Stage	Supplier Stage	Start Date & Time	Expiry Date & Time	Envelops
7.	Open Envelope-A (PQ Technical & Commercial Detail)		01/01/2016 from 10.00 A.M.	02/01/2016 from 17.00 P.M.	Technical Envelope
8.	Evaluation and Shortlisting of Envelope-A		01/01/2016 from 10.00 A.M.	02/01/2016 from 17.00 P.M.	Technical Envelope
9.	Open Envelope-C (Price Bid)		04/01/2016 from 10.00 A.M.	04/01/2016 from 17.00 P.M.	Price Bid Envelope
10.		Fill Negotiated Rates	04/01/2016 from 17.01 A.M.	04/01/2016 from 17.02 P.M.	Price Bid Envelope
11.	Evaluation and Shortlisting of Envelope-C		04/01/2016 from 17.03 A.M.	08/01/2016 from 17.04 P.M.	Price Bid Envelope
12.	Tender Award		08/01/2016 from 17.05 A.M.	12/01/2016 from 17.06 P.M	Technical Envelope Price Bid Envelope

22. Tender was to be submitted in three envelopes 'A','B' & 'C'. Envelope 'A' to contain earnest money. Envelope 'B' to contain technical qualifications/ details required for qualification as per NIT and other details. Envelope 'C' to contain financial offer.

23. Pre-qualification criteria has been dealt with in Clause 2 of the detailed NIT. The same is extracted as below:

> **"2. Pre-Qualification criteria: To be eligible under the contract, the intending tenderer should meet the following mandatory criteria:**
>
> **2.1 Financial Criteria**
>
> **Average Annual Turnover: As per C.G. Govt. PWD Circular No. F21-7/T/2017 dated 02/03/2015 achieved in "any one financial year"a financial turnover in mentioned clauses of civil engineering construction works) of construction work of at least 60%(Sixty percent)of the probable amount of contract for which bid has been invited i.e. INR 26.64 Crores(Audited balance sheet duly signed by CA should be enclosed).**
>
> **(b) satisfactory completed at least one similar work equal in value of 50% (Fifty per cent)of the portable amount i.e. INR 22.20 Crores of contract as one date of submission of financial offer (Audited balance sheet duly signed by CA should be enclosed).**

2.2 Technical Criteria

<table>
<tr><td>A</td><td>Intending tenderer shall be registered contractor with any Central/State/Semi Government of India or PSU in Class A-Unlimited or registered contractor in single registration system of C.G.P.W.D. in appropriate class</td></tr>
<tr><td></td><td>AND</td></tr>
<tr><td>B</td><td>Intending tenderer should have completed satisfactorily following works during last five years i.e. after 06.10.2010 in any Government/Semi Government or public Sector undertaking as below:
(a) One similar work costing nor less than INR 35.52 Crore each
OR
(b) two similar work costing not less than INR 22.20 Crore each</td></tr>
<tr><td>C</td><td><u>Construction experience</u> in Key activities (May be complied by specialist Subcontractors Employer shall require evidence of subcontracting agreement from the Bidder. Specialist Sub contractor is a specialist enterprise engaged for highly specialised processes which cannot be provided by the main contractor)
<table><tr><th>Requirement</th><th>Submission Requirements</th></tr><tr><td>For the above or other contracts executed during the</td><td>In form, Schedule-D(v) Construction</td></tr></table></td></tr>
</table>

period stipulated in 2.1 above a minimum construction experience in the following key activities		Experience in key activities
Earth work	33400 Cum	
Granular Sub Base Grading	20300 cum	
Dry Lean Cement Concrete	5100 cum	
Cement Concrete Pavement (M-30 & above grades)	10200 cum	
Wet mix mecadam	2500 cum	
Dense graded bituminous amacadam and by Bituminous concrete	3000 cum	
R.C.C. open drain (M-20 grade)	7500 RM	
D.I.pipeline various dia of class K-9	4265 RM	
Octagonal	75 Nos.	

	pole with LED light fitting 120 watt		

a. For the purpose value of executed works and financial turnover shall be bought to current costing level by enhancing the actual value of work at the rate of 10% per annum (compounded annually), calculated from the date of completion to last date of receipt of applications for tenders.

b. Ongoing project/part project experience shall not be considered for evaluation.

c. For the benefit of the intending tenderers a check list is enclosed at schedule D (Section 1) for the documents to be submitted alongwith tender.

d. If tenderer qualifies on the basis of experience of one/more components of scope of work, in such circumstance, a tenderer shall have to employ sub vendor who has experience in execution of that component, for which tenderer does not have experience. That sub vendor should have successfully completed work in any central/State Government/PSU in respect of particular component as below:

(i) One completed work of 80% of the value of that component; OR

(ii) Two completed work of 50% of the value of that component in the central/State Government Department/ PSU Certificate.

(a) All tenderers should submit the valid registration certificate. Comercial tax certificate, balance sheet with profit and loss statement for at least three years.

(b) The tenderer shall also submit satisfactory completion certificates in support of each quoted experience alongwith work order. The satisfactory completion certificate should be signed by an officer not below the rank of Executive Engineer concerned in case of Government department or the rank of General Manager in case of Public Sector as the case may be.

(c) all the documents to be submitted shall be duly notarized."

24. It is apparent from the pre-qualification criteria that for acquiring eligibility the intended tenderer has to meet the financial criteria as specified in Clause 2.1, technical criteria as per Clause 2.2(A) and the construction experience in key activities as provided in Clause 2.2 of doing a contract of requisite nature. Clause 2.2(B) required similar construction work should have been completed satisfactorily within five years, costing not less than INR 32.52 crores or two similar works of INR 22.20 crores each and Clause 2.2(C) provided with respect to the construction experience in key activities

requirement for the above or other contracts executed during the period stipulated in clause 2.1 above, a minimum construction experience in the key activities as provided in form Schedule D Section I(v) relating to construction experience.

25. Schedule D Section I(v) referred to in the pre-qualification criteria is also extracted below:

> **"D(v): Construction Experience in key Activities.**
>
> **Fill up one (1) form per contract.**

Contract No..... of....	**Name of work**	
Award Date		
Award Date		**Completion date**
Role in contract	**Contractor**	**Sub contractor**
Total contract amount		
Employer's name Address Telephone/ fax no.		

E-mail		
	Description of the work executed	

Note: Attach copies of the work order and satisfied completion certificates in support of each quoted experience. The completion certificate should be signed by the officer not below the rank of concerned Executive Engineer in case of Government Department or in the rank of General manager in case of Public Sector/private sector as the cases may be.

Signature of tenderer
Date_____"

26. Check list was given in Schedule D Section 1(v) for the documents to be submitted along with tender. The same is extracted hereunder :

Name of the Agency			
S.No.	**Document**	**Details**	**Enclosed as annexure page No. from to**
		Bar cutting machine upto 40 MM dia	**1 No.**
		Cutting pumps	**3 Nos.**

		Pan Mixer of not less than 0.5 cum	**2Nos.**
		Plate vibrators of one ton capacity	**2Nos.**
		Minimum shuttering material to provided by the contractor (good quality steel plates inc steel propose etc.)	**L =200 mt Ht 0.30m L= 200mt Ht 1.00 m**
		Fixed from or slip from paver	**1 No.**
		Water Tankers (10-12KL)	**1 No.**
		Tipper/trucks	**6Nos.**
		Soil compactor 8-10 tones)	**1 No.**
		Concrete saw	**1 No.**
		Generator	**1 No.**

		(250 KVA)	
		Vibratory roller (8-10 Tones)	**1 No**
		Motor Grader (Clearing/ Spreading/ GSB/100 Cum/ hour)	**1 No**
		Mechanical paver for CC Road fixed form	**1 No**
		Mechanical paver for BT Road	**1 No**

Note: the above check list only provides for those documents which are mandatory for the tender pre qualification criteria. Tenderers are required to append, other documents also with the technical tender as required in the detailed NIT or elsewhere in the Part One (CSIDC F-1)"

(Emphasis supplied by us)

27. It is pertinent to mention here that in said list of mandatory plant etc. necessary for pre-qualification criteria, the Hot Mix Plant is not mentioned. Thus, it was not a pre-requisite to qualify for opening financial bid.

28. Apart from that, when we peruse the list of minimum plant, equipments and shuttering provided in clause 51 of the contract document, 18 items have been mentioned in which again the Hot Mix Plant is not mentioned in the list of "Minimum plant equipment and Shuttering". The list contained in Clause 51 of tender documents is extracted hereunder:

"Sr. No.	Particulars	Quantity (As required)
1.	Computerised and Fully Automatic Concrete batching plant of minimum 30 Cum/ hr capacity.	1 No. Minimum
	Cement Silos for 2 (two) days capacity with direct feeding and batching facility.	
	Hoopers for fine and course aggregate.	
	Approved Plasticizer dozing facility.	
	Software programme compatible to make corrections to batching/ mix design.	
	Concrete Pump of required capacity.	1 No.
	Transit Mixer of 6 Cum capacity.	4 Nos.
	MS concrete Piping system	1 Sets per

	for pumping	Pump set
2.	JCB	2 Nos.
3.	Vibrators	
a	Electric with low noise	3 Nos.
B	Petrol (Stand by)	2 Nos.
c	Needle Vibrator - 40	2 Nos.
d	Needle Vibrator – 65	2 Nos.
4	Bar Bending Machine up to 40 mm dia.	1 No.
5	Bar cutting Machine up to 40 mm dia.	1 No.
6	Curing Pumps	3 Nos.
7	Pan mixer of not less than 0.5 Cum	2 Nos.
8	Plane Vibrators of 1 ton capacity	2 Nos.
9	Minimum shuttering material to be provided by the contractor (Good quality steel plate's inc steel propos etc.)	L=200 mtHt 0.30 m L=200 mtHt 1.00 m
10	Fixed from or slip from paver	1 No.
11	Water Tankers (10-12 KL)	1 No.
12	Tipper/ Trucks	6 Nos.
13	Soil Compactor (8-10 Tones)	1 No.
14	Concrete Saw	1 No.
15	Generator (250 KVA)	1 No.
16	Vibratory roller (8-10 Tones)	1 No.
17	Motor Grader (Clearing/ Spreading/ GSB/ (100 Cum/hour)	1 No.
18	Mechanical paver for concrete road & Mechanical paver for B.T. road	1 No.

उक्त उल्लेखित टूल्स एंड प्लांट्स स्वयं के स्वामित्व का हो | यदि किराये पर लिया जाता है तो भारतीय गैर न्यायिक स्टाम्प पेपर पर किये जाने वाले

किरायानामा अनुबंध पत्र जो इसी कार्य के लिए जारी किया गया हो, उपलब्ध उक्त मशीनों का स्पष्ट रूप से उल्लेख हो एवं जिससे किरायानामा अनुबंध निष्पादित किया गया हो उस एजेंसी का टूल्स एंड प्लांट्स का स्वामित्व का सत्यापन कार्यपालन अभियंता द्वारा जारी किया गया हो | प्रमाण पत्र के अभाव में ठेकेदार की अनहर्ता मानते हुए निविदा नहीं खोली जावेगी |

Note: The details referred to herein above are only for the purpose of quantitive assessment. The specification & qualitative aspect of the shuttering material shall be in accordance with the BOQ & Technical specification. The details are to be provided within 30 days after award of contract."

29. In case, any of the aforesaid minimum equipment is not available and certificate is not appended to the bid, the financial bid was not to be opened.

30. The Hot Mix Plant finds place in different Section V of Schedule D. A bare reading of Schedule D Section V makes it clear that though it was part of tender form and was in the list of approved tools and machinery to be used for road work, it was not necessary for the purpose of technical evaluation at the stage of pre-qualification for opening of financial bid.

31. Considering the aforesaid various clauses, we are of the considered opinion that both the bidders L-1 and L-2 *i.e.* M/s. Raipur Construction Pvt. Ltd. and M/s. Arcons Infrastructure Pvt. Ltd. were technically qualified for opening of their financial bids. The opinion expressed by the High Court that L-2 was made to be qualified in spite of the fact that it was not having Hot Mix Plant, thus, cannot be accepted as available ground to disqualify L-2 tenderer. The relevant clauses of the tender document were not placed for consideration before the High Court as mentioned by the High Court and at last moment the Hot Mix Plant inclusion in Schedule D Section V was indicated to it by the disqualified contractor. In our opinion, Hot Mix Plant was not a mandatory requirement so as to open the financial bid. Thus, the financial bids of the two tenderers who succeeded at the pre-qualification stage had been rightly opened and considered. In our opinion, M/s. Raipur Construction was not favoured by qualifying the disqualified tenderer - M/s. Arcons Infrastructure Pvt Ltd to give the contract to it in surreptitious method and manner as observed by the High Court. M/s. Arcons

Infrastructure was, in fact, rightly qualified.

32. This Court in *Tejas Constructions and Infrastructure Pvt. Ltd. vs. Municipal Council, Sendhwa and Anr.* (2012) 6 SCC 464 has laid down that when the work is 60 per cent complete, Court should be slow to interfere as retendering would delay the project. In the absence of malafide or arbitrariness which is not made out in the instant case as 50 per cent of the work had been completed when the order was passed by the High Court, hence, no interference was warranted in the present case.

33. Now, we advert to the question of manipulation in the technical evaluation sheet which has been placed on record by the CSIDC in the form of document R-4/3 and 5/3 and by M/s. Amar Infrastructure Ltd. as Annexure P-4 in the High Court.

34. The Cyber Crime Cell has observed that some modification was made on 4th July, 2016, in the technical evaluation bid document P-4, a copy of which was filed by the respondent *i.e.* M/s. Amar Infrastructure Limited in the month of April. It was also not reported what change was

made in P-4. There was no such manipulation reported in the document of technical evaluation filed by the CSIDC in the High Court. We have seen the stand of CSIDC in its reply to the Writ Application preferred by M/s B.B. Verma which was dismissed by the High Court after looking into same technical evaluation report. The similar stand had been taken by the CSIDC and the very same document of technical evaluation had been placed on record in the aforesaid case as is apparent from the pleadings to which our attention has been drawn by the learned Attorney General. The document relied upon by the CSIDC had been placed on record of said case within a week of finalisation of the financial bid. Immediate filing of the same and taking the stand to the similar effect as has been taken in this matter also vouch for the correctness of document which has been filed by the CSIDC and there is no manipulation in it. As per report of the cyber crime cell also there is no manipulation in the document which has been relied upon by the CSIDC. The question of manipulation as to Hot Mix Plant is of no consequence as it was not a mandatory criteria for opening of financial bid. The ownership or otherwise of the

hot mix plant was not at all necessary and the plant was not required as mandatory one for the purpose of pre-qualification stage for opening of financial bid. It was only in the list of approved plant and equipments to be used under the certification of the Engineer-in-charge. It appears that the document P-4 which had been filed by M/s. Amar Infrastructure Ltd. contained the evaluation sheet but it was not as per requirement of aforesaid various clauses necessary for pre-qualification stage and non-submission of the information as contended by M/s. Amar Infrastructure Ltd. could not have disqualified M/s. Arcons Infrastructure and Constructions Pvt. Ltd. Thus, what was the necessary requirement as per criteria for opening of the financial evaluation had been rightly placed before the Technical Evaluation Committee on 3.3.2016. We have perused the original Minutes and the technical evaluation document filed by CSIDC which were placed before Technical Evaluation Committee, and was signed by the Executive Engineer and had been considered by the Technical Evaluation Committee. The minutes of the Technical Evaluation Committee had also been signed by the aforesaid

three officers. Apart from that in the minutes of Technical Evaluation Committee meeting dated 3.3.2016, details of qualifications have been mentioned and that accords with the document of evaluation sheet which has been relied upon by the CSIDC.

35. In our opinion, as the hot mix plant was not a mandatory requirement so as to open the financial bid, we decline to go into the submission raised on behalf of the appellants that M/s. Amar Infrastructure Limited has not disclosed how and when and from whom and by which process it obtained the document P-4 which is not signed by anybody as the fact remains that the document which is filed by the respondent also existed in the computer of the CSIDC. However, it looms in insignificance owing to the conclusions to which we have reached with respect to the Hot Mix Plant. May be that this document P-4 was also prepared by somebody in the CSIDC but it was not initialed or signed by anybody. It depicted the position of entire tender of L-2 but what was mandatory requirement for pre-qualification stage and technical evaluation was correctly placed before the Technical Evaluation Committee

in the form of document R-4/3 and R-5/3. In view of the aforesaid, we are of the opinion that the report of the Cyber Crime Cell is of no consequence with respect to pre-qualification criteria and opening of financial bids, since it is not disputed that successful tenderer L-1 fulfilled all conditions and had Hot Mix Plant also.

36. There was no manipulation in the mandatory requirements and may be that P-4 was prepared but that was of no consequence as deficiency of Hot Mix Plant, even if placed before Committee, would not have tilted the balance in favour of the respondent M/s. Amar Infrastructure Limited. The Committee on that basis could not have disqualified the L-2 tenderer.

37. Coming to the submission raised by the learned counsel for the respondent that M/s. Anil Buildcon (I) Pvt. Ltd. was disqualified for not possessing concrete paver as such L-2 tenderer M/s. Arcons Infrastructure Pvt. Ltd. also ought to have been disqualified for deficiency of Hot Mix Plant, we are unable to accept the submission as concrete paver was mentioned in the list of mandatory plant and

equipment for pre-qualification stage so as to open financial bid. Thus, this submission is found to be baseless. M/s Anil Buildcon (I) Pvt. Ltd. was rightly disqualified.

38. We also find that M/s. Amar Infrastructure Ltd. itself was disqualified and it had not questioned the qualification of the successful bidder but that of L-2 bidder - M/s. Arcons Infrastructure Pvt. Ltd. on ground that it was not qualified and its financial bid had been illegally opened. It was purely a fight between the rival tenderers involving no element of public interest. It was the respondent who was trying to cater to its business interest to ensure retendering by seeking disqualification of L-2 tenderer M/s. Arcons Infrastructure Pvt. Ltd. to whom contract had not been given. The Court has to be loath in such matter to make interference.

39. Resultantly, we find that there was no merit in the writ petition filed by the respondent in the High Court. Thus, we have no hesitation in setting aside the impugned judgment, order and directions passed by the High Court.

The appeals are allowed. Parties to bear their own costs as incurred.

.....J.
(ARUN MISHRA)

.....J.
(AMITAVA ROY)

NEW DELHI
MARCH 09, 2017.