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

% Judgment reserved on: 09.09.2025
Judgment delivered on: 16.09.2025

\+ **W.P.(C) 10536/2025 & CM APPL.43700/2025**

M/S PROFESSIONAL GROUP .....Petitioner

versus

INDIAN OIL CORPORATION LTD & ORS .....Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Keshav Sehgal, Mr. Shivam Gaur, Mr. Aryan Kumar, Ms. Nandita Sharma, Ms. Rashi Singh and Ms. Shabina, Advocates.

For the Respondents : Mr. V.N. Koura and Ms. Paramjeet Benipal, Advocates for R-1 & R-2.
Mr. Suraj Kumar Singh, Mr. Bharat Singh, Mr. Abhay Singh and Mr. Akshay Singh, Advocates for R-3/BHPL.

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 quashing of the impugned list of technically qualified bidders dated 04.07.2025 and the impugned result of the financial bids dated 11.07.2025, as uploaded by respondent no.1 on the GeM portal in relation with Notice Inviting Tender dated 19.03.2025, whereby the respondent no.3

was declared as L1 bidder. It further seeks a direction declaring the petitioner as L1 bidder and awarding the tender in favour of the petitioner.

2. The facts in brief are that a Notice Inviting Tender (NIT) bearing no.RHQCC24158 dated 19.03.2025 was issued by respondent nos.1 & 2/Indian Oil Corporation Ltd. (Refineries Division) (hereinafter referred to as *'IOCL'*) for providing integrated hospitality, catering and miscellaneous services and co-ordination/management of events at IIPM, Gurgaon, a unit of respondent no.1, for a period of three years from the date of handing over of the site. The petitioner submitted its bid for the said NIT on 09.04.2025. Thereafter, on 04.07.2025, IOCL uploaded the impugned list on GeM portal whereby out of 11 bids which were received, the bids of the petitioner and 2 other firms (including respondent no.3) were held to be technically qualified. On 11.07.2025, the impugned result was uploaded on the GeM portal whereby the petitioner was selected as L2 while the respondent no.3 was declared as L1 by the IOCL. Aggrieved by such decision, the present writ petition has been filed.

CONTENTIONS OF THE PETITIONER:

3. Mr. Keshav Sehgal, learned counsel for the petitioner submitted that the NIT, *inter alia,* envisaged in Clause 11 that as an additional technical requirement, the bidder should possess catering related experience of minimum five (5) years of operating and managing hospitality/catering related services. However, the respondent no.3, which has been held as technically qualified and shortlisted as L1 bidder, is a company incorporated on 03.12.2021 only. It was stated that the fact that the respondent no.3 has not

even been in existence for 5 years clearly renders it ineligible to bid for the said NIT as evidently, it cannot fulfill the technical requirement of mandatory experience of five (5) years of providing hospitality/catering services.

4. It was further submitted that Clause 20(v) of the NIT as well as Clause 8.1.1(xiii) of the Additional Instructions to Bidders (hereinafter referred to as *'AITB'*) in the NIT categorically stipulates that the experience of only the bidding entity shall be considered unless specifically permitted in the tender document. On this, it was contended that the IOCL, by taking into account the experience of the sole proprietorship concern i.e., M/s. SAI Hospitality Services (hereafter referred to as *'M/s. SHS'*) which was allegedly taken over by the respondent no.3, has violated the conditions of the NIT which are sacrosanct.

5. Learned counsel for the petitioner stated that though IOCL has relied upon the Integrated Works Procedure Manual (hereinafter referred to as *'IWPM'*) to justify such violation of the terms of the NIT, however, as the IWPM does not form part of the NIT and is only an internal document of the IOCL, it ought to be left out of the purview of consideration for evaluation of the bids with respect to the subject NIT. To further substantiate his argument, Mr. Sehgal relied upon Clause 20(i) of the NIT which expressly states that the provisions/conditions stipulated in the NIT supersede all of the sections of the tender document. On this, he contended that the clauses of the said IWPM are in direct contradiction with the clauses of the NIT, and definitely cannot have an overriding effect on the clear and unambiguous terms of the NIT.

6. Reliance is also placed on (i) Clause 28.2(xiii) of the AITB in the NIT wherein it has been stated that no exception or deviation shall be accepted to the pre-qualification criteria in the NIT; (ii) Clause 20(xxiii) of the NIT which expressly states that offers not meeting statutory requirement are liable to be rejected; and (iii) Clause 1.12 of the AITB which states that the failure to fulfill minimum pre-qualification criteria renders the offer/bid liable for rejection, to submit that the bid of respondent no.3 has been accepted in stark violation of the conditions of the NIT, requiring interference of the Court.

7. Mr. Sehgal further placed reliance on the judgement of a co-ordinate Bench of this Court in ***M/s. Pratap Technocrats Pvt. Ltd. vs. M/s. Bharat Sanchar Nigam Ltd., 2017 SCC OnLine Del 8747***, where, while distinguishing the pronouncement of the Hon'ble Supreme Court in ***New Horizon Ltd. vs. Union of India, (1995) 1 SCC 478***, it was held that while evaluating the eligibility of bidders, the experience of sole proprietorship concern cannot be taken into account in respect of a company that subsequently acquires it, especially when the sole proprietorship did not cease its business even after such incorporation. It was also informed that the Special Leave Petition bearing SLP(C) 24655/2017 preferred against the aforesaid judgment stood dismissed by the Hon'ble Supreme Court *vide* order dated 15.09.2017.

8. Learned counsel for the petitioner contended that the plea regarding cessation of the said sole proprietorship concern (M/s. SHS) and its alleged absorption with the respondent no.3 is misleading and patently false. He contended that M/s. SHS had filed its GST Return as recently as on

11.08.2025 and even participated in tenders till 2024, which proves that M/s. SHS is still carrying on business without any interruption. Mr. Sehgal referred to various documents annexed to the writ petition which were handed over to the Bench in the form of a convenience compilation to submit that the respondent no.3 has been misleading the tendering authority and not disclosing true, correct and material facts, which, if disclosed, would also render respondent no.3 ineligible for participation in the subject tender. This is without prejudice to the earlier argument that IWPM itself cannot be relied upon at all by the tendering authority to take into account the experience of M/s. SHS to hold respondent no.3 eligible for participation in the subject tender.

9. Learned counsel was at pains to demonstrate that despite the assertion that respondent no.3 has purportedly taken over M/s. SHS, yet, both the entities have continued to maintain their business, finances and legal entities separately, indicating that they are not one but two separate and distinct legal entities. If that were true, learned counsel stoutly submitted that it was impermissible, both in law and on facts, for respondent no.3 to reckon the work experience gained by M/s. SHS as its own. On that touchstone, learned counsel vehemently contended that not only the declaration of respondent no.3 as L1 is wrong but the award of contract itself would be vitiated by fraud. Resultantly, according to him, the declaration of respondent no.3 as L1 as also the award of contract in its favour ought to be quashed and set aside. He prayed that as a consequence, since the petitioner was declared as L2, a direction to IOCL to award contract in petitioner's favour ought to be passed.

CONTENTIONS OF RESPONDENT Nos.1 & 2:

10. *Per contra,* Mr. V.N. Koura, learned counsel for the IOCL at the outset brought our attention to the IWPM, specifically to Serial no.7 of the Table in Clause 3.5.3 of the IWPM pertaining to acceptance of pre-qualification criteria (PQC), to state that the said clause allows a new entity to use the financial credentials (for financial criteria) and the experience (for techno-commercial experience criteria) of the erstwhile proprietorship concern/partnership firm, in a scenario where a new entity formed has taken over all the assets and liabilities of the proprietorship concern or partnership firm wherein one or more of the Directors of the new entity were the proprietor or partners and the erstwhile proprietorship concern/partnership firm has ceased doing business after taking over of the business by the new entity.

11. On facts, he submitted that the respondent no.3-M/s. Bluegent Hospitality Pvt. Ltd. was established by the sole proprietor (Mr. Prakash Mahabala Shetty) of M/s. SHS to take over the assets, liabilities and business of M/s. SHS. It was stated that upon incorporation of respondent no.3 on 03.12.2021, the said sole proprietor became part of respondent no.3's directorial board with a voting power of more than 50%. It is further stated that the respondent no.3 thereafter entered into a Slump Sale Agreement dated 01.04.2022 with M/s. SHS, whereby it took over the business of the said sole proprietorship along with all its assets and liabilities against which the sole proprietor was allotted equity shares in respondent no.3 company. The agreement also provided that the said sole proprietor would be in charge of the business of respondent no.3. By the Business Transfer Agreement dated

01.06.2022, the respondent no.3 took over the business of M/s. SHS as well as all of its properties, assets, liabilities, rights and obligations. The said transfer and takeover of business was certified by a certificate dated 30.05.2022 issued by a Chartered Accountant.

12. It was contended that all the relevant documents were furnished by respondent no.3 alongwith its bid and were considered by the IOCL for the techno-commercial evaluation of the respondent no.3's bid. The said evaluation was done keeping in view the purpose of work to be performed under the contract and, in light of the practical commercial guidelines as incorporated in the applicable IWPM, the cumulative experience of the bidder, both as a proprietary business prior to its takeover by respondent no.3 and post the takeover by the respondent no.3 were considered. It was submitted that the said evaluation was in consonance with the terms of the NIT and the applicable law. He also submitted that in any case, Clause 20(i) of the NIT does not restrict application of the IWPM which is an essential manual of the IOCL laying down necessary guidelines for the purpose of evaluation of the bids.

13. Mr. Koura submitted that since the respondent no.3 was found to be technically qualified with the lowest price bid, it was rightly declared L1 and consequently, awarded the contract. He stated that the said decision of the IOCL being in consonance with the terms of the NIT as well as the IWPM, does not call for any judicial interference by this Court and prayed that the present petition be dismissed.

CONTENTIONS OF RESPONDENT NO.3:

14. Mr. Suraj Kumar Singh, learned counsel appearing for respondent no.3 at the outset referred to the judgment of this Court in ***Pratap Technocrats Pvt. Ltd*** *(supra)* to submit that the reliance of the petitioner on the said judgment to support its contention is misplaced. While referring to para nos.1, 18, 22 and 25 of the said judgment, he submitted that the same ought to be read in favour of respondent no.3. That apart, he relied upon the judgment of the Hon'ble Supreme Court in ***Montecarlo Ltd. vs. NTPC Ltd***., ***(2016) 15 SCC 272*** to submit that the exercise of judicial review could only be called when the decision taken by the authority is arbitrary, *mala fide* or adopts a procedure which is meant to favour one party. He reiterated that it is the decision making process and not the decision itself which could be the subject matter of challenge under judicial review. Contrary to the judgment of a co-ordinate Bench of this Court in ***M/s. Pratap Technocrats Pvt. Ltd.*** *(supra),* learned counsel relied upon the judgment of a co-ordinate Bench of this Court in ***M/s. Bharat Power Control Systems vs. Govt. of NCT of Delhi & Ors., 2016 SCC OnLine Del 640*** to submit that the past experience of an entity as a sole proprietorship or partnership can be counted towards the cumulative experience that the successor entity may seek to submit to the tendering authority as its own experience. In that context, learned counsel invited our attention to para 20 of the said judgment, which in turn extracted para 23 of ***New Horizon Ltd.*** *(supra)* rendered by the Hon'ble Supreme Court. Predicated on the aforesaid judgments, learned counsel submitted that there is no prohibition or a bar, as is well settled, for a successor entity to reckon its

cumulative work experience to include the experience gained by the previous entity as a proprietorship or a partnership firm.

15. On facts, learned counsel for respondent no.3 contended that except for the objection in respect of the alleged shortfall of work experience of five years as mandated by the NIT, the petitioner has really no other factual objections to the qualifications or other eligibility criteria of respondent no.3. He submitted that in view of the mandate as expounded in ***New Horizons Ltd.*** *(supra)* and ***M/s. Bharat Power Control System*** *(supra)*, the said objection of the petitioner in respect of purported bar from reckoning the work experience of the previous entity, disappears. He submitted that on this count alone, the writ petition may be dismissed.

16. Mr. Singh forcefully submitted that it would be pertinent to take into account the fact that the proprietor of the previous entity is also a Director of the successor entity which is a Private Limited Company, holding 98% shares. His contention on that count was that the person behind the previous entity and the successor entity is largely the same and therefore, there is a continuity of nature of business and the experience gained while executing the works. He vehemently submitted that the entire assets alongwith its capital and liabilities of the sole proprietorship firm (M/s. SHS) was completely taken over and subsumed into respondent no.3 and as such, there could not be a bar from seeking advantage of the previous work experience for the purpose of being eligible in the subject NIT. Additionally, learned counsel had handed over the Bench a compilation of documents, comprising copies of EPFO registration certificates and the ESIC Number of the sole proprietorship i.e. M/s. SHS

which continued in the name of respondent no.3. So far as the contention of the petitioner regarding the continuation of the GSTIN of M/s. SHS beyond the year 2022 is concerned, he submitted that it was kept alive only on account of rental income and professional fee which the sole proprietor (Mr. Prakash Mahabala Shetty) was receiving in his personal capacity.

17. Lastly, learned counsel for respondent no.3 relied upon Clause 3.5.3 of the IWPM of IOCL to submit that the tendering authority has the discretion to take into account the work experience of the previous entity for reckoning the work experience of the successor entity which would be the bidder. In the present case, according to learned counsel, respondent no.3 being the successor entity to M/s. SHS, the tendering authority had correctly applied the provisions of Clause 3.5.3 of IWPM and rightly declared respondent no.3 as L1 and awarded the contract in its favour. In addition, he submitted that this changeover from M/s. SHS to respondent no.3 was intimated to respondent no.1 way back in the year 2022 alongwith intimation to other entities and authorities who have awarded tenders in the name of respondent no.3, which cannot be disputed by the petitioner. He thus prayed that the writ petition be dismissed.

ANALYSIS & CONCLUSION:

18. We have heard learned counsel for the parties, perused the records of the case, including the IWPM and the documents pertaining to M/s. SHS and respondent no.3 and others handed over the Bench by rival parties.

19. Mr. Sehgal, learned counsel for the petitioner had opened his arguments on the claim that various provisions of the NIT would not only demonstrate

that the respondent no.3 is ineligible to participate in the tender, but also that the provisions of Clause 20(i) of the NIT were in the nature of a *non-obstante* clause overriding any other clause of the NIT and other documents. In other words, learned counsel sought to impress upon us that the reliance of the tendering authority on Clause 3.5.3 of the IWPM was not permissible in law. In that backdrop, he would have us believe that once Clause 3.5.3 of the IWPM is eschewed from consideration, respondent no.3 would resultantly become ineligible to even participate in the tender process. We have carefully considered the aforesaid submissions since it appears to be quite forceful and logical. However, we hasten to add that on a closer scrutiny, it is not so.

20. No doubt, Clause 11 of the NIT stipulated that a bidder ought to have a minimum of five years of experience of operating/running/managing hospitality/catering services business and other similar stipulations, however, we are unable to accede to the submission that by virtue of Clause 20(i) of the NIT, the provisions of IWPM of the tendering authority shall also stand excluded. It is relevant to consider sub-clause (i) of Clause 20 upon which the petitioner predicated its arguments. The same reads thus:-

> *"20. General*
>
> *Bidder to note*
>
> *(i) Provisions/Conditions stipulated in NIT supersedes all of the sections of Tender document…"*

From a perusal of the aforesaid, we are persuaded to believe that Clause 20(i) of the NIT is a *non-obstante* clause overriding other conditions of the tender document. It is to be borne in mind that the *non-obstante* clause and the

language employed therein restrict its overriding nature only to the extent of the Sections of the tender document and not to the clauses of IWPM. A *non-obstante* clause cannot be read in a manner to apply to any other document or instrument not specifically mentioned therein, more so, as it restricts its operation only to the tender documents. Thus, read in that manner, it is clear that Clause 20(i) of the NIT would not override or restrict or even prohibit application of Clause 3.5.3 of the IWPM.

21. Another relevant clause argued and to be considered is Clause 20(v) of the NIT which limits the consideration of experience to the bidding entity alone and specifically prohibits use of credentials of the parent or sister or associated or subsidiary or any other group company of the bidding entity to be reckoned for the purposes of holding the bidding entity eligible for the conditions in the NIT. While this may be true and correct for the entities participating in the bids, however, since we have observed above that the *non-obstante* Clause 20(i) of the NIT would still not override the clauses of IWPM, it cannot be held, *stricto sensu*, that the tendering authority is completely bound by Clause 20(v) and would not have the leverage or the play in the joints to rely upon Clause 3.5.3 of the IWPM. After all, it is trite that the tendering authority alone knows its requirements and the interpretation of its conditions which best suit its needs.

22. In the aforesaid context, our views are fortified by the observations contained by the judgment of the Supreme Court in ***New Horizons Ltd.*** *(supra)* as noted in para 20 of ***M/s. Bharat Power Control Systems*** *(supra).* The relevant para of ***New Horizons Ltd.*** *(supra)* is extracted hereunder:-

*"**23.** Even if it be assumed that the requirement regarding experience as set out in the advertisement dated 22-4-1993 inviting tenders is a condition about eligibility for consideration of the tender, though we find no basis for the same, the said requirement regarding experience cannot be construed to mean that the said experience should be of the tenderer in his name only. It is possible to visualise a situation where a person having past experience has entered into a partnership and the tender has been submitted in the name of the partnership firm which may not have any past experience in its own name. That does not mean that the earlier experience of one of the partners of the firm cannot be taken into consideration. Similarly, a company incorporated under the Companies Act having past experience may undergo reorganisation as a result of merger or amalgamation with another company which may have no such past experience and the tender is submitted in the name of the reorganised company. It could not be the purport of the requirement about experience that the experience of the company which has merged into the reorganised company cannot be taken into consideration because the tender has not been submitted in its name and has been submitted in the name of the reorganised company which does not have experience in its name. Conversely there may be a split in a company and persons looking after a particular field of the business of the company form a new company after leaving it. The new company, though having persons with experience in the field, has no experience in its name while the original company having experience in its name lacks persons with experience. The requirement regarding experience does not mean that the offer of the original company must be considered because it has experience in its name though it does not have experienced persons with it and ignore the offer of the new company because it does not have experience in its name though it has persons having experience in the field. While considering the requirement regarding experience it has to be borne in mind that the said requirement is contained in a document inviting offers for a commercial transaction. The terms and conditions of such a document have to be construed from the standpoint of a prudent businessman. When a businessman enters into a contract whereunder some work is to be performed he seeks to assure himself about the credentials of the person who is to be entrusted with the performance of the work. Such credentials are to be examined from a commercial point of view which means that if the contract is to be entered with a company he will look into the background of the company and the persons who are in control of the same and their capacity to execute the work. He would go not by the name of the company but by the persons behind the company. While keeping in view the past experience he would also take note of the present state of affairs and the equipment and resources at the disposal of the company. The same has to be the approach of the authorities while considering a tender received in response to the advertisement issued on 22-4-1993. This would require that*

first the terms of the offer must be examined and if they are found satisfactory the next step would be to consider the credentials of the tenderer and his ability to perform the work to be entrusted. For judging the credentials past experience will have to be considered along with the present state of equipment and resources available with the tenderer. Past experience may not be of much help if the machinery and equipment is outdated. Conversely lack of experience may be made good by improved technology and better equipment. The advertisement dated 22-4-1993 when read with the notice for inviting tenders dated 26-4-1993 does not preclude adoption of this course of action. If the Tender Evaluation Committee had adopted this approach and had examined the tender of NHL in this perspective it would have found that NHL, being a joint venture, has access to the benefit of the resources and strength of its parent/owning companies as well as to the experience in database management, sales and publishing of its parent group companies because after reorganisation of the Company in 1992 60% of the share capital of NHL is owned by Indian group of companies namely, TPI, LMI, WML, etc. and Mr Aroon Purie and 40% of the share capital is owned by IIPL a wholly-owned subsidiary of Singapore Telecom which was established in 1967 and is having long experience in publishing the Singapore telephone directory with yellow pages and other directories. Moreover in the tender it was specifically stated that IIPL will be providing its unique integrated directory management system along with the expertise of its managers and that the managers will be actively involved in the project both out of Singapore and resident in India."

23. We find from the cumulative reading of the NIT conditions in Clause 20(i), Clause 20(v) of the NIT, Clause 3.5.3 of the IWPM and the ratio of the judgments noted above that the tendering authority would have a right and an entitlement to consider the provisions of Serial no.7 of Table under Clause 3.5.3 of the IWPM while evaluating the eligibility conditions stipulated in the NIT. Though the clauses of the NIT contain conditions which are necessary for deciding the eligibility criteria, however the provisions of IWPM, particularly provisions like Clause 3.5.3 are meant to aid IOCL while evaluating the eligibility criteria of various bidders. It would be pertinent to note that Clause 3.5.3 of the IWPM squarely relates to a new entity which may

be formed as a result of merger of two entities coupled with the cessation of the previous entity. Apart from that, the Table provided under the said clause considers various conditions and nature of entities more than one which may come together and the manner in which IOCL is to evaluate the financial and techno-commercial bids of such entities. It is in that context that Serial no.7 of the Table under Clause 3.5.3 of the IWPM gains significance and may be made applicable to the present case. As observed earlier, the *non-obstante* clause contained in Clause 20(i) of the NIT would only override various sections of the NIT and the tender documents alone and not the IWPM. Considered in that angle, we do not think that IOCL was precluded from evaluating the bidding entities of the subject NIT with the prism of Serial no.7 of the Table under Clause 3.5.3 of the IWPM.

24. So far as the arguments of the petitioner in respect of parallel continuation of M/s. SHS and respondent no.3, with both entities having separate GSTIN and other incidental documents are concerned, it would be relevant to note that these documents were not placed by the petitioner before the tendering authority i.e. IOCL. More importantly, from a consideration of these documents relied upon by the petitioner as also respondent no.3, what with allegations and counter allegations and denial of facts and hotly contested disputes on that count, we do not propose to enter into or traverse such controversies. This is for the simple reason that a Constitutional Court exercising powers of judicial review under writ jurisdiction is circumscribed and precluded from appreciating hotly contested and disputed questions of facts which would require appreciation of evidence, that too, both oral and

documentary. In this regard, it would be worthwhile to refer to the judgments of the Hon'ble Supreme Court in ***Union of India vs. Puna Hinda, (2021) 10 SCC 690*** and ***Shubhas Jain vs. Rajeshwari Shivam, 2021 SCC OnLine SC 562***. In that view of the matter, we refrain from making any observations in respect of the contentions and counter raised by the petitioner and respondent no.3, respectively.

25. Additionally, we do not find any whimsicalness, arbitrariness or any *mala fides* in the actions taken by the IOCL while declaring respondent no.3 as L1 and further awarding contract to it, in view of the aforesaid observations made us. Absent such conditions, the Constitutional Court would not exercise powers of judicial review in view of the law as settled by the Supreme Court in a catena of judgments like ***Montecarlo*** *(supra)*.

26. In view of the aforesaid, the present petition is dismissed along with pending applications, if any, however without any order as to costs.

TUSHAR RAO GEDELA, J

DEVENDER KUMAR UPADHYAY, CJ

SEPTEMBER 16, 2025/*aj/rl*