NEUTRAL CITATION NO. 2026:MPHC-JBP:7231

IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

**HON'BLE SHRI JUSTICE SANJEEV SACHDEVA,
CHIEF JUSTICE**

&

HON'BLE SHRI JUSTICE VINAY SARAF

WRIT PETITION No. 34302 of 2025

GERA GREEN INNOVATION

Vs.

NORTHERN COALFIELDS LIMITED AND OTHERS

Advocates for the Petitioner:

Shri Naman Nagrath, Senior Advocate with Shri Ritwik Parashar Advocate for Petitioner.

Advocates for the Respondents:

Shri Anoop Nair Senior Advocate with Ms. Surbhi Singh Advocate for Respondent nos.1 and 2.

Shri Sanjay Agrawal, Senior Advocate with Shri Siddharth Kumar Sharma Advocate for Respondent no 3.

Reserved On : 09.10.2025
Pronounced On : 27.01.2026

JUDGMENT

Per: Justice Sanjeev Sachdeva

1. Petitioner *inter alia* seeks quashing of Letter of Acceptance dated 06.08.2025, whereby the entire tender has been awarded to Respondent No. 3. Petitioner seeks reconsideration of the award of tender by applying the correct Public Procurement Policy for Micro and Small Enterprises (MSE) Order, 2012 thereby awarding 75% of the work to the Petitioner (L1) and 25% to the L2 (MSE, other than Respondent No. 3).

2. Respondent No. 1 — Northern Coalfields Limited (NCL), issued an e-tender for 62.05 lakh tonnes of coal transportation from specified seams to Spur-I Siding, including loading into trucks / wagons, for two years. The result of the tender was declared on the website of GeM and the Bid submitted by the Petitioner was declared as L1 (lowest) in the financial evaluation. However, the tender was awarded to Respondent No. 3 i.e. the L2 bidder by treating it as an MSE within a price band of L1 + 15% under the Public Procurement Policy for Micro and Small Enterprises (MSE) Order, 2012 (hereinafter referred to as the MSE Order 2012.

3. Petitioner has impugned the award of tender to Respondent No. 3 on the ground that it could not have been treated as an MSE. It is contended that the Turnover of the Respondent No. 3 for the Financial Year 2021-2022 was 47.078 Crores and for the Financial Years 2022-2023 and 2023-2024 was Rs. 118.978 Crores and 145.373 Crores respectively. It is submitted that as on the bid submission date the

limits applicable were Micro ≤ 5 cores, Small ≤ 50 Crores and Medium ≤ 250 Crores. The limits were revised on 01.04.2025. It is contended that as the turnover of Respondent No. 3 exceeded Rs. 50 Crores it was a Medium Enterprise and thus not eligible to the benefit as MSE.

4. It is further submitted that L2 was wrongly extended the MSE preference. If the tender had been treated as split able, only 25% could go to L2 (on price match) and 75% to the Petitioner (L1). By labeling the tender "non split able." Respondents No. 1 and 2 enabled the entire contract to be diverted to L2.

5. Learned Senior Counsel for the Petitioner submits that Respondent No. 3 has formed a new company with a new GST and new PAN. He submits that Respondent No. 3 has obtained the tender by using a micro status but using the credentials of other company which has hundreds of cores turnover. It is submitted that as Respondent No. 3 has relied upon the work experience of the previous concern, it could not have obtained the benefit of the MSE Order 2012.

6. Reference may be had to the MSE Order 2012 in respect of the preferential treatment being given to MSE. The relevant clause reads as under:

> *"III.* ***The following clauses are applicable for both One Part and Two Part Systems****:*
>
> ***A. Procurement from Micro and Small Enterprises (MSEs) shall be applicable for Service Tenders in accordance to the notification of Govt. of India and***

including its amendment(s) as notified by GoI from time to time

i) *Subject to meeting terms and conditions stated in the tender document including but not limiting to prequalification criteria, 25% of the work will be awarded to MSE as defined in MSE Procurement Policy issued by Department of Micro, Small and Medium Enterprises (MSME) for the tendered work/item. Where the tendered work can be split, MSE quoting a price within a price band of L1 + 15% shall be awarded at least 25% of total tendered work provided they match L1 price. In case the tendered work cannot be split, MSE shall be awarded full work provided their quoted price is within a price band of L-1 + 15% and they match the L-1 price.*

ii) *In case of more than one such MSEs are in the price band of L-1 + 15% and matches the L-1 price, the work may be shared proportionately if the job can be split. If the job cannot be split, then the opportunity to match the L-1 rate of the tender shall be given first to MSE who has quoted lowest rate among the MSEs and the total job shall be awarded to them after matching the L-1 price of the tender, in case the L-1 is other than MSE. If MSE is a L1 Bidder, full work will be awarded to such Bidder. If the MSE who have quoted lowest rate among the MSEs in the price band of L-1 + 15% do not agree to match the rate of L-1 of the tender, then the MSE with next higher quoted rate in the price band of L-1 + 15% shall be given chance to match the rate of L-1 for award of the complete job. This process to be repeated in till work is awarded to MSE or MSE Bidders are exhausted.*

NOTE- Bidders should take note that above work cannot be split.

iii) *Out of the 25% target of annual procurement from micro and small enterprises 3 (three) percent shall be earmarked for procurement from micro and small enterprises owned by women. In the event of failure of such MSEs to participate in the tender process or meet the tender* *requirements and L-1 price, 3(three) percent sub-target so earmarked shall be met from other MSEs.*

iv) Out of the 25% target of annual procurement from micro and small enterprises 4 (four) percent shall be earmarked for procurement from micro and small enterprises owned by Scheduled Caste & Scheduled Tribe entrepreneurs. In the event of failure of such MSEs to participate in the tender process or meet the tender requirements and L-1 price, four percent sub-target so earmarked shall be met from other MSEs.

v) To qualify for entitlement as SC/ST owned MSE, the SC/ST certificate issued by District Authority must be submitted by the Bidder in addition to certificate of registration with anyone of the agencies mentioned in paragraph (I) above. The Bidder shall be responsible to furnish necessary documentary evidence for enabling CIL to ascertain that the MSE is owned by SC/ST. MSE owned by SC/ST is defined as:

* *In case of proprietary MSE, proprietor(s) shall be SC /ST.*

* *In case of partnership MSE, the SC/ST partners shall be holding at least 51% shares in the enterprise.*

* *In case of Private Limited Companies, at least 51% share shall be held by SC/ST promoters.*

vi) Classification of Micro and Small Enterprise are as under:

a) Micro Enterprise -Enterprise where the investment in Plant and Machinery or Equipment does not exceed One Crore Rupees and Turnover does not exceed Five Crore Rupees.

b) Small Enterprise- Enterprise where the investment in Plant and Machinery or Equipment does not exceed Ten Crore Rupees and Turnover does not exceed Fifty Crore Rupees.

vii) Micro and Small Enterprises (MSEs) registered under Udyam Registration are eligible to avail the benefits under the policy. Verification of MSE status of bidder is mandatory.

viii) The MSEs are required to submit copy of documentary evidence, issued by their registering authority whether they are small enterprise or micro enterprise as per provisions of Public Procurement Policy for Micro and Small Enterprise (MSEs) Order, 2012 with latest guidelines/clarifications provided by MoMSME."

(underlining supplied)

7. In terms of the procurement policy 25% of the work is to be awarded to MSE as defined in MSE order. Where the tendered work can be split, MSE quoting a price within a price band of L1 + 15% shall be awarded at least 25% of the total tendered work provided they match L1 price and if the tendered work cannot be split, MSE shall be awarded full work provided their quoted price is within a price band of L-1 + 15% and they match the L-1 price. The note stipulates that the work cannot be split.

8. As per the Respondents No. 1 & 2, the above clause was applied and Respondent No. 3 was asked to match the L1 price offered by the Petitioner. They matched the price and as tender stipulated that the work cannot be split, the entire work was awarded to Respondent No. 3. It is contended that Respondent No. 3 is classified as Micro Enterprise for the year 2024-25 as per the UDYAM certificate, benefit was accorded to them.

9. As per the Petitioner, Respondent no. 3 Harsh Roadlines Private Limited is a Company incorporated by the Sole Proprietor of Harsh

Enterprises. Since it is a company recently incorporated, it has obtained MSE registration. It is submitted that for the purposes of claiming eligibility for the subject tender, it has availed of the work experience of the proprietorship concern. It is contended that the Sole Proprietorship concern does not qualify as an MSE and as such the benefit of MSE cannot be claimed by the Respondent No. 3, if it was using the work experience of a non MSE.

10. Per contra, the contention on behalf of Respondent No. 3 is that the Company came into existence on 21.03.2024 and was classified as a Micro Enterprise on 12.06.2024. It is submitted that the MSME registration is entirely online and can be obtained from the Udyam registration portal. An enterprise applying online for MSME registration has to upload Aadhar number and PAN number. Thereafter, PAN and GST-linked details of the enterprise is taken automatically by the Udyam Registration Portal from the Government database. The Udyam Registration portal classifies an enterprise as a Micro, Small or Medium enterprise based on a composite criterion of both investment in plant, machinery/equipment and annual turnover. The portal automatically determines the classification by fetching data from the Income Tax and GST portals based on the PAN and GSTIN provided. After verifying the investment in plant and machinery as well as annual turnover, an enterprise is classified as micro, small or medium.

11. The e-tender stipulated the eligibility qualification based on Work Experience. The relevant clause reads as under:

> *"c) **Work Experience**: The Bidder must have experience of works (includes completed/ ongoing) of similar nature valuing 50 % of the Annualized estimated value of the work put to tender (for period of completion over 1 year) / 50 % of the Estimated value of the work (for completion period up to one year) put to Tender, in any year (consecutive 365 days) during last 7(seven) years ending last day of month previous to the one in which bid applications are invited."*

12. As per the tender document the Bidder, to qualify in the tender, must have experience of completed or ongoing works of similar nature valuing 50% of the annualized estimated value of the work. The estimated cost of work as per the tender document is Rs. 96,30,64,399/-. The period of completion stipulated is 730 days i.e. 2 years.

13. Respondent No. 3 is a private limited Company incorporated on 21.03.2024 and the documents submitted by it show that it commenced its operations on 01.04.2024. The Turnover Certificate submitted by Respondent No. 3 is for the year Financial Years 2021-22, 2022-23 and 2023-24 and Turnover shown is Rs. 47,07,87,603/-, Rs. 118,97,88,223/- and Rs. 145,37,34,230/- respectively. The Turnover Certificate certifies that the Total Turnover of M/s Harsh Roadlines Private Limited (previously known as Harsh Enterprises) having PAN # AAHCH2669E during the period 01.04.2021 to 31.03.2024 is as shown above.

14. The PAN card uploaded by Respondent No. 3 shows the date of incorporation as 21.03.2024. Clearly the Turnover Certificate covering the period 01.04.2021 to 31.03.2024 does not relate to Respondent No. 3. Said company was not in existence during the said period and

admittedly commenced its operations on 01.04.2024. The PAN No. of Harsh Enterprises is APAPA3482R. Respondent No. 3 has been incorporated by conversion of proprietorship to Company with two promoters Mr. Shakil Ahmad son of Adbul Rajjak (shown as the Existing owner) and Mr. Abdul Rajjak Siddiqui son of G.R. Siddiqui (shown as father of Existing Owner).

15. The MSE Order 2012 has been formulated with i*nter alia* the object of promotion and development of micro and small enterprises. Respondent No. 3 seeks to claim benefit of the MSE order 2012 by claiming the status of MSE. For claiming the status of MSE, it contends to be newly incorporated company. The contention of Respondent No. 3 is that the online portal automatically determines the classification by fetching data from the Income Tax and GST portals based on the PAN and GSTIN provided. The date of Udyam registration is 12.06.2024 and the PAN No. of Respondent No. 3 was that of a newly incorporated company with no turnover prior to 31.03.2024. Respondent No. 3 did not provide the PAN No. of the proprietorship concern which had a turnover of over Rs. 145 Crores in 2023-2024. Had Respondent No. 3 provided the PAN No. of the proprietorship concern, it would not have been classified either as a Micro or a Small enterprise.

16. Respondent No. 3 submitted its bid document under the category of Micro Enterprise. As per the notification dated 26.06.2020 an enterprise could be classified as Micro if its turnover

did not exceed five cores. By notification dated 21.03.2025, it has been enhanced to Rs. Ten cores.

17. Respondent No. 3, for claiming benefit of the MSE Order 2012 i.e. preference being given to MSE who quoted price within a price band of L-1 + 15%, L1, claims status of Micro Enterprise i.e. having a turnover of less than Rs. 5 Crores. However, to show eligibility, Respondent No. 3 relies upon the turnover of Harsh Enterprises, its proprietorship concern and files documents showing turnover of over Rs. 47 Crores for the Financial Year 2021-22, over around Rs. 119 Crores for the Financial Year 2022-23 and over Rs. 145 Crores for the Financial Year 2023-24. Admittedly Harsh Enterprises does not qualify or have the status of Micro or Small Enterprise and is not entitled to take benefit of the MSE Order 2012. The conversion from proprietorship to Private Limited Company as a new entity is to claim benefit of the preference clause in the MSE Order 2012 and tax exemptions and other benefits available to Start Ups under the Start Up India Scheme. Respondent No. 3 clearly cannot qualify as a Start Up if it seeks to take benefit of the work experience and turnover of the proprietorship concern.

18. The Judgment in the case of ***New Horizons Ltd. v. Union of India*, (1995) 1 SCC 478 at page 492** relied upon by learned senior counsel for Respondent No. 3 to contend that the newly formed Company was entitled to take benefit of the work experience of the proprietorship concern of its promoter who holds 50% of its equity is not applicable to the facts of the case of Respondent No. 3.

Respondent No. 3 may be entitled to take into consideration the work experience/turnover of the proprietorship but then it cannot ignore the turnover while claiming the status as a Micro or Small Enterprise.

19. Respondent No. 3 is not entitled to take benefit of the MSE Order 2012 as the benefit of the said Order is available only to MSEs. If Respondent No. 3 wishes to take benefit of the turnover of its predecessor proprietorship concern, then it cannot avail of the benefits under the MSE Order 2012. If it wishes to avail of the benefit of the MSE Order 2012 then it has to forego the work experience and turnover of its predecessor. The object and purpose of the MSE Order 2012 is to promote and give development opportunities to micro and small enterprises and not to give benefit to a large enterprise which is well settled and has turnover way beyond the prescribed threshold. It cannot be held that an Enterprise can claim the turnover/work experience of a large enterprise to show eligibility but claim Micro Enterprise status by claiming to be a Start Up or new enterprise with no Turnover. It cannot be permitted to *'blow hot and cold in the same breath'*.

20. Respondent No. 3 was clearly not entitled to avail of the benefit of the preference clause which entitled an MSE quoting a price within a price band of L1 + 15% to be awarded the full work. Thus, the option given to Respondent No. 3 to match the L1 price was incorrect and the award of contract to Respondent No. 3 is liable to be quashed.

21. In view of the above, the Writ Petition is allowed. The contract awarded to Respondent No. 3 by way of Letter of Acceptance dated

06.08.2025 is quashed. Respondents No. 1 and 2 are directed to reprocess the Tender in accordance with the Tender conditions. While reprocessing the Tender, Respondent No. 1 and 2 shall ignore the status of Respondent No. 3 as an MSE. There shall be no orders as to costs.

(SANJEEV SACHDEVA)
CHIEF JUSTICE

(VINAY SARAF)
JUDGE

YOGESH KUMAR SHIRVASTAVA