

**Reserved On : 30/09/2025
Pronounced On : 06/10/2025**

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

**R/SPECIAL CIVIL APPLICATION NO. 7289 of 2025
With
R/SPECIAL CIVIL APPLICATION NO. 12328 of 2025**

FOR APPROVAL AND SIGNATURE:

HONOURABLE MR. JUSTICE A.S. SUPEHIA **Sd/-**

and

HONOURABLE MR.JUSTICE L. S. PIRZADA **Sd/-**

Approved for Reporting	Yes	No
	✓	

O AND M SOLUTIONS PVT LTD.

Versus

GSPC PIPAVAV POWER COMPANY LTD. (GPPC) & ORS.

Appearance:

IN R/SPECIAL CIVIL APPLICATION NO.7289 of 2025

MR SHALIN MEHTA, SENIOR ADVOCATE WITH

MR HARSH J SHAH & MR PRIYABRAT TRIPATHY, ADVOCATES for the Petitioner(s) No. 1

MR ASPI M. KAPADIA, ADVOCATE FOR

MR KAIZAD A KAPADIA(12168) for the Respondent(s) No. 1

MR JV VAGHELA(5809) for the Respondent(s) No. 2

MR MIHIR JOSHI, SENIOR ADVOCATE WITH

MR AKSHAT KHARE & MS R.R. GAUTAM, ADVOCATES for MOSON LE EXPARTS(11071) for the Respondent(s) No. 3

IN R/SPECIAL CIVIL APPLICATION NO. 12328 of 2025

MR MIHIR JOSHI, SENIOR ADVOCATE WITH

MR AKSHAT KHARE & MS R.R. GAUTAM, ADVOCATES for MOSON LE EXPARTS(11071) for the PETITIONER

MR ASPI M. KAPADIA, ADVOCATE FOR

MR KAIZAD A KAPADIA(12168) for the Respondent(s) No. 1

MR SHALIN MEHTA, SENIOR ADVOCATE WITH

MR HARSH J SHAH & MR PRIYABRAT TRIPATHY, ADVOCATES for the RESPONDENT NO.2

CORAM:HONOURABLE MR. JUSTICE A.S. SUPEHIA

and

HONOURABLE MR.JUSTICE L. S. PIRZADA

**COMMON CAV JUDGMENT
(PER : HONOURABLE MR. JUSTICE A.S. SUPEHIA)**

1. Both the captioned writ petitions arise out of the tender issued by the respondent No.1 - GSPC Pipavav Power Company Ltd. (GSPC) (hereinafter referred to as "the respondent No.1 - GSPC Company"), on 13.01.2025, inviting online bids from the interested Indian Bidders for "Operation and Maintenance" of GPPC's Combined Cycle Power Plant for a period of five years at Village Kovaya, near Pipavav, Taluka Rajula, District Amreli, Gujarat.

BRIEF FACTS:-

2. The GSPC issued the tender on 13.01.2025, inviting online bids for their Operation and Maintenance of power plants for a period of 5 years. The last date of submission of bid was 11.04.2025 and the petitioner, along with three others, submitted their bids. The financial proposals for the 1st year of the Operation and Maintenance Cost were submitted by the Bidders on 07.05.2025. Thereafter, the GSPC evaluated the technical marks of the bidders as per the recitals of the bid document and found three bidders qualified, having obtained 60 marks — the petitioner, the respondent Nos.2 and 3. The Letter of Award "LOA" was awarded to the respondent No.3 - STEAG Energy Services (INDIA) Pvt. Ltd., (hereinafter referred to as "the respondent No.3 - STEAG"), on 09.06.2025, and subsequently, the contract was also executed and STEAG mobilized its manpower from 01.07.2025.

3. The captioned writ petition, being Special Civil Application No.7289 of 2025, was initially placed before the

Vacation Bench, whereupon the notice was issued on 23.05.2025, making it returnable on 19.06.2025. During the pendency of the writ petition, since the respondent No.3-STEAG was awarded LOA, the prayers in the writ petition were amended.

4. When the matter was placed before the regular bench, vide order dated 01.08.2025, upon the submissions advanced on behalf of the petitioner on the allocation of deficit marks on Item No.3 of Clause 20.2 B of the bid document and finding merit in their submissions, and since the learned advocate Mr. Aspi M. Kapadia, appearing for GSPC agreed to the re-evaluation of the marks through its consultant - Fichtner Consulting Engineers (India) Pvt. Ltd., accordingly, we directed the consultant to prepare a fresh report on the allocation of marks after hearing the respective parties.

5. This Court in the order dated 01.08.2025 had clarified that the award of contract to the respondent No.3 - STEAG was made subject to further orders of this Court.

6. Pursuant to the order dated 19.08.2025 passed by this Court in the captioned writ petition being Special Civil Application No.7289 of 2025, after hearing the petitioner and the respondent No.3-STEAG, a detailed report dated 14.08.2025 was placed on record by way of an affidavit filed by the respondent No.1 – GSPC Company.

7. It is pertinent to note that the respondent No.3 - STEAG during the hearing before the consultant demanded extra 5 marks for Item No.4 of Clause 20.2 B. It has been recorded by

the consultant in the report that upon re-evaluation, the earlier 10 marks allocated to the respondent No.3 - STEAG were reduced to 8 marks based on the documents, and the claim for an additional 5 marks was rejected. As a result, the total technical score of both the petitioner and the respondent No.3 has been assessed as 93.

8. Since the marks of the respondent No.3-STEAG got reduced by two, on the basis of such report, it filed the captioned writ petitions, being Special Civil Application 12328 of 2025, seeking a declaration directing the respondent No.1 to award an additional 5 marks under Item No.4 of Clause 20.2 B of the Tender Document.

9. It is pertinent to note that the balance tilted in favour of the petitioner-Company in view of the findings recorded by Fichtner Consulting Engineers (India) Pvt. Ltd. in its report dated 14.08.2025, thereby aggrieving the respondent No.3-STEAG, which has assailed the denial of 5 marks by filing the captioned writ petition, being Special Civil Application No.12328 of 2025.

SUBMISSIONS ON BEHALF OF O & M SOLUTIONS PVT LTD:-

10. Learned Senior Advocate Mr.Shalin Mehta, appearing for the petitioner - O & M Solutions Pvt. Ltd., has submitted that the respondent No.3 - STEAG stands disqualified in view of the consultant's report, and the contract awarded to the respondent No.3 ought to be recalled/cancelled and awarded to the petitioner - O & M Solutions Pvt. Ltd.

11. It is further submitted by learned Senior Advocate Mr.Mehta that the grievance of the petitioner of awarding of lesser marks under Item No.3 of Clause 20.2 B, has been subsequently found to be valid by the consultant of the respondent No.1. Upon re-evaluation, both the petitioner and the respondent No.3 - STEAG have been allocated equal technical scores of 93 marks. Since there exists only a differential amount of approximately Rs.11,400/- in favour of the petitioner - O&M Solutions Private Limited, as against the respondent No.3 - STEAG, the contract, deserves to be awarded to the petitioner- O&M Solutions Private Limited.

12. It is contended that the claim of the respondent No.3- STEAG in Special Civil Application No.12328 of 2025, seeking additional five marks under Item No.4 of Clause 20.2 B, is misconceived. He has placed reliance on Clause 8.4 read with Clause 9(a) and has submitted that the bid of the respondent No.3-STEAG, clearly indicates that M/s.STEAG O & M Company Pvt. Ltd., is a sister concern of M/s.STEAG Energy Services India Private Limited, which has been operating and maintaining the plant of M/s.Hinduja National Power Corporation Limited (a Subcritical Thermal Power Plant) since March 2012, including the operation and maintenance of the sea water system.

13. It is thus urged that, in terms of Clause 8.4, the experience of a bidder as a subcontractor or through its sister concern cannot be considered for evaluation. Further, Clause 9(a) stipulates that the bidding company itself must satisfy the

technical and financial criteria on a standalone basis. It is submitted that submission of bids through a joint a venture/consortium is expressly prohibited. In the present case, since the respondent No.3 has sought to rely on the experience of its sister concern and its joint venture with M/s.Hinduja National Power Corporation, the additional 5 marks claimed, are wholly untenable. It is also submitted by the learned Senior Advocate Mr.Mehta, that the respondent No.3 attempted to submit additional documents during the re-evaluation, which is impermissible. Hence, under no circumstances can respondent No.3 - STEAG Energy Services India Private Limited, be awarded such 5 marks. Accordingly, considering the technical evaluation, the overall marks, and the differential in price, the contract ought to be awarded to the petitioner - Company i.e. M/s. O & M Solutions Private Limited.

14. Learned Senior Advocate Mr.Mehta, has relied upon the judgment of the Supreme Court in the case of Afcons Infrastructure Limited Vs. Nagpur Metro Rail Corporation Limited and Another, (2016) 16 SCC 818.

SUBMISSIONS ON BEHALF OF M/S STEAG ENERGY SERVICES(INDIA) Pvt. Ltd :-

15. In response to the aforesaid submissions, learned Senior Advocate Mr.Mihir Joshi, appearing for respondent No.3 - STEAG Energy Services (India) Pvt. Ltd. (the petitioner in Special Civil Application No.12328 of 2025), has submitted that the respondent No.3 is entitled to an additional 5 marks under Item No.B4 of Clause 20.2 of the Bid Document. In the

alternative, it is submitted that the respondent No.3 may be permitted to match the price bid of Rs.11,400/-.

16. By placing reliance on Clause 8.4 and Clause 9 of the Bid Document, it is contended that the respondent No.3 falls within the parameters of the said clauses and is entitled to the additional 5 marks. It is further submitted that the consultant engineer has erroneously denied such marks in the re-evaluation process, on the ground that the experience certificate issued by M/s.Hinduja National Power Corporation pertained to M/s.STEAG O & M Company Pvt. Ltd., a sister concern of the respondent No.3 - STEAG. Learned Senior Advocate Mr.Joshi, has submitted that such reasoning is factually and legally untenable.

17. Reference is also made to the joint venture agreement between M/s.STEAG Energy Services India Pvt. Ltd., M/s.Hinduja Energy India Ltd., and M/s.STEAG O&M Company Pvt. Ltd. It is submitted that the respondent No.3 has participated in the bid process in its independent capacity and that the joint venture company constitutes a separate legal entity, distinct from the respondent No.3 as a bidder. Hence, denial of the additional 5 marks to the respondent No.3 is unjustified. While placing reliance on the judgment of the Supreme Court in the case of New Horizons Limited and Ors. Vs. Union of India, (1995) 1 SCC 478, learned Senior Advocate Mr.Mihir Joshi has further submitted that the experience gained through the joint venture cannot be disregarded in its entirety, and therefore, the respondent No.3 is entitled to the additional 5 marks.

SUBMISSIONS ON BEHALF OF GSPC:-

18. Learned Advocate Mr.Kapadia, has submitted that in the present matter GSPC cannot show favouritism to any of the parties. It is submitted that pursuant to the order passed by this Court, its consultant - Fichtner Consulting Engineers (India), has undertaken the re-evaluation of the score, in which the respondent -STEAG has also placed new documents to claim an additional 5 marks. He has pointed out the final score of all the bidders and has submitted that the technical score of the petitioner and the respondent- STEAG is equal, so far as the financial difference is concerned the same comes to 11,400/-. It is also submitted there appears to be some discrepancy in the report regarding the experience of respondent-STEAG as a joint venture on the basis of fresh documents submitted by it.

SCOPE OF JUDICIAL REVIEW :-

19. Before we delve into the realm of examination of facts and pleadings, we shall examine the scope of judicial review by the High Court in the matter relating to contract. The Supreme Court, after surveying a catena of judgments in the decision rendered in the case of M.P.Power Management Company Limited, Jabalpur Versus Sky Power Southeast Solar India Private Limited And Others, 2023 (2) SCC 703 has culled out the parameters for the exercise of judicial review over actions by the State in a matter arising from a contract apropos arbitrary action. In order to avoid prolixity, we have

incorporated the relevant points as culled out the Apex court, the same are as below:-

"82. We may cull out our conclusions in regard to the points, which we have framed:

82.1 It is, undoubtedly, true that the writ jurisdiction is a public law remedy. A matter, which lies entirely within a private realm of affairs of public body, may not lend itself for being dealt with under the writ jurisdiction of the Court.

82.2. xxxxxxx

82.3 The mere fact that relief is sought under a contract which is not statutory, will not entitle the respondent-State in a case by itself to ward-off scrutiny of its action or inaction under the contract, if the complaining party is able to establish that the action/ inaction is, per se, arbitrary.

*82.4 An action will lie, undoubtedly, when the State purports to award any largesse and, undoubtedly, this relates to the stage prior to the contract being entered into [See R.D. Shetty (supra)]. This scrutiny, no doubt, would be undertaken within the nature of the judicial review, which has been declared in the decision in **Tata Cellular vs. Union of India, (1994) 6 SCC 651**.*

82.5 After the contract is entered into, there can be a variety of circumstances, which may provide a cause of action to a party to the contract with the State, to seek relief by filing a Writ Petition.

82.6. xxxxxxxx

82.7xxxxxx

82.8xxxxxx

82.9xxxxx

82.10 The reach of Article 14 enables a Writ Court to deal with arbitrary State action even after a contract is entered into by the State. A wide variety of circumstances can generate causes of action for invoking Article 14. The Courts approach in dealing with the same, would be guided by, undoubtedly, the overwhelming need to obviate arbitrary State action, in cases where the Writ remedy provides an effective and fair means of preventing miscarriage of justice arising from palpably unreasonable action by the State.

82.11.xxxxxx

82.12 xxxxxx

82.13 xxxxxx

82.14xxxx

82.15 Violation of natural justice has been recognised as a ground signifying the presence of a public law element and can be found a cause of action premised on breach of Article 14. [See Sudhir Kumar Singh and Others (supra)]".

20. It will be apposite to refer to the landmark judgment of the Supreme Court in case of **Tata Cellular(supra)**, where in the Supreme Court has succinctly summed up the scope of judicial review as under:

"77. ... Therefore, it is not for the court to determine whether a particular policy or particular decision taken in the fulfilment of that policy is fair. It is only concerned with the manner in which those decisions have been taken. The extent of the duty to act fairly will vary from case to case. Shortly put, the grounds upon which an administrative action is subject to control by judicial review can be classified as under :

- (i) Illegality: This means the decision-maker must understand correctly the law that regulates his decision-making power and must give effect to it.*
- (ii) Irrationality, namely, Wednesbury unreasonableness,*
- (iii) Procedural impropriety."*

21. Keeping in mind the judicial precedent as enunciated by the Supreme Court, we shall endeavour to answer the rival submissions.

ANALYSIS OF ALLOCATION OF MARKS AS PER THE ITEM NO.3 OF CLAUSE 20.2 IN SPECIAL CIVIL APPLICATION NO.7289 OF 2025:-

22. We have heard the learned advocates appearing for the respective parties at length.

23. The captioned writ petition, being Special Civil Application No.7289 of 2025, has been filed by the petitioner - M/s.O&M Solutions Private Ltd., seeking quashing and setting aside of the tender evaluation process, as well as the letter of Intent (LOI) dated 09.06.2025 issued to the respondent No.3 - STEAG Energy Services (India) Pvt. Ltd. by the respondent No.1 - GSPC Company.

24. After the issuance of Notice by this Court on 23.05.2025, the respondent No.3 STEAG has been issued LOA on 09.06.2025, and has been awarded the contract. The date of execution of contract is not informed to the Court. However, it appears that the respondent -STEAG has mobilized its manpower for taking over the site from 01.07.2025. The same has been made subject to the final outcome of the captioned writ petition vide order dated 01.08.2025.

25. The case of the petitioner is premised on the incorrect evaluation score/marks to the STEAG Energy for Item No.3 under Clause 20.2 B, the same reads as under:

<i>B. Technical Experience of the bidder</i>			
<i>S. No</i>	<i>Parameter</i>	<i>Maximum Marks allotted</i>	<i>Documents to be attached as an evidence to substantiate the claim</i>
3	<p><i>Experience of planning and supervising of Major Overhaul, HGPI and CI of 1 (one) GT (Gas Turbine of ISO rating more than 100 MW.</i></p> <p><i>-Major Overhaul = maximum 5 marks individual</i></p> <p><i>-HGPI = maximum 3 marks individual</i></p> <p><i>- CI = maximum 2 marks individual</i></p>	10	<p><i>Bidder shall submit copy of work orders / execution orders and relevant completion / execution certificate and complete details of work issued by the client duly certified by notary public. Bidder has to submit the details of orders executed in last seven years duly certified by notary public.</i></p>

26. Upon a fair stand taken by learned advocate Mr.Kapadia appearing for the GSPC to undertake re-evaluation of the score of the respective bidders, through its consultant Fichtner Consulting Engineers, we directed the re-evaluation of the score of O & M Solutions and the STEAG Energy vide order

dated 01.08.2025 and to place a report after hearing the respective bidders.

27. Pursuant thereto, the consulting engineers prepared a report dated 14.08.2025, which tilted the balance in favour of the petitioner. The paragraph 2.2.1 of the report explains the reduction of two marks of the respondent-STEAG. The same is as under:

"2.2.1: Based on the document submitted by STEAG on 12 August 2025, the following is the view of Fichtner India : STEAG will be allotted 8 marks out of 10 towards item 3 of Clause 20.2B. The marks allotted is based on Experience of planning and supervising of two (2) numbers of HGPI and one (1) number of Cl during the period of last seven (7) years i.e. from 01.01.2018 to 31.12.2024. The earlier allotted marks to STEAG was 10 and during the re-evaluation it is found that one (1) out of three (3) numbers of HGPI earlier claimed by STEAG is carried out beyond the evaluation period which was not evident in the document earlier submitted by STEAG" .

28. The aforesaid findings recorded by the consultant are not challenged by the respondent - STEAG. Thus, the score of the respondent - STEAG was reduced from 10 to 8 for the aforesaid Item No.3 of Clause 20.2 B, resulting both the petitioner and the respondent No.3 - STEAG securing an equal technical score of 93. The report were placed on record by the respondent No.1-GSPC through an additional affidavit dated 18.08.2025. There is not a whisper in the two paragraph affidavit about the report being incorrect or the scores are incorrectly evaluated.

29. It is pertinent to note that, before the consultant, the respondent no.3 placed a claim of 5 marks for Item No.4 of Clause 20.2B, which were never allocated in the first place. Upon receipt of the said report, the respondent No.3 filed Special Civil Application No.12328 of 2025, *inter alia* seeking

directions to the respondent No.1 to award it an additional 5 marks under Item No.B4 of Clause 20.2(ii) of the Bid Document, and in the alternative to reduce the price and match the price bid by Rs.11,400/-.

30. Thus, while the report prepared by the consulting engineers pursuant to the interim order dated 01.08.2025 has not been challenged to the extent of the reduction of 2 marks, nevertheless, the respondent No.3 (the petitioner in Special Civil Application No.12328 of 2025) has questioned the denial of the additional 5 marks in the report dated 14.08.2025.

31. Accordingly, after the report, both the petitioner and the respondent No.3 stand on an evenness of a total technical score of 93 marks. Since the respondent No.3 has not disputed its reduction of two additional marks from 10 to 8, the case of the petitioner, O & M Solutions, deserves to be accepted. Hence, the captioned writ petition, being Special Civil Application No.7289 of 2025, merits acceptance.

ANALYSIS OF ALLOCATION OF MARKS AS PER ITEM NO.4 OF CLAUSE 20.2.B IN SPECIAL CIVIL APPLICATION NO.12328 OF 2025:-

32. The only issue that survives for consideration is whether respondent No.3 - STEAG is entitled to an additional 5 marks, as prayed for in Special Civil Application No.12328 of 2025, or in the alternative, whether it can be permitted to match the price bid of the petitioner- Company of Rs.11,400/-.

33. It is significant to note that Fichtner Consulting Engineers (India) Pvt. Ltd., the consultant of the respondent No.1, while examining Item No.4 of Clause 20.2 read with Clause 8.4, rejected the claim of the respondent No.3 for allocation of additional marks, giving the following reasons: -

“2.3.1 Item 4 of Clause 20.2B is in respect of Operation and Maintenance of Sea Water System experience for any one plant for a period of 3 years during the last 7 years. STEAG in their bid submission has claimed five (5) marks against Item 4 of Clause 20.2B of Tender. STEAG had submitted the experience certificate issued by Hinduja National Power Corporation Limited. The experience certificate issued by Hinduja National Power Corporation Limited had mentioned that Operation and Maintenance of Sea Water System was carried out by STEAG O&M Company Private Limited, a sister concern of STEAG. Self-assessment made by STEAG also mentions that the Sister Company of STEAG has the requisite experience”

2.3.2 As per Clause 8.4 of Instructions to Bidders, qualification/experience of Sister Concern shall not be considered for evaluation. Based on this Clause of Tender, Fichtner India has not considered eligible for allocation of marks and has allotted 0 marks against this item in their Technical Evaluation Report submitted vide transmittal 20124198/ME/FDT/0005 dated 28th April 2025.

2.3.3 STEAG in their affidavit in reply has mentioned that STEAG O&M Company Private Limited is not their sister Company and is a Joint Venture Company with STEAG holding 51% equity in the Joint Venture Company.

2.3.4 STEAG has submitted the following document vide their email dated 12th August 2025 amongst other documents.

- Joint Venture Agreement signed between STEAG, Hinduja Energy India Limited and STEAG O&M Company Private Limited.

- O&M Agreement entered between Hinduja National Power Company Limited, STEAG and STEAG O&M Company Private Limited

2.3.5 *Clause 8.4 of Instructions to Bidders of the tender has mentioned the following:*

"Qualification Requirements of the Bidder's Company shall only be considered and Qualification/Experience of Sister Concern shall not be considered for evaluation".

As per the above phrase, the experience of any other related entity, including JV Company, cannot be considered as the experience of bidder's company. JV Company is a separate legal entity different from the bidder's company. In view of above, the marks claimed by STEAG cannot be admitted."

34. In order to appreciate the findings of the consultant, it would be apposite to incorporate the Clause No.4 of 20.2 B of the Bid Document : -

<i>B. Technical Experience of the bidder</i>			
<i>S. No</i>	<i>Parameter</i>	<i>Maximum Marks allotted</i>	<i>Documents to be attached as an evidence to substantiate the claim</i>
4	<i>Operation and maintenance of Sea water system experience for anyone plant for a period of 3 years during the last 7 years.</i>	5	<i>Bidder shall submit copy of work orders / execution orders and relevant completion / execution certificate and complete details of work issued by the client duly certified by notary public. Bidder has to submit the details of orders executed in last seven years duly certified by notary public.</i>

35. It is pertinent to note that in its affidavit dated 16.09.2025, the respondent No.3-STEAG has admitted that, in the earlier evaluation of the bid, it had not been granted 5 marks under the aforesaid clause, since the Letter of Intent (LOI) had already been issued in its favour, there was no occasion for the respondent No.3-STEAG to challenge the non-

awarding of such marks at that stage. In the present writ petition, however, the respondent No.3 - STEAG, is seeking to claim the said additional 5 marks. This Court directed the re-evaluation of marks on being impressed by the submissions advanced by the petitioner- O&M Solutions Pvt. Ltd., and the willingness shown by the GSPC for re-evaluation of 10 marks to STEAG, and this Court directed the consultant to prepare a fresh report after hearing the respective bidders. While being heard, STEAG Energy raised a claim of an additional 5 marks before the consultant, which has been denied. Since respondent No.3 - STEAG Energy has filed the captioned writ petition raising doubts in non-allocation of 5 marks under clause-4, we have dealt with the same also.

36. The consultant, while denying the claim of the respondent No.3 for such marks, has placed reliance on Clause 8.4 of the Bid Document, which reads as under: -

“8.4 Bidder meeting minimum qualification requirement as above will only be evaluated further Experience of bidder as a Sub-Contractor shall not be considered for evaluation of Qualification requirements Qualification Requirements of bidder's company shall only be considered, and qualification/experience of sister concern shall not be considered for evaluation.”

37. We may, along with the aforesaid Clause 8.4, refer to Clause 9(a) which is as under.

“9.0 NATURE OF ENTITIES ELIGIBLE TO BID

The Bidder who would be sole Bidder, should be a Company registered in India under Indian Companies Act 1956 or 2013.

It is clarified that no other form of entity other than registered in India under Indian Companies Act 1956 or 2013 would be allowed.

Submission of bids by forming a Joint Venture (JV)/Consortium is not allowed

The Bidding Company

a) The Bidder (Sole Bidder) meeting the Technical and Financial Criteria on its own, on standalone basis.

38. It is not in dispute that in the bid document filled in by the respondent No.3, in response to the Clause 4 has mentioned, as under.

<i>Technical Experience of the Bidder</i>			
<i>S. No</i>	<i>Parameter</i>	<i>Maximum Marks allotted</i>	<i>Documents to be attached as an evidence to substantiate the claim</i>
4	<i>Operation and maintenance of Sea water system experience for anyone plant for a period of 3 years during the last 7 years.</i>	5	<p><i>M/S STEAG O&M Company Pvt. Ltd., a sister concern of M/s STEAG Energy Services (India) Pvt. Ltd. has been Operating and Maintaining M/s Hinduja National Power Corporation Limited 2X520 MW Subcritical Thermal Power Plant since March 2012 till date, wherein the services included Operation and Maintenance of Sea water system (from Desalination plant with a capacity of 12.5 MLD installed to meet the sweet water requirement) and associated Water Treatment Plant.</i></p> <p><i>Copy of Notarized Certificate issued by Client is enclosed herewith to substantiate our claim as Annexure 5.</i></p>

39. The notarized certificate issued by the respondent No.3- STEAG, which is placed on record along with the details furnished in response to Item No.4, makes it evident that the respondent No. 3 - M/s. STEAG Energy Services (India) Pvt. Ltd.

is a sister concern of M/s. STEAG O&M Company Pvt. Ltd., which has been operating and maintaining the Subcritical Thermal Power Plant of M/s. Hinduja National Power Corporation Limited. The joint venture agreement has also been produced on record.

40. If the aforesaid details furnished by respondent No.3 are read in juxtaposition with Clause 8.4 and Clause 9 of the Bid Document, it is apparent that only the qualification requirements of the bidding company are to be considered, and the qualification/experience of a sister concern cannot be taken into account for evaluation. The reliance placed by the respondent No.3 – STEAG Energy Services India Pvt. Ltd. on the judgment in **New Horizons Limited (Supra)** is of no avail, as the facts of the present case are materially different, more particularly, the Supreme Court in that case did not examine peremptory clauses akin to the Clauses 8.4 and 9 of the present bid document.

41. We, therefore, find ourselves in complete agreement with the reasoning adopted by the consultant in denying the claim of the respondent No.3 for the additional five marks. The quintessential factor for rejecting such a claim is that, even prior to the re-evaluation and before the consultant's report dated 14.08.2025, the respondent No. 3 was not awarded five marks in view of the restriction contained in Clause 8.4. The cause of claiming an additional 5 marks is the interim order passed by this Court, in favour of O & M Solutions, and not STEAG Energy. Nevertheless, the position has remained unaltered, both before and after the consultant's report.

42. It is also noteworthy that in its affidavit-in-reply, the respondent No.3 has sought to contend that STEAG O&M Company Pvt. Ltd. is not its sister concern, but a joint venture company in which the respondent No.3-STEAG holds 50% equity. Even if such contention is considered, the subsequent documents furnished during the re-evaluation pursuant to the interim directions of this Court would nevertheless fall foul of Clause 8.4. As rightly held by the consultant, the experience of any related entity, including a joint venture company, cannot be considered and is barred under Item No.4 of Paragraph 20.2 B of the bid document. Accordingly, the claim of the respondent No.3 for an additional 5 marks stands rejected.

ISSUE OF MATCHING THE PRICE BID BY RS.11,400/- :-

43. At this stage, it would be appropriate to refer to the comparative position of total marks, technical scores and total score of the petitioner and the respondent No.3-STEAG, both prior to the re-evaluation and thereafter. The relevant items are as under: -

<i>S. N</i>	<i>Bidder Name</i>	<i>Technical Score (St)</i>	<i>Price Quoted (F)</i>	<i>S=(St.Xtw)+(SfXFw)</i>
1.	<i>OMS</i>	93	196555668	95.09989831
2.	<i>STEAG</i>	93	196569120	95.0978453

44. The respondent No.3-STEAG is seeking permission to allow the matching of price bid by reducing to Rs.11,500/- of the petitioner-O & M.

45. In this regard, we may refer to Clause 20.2(vi) of the Bid Document, which reads as under: -

“vi. The total score of the bidder shall be obtained by weighting the combined quality/technical scores and cost scores and adding them as follows :

$$S = (St \times Tw) + (Sf \times Fw)$$

The bidder with the highest total score (S) shall be considered for award of job.”

46. Thus, in terms of the aforesaid provision and the formula set out in Clause (vi), the bidder with the highest total score “S” is to be considered for the award of the contract.

47. In the present case, as noted hereinabove, the total score “S” of the petitioner-O & M is marginally higher than that of the respondent No.3, though the difference is minuscule, being 95.09989831 as against 95.0978453 i.e. the difference of 0.00205301, this Court cannot ignore the conditions of Clause (vi) and validate the contract awarded to the respondent No.3-STEAG. The recitals of the bid document do not permit the course suggested by respondent No.3-STEAG of matching the price bid by reduction.

48. Thus, on an overall appreciation of the pleadings and the facts, we are of the considered opinion that by preparing the re-evaluation report, the respondent No.1-GSPC has corrected its error. Thus, as per the settled legal precedent, the reach of Article 14 enables a Writ Court to deal with arbitrary State action even after a contract is entered into by the State and the Court’s approach in dealing with the same would be guided by the need to obviate arbitrary State action. The procedural impropriety of the respondent No.1-GSPC before the Report

dated 14.08.2025 was open to judicial review. The entire purpose of passing the interim order, and the fair proposition of the respondent No.1-GSPC was to check that the decision of evaluation of marks was lawful or not. The respondent No.3-STEAG has accepted the Report to the extent of deduction of two marks from its technical score. The challenge to claim additional 5 marks has failed.

49. Since the respondent No.3-STEAG has been awarded the contract during the pendency of the petition, and vide interim order dated 01.08.2025, the same was made subject to further orders, the action of the respondent No.1 in awarding LOA and subsequent contract to the respondent No.3-STEAG is hereby quashed and set aside. The respondent No.1-GSPC is directed to act accordingly, and do the needful for awarding the contract to the petitioner-O & M Solutions Pvt. Ltd. We direct the respondent No.3-STEAG to fully cooperate with respondent No.1-GSPC for smooth transition. The entire exercise shall be completed within a period of 02 (two) weeks.

50. Accordingly, the captioned writ petition being Special Civil Application No.7289 of 2025 is allowed. Rule made absolute; whereas the writ petition being Special Civil Application No.12328 of 2025 is dismissed. Rule is discharged.

51. Registry to place a copy of this order in each of the connected matters.

(A. S. SUPEHIA, J)

(L. S. PIRZADA, J)

##FURTHER ORDER ##

52. After the judgment was pronounced, learned advocate Mr.Akshat Khare, appearing for the petitioner in Special Civil Application No.12328 of 2025 has requested for staying of the aforesaid directions, however in view of the stakes involved in the matter, in light of the aforesaid observations, the request is refused.

Sd/-
(A. S. SUPEHIA, J)

Sd/-
(L. S. PIRZADA, J)

MAHESH/01 & 02