

GAHC010056982026



2026:GAU-AS:6327

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)

Case No. : WP(C)/1632/2026

M/S WIN POWER INFRACON LLP AND ORS
1ST FLOOR, BASANTA ENCLAVE.
DR. B. BARUAH COLLEGE ROAD, ULUBARI -781007, GUWAHATI,
ASSAM.REPRESENTED BY SHRI AMRENDRA KUMAR TIWARI (POWER OF
ATTORNEY HOLDER OF M/S WIN POWER INFRACON LLP)

2: SHRI AMRENDRA KUMAR TIWARI
GENERAL MANAGER.
M/S WIN POWER INFRACON LLP.
1ST FLOOR
BASANTA ENCLAVE.
DR. B. BARUAH COLLEGE ROAD
ULUBARI-781007 GUWAHATI
ASSAM

VERSUS

ASSAM POWER DISTRIBUTION COMPANY LIMITED AND ORS
BIJULEE BHAWAN, PALTAN BAZAR, GUWAHATI.
REPRESENTED BY ITS MANAGING DIRECTOR .
DIST.- KAMRUP(M), GUWAHATI.

2:CHAIRMAN APDCL
BIJULEE BHAWAN
PALTAN BAZAR.
DIST- KAMRUP (M) GUWAHATI.

3:MANAGING DIRECTOR APDCL
BIJULEE BHAWAN
PALTAN BAZAR .
DIST- KAMRUP (M) GUWAHATI.

4:CHIEF GENERAL MANAGER (DISTRIBUTION AND SAFETY)
LAR BIJULEE BHAWAN

PALTAN BAZAR
DIST- KAMRUP (M) GUWAHATI.

5:CHIEF GENERAL MANAGER (AUDIT)
BIJULEE BHAWAN
PALTAN BAZAR
DIST- KAMRUP (M) GUWAHATI

**BEFORE
HONOURABLE MR. JUSTICE DEVASHIS BARUAH**

For the Petitioner(s) : Mr. K.K. Mahanta, Sr. Advocate
Mr. K.M. Mahanta, Advocate

For the Respondent(s) : Mr. K.P. Pathak, Standing Counsel

- Date on which Judgment was reserved : N/A
- Date of Pronouncement of Judgment : **07.05.2026**
- Whether the pronouncement is of the Operative Part of the Judgment : No
- Whether the full Judgment has been Pronounced : Yes

JUDGMENT AND ORDER (ORAL)

Heard Mr. K.K. Mahanta, the learned Senior Counsel assisted by Mr. K.M. Mahanta, the learned counsel appearing on behalf of the Petitioners. Mr. K.P. Pathak, the learned Standing Counsel appears on behalf of the Respondent Nos. 1 to 5.

2. The present writ petition has been filed by the Petitioners

assailing the Speaking Order bearing Letter No. CGM (D&S) / APDCL /LAR / HPCL, Kamardanga/2025-26/88 dated 09.03.2026, as well as the Notice Inviting Tender/Re-tender vide NIT dated 10.03.2026, published on 11.03.2026, and seeking other consequential directions.

BRIEF FACTS

3. The brief facts which led to the filing of the present writ petition are that the Respondent No. 1 through the Chief General Manager (D&S), APDCL issued a Notice Inviting Tender dated 11.09.2025 for "Construction of 33 kV Dedicated Feeder from 220 kV Salakati GSS to HPCL Project at Kamardanga under Basugaon ESD under Deposit Work Scheme on Full Turnkey Mode. The estimated cost of the project was Rs. 12,49,12,131/- and the period for completion of the said project was 180 days from the date of issuance of the work order. The said Bid Document contained various Sections.

4. Section-I to the Bid Document is the Notice Inviting Tender which stipulated the Tender Download Start Date to be 12.09.2025; Pre-Bid Meeting Date up to 14:00 Hrs. on 16.09.2025; Bid Submission Start date on 19.09.2025; Bid Submission End Date

up to 16:00 hours on 25.09.2025 and the Technical Bid Opening Date on 26.09.2025. It is categorically mentioned in Note No. 2 of Section-I of the Bid Document that the bids must be submitted electronically through e-Tender portal www.assamtenders.gov.in in 2 (two) parts as Techno-Commercial bid and Price bid. Apart from that, a copy of the technical bid has to be submitted in a sealed envelope subscribing: a) Tender No; b) Name of the bidder with full address. It further stipulated that only bidders who were found acceptable in Part-I Bid (technical) with adequate bid capacity, shall be considered for opening of the Price bid. The date and time of opening of the Part-II Bid (Price) shall be communicated to those bidders whose bids are qualified for opening.

5. Section-II of the Bid Document is with the heading "Tender Inviting Proposal". The said Section-II contains various terms and conditions. Clause 5 of Section-II stipulated the "Basic Qualifying Requirements". Sub-Clause A of Clause 5 of Section-II is in relation to "Technical"; Sub-Clause B of Clause 5 of Section-II relates to "Financial" and Sub-Clause C of Clause 5 of Section-II is the "Bid Capacity". Clause 6 of Section-II stipulates the requirement of entering into an Agreement by the successful bidder within 7 (seven) days from the date of issuance of the detailed work order (LoA), failing which, the LoA shall be treated as cancelled without

further communication from APDCL. Clause 6 of Section-II of the Bid Document being relevant is reproduced herein under:

“6. Agreement:

The successful bidders shall have to enter into an agreement with APDCL within 7(seven) days from the date of issue of detailed work order (LOA) failing which the LOA shall be treated as cancelled without further communication from APDCL end.”

6. Clause 7 of Section-II of the Bid Document is in respect to “Performance Guarantee” and the requirement for submission of the performance guarantee is to the tune of 10% of the contract value at the time of execution of the agreement. The performance guarantee has to be valid for a period of 60 (sixty) days beyond the stipulated date of completion of the project as per LoA. Clause 8 of Section-II refers to the Additional Performance Guarantee in the case of Abnormally Low Bid (ALB). The said Clause 8 of Section-II of the Bid Document being relevant is reproduced herein under:

“8. Additional Performance Guarantee in the event of ALB:

In the event that an Abnormally Low Bid has been accepted for award of contract, the successful bidder shall be required to submit an additional Performance Security along with the regular Contract Performance Guarantee for an amount calculated as

under:

i) If the Bid Price offered by the shortlisted Bidder is lower than 10% but up to 20% of the estimated Project cost, then the Additional Performance guarantee shall be calculated @ 5% of the Contract Price.

ii) If the Bid Price offered by the shortlisted Bidder is below 20% of the estimated Project cost, then the Additional Performance guarantee shall be calculated @ 15% of the Contract Price.

1.1. The additional Performance guarantee shall be treated as part of the Performance guarantee and shall be valid for a period coextensive with the Contract Performance guarantee.

1.2. Non-submission of the additional Performance guarantee shall constitute sufficient ground to reject the bid and similar assessment pursuant to clause 1 will be made for the next ranked bidder.”

7. Clause 11 of Section-II of the Bid Document stipulates the “Submission of bid” and a perusal of the said Clause, more particularly, the later portion of the said Clause reveals that upon non-acceptance of the Letter of Intent, the Earnest Money Deposit of the successful bidder would be forfeited. The said Clause being relevant is also reproduced herein under:

“11. Submission of bid:

Bids must be submitted electronically through e-tender portal

<https://assamtenders.gov.in> in two parts as Techno Commercial bid and Price bid.

EMD should be submitted online through portal <https://assamtenders.gov.in>. The earnest money for the work is Rs. 25,00,000.00 (Rupees Twenty Five Lakh) only. Any tender without EMD will be rejected outright.

The EMD to the successful bidders will be released on submission of 10% Performance Security Deposit to the undersigned as per the clause of the bid document. The EMD of the successful bidder will be forfeited on non-acceptance of Letter of Intent (LOI) within the stipulated period mentioned in LOI."

8. Clause 12 of Section-II of the Bid Document stipulates the "Submission of documents with technical bids". Clause 15 of Section-II of the Bid Document stipulates the condition pertaining to "Award of work". The said Clause 15 being relevant is reproduced herein under:

"15. Award of work:

i. The evaluation of bids will be carried out in two parts, technical bid and price bid. The price bid will be opened and evaluated only of those bidders who qualified in technical bid only.

ii. Company is not bound to accept the lowest quoted rate if the bidder is not responsive as per requirement of APDCL's T&C.

iii. In no case, the contract shall be awarded to any bidder

whose bid capacity is less than the estimated cost of the project put to the tender.

iv. Work shall be started within Ten (10) days from the date of issue of the work order, failing which order will be cancelled without further correspondence.

v. The successful bidder must have to complete survey works Seventeen (17) days from the date of issue of work order & submit quantity variation within that period.

vi. All the materials installed shall be under custody of the contractor till the date of commissioning and charging. The properties will be taken over by APDCL, only after satisfactory commissioning and charging.”

9. A perusal of the above quoted Clause would show that though Sub-Clause(i) categorically stipulates that the evaluation of the bids would be carried out in 2 (two) parts, i.e. technical bid and price bid and the price bid would be opened and evaluated only of those bidders who qualify in the technical bid only, but then also in Sub-Clause(iii), it is mentioned that in no case, the contract shall be awarded to any bidder whose bid capacity is less than the estimated cost of the project put to the tender. This aspect is relevant, taking into account the dispute involved in the present

proceedings.

10. Clause 28 of Section-II of the Bid Document relates to Abnormally Low Bids (ALB), and it further stipulates as to what steps should be taken by the tender Committee, when the price bids so submitted, fall within the ambit of abnormally low bids. Clause 29 of Section-II of the Bid Document stipulates as to how a dispute is to be resolved. A further perusal of the said Clause, which relates to dispute resolution would show that any disputes should be settled amicably between both the parties by serving notice and if such settlement is not reached within a period of 30 days recourse to arbitration in accordance with the provisions of the Arbitration and Conciliation Act, 1996 is the agreed mechanism for dispute resolution.

11. Before further proceeding, this Court finds it very pertinent to deal with the Bid Capacity which has been specifically mentioned at Clause 5C of Section-II of the Bid Document. The said Clause, more particularly Sub-Clause C of Clause 5, being relevant, is reproduced herein under:

“C. Bid Capacity:

The Bidders who meet the minimum qualification criteria mentioned against the A)

Technical & B) Financial section will be qualified only if their available bid capacity at the time of bidding is more than the estimated cost of the project. The available capacity will be calculated as under:

Assessed available bid capacity = (A*N*2-B)

Where,

A = Maximum value of Electrical works executed in any one year during the last five years (updated to the price level of the year as indicated in Annexure 1(E) rate of inflation may be taken as 10% per year) taking into account the completed as well as works in progress.

N = Number of years prescribed for completion of the works for which bids are invited. (Value of N = 1/2 Up to 6 Months & N = 1 above 6 Months).

B = Value (updated to the price level) of existing commitments and ongoing works to be completed during period of completion of works for which bids are invited. In support of this the intending bidder has to submit an affidavit as per the format indicated in the annexure 1(F) along with all the relevant supporting documents mention therein.

N.B *The statements showing the value of existing commitments and ongoing works as well as the stipulated period of completion remaining for each of the works listed shall be countersigned by the Engineer in charge, not below the rank of **CEO/DGM/Superintending Engineer** of electrical utilities.*

- *APDCL reserves the right to carry out the Bid Capacity assessment of the Bidders and the owner's decision shall be final and binding to the*

bidder.

- *Even though the bidders meet the above qualifying criteria, they are subject to be disqualified if they have:*
 - *Made misleading or false representations in the forms, statements and enclosures submitted as a proof of the qualification requirements; and/or*

Record of poor performance such as abandoning the work, rescinding of contract for which the reasons are attributable to the non-performance of the contractor, consistent history of litigation awarded against the Applicant or financial failure due to bankruptcy. The rescinding of contract of a Joint Venture on account of reasons other than non-performance, such as most experience partner of Joint Venture pulling out, court directions leading to breaking up of a Joint Venture before the start of work, which are not attributable to the poor performance of the contractor will, however, not affect the pre-qualification of the individual partners.”

12. A perusal of the above quoted Sub-Clause would show as to how the bid capacity is to be computed. The formula which has been provided in the said Sub-Clause refers to the letter “A” to mean the maximum value of electrical works executed in any one year during the last 5 years, [updated to the price level of the year as indicated in Annexure-1(E)], rate of inflation may be taken as 10% per year, taking into account the completed as well as works in progress. The letter “N” denotes the number of years prescribed for completion of the work for which bids are invited. The letter “B”

denotes the value (updated to the price level) of existing commitments and ongoing works to be completed during the period of the completion of works for which bids are invited. In that respect also, the intending bidder has to submit an affidavit as per format indicated in Annexure-1(F), along with all relevant supporting documents mentioned therein.

13. In the backdrop of the above, this Court now finds it relevant to take note of Annexure-1(E) which prescribes the format for assessing the bid capacity of the bidders to calculate the value of "A" as mentioned in Sub-Clause C of Clause 5 of Section-II of the Bid Document. The said Annexure-1(E) being relevant is reproduced herein under:

“Annexure 1(E)

Format for assessing the Bid Capacity of the Bidders to calculate the value of "A"

The following table contains the value of Electrical Works/Projects (Turnkey projects/Item rate contract/Construction Works) undertaken by the Bidder during the last 5 years.

<i>SL No.</i>	<i>Financial Year</i>	<i>Total value of Electrical Works done during the</i>	<i>Factor for updating to current</i>	<i>Updated Value of the</i>
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		year (excluding advance such as mobilization advance etc.)** In Rs.	price level	Work In Rs.
		A	B	C=AXB
1	2023-24		1.00	
2	2022-23		1.10	
3	2021-22		1.21	
4	2020-21		1.331	
5	2019-20		1.464	
Maximum Value of work in one FY during last 5 FYs (In Rs.)				

*** Figures to be mentioned in the Column A shall be supported by relevant copies of the Work Order/LOA as well as the corresponding Completion Certificates issued by the officer not below the rank of **CEO/DGM/Superintending Engineer** of electrical utilities.*

Maximum value of projects that have been undertaken during the F.Y. _____ out of the last 5 years and the value of the projects updated to the current price level (i.e. FY 2023-24) thereof is Rs. _____ (Rupees in words)."

14. A perusal of the above quoted Annexure-1(E) would show that the figures to be mentioned in Column A shall be supported by relevant copies of the Work Orders/LoA as well as the corresponding Completion Certificates issued by the officer not below the rank of CEO/DGM/Superintending Engineer of electrical utilities.

15. In the backdrop of the above, this Court finds it very pertinent to take note of that the Petitioners submitted the bid in two parts and uploaded the same on 15.10.2025. Simultaneously, the Petitioners submitted to the Respondent No. 4, the hard copies of the bid. It is relevant to take note of that the Petitioners, along with submitting the bid, also submitted the Annexure-1(E). The Annexure-1(E) which has been enclosed at page Nos. 87 and 88 to the writ petition is however shown to be notarized on 13.01.2026.

16. This Court, during the course of the hearing, enquired with the learned counsels appearing on behalf of the parties as to how the said document could be dated post the submission of the Petitioners' bid on 15.10.2025. It was informed to this Court that the Annexure-1(E) which was dated 04.10.2025 was submitted without any affidavit and as such the Petitioners submitted subsequently before the opening of the technical bid another

Annexure-1(E) dated 13.01.2026 by way of an affidavit. The records were produced in that regard, and the Annexure-1(E), which was submitted by the Petitioners along with the bid, being relevant, is reproduced herein under:

“Annexure 1(E)

Format for assessing the Bid Capacity of the Bidders to calculate the value of "A"

The following table contains the value of Electrical Works/Projects (Turnkey projects/Item rate contract/Construction Works) undertaken by the Bidder during the last 5 years.

SL No.	Financial Year	Total value of Electrical Works done during the year (excluding advance such as mobilization advance etc.)** In Rs.	Factor for updating to current price level	Updated Value of the Work In Rs.
		A	B	C=AXB
1	2023-24	26,29,55,000	1.00	26,29,55,000
2	2022-23	3,59,58,000	1.10	3,95,53,800

3	2021-22	107,87,83,000	1.21	130,53,27,430
4	2020-21	0	1.331	0
5	2019-20	0	1.464	0
Maximum Value of work in one FY during last 5 FYs (In Rs.)				130,53,27,430

*** Figures to be mentioned in the Column A shall be supported by relevant copies of the Work Order/LOA as well as the corresponding Completion Certificates issued by the officer not below the rank of CEO/DGM/Superintending Engineer of electrical utilities.*

Maximum value of projects that have been undertaken during the F.Y. 2021-22 out of the last 5 years and the value of the projects updated to the current price level (i.e. FY 2023-24) thereof is Rs.130,53,27,430/- (Rupees in words One Hundred Thirty Crore Fifty Three Lakhs twenty seven thousands & four hundred thirty only).

Bidding Capacity=[AXNX2]-B

$$=[13053.27 \times 1 \times 2]-0$$

$$=26106.54''$$

17. From a perusal of the above quoted Annexure-1(E) submitted by the Petitioners, it is apparent that the Petitioners herein laid emphasis on the total value of the electrical work done during the year 2021-22; the value of which was Rs. 107,87,83,000/- and

updating the same as per the formula provided, the value of the work was Rs. 130,53,27,430/-. On the basis thereof, the Petitioners applied the formula so provided in Sub-Clause C of Clause 5 of Section-II of the Bid Document and mentioned in Annexure-1(E) that the total bid capacity of the Petitioners was Rs. 26106.54 Lakhs.

18. It is, however, very pertinent to mention that in the format of Annexure-1(E), quoted herein above there is a clear and unequivocal mention that in order to prove the figures mentioned in Column A, the same had to be supported by relevant copies of the Work Order/LoA as well as the corresponding Completion Certificate issued by the officer not below the rank of CEO/DGM/Superintending Engineer of the electrical utilities.

19. The record further reveals that the technical bid was evaluated on 02.02.2026. From the evaluation, it appears that 7 (seven) bidders submitted their bids and out of them only 3 (three) bidders were found to be technically competent. Amongst the qualified technical bidders, the Petitioners were one of such Bidders. The status was uploaded on 02.02.2026.

20. On the said date, two other important developments took

place. First, the price bid was opened, and secondly, a communication was issued to the Petitioners. While opening the price bid, it was found that the Petitioners were the lowest bidder, having quoted Rs. 9,99,31,159.40p. The L2 bidder quoted Rs. 10,00,03,643/- and L3 bidder quoted Rs. 10,46,00,639.46p.

The other important development was a communication issued to the Petitioners on 02.02.2026. The said communication dealt with two issues. First, it related to the abnormally low bid of the Petitioners and the Petitioners were asked to provide justification, which is required in terms with Clause 28 of the Bid Document. At this stage, it is important to note that the bid submitted by the Petitioners was 19.972% below the estimated contract value.

21. Secondly, the Petitioners were asked to submit supporting documents in support of Annexure-1(E) for calculation of the value of the Component 'A' to calculate the Bid Capacity, duly signed by an officer not below the rank of DGM, prior to issuance of the work order. It is very pertinent to mention that in order to be technically competent, the Petitioners were required to furnish the documents as per Annexure-1(E) to ascertain the Component 'A' without which the Bid Capacity could not have been ascertained as per the

formula stipulated in Sub-Clause(C) of Clause 5 of the Bid Document. In fact on the failure of compliance to submit the documents as required in terms with Annexure-1(E), the technical bid of the Petitioners ought to have been held to be non-responsive. Be that as it may, the Respondent Authorities did not do so rather asked the Petitioners to submit additional documents post the last date of submission of the Bids.

22. A perusal of the said communication dated 02.02.2026 would also show that the Petitioners had to submit these documents prior to issuance of the work order which has been interchangeably used with the expression Letter of Acceptance at Clauses 6 and 7 of Section-II of the Bid Document.

23. The Petitioners thereupon submitted a communication on 04.02.2026 justifying the price quoted by the Petitioners and providing further details.

24. The record further reveals that on 05.02.2026, a Letter of Intent was issued to the Petitioners informing the Petitioners that the Chief General Manager (D&S), APDCL was intending to place an order for execution of the work at the rates quoted by the Petitioners, subject to submission of additional performance

guarantee as was required in terms with Clause 8 of Section-II of the Bid Document. An acceptance from the Petitioners was sought for within 7 (seven) days from the issuance of the Letter of Intent. The contents of the Letter of Intent being very relevant, the same is quoted hereinbelow:

**“ASSAM POWER DISTRIBUTION COMPANY LIMITED.
OFFICE OF THE CHIEF GENERAL MANAGER (D),
(LOWER ASSAM REGION)**

CIN: U40109AS2003SGC007242

No.: CGM(D&S)/APDCL/LAR/HPCL, Kamardanga/2025-26/70

Date: 05/02/2026

To

M/s Winpower Infraconn LLP

Dr. B. Baruah Road, Ulubari-Guwahati-781007

Sub:- Letter of Intent (LOI)

*Ref:- NIT No: CGM(D&S)/APDCL/LAR/HPCL, Kamardanga/2025-26/05 dated
11.09.2025*

Dear Sir(s),

With reference to the above, the undersigned is intending to place an order for execution of works at your quoted rates against the above referred NIT as detailed below:-

Name of the work: *Construction of 33kV Dedicated Feeder from 220 kV Salakati GSS to*

HPCL Project at Kamardanga under Basugaon ESD under Deposit Work Scheme on Full Turnkey Mode.

Value of the Work: *The total package value of the work will be **Rs. 9,99,31,159.40 (Rupees Nine Crore Ninety-Nine Lakh Thirty-One Thousand One Hundred Fifty-Nine and Forty Paise) Only** inclusive of all taxes and duties.*

1. **Area of Operation:** *Within the jurisdiction of Basugaon Electrical Sub Division under Kokrajhar Electrical Division of Kokrajhar Electrical Circle, APDCL (LAR).*
2. **Scheme of work:** *Deposit Work.*
3. **Completion period:** **180 (One Hundred Eighty) days from the date of issuance of LOA.**
4. **Detail work parameters, Terms & Conditions:** *As declared in the Bid documents of NIT No. CGM(D&S)/APDCL/LAR/HPCL, Kamardanga/2025-26/05 dated 11.09.2025.*
5. **Submission of Additional Performance Guarantee for ALB:** *Since your quoted price is 19.972% below the working estimate amount, additional performance guarantee as per ALB clause stated in the bid document is to be submitted by you along with Contract Performance Guarantee of 10% of contract value i.e **Rs. 99,93,116.00 (Rupees Ninety-Nine Lakh Ninety-Three Thousand One Hundred Sixteen)** only, which shall be valid for a period coextensive with the contract performance guarantee. Value of additional performance guarantee will be 5% of the contract value i.e. (Rs. 9,99,31,159.40 x 5%) which is equal to **Rs. 49,96,558.00 (Rupees Forty-Nine Lakh Ninety-Six Thousand Five Hundred Fifty-Eight) only.**"*

25. The Petitioners immediately, on 06.02.2026 accepted the Letter of Intent and subsequent thereto, on 09.02.2026 provided the performance guarantee as well as the additional performance

guarantee.

26. The records further reveal that though the Letter of Intent was issued by the Chief General Manager (D&S) of the APDCL and the Petitioners accepted the Letter of Intent on 06.02.2026, the Chief General Manager (D&S), APDCL in continuation to the communication dated 02.02.2026 issued a communication dated 07.02.2026 and informed the Petitioners that the Petitioners were yet to submit those documents in support of Annexure-1(E), for computation of the value of the Component A of the bid capacity, duly signed by an officer not below the rank of a DGM, prior to issuance of the work order. The Petitioners were asked to submit these documents on or before 17:00 hours of 10.02.2026 so that the work order could be issued. It was also mentioned that in the event of non-submission of the requisite documents within the stipulated time, the Letter of Intent was liable to be revoked without further communication.

27. The Petitioners, on 10.02.2026, submitted various documents pertaining to work orders dated 20.01.2025 and 13.03.2024 and the completion certificates in respect to those work orders. In addition to that, the Petitioners submitted the work order issued by a private firm alongwith a completion certificate issued by the

Competent Authority of the APDCL, which were relied upon in Annexure-1(E), i.e. the work order relating to the financial year 2021-22 of the value of Rs. 1,07,87,83,000/- as well as the completion certificate dated 01.12.2022.

28. The Chief General Manager (D&S), APDCL sought for certain clarifications from the Petitioners vide a communication dated 19.02.2026. The clarification sought for were:

(i) In the Annexure-1(E) submitted on affidavit dated 13.01.2026, the value of the work against Financial Year 2023-24 was submitted to Rs. 26.29 Crore, whereas from the supporting documents the works were found to be completed in Financial Year 2024-25.

(ii) The affidavit dated 13.01.2026 explicitly declared the maximum updated value to be Rs. 130.53 Crore for Financial Year 2021-22, however, from the supporting documents the works were found to be executed by the Petitioners as sub-contractor.

(iii) As per the Audit observation, based upon the supporting documents and Annexure-1(E), the bid capacity calculation was found flawed.

29. The Petitioners thereupon submitted a reply on 21.02.2026 providing clarification.

30. On the basis of the clarification so provided, a Committee was constituted vide an order dated 25.02.2026, to examine the clarification submitted by the Petitioners in respect to the tender evaluated for the work in question. In the Minutes of the Meeting held on 05.03.2026, the Committee came to a finding that the Petitioners failed to meet the prescribed bid capacity criteria, and therefore opined that the Petitioners, may be treated as non-responsive.

31. Pursuant thereto, a Speaking Order was passed on 09.03.2026 whereby the Petitioners' bid was rejected on the ground that the Petitioners failed to meet the bid capacity criteria and it was decided that the said work would be retendered. Thereafter, a tender was issued in respect to the said work.

32. The record reveals that the Petitioners being aggrieved by the Minutes of the Meeting dated 05.03.2026 and the Speaking Order dated 09.03.2026 as well as the consequential action for initiation of fresh tender, have filed the present writ petition on 16.03.2026.

33. This Court further finds it relevant to take note of that when

the writ petition was listed on 18.03.2026, the learned counsel appearing on behalf of the Petitioners sought for time and accordingly, the writ petition was directed to be listed on 27.03.2026. On 27.03.2026, the learned Coordinate Bench of this Court issued notice making it returnable on 06.05.2026. The learned Coordinate Bench, however, declined to pass any interim directions, staying the bidding process initiated vide the tender notice dated 11.03.2026.

34. The Petitioners challenged the order dated 27.03.2026 before the learned Division Bench of this Court by filing a Writ Appeal which was registered and numbered as W.A. No. 109/2026. The said Writ Appeal was disposed of vide an order dated 08.04.2026 by the learned Division Bench of this Court without interfering with the order dated 27.03.2026. Liberty was granted to the Petitioners to file an Interlocutory Application for early hearing.

35. The records further reveal that in the meantime, the Petitioners filed an Interlocutory Application and this Court while taking up the said Interlocutory application, passed an interim direction that no action be taken on the fresh tender till 05.05.2026. It is further seen that in the meantime, the Respondents have filed the affidavit-in-opposition thereby

supporting the decision taken in the Minutes of the Meeting dated 05.03.2026 as well as the Speaking Order dated 09.03.2026. Reply thereagainst was also filed by the Petitioners.

SUBMISSIONS MADE BY THE LEARNED COUNSELS FOR THE PARTIES

36. Mr. K.K. Mahanta, the learned Senior Counsel appearing on behalf of the Petitioners submitted that upon issuance of the Letter of Intent and acceptance to the same by the Petitioners, a contract had come into existence. Under such circumstances, cancellation of the Letter of Intent vide the impugned order dated 09.03.2026 and the decision to re-tender the works amounted to termination of the contract which was absolutely arbitrary and unreasonable.

37. The learned Senior Counsel drawing the attention of this Court to Clause 7 of Section-II of the Bid Document submitted that the Performance Guarantee is required to be submitted only upon issuance of the Letter of Acceptance. The learned Senior Counsel further submitted that in terms with the Letter of Intent, the Petitioners were required to submit a further additional performance security to the extent of 5% of the contract value. The said Letter of Intent having been accepted by the Petitioners,

and thereupon the performance security as well as the additional performance security having already been submitted to the Respondents, the Letter of Intent takes the flavor of Letter of Acceptance and the contract came into existence. The execution of the Agreement, which is mandated as per Clause 6 of Section-II of the Bid Document, is a mere formality which is only to be done pursuant to the issuance of the Letter of Acceptance. The learned Senior Counsel appearing on behalf of the Petitioners therefore referred to the judgment of the Supreme Court in the case of ***Dresser Rand S.A. Vs. Bindal Agro Chem LTD. & Another*** reported in ***(2006) 1 SCC 751*** and specifically referred to paragraph No. 40 of the said judgment.

38. The learned Senior Counsel appearing on behalf of the Petitioners submitted that even assuming for argument's sake without admitting that the Letter of Intent dated 05.02.2026 is not the Letter of Acceptance then also, the impugned actions on the part of the Respondent Authorities in holding the Petitioners technically non-responsive is based upon irrelevant and extraneous considerations. The learned Senior Counsel further elaborating his submissions submitted that the Petitioners were held to be technically responsive after the evaluation being carried out by the Tender Evaluation Committee on 02.02.2026, and thereupon the

financial bids of those technically competent bidders were opened. Pursuant to the opening of the financial bid, the Petitioners' bid was found to be the lowest, and the Letter of Intent was issued. The question of again going back to the stage of ascertaining Technical Competence as to whether the Petitioners had the bid capacity or not, suffers from malice in law.

39. The learned Senior Counsel submitted that the Respondents themselves have sought for certain clarifications, and those clarifications were provided along with all such documents which would have shown that the Petitioners had the bid capacity. The Respondent Authorities instead of looking into those documents which have been submitted by the Petitioners on 10.02.2026, and the clarifications so provided on 21.02.2026, have in order to reject the bid of the Petitioners by hook or by crook have raised issues to the effect that the Petitioner did the work as a sub-contractor, though working as a sub-contractor was not a bar for deciding the Bid Capacity of the Bidder.

40. The learned Senior Counsel therefore submitted that this is a case wherein the Petitioners' bid was rejected as technically non-responsive by an arbitrary, unreasonable and irrational exercise of power, for which interference is required from this Court under

Article 226 of the Constitution.

41. In addition to above, the learned Senior Counsel submitted that a perusal of the stands so taken by the Respondents in their affidavit-in-opposition shows that the work orders are required to be issued by the CEO/DGM/Superintending Engineer of electrical utilities which stand apparently was nothing, but an afterthought to reject the bid of the Petitioners. In that regard, the learned Senior Counsel referred to the judgment of the Supreme Court in the case of ***Reliance Energy Limited & Another Vs. Maharashtra State Road Development Corporation Ltd. & Others Corporation Limited & Others*** reported in ***(2007) 08 SCC 1***, wherein the Supreme Court categorically mentioned at paragraph No. 38 that if the terms and conditions of a bid are ambiguous and vague, rejection on such terms and conditions would be violative of Article 14 of the Constitution.

42. Mr. K.P. Pathak, the learned Standing Counsel for the APDCL, on the other hand, submitted that the Petitioners herein were issued only a Letter of Intent and a very perusal of the Letter of Intent dated 05.02.2026 would clearly show that intention was to inform the Petitioners that the APDCL Authorities were intending to issue the work order. The learned Standing Counsel further

submitted that a further perusal of the said Letter of Intent would also show that the Petitioners were informed that the Petitioners had to deposit an additional performance security, on account of the Petitioners bid being abnormally low bid, which was 19.972% below the contractual value of the tender document. The said document under no circumstances can be said to be a work order, thereby leading to a formation of a contract. In that regard, the learned Standing Counsel submitted that recently the Supreme Court, in the case of ***State of Himachal Pradesh & Another Vs. Oasys Cybernatics Private Limited*** reported in ***(2026) 3 SCC 348*** had categorically observed as to what right flows from an issuance of a Letter of Intent. The learned Standing Counsel referred to paragraph Nos. 32 to 36 of the said judgment and submitted that the Letter of Intent in the instant case, at best can be said to be a promise in embryo capable of maturing into a contract only upon satisfaction of the stipulated preconditions or upon issuance of the Letter of Acceptance.

43. The learned Standing Counsel for the APDCL submitted that a perusal of Clause 15 of Section-II of the Bid Document categorically stipulates that the contract cannot be awarded to a bidder whose bid capacity is less than the estimated cost of the project put to the tender. The learned Standing Counsel submitted

that in view of Clause 15(iii) of Section-II of the Bid document there was a clear bar in awarding a contract to a bidder who did not have the bid capacity. Elaborating further, the learned Standing Counsel submitted that the manner in which the bid capacity is to be ascertained had been categorically mentioned in Clause 5C of Section-II of the Bid Document. The learned Standing Counsel further submitted that the formula stipulated in Clause 5C of Section-II of the Bid Document, has to be read in conjunction with Annexures-1(E) and 1(F). Further referring to Annexure 1(E), the learned Standing Counsel submitted that it is clearly stipulated that there was a requirement of providing the work order/the Letter of Acceptance as well as the completion certificates issued by an officer not below the rank of CEO/DGM/Superintending Engineer of electrical utilities. Referring to the bid so submitted by the Petitioners, the learned Standing Counsel submitted that though the Petitioners had submitted Annexure-1(E), but the supporting documents were not furnished at the time of submission of the bid by the Petitioners on 15.10.2025. The learned Standing Counsel, however, admitted that after opening of the price bid, the APDCL authorities had on various occasions requested the Petitioners to submit those documents and these documents which were submitted and enclosed at page Nos. 168, 169 and 170 to the writ petition were submitted on 10.02.2026, which form the basis of the

details furnished by the Petitioners in Annexure-1(E). The learned Standing Counsel submitted that these documents could not have been taken into consideration as they were not issued by the CEO/DGM/Superintending Engineer of the electrical utilities, and the work was, in fact, executed by the Petitioners as sub-contractor.

ANALYSIS AND DETERMINATION

44. I have heard the learned counsels appearing on behalf of the parties and perused the materials on record.

45. From a perusal of the materials on record as well as the submissions made by the learned counsels for the parties, 2 (two) points for determination arises, which are as follows:

POINTS FOR DETERMINATION

- (i) Whether the Letter of Intent dated 05.02.2026 can be said to be a work order (Letter of Acceptance), whereby it can be said that a contract had come into existence by and between the Petitioners and the Respondent APDCL authorities?

(ii) Whether the action on the part of the Respondent Authorities in coming to a conclusion in the Minutes of the Meeting dated 05.03.2026 as well as the Speaking Order dated 09.03.2026 calls for any interference under Articles 226 of the Constitution?

FIRST POINT FOR DETERMINATION

46. This Court had in detail narrated the facts in the earlier segments of the present judgment.

47. Section-II of the Bid Document contains the various terms and conditions of the Bid Document. It is only at Clause 11 of Section-II, there is a reference to the issuance of a Letter of Intent and the forfeiture of the EMD upon non-acceptance of the Letter of Intent within the stipulated period mentioned in the Letter of Intent. On the other hand, a perusal of Clause 6 as well as Clause 7 of Section-II of the Bid Document would show that a successful bidder would be issued a detailed work order and in the said work order, the period of completion would be mentioned. The performance guarantee which is required to be submitted had to be for a period valid for 60 days beyond the stipulated date of completion of the project as per the Letter of Acceptance. The

above analysis would show that the Tendering Authority had kept the Letter of Intent and the Letter of Acceptance in separate pedestal. Section-II of the Bid Document do not envisage that issuance of a Letter of Intent would amount to entering into a contract. In fact, the penalty which is imposed for non-acceptance of a Letter of Intent by the successful bidder is the forfeiture of the EMD, which would be Rs.25,00,000/-. Rather Section-II of the Bid Document shows that something more is required to be done pursuant to the issuance of the Letter of Intent for the formation of a contract.

48. In view of the above, let this Court now take note of the manner in which the parties dealt with the issuance of the Letter of Intent, and pursuant thereto.

49. On 02.02.2026 out of the 7 bidders, 3 bidders were held to be technically responsive, and on the very day the financial bids were opened wherein the Petitioners' bid was found to be the lowest. The communication issued on 02.02.2026 to the Petitioners is of relevance. It stipulated two things. First, that the Petitioners' financial bid was abnormally low thereby justification was sought in terms with Clause 28 of Section-II of the Bid Document. Secondly, the Petitioners were duly informed that there were no supporting

documents in respect to Annexure-1(E) for calculation of the value of the Component 'A' of the bid capacity duly signed by an officer not below the rank of DGM, prior to the issuance of the work order.

50. The Petitioners provided the justifications vide the communication dated 04.02.2026. However, the other documents which were sought for in support of Annexure-1(E) were not submitted by the Petitioners prior to the issuance of the Letter of Intent. The Letter of Intent was issued on 05.02.2026, wherein it was specifically mentioned that "**the undersigned is intending to place an order for execution of the works at your quoted rates**". It is further seen from a perusal of the Letter of Intent that the Petitioners were informed that the Petitioners have to deposit an additional performance security of 5% of the contract value as the Petitioners' bid came within the ambit of Abnormally Low Bid. The Petitioners were asked to accept the Letter of Intent within 7 (seven) days. The Petitioners accepted the same on 06.02.2026.

51. Now the question arises, as to whether the said Letter of Intent can be said to be formation of a contract between the Petitioners with the Respondent Authorities.

52. Mr. K.K. Mahanta, the learned Senior Counsel for the

Petitioners referred to the judgment of the Supreme Court in the case of ***Dresser Rand S.A. (supra)***. The Supreme Court in the case of ***Oasys Cybernatics Private Limited (supra)*** has duly considered the judgment in the case of ***Dresser Rand S.A. (supra)*** and thereupon had observed what is the status of a Letter of Intent. Paragraph Nos. 32 to 36 of the judgment in the case of ***Oasys Cybernatics Private Limited (supra)***, being relevant, is reproduced herein under:

“32. The first issue that falls for our determination concerns the legal character of the LoI dated 2-9-2022 and the nature of rights, if any, accrued to the Respondent company thereunder.

33. This question goes to the root of the matter, and is not one of mere semantics i.e. ascertaining whether the issuance of the LoI created a concluded contract capable of enforcement, or whether it remained a conditional and inchoate expression of intent, leaving the Government free to reassess its position prior to formal acceptance. The answer defines the legal threshold for the appellant State’s power to cancel and the Respondent company’s entitlement to protection.

34. The jurisprudence on the subject is neither nascent nor unsettled. A catena of decisions starting from Rajasthan Coop. Dairy Federation Ltd. v. Maha Laxmi Mingrate Mktg. Service (P) Ltd., through Dresser Rand S.A. v. Bindal Agro Chem Ltd., Level 9 Biz (P) Ltd. v. H.P. Housing & Urban Development Authority, this Court has consistently held that an LoI is, in the ordinary course, a precursor to a contract and not the contract itself.

*35. In Dresser Rand, it was re-stated with clarity that **“a letter of intent merely indicates a party’s intention to enter into a contract with the other party in***

future. A letter of intent is not intended to bind either party ultimately to enter into any contract". The same principle animated *Rajasthan Coop. Dairy Federation*, wherein this Court observed that until the offer is accepted unconditionally and the preconditions are satisfied, "**no binding legal relationship**" comes into existence. The rationale is thus simple but fundamental: the law of contract distinguishes between a promise to make a promise and a promise performed. The former is not legally binding until its contingencies are fulfilled.

36. These authorities collectively articulate a coherent doctrine: an LoI creates no vested right until it passes the threshold of final and unconditional acceptance. It is but a "promise in embryo", capable of maturing into a contract only upon the satisfaction of stipulated preconditions or upon the issue of an LoA. A bidder's expectation that such a contract will follow may be commercially genuine, but it is not a juridical entitlement. To hold otherwise would be to bind the State in contract before it has consciously chosen to be bound—a proposition foreign to both contract law and public administration."

53. From a perusal of the above quoted judgment, it would be seen that a Letter of Intent creates no vested right until it passes the threshold of final and unconditional acceptance. Applying the said principle to the present facts, it would be seen that a conjoint reading of the communication dated 02.02.2026; the communication issued by the Petitioners on 04.02.2026 providing justification; the Letter of Intent dated 05.02.2026 and subsequently the communication issued by the Respondents on 07.02.2026, wherein the Petitioners were again sought for the supporting documents in respect to Annexure 1(E), clearly goes to show that there was no acceptance to the bid of the Petitioners. It

is apposite to observe that mere acceptance of the Letter of Intent and thereupon submission of the performance security and Additional Performance Security on 09.02.2026 by the Petitioners without compliance with the letters dated 02.02.2026 and 07.02.2026 cannot be said that a contract had come into existence.

54. Under such circumstances, it is therefore the opinion of this Court that the issuance of the Letter of Intent dated 05.02.2026 did not constitute a contract between the Petitioners with the Respondent Authorities.

SECOND POINT FOR DETERMINATION

55. The second point for determination arises on account of holding the Petitioners' bid technically non-responsive by the Committee constituted vide order dated 25.02.2026, in the Minutes of the Meeting dated 05.03.2026, as well as the Speaking Order dated 09.03.2026. In the previous segments of the instant judgment, this Court had taken note of as to when and how the bids were required to be submitted. The bids were required to be submitted by the bidders online in the www.assamtenders.gov.in and thereupon a hard copy of the said bid was required to be submitted offline. One of the major criteria in the Bid was that the

Bidder had to show that the Bidder had the Bid Capacity. The manner in which the bid capacity was to be ascertained was provided at Clause 5C of Section-II of the Bid Document. The said Clause had already been quoted herein above. A perusal of the said quoted Clause reveals that a formula is prescribed for ascertaining the Bid Capacity. Clause 5C of Section-II of the Bid Document also stipulates how the Bid Capacity is required to be shown with specific reference to Annexure-1(E) as well as Annexure-1(F) as prescribed in the Bid Documents.

56. This Court has quoted Annexure-1(E) as provided in the Bid Document as well as the Annexure-1(E) which was provided by the Petitioners dated 04.10.2025. From a perusal of the said Annexure-1(E) submitted by the Petitioners, it would show that the Petitioners relied upon a contract pertaining to the financial year 2021-22, which was of the value of Rs.107,87,83,000/- and applying the factor of updation, the updated value of the said contract was Rs. 130,53,27,430/-. In support of this contract, it was necessary for the Petitioners to submit the necessary documents, i.e. the work order/Letter of Acceptance as well as the corresponding Completion Certificate issued by the officer not below the rank of CEO/DGM/Superintending Engineer of the electrical utilities. This requirement is also apparent from a reading

of the portion of Clause 5C of Section-II of the Bid Document with the caption 'N.B' as quoted above.

57. During the course of the hearing, prior to the lunch recess, it was submitted before this Court by the learned Senior Counsel for the Petitioners that the said documents as required in terms with Annexure-1(E) were submitted by the Petitioners at the time of submission of the Bid. Mr. K.P. Pathak, the learned Standing Counsel for the APDCL strongly refuted the same. Under such circumstances, this Court directed the APDCL to produce the hard copy of the Bid submitted by the Petitioners on 15.10.2025. The hard copy of the Petitioners' bid was produced post the lunch recess.

58. A perusal of the hard copy of the bid which was submitted by the Petitioners on 15.10.2025 shows that no documents in support of the bid capacity as was stipulated in Annexure-1(E) were not submitted by the Petitioners. Rather the records so produced shows that Annexure-1(E) on affidavit was submitted post the last date of submission of the Bids and on 10.02.2026 various other documents were submitted including the documents in support of Annexure-1(E).

59. It is the opinion of this Court that taking into account Clause 15(iii) of Section-II of the Bid Document, which particularly mandated that the contract cannot be awarded to a bidder who did not have the bid capacity, the Respondent Authorities ought to have held the Petitioners' bid technically non-responsive for non-submission of the documents in support of the bid capacity as was required in terms with Annexure-1(E).

60. The acts on the part of the Respondents to hold the Petitioners' bid technically responsive at the first place without the supporting documents appears to be the root cause of the present controversy. In fact, the act on the part of the Respondents to evaluate the Petitioners' bid to be technically non-responsive and then permitting the Petitioners to submit documents later on violated the level playing field amongst the various bidders. At the cost of repetition, there were 7 (seven) bidders and out of them only 3 (three) bidders including the Petitioners were held to be technically responsive. Under such circumstances, the Respondents could not have allowed the Petitioners to become technically responsive at a later stage by allowing the Petitioners to submit further documents to support their claim of having the Bid Capacity, more so, when proving the Bid Capacity was one of the most essential criterion in terms with Clause 15(iii) of Section-II of

the Bid Document. The above aspect violated the mandate of fairness and equality which are basis principles of Article 14 of the Constitution.

61. It is pertinent to take note of that this Court, while exercising jurisdiction under Article 226 of the Constitution, does not sit as an Appellate Authority, but only examines the decision-making process. The settled principles of law stipulate that if the decision-making process is vitiated by arbitrariness, unreasonableness, irrationality, or suffers from malice in law or in fact, this Court, in exercise of its powers of judicial review, can certainly interfere.

62. In the instant case, the steps taken by the Respondent Authorities intending to award the contract to the Petitioners in spite of the Petitioners being not technically responsive at the first place, resulted in violation of Article 14 of the Constitution, qua the other bidders. It may not be out of place to observe that merely because the Tendering Authority had committed some errors or mistake, the same shall not create a right upon the bidder, if the mistake or error if allowed to perpetuate would result in violation of Article 14 of the Constitution. It appears, that at the end, prudent sense prevailed upon the APDCL authorities to reject the bid of the Petitioners and proceed with a fresh tender.

63. Taking into account the above, this Court opines insofar as the second point for determination that the impugned decision to hold the Petitioners' technically non-responsive and to go for a fresh tender, do not suffer from arbitrariness, unreasonableness or vitiated by any malice in law or malice in fact.

64. Considering the above, this Court finds no merit in the instant writ petition, for which, the same stands dismissed. No costs.

JUDGE

Comparing Assistant