



2023:DHC:7948-DE



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

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Date of Decision: 19.10.2023% **W.P.(C) 11998/2023 and CM APPL. 52083/2023****REVALSYS TECHNOLOGIES INDIA PRIVATE LIMITED
& ANR.**

..... Petitioners

Through: Mr. Aditya Dewan, Advocate.

versus

LAND PORTS AUTHORITY OF INDIA & ANR. RespondentsThrough: Mr. Vikram Jetly, CGSC with
Ms.Shreya Jetly, Advocate for
respondent No.1.**CORAM:****HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE SANJEEV NARULA****SATISH CHANDRA SHARMA, CJ. (ORAL)**

1. The instant writ petition has been filed by the Petitioners seeking a direction to the Respondents to accept the bid of the Petitioners in respect of Tender Document No. GEM/2023/B/3552190 dated 09.06.2023 (“**Subject Tender**”) issued by the Land Ports Authority of India (“**LPAI**” or “**Respondent No. 1**”)

2. The facts in brief, leading up to the filing of the instant writ petition are, that on 09.06.2023, LPAI issued the Subject Tender for the work of “Selection of System Integrator for Design, Development, Implementation and Operation & Maintenance of Land Ports Management System ‘VINIMAY’” (“**the Project**”) of LPAI. The terms of the Subject Tender

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provided that participants should submit their respective bids by 03:00 PM on 01.09.2023. The Request for Proposal (“RFP”) for the Subject Tender provided that the bids should be submitted by uploading the concerned file to the Government E-Marketplace (“GEM” or “Respondent No. 2”) Portal.

3. Petitioner No. 1 and Petitioner No. 2, entered into a Consortium Agreement dated 30.08.2023 for the purpose of submitting their bid in pursuance of the Tender under the name of “REVALSYS-ENVISION LPMS” (“**Petitioner Consortium**”), with Petitioner No. 1 as the lead member of the Petitioner Consortium.

4. It is stated that on 01.09.2023, i.e., the last day of submission of bids for the Subject Tender, the Petitioner Consortium sought to submit their bid via the GEM Portal, however they were unable to do so owing to technical glitches on the GEM website and the Petitioners were unable to upload the files, and therefore their bid could not be submitted for no fault on their part. It is stated that the GEM Portal showed an error that “PDF File format not supported” despite the fact that it met the specifications provided, with a file size of less than 10 MB and not more than 100 pages.

5. On the same day, at 02:30PM, the Petitioners raised with GEM, a grievance ticket with the description of the issue being “Unable to Participate In Bid”. It is stated that the GEM Helpdesk executive accessed the Petitioners system remotely through AnyDesk software and the Petitioners followed his instructions to compress the files, however the issue was still not resolved.

6. The Petitioners therefore were unable to submit their bid before 03:00 PM on 01.09.2023 and have approached this Court with the following prayers:



“a) Issue a writ of mandamus and/or other order(s) of the similar nature directing the Respondents to suitably extend the date for submission/opening of the tender inviting bids vide its tender document no./ GEM bid number: GEM/2023/b/3552190 issued by the Land Ports Authority Of India, and/or

b) Issue a writ of mandamus and/or other order(s) of the similar nature directing the Respondents to manually/physically accept the bid of the Petitioners in respect of the tender inviting bids vide its tender document no./ GEM bid number: GEM/2023/b/3552190 issued by the Land Ports Authority Of India and/or

c) Issue a writ of mandamus and/or other order(s) of the similar nature directing the Respondent No. 2 to rectify the errors in the GeM portal and permit the Petitioners to submit their bid online and direct the Respondents to consider the same for the process of the tender document no./ GEM bid number: GEM/2023/b/3552190 issued by the Land Ports Authority of India; and /or

d) Pass any other/ further order(s) or direction(s) as this Hon’ble Court may deem fit and proper in the interest of justice. ”

7. The present case came up before this Court on 13.09.2023 wherein this Court issued notice based on the claim of the Petitioners that they were unable to submit the bid on account of technical glitch. It was observed by this Court that in case the Petitioner’s plea is not substantiated by the record, this Court shall impose costs upon the Petitioner.

8. Learned counsel for the Petitioners submits that they were unable to submit their bid on the GEM Portal before 03:00 PM on 01.09.2023 because the GEM Portal was not functioning properly and the same was out of their control. It is submitted that there was inaction on the part of the Respondents to rectify the technical glitch and the same is an encroachment of their rights under Article 19(1)(g) of the Constitution of India. It is further submitted



that the Petitioners have been deprived of their right to participate in the Subject Tender and present a competitive bid, and therefore should be allowed to submit their bid and the same should be considered by the tendering authority.

9. *Per Contra*, learned counsel for GEM refutes the claims made by the Petitioners apropos technical glitches on the GEM Portal. He submits that there were six bidders who had participated in the bidding process of the Subject Tender and none of these bidders have reported any technical glitches on the GEM Portal. He further submits that on 01.09.2023, between 01:55 PM and 02:49 PM, the Portal received four bids in respect of the Subject Tender. He contends that the Petitioners were also trying to submit their bid during the same time, however no issues were faced by the other four bidders and they were able to successfully submit their bid online. He therefore submits that there were no technical glitches on the GEM Portal during the time when the Petitioners were attempting to submit their bid.

10. It is submitted by learned counsel for GEM that the Petitioners raised a ticket with GEM helpdesk, to which the helpdesk responded promptly, however the Petitioners failed to upload screenshots of the issue being faced by them, and thus the ticket was closed owing to non-receipt of required details and response from the Petitioners. It is submitted that the Petitioners called the call centre of GeM Helpdesk and gave remote access of their system through AnyDesk software, and through this the Helpdesk official successfully uploaded the files and the issue was resolved and the Petitioner also confirmed successful upload of the files and the issue was thus resolved and the call was accordingly disconnected. He further submits that the screenshots shared by the Petitioners show that two (2) out of four (4)



documents are uploaded successfully, which further evinces that there was no technical glitch on the GEM Portal, and the issues faced by the Petitioners cannot be attributed to GEM.

11. Heard learned counsels for the parties and perused the documents on record.

12. The facts of the case reveal that as per the terms of the Subject Tender, the prospective participants were required to submit their bids on the GEM Portal by 03:00 PM on 01.09.2023. The Petitioner Consortium, wishing to participate in the Subject Tender tried to submit its bid on 01.09.2023, however some of the documents required to be uploaded could not be uploaded. As per the screenshot annexed by the Petitioners, while two documents were uploaded, two documents being submitted by the Petitioners were crossing the 100 page limit prescribed. Due to the issues faced by the Petitioners, they contacted GEM to resolve the issue. The GEM Helpdesk *vide* a call and the AnyDesk software helped the Petitioners resolve the issue pertaining to inability to upload certain documents and accordingly closed the ticket/grievance raised by the Petitioners. However, even with the assistance of GEM, the Petitioners failed to submit the documents before the deadline prescribed. Further, during the time period in which the Petitioners were attempting to submit their bids in respect of the Subject Tender, the GEM Portal received four other bids with respect to the Subject Tender.

13. In view of the above, this Court finds it difficult to accept the contention of the Petitioners that they were unable to submit their bids due to a technical glitch on the GEM Portal. The fact that the Petitioners were able to upload some documents but not all documents along with the fact



that four other bidders were able to successfully submit their bids during the said time makes it amply clear that the non-submission of bid by the Petitioner Consortium before the deadline was not due to any technical glitches on the GEM Portal. The issues faced by the Petitioners, if any, can only be attributed to the Petitioners themselves and not the Respondents. Therefore, the failure of the bidder to submit its bid within due time on the GEM Portal is certainly the fault of the Petitioner itself, and this Court finds no merit in the allegations levelled by the Petitioner that it was unable to submit its bid due to technical glitches.

14. A similar question relating to non-submission of bid due to alleged technical glitches was recently decided by this Court in ***Jindal Steel & Power Ltd. v. Union of India***, 2023 SCC OnLine Del 4401, wherein the Petitioner-therein approached this Court alleging that on account of a technical glitch, it was prevented from proceeding further in the e-auction process in relation to the allocation of coal mines. This Court in the said case, after going through the material placed on record, came to a finding that there was no technical glitch on the bidding portal, and therefore, it would be improper to grant relief to the Petitioner-therein. The relevant extracts of the decision in ***Jindal Steel*** (supra) reads as under:

“82. A perusal of the material on record shows that at the time when the auction for Chhendipada (Revised) Coal Mine was going on, two more auctions - one for Parbatpur Central Mine (40729) and the other for Datima Mine (40733), were being conducted on the very same e-auction portal. Material on record indicates that between 14 : 48 : 09 hrs to 14 : 56 : 09 hrs, i.e. the time period in which the Petitioner faced technical glitches on the e-auction portal, bidders were able to place their bids for the other two mines. Bids were received at 14 : 51 : 57 for Parbatpur Central Mine and for Datima Mine bids were received at 14 : 48 : 13, 14 : 49 : 14, 14 : 54 : 10 & 14 :



56 : 10. Since the bidders for two other auctions for coal mines were about to place the bids, which were being conducted at the very same time on the very same portal, it cannot be said that there was a technical glitch in the portal of Respondent No. 3. The Petitioner has not been able to make out a case that there was a technical glitch across the board on the portal on which auctions were being conducted.

83. This Court is of the opinion that in view of the fact that there was no glitch on the portal of the MSTC, on which the e-auctions were being conducted, it would be improper to set aside the result of the present e-auction only on the ground that the Petitioner was prepared to give a higher bid.”

15. Similarly, the High Court of Orissa in **Mythri Infrastructure & Mining India (P) Ltd. v. State of Odisha**, 2021 SCC OnLine Ori 2436, refuted the contention of the Petitioners-therein that it could not submit its Initial Price Offer (“IPO”) on account of technical glitches faced by it. The relevant paragraphs of the decision in **Mythri Infrastructure** (supra) are reproduced as under:

“25. While the Petitioners might contend that their inability to upload the IPO was for reasons entirely outside their control, the fact remains that there was no technical glitch on the side of Opposite Party No. 3. The log enclosed with its counter affidavit makes it abundantly clear that none of the other bidders encountered any difficulty in uploading the technical bid as well as the IPOs. While the log does show that the Petitioners' three attempts at uploading the IPO prior to 3 PM on 24th August, 2021 were unsuccessful, this is not conclusive proof of the technical glitches at the end of the Petitioners being for reasons entirely outside their control. Even assuming in this regard in favour of the Petitioners, the fact remains that they need not have waited till the last minute to upload the IPO. The tender documents made it clear that Opposite Party No. 3 would not be responsible for any problem at the bidder's end. In fact, this is the reason why MSTC Limited had offered help to bidders. The instructions in this regard were specific and read as under:



“Attached Documents

After uploading these documents, the bidder shall have to attach them with the specific tender for the concerned mine for which it is intending to submit the Technical Bid. It may be noted by the Bidder that in case it intends to use the same supporting document for more than one mine, it does not need to upload the same document every time. The supporting document, once uploaded, can be attached with Technical Bid for multiple mineral block(s), if desired.

The bidder should note that only a file which is “attached” with a specific mine(s) shall be considered during evaluation of the Technical Bid. Files which are not attached to any mine(s) shall not be considered for evaluation.

The Bidder should also note that a Bid will be considered as submitted if and only if the Bidder has submitted the Initial Price Offer. Only such Bids will be opened for which Initial Price Offer has been submitted. It is further clarified that saving of Technical Bid without saving of the Initial Price Offer will be treated as non-submission of bid.

Upon successful submission of Initial Price Offer, the Bidder shall receive a bid acknowledgment from the system automatically.

The Bidders may note that the Technical Bid and the Initial Price Offer submitted online as above will be encrypted by the MSTC's own software before storage in the database. This will be done to protect the sanctity and confidentiality of the Bids before the actual opening of the same.

The Bidder has an option to edit Technical Bid and initial price offer as many times as it wishes till the final submission.” (emphasis supplied)

26. In similar circumstances, in Shapoorji Pallonji (supra), the



Supreme Court disapproved of the High Court having interfered and allowed the Respondent therein to participate in the tender process. In that case, the deadline for submission of online bids was 13 : 00 hours. Respondent No. 1 had submitted its proposal at 12 : 16 hours. It was claimed that it pressed the 'freeze button' but could not get any acknowledgement. Its bid was therefore rejected. The system had generated an acknowledgement for other bidders and therefore it was held that there was no glitch in the system as far as the host of web portal i.e. the National Informatics Centre (NIC) was concerned. The Supreme Court came to the following conclusions:

“9. If NIC, which had developed the e-portal in which bids were to be submitted and maintenance and upkeep of which was its responsibility, had stated in its affidavit what has been indicated above, we do not see how the repeated statements made on behalf of the first respondent that the bid documents can still be retrieved, if required by travelling beyond the Government of India Guidelines, should commend to us for acceptance. The opinion rendered in this regard by the consultant of the first respondent Mr. Arun Omkarlal Gupta on which much stress and reliance has been placed by the first respondent could hardly be determinative of the question in a situation where NIC which had developed the portal had stated before the Court on affidavit that retrieval of the documents even jointly with Maharashtra Housing Development Authority is not feasible or possible. That apart, lack of any timely response of the first respondent when the system had failed to generate an acknowledgement of the bid documents in a situation where the first respondent claims to have pressed the “freeze button”; the generation of acknowledgements in respect of other bidders and the absence of any glitch in the technology would strongly indicate that the bid submitted by the first respondent was



not a valid bid and the directions issued by the High Court in favour of the first respondent virtually confer on the said respondent a second opportunity, which cannot be countenanced.

10. In the above view of the matter, we are inclined to take the view that the High Court was not correct in issuing the directions extracted above as contained in paragraph 29 of the impugned judgment/order dated 28-9-2017. The same are, therefore, interfered with. The appeal is allowed accordingly.”

27. The present case is more or less similar on facts. The Court is therefore inclined not to accept the plea of Petitioner No. 1 that it should be allowed to participate in the second round of bidding by requiring the Opposite Parties to accept its IPO, which would be submitted physically.”

16. A Special Leave to Appeal being Appeal (C) No(s). 20851/2021, was filed against the Order of the Division Bench of the Orissa High Court. The said Appeal was rejected by the Apex Court *vide* Order dated 19.01.2023 by observing as under:

“ It is pointed out to us that about 122 bids were received and uploaded in the server in question on 24.07.2021 upto 3:00 p.m. On the basis of preponderance of probability, the High Court has rightly arrived at the conclusion that the technical glitch was at the end of the petitioners.

During the course of hearing, the learned Senior Advocate appearing on behalf of the petitioners has stated that the tender qua the 11th block has been cancelled/annulled. This is disputed by the learned Senior Advocate appearing on behalf of the State of Odisha. We make no comments in this regard.

Recording the aforesaid, we do not find any good ground and reason to interfere with the impugned judgment and hence the special leave petition is dismissed.

Application for impleadment stand disposed of. Pending application(s), if any, shall stand disposed of.”



17. It is well settled that the scope of interference by a High Court in matters of tender, while exercising its jurisdiction under Article 226 of the Constitution of India, is extremely narrow. The Court ought not to interfere in such matters unless it is established that the process adopted by the decision-making authority is *mala fide*, intended to favour someone, arbitrary or irrational. In case the decision-making process is just, fair and reasonable, the writ courts must loathe to interfere with the award of contracts by the State/Instrumentalities of the State. [See: *Tata Cellular v. Union of India*, (1994) 6 SCC 651; *Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd.*, (2016) 16 SCC 818; *Silppi Constructions Contractors v. Union of India*, (2020) 16 SCC 489; and *Agmatel India (P) Ltd. v. Resoursys Telecom*, (2022) 5 SCC 362].

18. In view of the above, this Court does not find any merit in the contentions and allegations made by the Petitioners. It is difficult for this Court to come to a finding that the Petitioner Consortium was unable to submit its bid for the Subject Tender owing to technical glitches on the GEM Portal. The documents on record make it very clear that that the GEM Portal was working smoothly on the last date of submission of bids i.e., 01.09.2023 and during the time when the Petitioners were attempting to submit their bid. The issues, if any, faced by the Petitioners in submitting its bid before the bid submission cut-off time can only be attributed to the Petitioners themselves and the Petitioners cannot seek refuge from its inability to adhere to the timelines prescribed by alleging the presence of and / or the occurrence of technical glitches on the GEM Portal. In view of the aforesaid, this Court finds no merit in the present writ petition and the same is dismissed.



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19. On 13.09.2023, this Court has issued notice solely based upon the allegations of the Petitioners that there was a technical glitch due to which its bid has been rejected. It was further observed by this Court that in case the petition is dismissed, heavy costs shall be imposed upon the Petitioners. In the present case, there was no technical glitch – as argued by the Petitioners, and the allegations made by the Petitioners that they were not able to submit their bid for the Subject Tender owing to technical glitches on the e portal, is incorrect and has not been established. Therefore, the petition is dismissed with costs of Rs. 1,00,000/- to be paid to the Armed Forces Battle Casualties Welfare Fund within four weeks.

20. With these observations, the petition is dismissed, along with pending application(s), if any.

SATISH CHANDRA SHARMA, C.J.

SANJEEV NARULA, J

OCTOBER 19, 2023

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