

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

-.-

Date of decision: 13.02.2019

(1) CWP No. 31711 of 2018 (O&M)

Ashish Jain

.....Petitioner

Vs.

HSI IDC & Anr.

...Respondents

(2) CWP No. 30487 of 2018 (O&M)

Amit Kohli & others

.....Petitioners

Vs.

HSI IDC & Anr

....Respondents

(3) CWP No. 30587 of 2018 (O&M)

Essaar Textiles

.....Petitioner

Vs.

HSI IDC

....Respondent

(4) CWP No. 32117 of 2018 (O&M)

M/s Mahavir Overseas Pvt. Ltd

.....Petitioner

Vs.

HSI IDC & Anr

....Respondents

(5) CWP No. 32345 of 2018 (O&M)

Pankaj Chawla

.....Petitioner

Vs.

HSI IDC & Anr

....Respondents

(6) CWP No. 32975 of 2018 (O&M)

Gaurav Kapoor and others

.....Petitioners

Vs.

HSIIDC & Anr

....Respondents

(7) CWP No. 33005 of 2018 (O&M)

Auxein Medical Pvt. Ltd and another

.....Petitioners

Vs.

HSIIDC & Anr

....Respondents

(8) CWP No. 33006 of 2018 (O&M)

Krishan Kumar Behreja and another

.....Petitioners

Vs.

HSIIDC & Anr

....Respondents

(9) CWP No. 505 of 2019 (O&M)

Varinder Singh

.....Petitioner

Vs.

HSIIDC & Anr

....Respondents

(10) CWP No. 2002 of 2019 (O&M)

R.M Enterprises

.....Petitioner

Vs.

HSIIDC & Anr

....Respondents

**CORAM: HON'BLE MR. JUSTICE MAHESH GROVER
HON'BLE MR. JUSTICE LALIT BATRA**

Present:- Mr. Akshay Bhan, Sr. Advocate, with
Mr. Amandeep Singh Talwar, Advocate,
Mr. Arun Jain, Sr. Advocate, with
Mr. Amit Jain, Advocate, and
Mr. Ajay Kaushik, Advocate,

Mr. Girish Agnihotri, Sr. Advocate, with
Ms. Roja Agnihotri, Advocate,
Mr. Harit Sharma, Advocate,
Mr. Manish Soni, Advocate,
Mr. Vivek Aggarwal, Advocate,
Ms. Sharmila Sharma, Advocate,
for the petitioners.

Mr. Vikas Bahl, Sr. Advocate, with
Ms. Harbani Shinh, Advocate,
Mr. Aknur Mittal, Advocate,
for HSIIDC.

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MAHESH GROVER, J. (Oral)

C.M No.1716-CWP of 2019 in CWP No.31711 of 2018
C.M No.2121-CWP of 2019 in CWP No.32117 of 2018
C.M No.2177-CWP of 2019 in CWP No.32975 of 2018
C.M No.825-CWP of 2019 in CWP No.33005 of 2018

Allowed as prayed for subject to all just exceptions.

Main Cases

By this order, a bunch of 10 writ petitions i.e C.W.P Nos. 31711, 30487, 30587 32345, 32117, 32975, 33005 and 33006 of 2018 along with C.W.P Nos. 505 and 2002 of 2019 shall be disposed of. The facts of the case have been taken from C.W.P No. 31711 of 2018

HSIIDC put out an advertisement offering 1762 industrial plots through what they described “***transparent procedure of allotment of plots***”. The terms and conditions for online industrial plots/sheds/FAF sheds were given out in the brochure. We intend to produce the relevant clause:-

“1. The allotment shall be made in accordance with the Enterprises Promotion Policy of the State Government and Estate Management Procedures (EMP)/Allotment Procedure of the Corporation, as amended from time to time. The applicant confirms that he has gone through the Industrial Policy of the State Government and the Estate Management Procedures

(EMP)/Allotment Procedure of HSIIDC and understood the provisions thereof and agrees to abide by the same.”

A glance at the above extracted clause shows that allotment was to be made in accordance with the enterprises promotion policy of the State Government and the Estate Management Procedures (EMP)/Allotment Procedure of the Corporations as amended from time to time. It would thus be relevant to refer to the State Management Procedure/Allotment Procedures envisaged clause 3.4 ii (a) and (c) which are relevant are extracted here-below:-

“3.4 Process of Allotment:-

ii General/NRI/FDI/Persons with Disability Categories

Allotment:

a) The applications for allotment of plots under this category shall be invited through advertisement on first of each month and 100% of the available industrial plots of each sector/phase shall be offered for allotment in one go;

b) xxx xxx xxx xxxx

c) In case, the number of applications received in any plot size category are less than or equal to the number of plots offered, all the applicants may be considered for allotment by the Managing Director/Industrial Plot Allotment Committee and where the number of applications are more, the allotment shall be made through limited e-auction amongst the applicants;

What is thus contemplated is a limited e-auction amongst the applicants in case the applications made are more than the allocated plots. It is thus in tune with the allotment procedures that an exercise to conduct e-auction for allotment of industrial plots was undertaken on 25.09.2018. All the petitioners before us participated in the e-auction and were successful

bidders against various categories of plots in different places which had been put out for auction vide an advertisement dated 04.07.2018.

But instead of accepting the bids a public notice was given out on 29.11.2018 (Annexure P-9) putting out as many as 130 plots for manual auction by discarding the bids obtained during e-auction. The public notice makes a revealing reading as it has been said “*due to some technical reasons it has been decided to resume/conduct some of the auctions manually as per the following schedule*”.

After the schedule, a note is given in the notice which also needs to be extracted here:-

“Note:- *The auction at Sr. No.1 to 8 above, shall be resumed from the highest bid as received during e-auction”*

It is at this stage petitioners have approached this Court by impugning the action of the respondents in scuttling the bids received by them in e-auction and to proceed with the process of allotment through manual auction.

The arguments advanced by Mr. Akshay Bhan, Sr. Advocate assisted by Mr. A.S. Talwar, Advocate, before us are on expected lines that the rules of the game could not be changed having once accepted by the parties and sufficiently embarked upon by them, to which the respondents would also reply on expected lines that they indeed have the power to withdraw/modify the entire process and merely because a bid has been made would give no cause of action to the petitioners to agitate before the court of law and the respondents would be justified in making a change in the bidding process and the exercise has resulted in substantial gain to the exchequer.

No other point was urged by any of the counsels appearing for the petitioners in connected matters. Rather they adopted the arguments advanced by Mr. Bhan.

Reply to the petition has been filed and the respondents have put on record the minutes of the meeting held on 27.11.2018 where each and every complaint has been compressed and stated this to be the primary reason for discontinuing the process of e-auction to revert to manual auction qua the limited number of plots. The complaints set out in tabulated form make interesting reading and are extracted below:-

“A- 1012.50 sqm size plots in IE Barhi-e-auction held on 26.09.2018

<i>Sr. No.</i>	<i>Complainant/Complaint</i>	<i>Observations/Findings of the Committee</i>
1	Madan Lal & Sons- Images shows Zero seconds and their bid was highest at that time. But when they generated the result, the plot was allotted to some other applicant.	The complainant did not appear for hearing and has withdrawn his application for allotment on 14.11.2018.
2	Mr. Mukesh Sharma- The website was very poor to perform so he could not bid in the last few seconds.	The complainant did not appear for hearing. On perusal of the record produced before the Committee, it was observed that the complainant was bidding against plot No. 136 and was second highest bidder at Rs. 20200/- at 15:59:54.784 Hours and highest bid against this plot was Rs. 22200/- at 15:59:57.528 Hours. Similar is the grievance of many other bidders and thus the complaint merits consideration.
3	Mr. Shubham Goel During e-auction he tried to bid so many times but was not able to see my bid placed. Beside that the website was very poor to perform taking so much time to perform. He wanted to bid but due to the reasons mentioned above, he could not bid.	The complainant did not appear for hearing. On perusal of the e-auction logs, it has been observed that there was no bid placed by the complainant in this e-auction.

<i>Sr. No.</i>	<i>Complainant/Complaint</i>	<i>Observations/Findings of the Committee</i>
4	Bright Cables Pvt. Ltd. NaN error popped up so many times during e-auction disabling us to bid in a right way. So many times we did log out then again log in	Sh. Jaibir Singh, representative of the complainant appeared before the Committee and contended that they could not bid due to NaN error. On perusal of the record, it was observed that there was NaN error, which was resolved by the IT Team at 15:45 hours.
5	Ms. Sarika Walia-N2018JUL13269 The results were changed within seconds after the time was over. This is clearly a case of fraud to genuine applicants. You are requested to cancel this auction and make this happen again for a fair competition else we have no choice than to proceed legally.	Mr. Kapil Walia, Husband of the complainant appeared before the Committee and informed that they were bidding against plot No. 137 and contended that the results changed within seconds after the time was over and the last two bids were not visible to them. Thus they could not place the bid thereafter and requested to re-conduct this auction. On perusal of the e-auction logs, it was observed that the complainant was bidding against plot No. 18, 41, 137, 138, 140 & 144. Against plot No. 137 her last bid was for Rs. 20700/- at 15:59:50.21 Hours and thereafter there were 2 bids of Rs. 20900/- at 15:59:52.622 and highest bid of Rs. 22100/- at 15:59:57.95 Hours. The complainant has submitted an affidavit in support of her contentions. Therefore, the complaint merits consideration.
6	Mr Dinesh Sharma Because of lethargic performance of the e-auction website, we could not bid properly.	The complainant did not appear for hearing. On perusal of the record produced before the Committee, it has been observed that the complainant was bidding against plot No. 16 & 39. Against plot No. 16, his last bid was for Rs. 18500/- at 15:43:38.11 Hours and thereafter there were 4 bids with highest bid of Rs. 20200/- at 15:52:42.065 Hours. Against plot No. 39, he is the highest bidder at Rs. 22700/- at 15:59:56.124 Hours. Thus, the complaint is devoid of any merit.
7	Mr. Vikas Bansal I do many bid in plot No. 136 and last bid at 15.59.20 rate 22200 I do- but your department award any other in same but I think some mistake your site I am call all officer yesterday in barhi but no one response me and solve my problem	The complainant did not appear for hearing, but vide email dated 15.11.2018 has requested for another date due to some medical emergency in the family. On perusal of the e-auction logs of Plot No. 136, it was observed that the complainant had placed the bid of Rs. 18200/- at 15:26:12.982 Hours and the highest bid was of Rs. 22200/- at 15:59:57.528 Hours. Since the complainant's bid of Rs. 22200/- at 15.59.20 hours was not captured by the system, the complaint merits consideration.

<i>Sr. No.</i>	<i>Complainant/Complaint</i>	<i>Observations/Findings of the Committee</i>
8	Mr. Puneet Sethi He was bidding against Plot No. 47. He was highest bidder at Rs. 19000/- with remaining time displaying zero on the screen. Submitted screen shot in support thereof. Final result was different. Requested for a solution else legal action.	This complaint was received subsequent to the date of hearing. On perusal of the screen shot submitted by the complainant, it is true that last bid was shown as Rs. 19000/- with zero remaining time. But as per e-auction logs, there are five bids thereafter with highest bid of Rs. 20000/- at 15:59:33.263 Hours, which was not visible to the complainant. Similar screen shot has been submitted by another bidder of Rai. The representative of M/s Nextenders present during hearing could not give any satisfactory reply to the same. Therefore, the complaint merits consideration.

B. 1800 sqm size plots in IE Barhi- e-auction held on 14.9.2018.

<i>Sr. No.</i>	<i>Complainant/Complaint</i>	<i>Observations/Findings of the Committee</i>
1	Small Scale Industrial Manufacturers Association, Rai on behalf of Mr. Amit Kohli Some irregularities have been pointed out in placing/accepting the bids in the last moment by the system and requested for live hammer auction.	Mr. Mahender Goel, President SSIMA, Rai appeared before the Committee in some other case and denied having made this complaint. Further Mr. Amit Kohli, on whose behalf this complaint was made has withdrawn the complaint vide email dated 12.11.2018, being satisfied with the e-auction.

C. 750 sqm size plots in Udyog Vihar Gurugram-e-auction held on 17.9.2018.

<i>Sr. No.</i>	<i>Complainant/Complaint</i>	<i>Observations/Findings of the Committee</i>
1	Tirupati Global International- They placed bid due to some server error their bids were not uploaded on the site. They tried for 40 seconds before the auction ended but the server did not work properly and they faced this problem continuously.	Mr. Karan Chitkara, representative of the complainant appeared before the committee and informed that they could not place bid after 15:59:06 hours due to screen showing zero seconds for auction and requested to cancel the auction. The complainant has also submitted an affidavit in support of his contentions. On perusal of the e-auction logs, it was observed that there was only one plot in this category. The complainant was the second highest bidder with a bid of Rs. 57700/- at 15:59:06.458 hours and highest bid against this plot was Rs. 64700/- at 15:59:18.131 hours. Since the complainant was continuously bidding and was the second highest bidder, but could not place bid in the last few seconds, the complaint merits consideration.

D. 250 sqm size plots in Udyog Vihar Gurugram-e-auction held on 17.9.2018.

<i>Sr. No.</i>	<i>Complainant/Complaint</i>	<i>Observations/Findings of the Committee</i>
1	Mr. Mukesh Aggarwal- In the last seconds when he was trying to submit bid which was higher than the winning bid, but bid was not going to the system.	The complainant appeared before the Committee and informed that he was bidding against plot No. 602, but he could not place bid in the last few seconds, which was higher than the winning bid. On perusal of the e-auction logs, it has been observed that there were two plots in this category i.e., Plot No. 602 & 658. Against plot No. 602, the last bid of the complainant was Rs. 118400 at 15:52:55.3 hours and highest bid was Rs. 134600/- at 15.59.57.047 hours. Similarly, against Plot No. 658, the last bid of the complainant was for Rs. 160500/- at 14.26.29.163 hours and highest bid of Rs. 171600 at 15.59.53.036 Hours. Since, the complainant was continuously bidding but could not submit his bid in the last second, as complained by other bidders as well in other e-auctions, the complaint merits consideration.

E. 3855.60/4050 sqm size plots in Kundli-e-auction held on 14.9.2018.

<i>Sr. No.</i>	<i>Complainant/Complaint</i>	<i>Observations/Findings of the Committee</i>
1	Elegant Farm Developers Pvt. Ltd.- In the last seconds the server stopped accepting bids. They tried to place the bid several times (Approx. 20 times) but the system did not record their bid. It is further stated that highest bid is much lower than they were ready to pay.	Mr. Gaurav Chaudhary appeared before the Committee and informed that they tried to bid 10-20 times but the system did not respond being very slow and they were not able to see their bid placed. He further informed that they tried to place a bid of Rs. 32900/-at 15:59:31 seconds, but the same was not saved by the system. The complainant has submitted an affidavit in support of their contentions. On perusal of the e-auction logs, it has been observed that the complainant was bidding against plot No. 377 and the last bid of the complainant was Rs. 29400/- at 15:32:36:77 hours and highest bid was Rs 33500/- at 15:59:54:489 hours. In view of the complainant having submitted an affidavit, the complaint merits consideration.

<i>Sr. No.</i>	<i>Complainant/Complaint</i>	<i>Observations/Findings of the Committee</i>
2	Rizon Developers & Infrastructure Pvt. Ltd.- In the last seconds the server stopped accepting bids. They tried to place the bid several times (approx. 20 times) but the system did not record their bid. It is further stated that highest bid is much lower than they were ready to pay.	Mr. Gaurav Chaudhary appeared before the Committee and informed that they tried to bid 10-20 times but the system did not respond being very slow and they were not able to see their bid placed. The complainant has submitted an affidavit in support of their contentions. He further informed that they tried to place a bid of Rs. 29500/-at 15:59:28 seconds, but the same was not saved by the system. On perusal of the e-auction logs, it has been observed that the complainant was bidding against plot No. 96-E and the last bid of the complainant was Rs. 25400/- at 15:32:38:955 hours and highest bid was Rs 28200/- at 15:57:20:745 hours. In view of the complainant having submitted an affidavit, the complaint merits consideration.
3	Bellstar Trading Pvt. Ltd.- The website was not performing in proper way as they were able to see their bid after 5-6 seconds of placing it.	Mr. Abhay Bhanot appeared before the Committee and informed that they tried to bid several times but the system did not respond being very slow and they were not able to see their bid placed. However, the complainant could not submit any evidence in support thereof. On perusal of the e-auction logs, it has been observed that the complainant was bidding against Plot No 96-F and was the second highest bidder with a bid of Rs.32200/- at 15:59:59.365 hours and highest bid was for Rs.32800/- at 15:59:59.834 hours. Since the complainant was able to place the bid till the last second, the complaint is devoid of any merit and same was clarified to the complainant. The Complainant agreed with the observations of the Committee and suggested unlimited extensions for future e-auctions.

F. 1800 sqm size plots in Kundli- e-auction held on 25.09.2018

<i>Sr. No.</i>	<i>Complainant/Complaint</i>	<i>Observations/Findings of the Committee</i>
1	M/s J.K.Polyplast Pvt. Ltd.- The auction Website could not perform properly and they could not bid in the last few seconds. In the last 10 seconds they bid almost 10-20 times and could not see their bids placed. At one moment error popped up 'You cannot bid'.	Mr. Sandeep Sangwan (authorised representative) appeared before the Committee and informed that they tried to bid several times in the last seconds but the system did not respond being very slow and they were not able to see their bid placed. On perusal of the e-auction logs, it has been observed that the complainant was bidding against plot No. 163-M and was the second highest bidder with a bid of Rs.43,700/- at 15:59:52.267 hours and highest bid was for Rs.45000/- at 15:59:55.972 hours. Since the complainant was continuously bidding and was the second highest bidder, the complaint merits consideration.

G. 8100 sqm size plots in Rai-e-auction held on 14.09.2018

<i>Sr. No.</i>	<i>Complainant/Complaint</i>	<i>Observations/Findings of the Committee</i>
1	M/s Sequal Industries Pvt. Ltd.- After bid of Rs 21000/- by the other party, they repeatedly tried to place their bids but the portal was not accepting their bid and consequently they could not place their next bid.	Mr. Naresh Kumar appeared before the Committee and informed that after placing bid of Rs.20100/- by other party, they repeatedly tried to place their bids but the portal was not accepting their bid and consequently they could not place their next bid. However, he could not submit any evidence in support thereof. On perusal of the e-auction logs, it has been observed that the complainant had placed first bid at 10:12:39.777 hours, the second bid was placed by some other applicant at 10:23:44.563 hours and thereafter there was no bid. Further, this complaint was received on 13.10.2018 i.e. After one month of auction and there was no complaint/query from the applicant in this regard on the day of e-auction or thereafter for one month. Therefore, there is no merit in the complaint.

H. 1800 sqm size plots in Rai -e-auction held on 25.09.2018

<i>Sr. No.</i>	<i>Complainant/Complaint</i>	<i>Observations/Findings of the Committee</i>
1	Ram Karan Yadav- Tried to place their bid after 03:23 PM was shown invalid by e-auction site.	The complainant did not appear for hearing. On perusal of the e-auction logs, it has been observed that the complainant was bidding majorly against plot No.1918-1 and placed 9 bids with last bid of Rs.28200/- at 15:23:43.561 hours and the highest bid against this plot was Rs.35800/- at 15:59:59.756 by some other applicant. Since this is a common complaint from many bidders that they could not bid in the last seconds, the complaint merits consideration.
2	Shivani Bansal- Last bid did not submitted even while many seconds were available and result got changed within few second after time was over	Mr. Arun Bansal (Husband of the complainant) appeared before the Committee and informed that they could not submit the last bid even while many seconds were available and result got changed within few second after time was over. The complainant has submitted an affidavit in support of her contentions. On perusal of the e-auction logs, it has been observed that the complainant was bidding majorly against plot No.1918-I and placed 5 bids with last bid of Rs.30200/- at 15:59:13.575 hours and highest bid against this plot was Rs.35800/- at 15:59:59.756 by some other applicant. Since this is a common complaint from many bidders that they could not bid in the last seconds, the complaint merits consideration.

<i>Sr. No.</i>	<i>Complainant/Complaint</i>	<i>Observations/Findings of the Committee</i>
3	Rajesh Kumar -Placed bid in the last minutes but most of the time NaN error appeared. They bid 15-20 times but only one bid placed successfully.	The complainant did not appear for hearing. On perusal of the e-auction logs, it has been observed that the complainant was bidding against plot No. 2068 and was the second highest bidder with bid of Rs.32900/- at 15:59:49.939 hours. Since the complainant was a genuine bidder being the second highest bidder, the complaint merits consideration.
4	Ankush Gupta -Last bid did not submitted even while many seconds were available and result got changed within few second after time was over.	Mr. Amit Gupta (brother of the complainant) appeared before the Committee and informed that they could not submit the last bid even while many seconds were available and result got changed within few second after time was over. On perusal of the e-auction logs, it has been observed that the complainant was bidding majorly against plot No.2069 and his last bid was of Rs.26200/- at 15:19:07.409 hours. Since this is a common complaint that bidders could not bid in the last few seconds, the complaint merits consideration.
5	Ashok Dyestuff Pvt. Ltd. (Sati Setia) - The system was hanging lots of time and in the end they lost on e-auction because of such error.	The complainant did not appear for hearing. On perusal of the e-auction logs, it has been observed that the complainant is the highest bidder against plot No.1918-I and as such the complaint is devoid of any merit.
6	Manish Pakkers (Sanjay Manocha) - Bid was placed of Rs. 30800/- and the time stopped and shows zero second remaining but even after the time was over it took one more bid from any other person of Rs. 31800 Psm.	Sh. Mahender Goel, partner of the complainant appeared before the Committee and informed that as per display on their system, at the close of the e-auction with zero remaining time, they were the highest bidder with bid of Rs.30800/- but even after the time was over it took one more bid from another person of Rs.31800/- psm. He submitted a copy of screen shot in support of his contentions. On perusal of the e-auction logs, it was observed that the complainant was bidding against plot No.2069 and placed a bid of Rs.30800/- at 15:59:09.633 hours and highest bid against this plot was Rs.33900/- at 15:59:57.177 hours. As per the screen shot submitted by the complainant, the highest bid was Rs.31800/- with zero remaining time. Therefore, the complaint merits consideration.

4050 sqm size plots in IMT Manesar-e-auction held on 14.9.2018

<i>Sr. No.</i>	<i>Complainant/Complaint</i>	<i>Observations/Findings of the Committee</i>
1	Sh. Nishant Kharbanda- Partner of R&M Global Ventures LLP- was one of the bidder from plot No. 11, Sector M-11, with a bid of Rs. 25100/- at 13:17 PM. The applicant has claimed that he was highest bidder from 01:30 PM to 03:59 PM an in last 30 seconds some other bidder placed the highest bid and he could not get a chance to re-bid. It is further contended that in other auctions by banks etc. upon bid in the last five minutes the auction is automatically extended.	The complainant did not appear for hearing. On perusal fo the complaint & e-auction logs, it was observed that the last bid of the complainant was Rs 25100/- at 13:17:43.007. The highest bid against this plot was Rs. 31000/- at 15:59:57.028 hours. The comlaint of the complainant that he could not get a chance to re-bid in last 30 seconds, as complained by other complainants also, therefore, the complaint merits consideration.
2	Sh. Narinder Singla- was one of the bidder for plot No. 34, Sector 6. The applicant did not get a chance to re-bid in the last few seconds and the Corporation has not granted an auto extension of 5 minutes thereafter.	The complainant did not appear for hearing. On perusal of the complaint & e-auction logs, it was observed that the last bid of the complainant was Rs. 23000/- at 13:01:17.795 hours. The highest bid against this plot was of Rs.23300/- at 13:42:16.06 hours. The complaint of the complainant that he could not get a chance to re-bid in last few seconds, as complained by other complainants also, therefore, the complaint merits consideration.

Recommendations of the Committee:

<i>Sr. No.</i>	<i>E-auction</i>	<i>Recommendations</i>
1	1012.50 sqm size plots in IE Barhi	Majority of the complaints merit consideration and therefore, it is recommended to resume this auction, from where it concluded.
2	1800 sqm size plot in IE Barhi	Mr. Mahender Goel, President SSIMA, Rai appeared before the Committee in some other case and denied having made any complaint against this e-auction. Further, Mr. Amit Kohli, on whose behalf this complaint was filed, has withdrawn the complaint, being satisfied with the e-auction. Therefore, the e-auction may be accepted.
3	750 sqm size plot in Udyog Vihar Gurugram	The complaint merits consideration and it is recommended to resume this auction, from where it concluded.
4	250 sqm size plots in Udyog Vihar Gurugram	The complaint merits consideration and it is recommended to resume this auction, from where it concluded.
5	3855.60/4050 sqm size plots in IE Kundli	The complaints merit consideration and it is recommended to resume this auction, from where it concluded.

<i>Sr. No.</i>	<i>E-auction</i>	<i>Recommendations</i>
6	1800 sqm size plot in IE Kundli	The complaint merits consideration and it is recommended to resume this auction, from where it concluded.
7	8100 sqm size plots in IE Rai	The complaint is devoid of any merit and it is recommended to file the same and accept the e-auction.
8	1800 sqm size plots in IE Rai	The complaints merits consideration and it is recommended to resume this auction, from where it concluded.
9	4050 sqm size plots in IMT Manesar	The complaints merits consideration and it is recommended to resume this auction, from where it concluded.

If we see the complaints in the way they have been set out in their compressed form, in majority of them it is noticed that the complainants did not appear for hearing although the contents of complaint is noticed. It indicates that at a particular time, which is just a few nano seconds before the final bid, was the bid of the complainant as against the one received from the successful bidders which is concededly higher.

Now it does not require the expertise of a technocrat to understand that in matters of e-auction it is the final bid made that is to be accepted even though the bidder may have scraped through to beat the time by a fraction of a mili second over rival contenders and this is precisely what has happened. The fact is that the bidder who lost out and made the complaint was himself into that game by bidding at nth second for example 15.59.54.784 Hours as against unsuccessful bidders offer at 15:59:57.528.

Learned counsel for the respondents has very strenuously referred to one complaint where a screen-shot had been provided by the complainant to highlight the flaw in the e-auction and at the cost of repetition we intend to reproduce the complaint here-below:-

6	Manish Pakkers (Sanjay Manocha) - Bid ws placed of Rs. 30800/- and the time stopped and shows zero second remaining but even after the time was over it took one more bid from any other person of Rs. 31800 Psm.	Sh. Mahender Goel, partner of the complainant appeared before the Committee and informed that as per display on their system, at the close of the e-auction with zero remaining time, they were the highest bidder with bid of Rs.30800/- but even after the time was over it took one more bid from another person of Rs.31800/-psm. He submitted a copy of screen shot in support of his contentions. On perusal of the e-auction logs, it was observed that the complainant was bidding against plot No.2069 and placed a bid of Rs.30800/- at 15:59:09.633 hours and highest bid against this plot was Rs.33900/- at 15:59:57.177 hours. As per the screen shot submitted by the complainant, the highest bid was Rs.31800/- with zero remaining time. Therefore, the complaint merits consideration.
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This again shows that as per his own showing the complainant was bidding against plot No.2069 and placed the bid of Rs.30,800/- at 15.59.09.633 hours whereas the highest bid of Rs.33,900/- was received on 15.59.57.177 hours and the screen-shot submitted by the complainant showed highest bid of Rs.31,800/- with zero remaining time. It is stated with some vehemence by the learned counsel for the respondents that this formed the basis of their decision as they concluded a systemic failure to warrant the scrapping of the entire e-auction qua 130 plots.

This to our minds is an indefensible stand taken by the respondents. Firstly if there was a systemic failure then decision of scrapping should have been applied to the entire e-auction process, and, process undertaken afresh. Instead the respondents went cherry-picking by limiting it to few plots as has been done; secondly even if the screen shot submitted by the complainant was suggestive of a systemic failure it was the bounden duty of the respondents to associate technical experts and solicit a report from them in this regard. To a pointed question whether any technical evaluation was done regarding the complaint of system failure, the candid answer by the learned counsel for the HSIIDC, on instruction, is in the

negative. He further states that even though NIC and others were associated, there is nothing on the record with them to show flaw or failure in the system. This would imply that the material with the HSIIDC was only an unsustainable, unverified complaint received by them, which just does not justify the scrapping of the process and that too selectively.

Evidently the decision to scrap the e-auction was deeply flawed besides being completely arbitrary and no foundation to justify it manifests itself.

Learned counsel for the respondents would then refer to a condition in the brochure 4-D extracted here-below, to contend that they were within their rights to add/amend/withdraw/modify any of the terms and conditions at any stage without any notice and the decision of the Corporation would be final in this regard:-

“d) The Corporation reserves the right to add/amend/withdraw/modify any of the above terms & conditions at any stage without any notice. The decision of the Corporation in respect of all these will be final.”

We are of the opinion that this blanket clause cannot be used to subvert a legitimate process unless justifiable reasons are shown to exist or at least shown to the Court at the time when an issue offers itself for judicial review. As noticed above the respondents have been unable to justify their stand of systemic failure and assuming there was one neither was any technical report obtained nor any input in this regard manifested itself. In fact the arbitrariness is writ large in the entire exercise of back track. What the respondents have done is to extend the auction process through a back door and their mind reveals itself from language employed in the public

notice (Annexure P/9) on record where they have stated that auctions of plots identified at Sr. Nos. 1 to 8 shall be resumed (emphasis provided) from the highest bid as received during the e-auction.

The State in the matters of contract has a greater onus on it to act fairly. It cannot be treated at par with ordinary parties desirous of contracting an agreement amongst themselves. The State's responsibility is far greater, as what it offers to the public at large has a backing of sovereign reliability and sovereign guarantee. Therefore any attempt made by the State or its agencies or statutory bodies to act unfairly casts an equally important role upon the Courts to scuttle such attempts in the exercise of their powers of judicial review to stem arbitrariness.

For the aforesaid reasons when absolutely no justification has been offered by the Corporation for their actions in scuttling e-auction we have no other option but to accept the writs and strike down the course adopted by the Corporation.

Accordingly above-numbered writ petitions are allowed.

(MAHESH GROVER)
JUDGE

February 13, 2019
tripti

(LALIT BATRA)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No