

\$~15

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

Date of Decision : 18.06.2021

+ LPA 191/2021 & CM APPLs. 18854-55/2021

DELHI DEVELOPMENT AUTHORITY Appellant
Through Mr.D.Relan, Adv., SC for DDA

versus

VIKAS GOYAL Respondent
Through Mr.Siddharth Banthia, Adv.
along with Mr.Adarsh Aggarwal

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA
HON'BLE MS. JUSTICE ASHA MENON

NAVIN CHAWLA, J. (Oral)

This hearing has been held through video conferencing.

CM APPL. 18854/2021(Exemption)

Allowed, subject to all just exceptions.

LPA 191/2021 & CM APPL. 18855/2021

1. As the learned counsel for the respondent has appeared on an advance notice and has been heard in the appeal, we dispose of this appeal at this stage itself.
2. This appeal has been filed by the appellant challenging the interim order dated 13.05.2021 passed by the learned Single Judge in

W.P. (C) No.5138/2021 filed by the respondent herein *inter alia* directing as under:

"7. The petitioner is ready and willing to pay the remaining amount of Rs.1,63,12,000/- (less Rs.5,25,600/- already paid. Without prejudice to the rights and contentions of the parties, let the said monies be deposited with the DDA by the petitioner within 3 weeks. The petitioner's right and position in the said plot of land shall remain secured till the next date."

3. The learned counsel for the appellant has drawn our reference specifically to the e-mails dated 04.11.2020, 11.12.2020 and 19.12.2020 addressed by the respondent to the appellant, to contend that the plea of the respondent that the Letter of Intent (hereinafter referred to as 'LOI') cannot be given effect to for it did not mention the number of the plot allotted to the respondent is, on the face of it, incorrect inasmuch as the respondent was well aware of the plot allotted to him and had in fact been seeking extension of time to make the payment on account of financial difficulties arising out of Covid.

4. On the other hand, the learned counsel for the respondent submits that the fact that the LOI does not mention the exact plot allotted to the respondent is evident from a reading of the said document.

5. He further submits that the Letter of Intent has not been communicated to the respondent and the appellant has not even placed

on record the purported e-mail dated 29.04.2020 along with which it claims to have sent the LOI.

6. He submits that while two extensions were granted for the bidders for making payment of the balance 75% of the bid amount, the extension for making the initial deposit of the 25% was granted only once, thereby causing discrimination.

7. The learned counsel for the respondent further submits that in terms of the Impugned Order, the respondent has also issued a cheque qua the amount payable in terms of the said order in favour of the appellant.

8. We are not impressed with the submissions made by the learned counsel for the respondent. The e-mail dated 04.11.2020 of the respondent reads as under:

"I had applied through e-Auction No. Phase VII for INDUSTRIAL PLOT SI. No. 79 Plot No. C-59 Mangolpuri, Ph- I (100 mtr). I was the highest bidder @ INR 1,63,12,000 as on 20th November 2019. The EMD of INR 5,25,600 was paid on 15 November 2019.

I waited for a long time for the letter of intent, and later discovered that the letter of intent No.F.1 (Misc.) Industrial Action Plots/DDA/2017/614 had been uploaded on the online portal on 29 April 2020. There was no intimation via email or message. Since the letter of Intent was uploaded in the Covid lockdown period, it was not duly communicated to us. Also the time extended by your good self was not

sufficient to meet out the payments as there was a cash crunch due to the pandemic.

However, I am interested in purchasing the plot and am in the position to make the necessary payments along with interest, if any. Thus, I want an extension so that I can pay for the plot now. Let me know how to proceed further and allow me to make the payments.

Kindly consider the request in these unprecedented times."

9. The above email clearly gives the plot number which has been allotted to the respondent to his own knowledge as also mentions about the LOI being discovered as having been uploaded on 29.04.2020. It does not complain that the said LOI does not give the plot number thereby, in any manner, disabling the respondent from making the payment.

10. The e-mail dated 11.12.2020 reads as under:

"I was successful bidder of above mentioned two plots. I have received letter for paying amount of LOA by 15.07.2020. By that time, payment was not possible at all due to pandemic, however now I can make payment and request you to provide me extension for paying due amount of LOA. Further no interest should be applicable to due amount and the same should be waived off as it was completely beyond my control to make payment in pandemic situation. Kindly consider my following submission for applying extension request.

*Please be informed that while I applied for this auction, the situation was normal for the business and I had taken commitments for loan from my relatives and friends for fund management for this investment. However as your good self is aware that now the situation has been changed. The novel coronavirus ("COVID-19") outbreak has resulted in robust mitigation and containment measures being taken by countries around the world and is having significant and broadening negative impacts on business activities. This pandemic is a "Force Majeure Event" and is **beyond the control of both parties Bidder and DOA**. Everyone is under tremendous pressure now. Even our government and RBI has came up with various relaxations and support plans considering such disaster in business and finance sector. Government authorities are refunding all dues to assist public in managing their expenses due to adverse affect on inflow of revenue.*

Whereas upon receipt of your LOI, I felt very much depressed, as there was no certainty for how long it will take to get the normal situation and will be able to manage the payment. By the due date of LOA payment, first priority of every person was to attain back their business on the track likewise pre Covid. The expansion and investments shall come at very late stage. Everyone has watched the situation and all finance was at stand still till August 2020. No customer was making any business payment. Even at that I was in strong need of money to meet out my personal financial requirement.

Competent Authority has issued LOI on 6th May 2020 for further payment and even extended payment date of 15th July 2020 was completely undue. **Due to government restrictions** it was not possible for bidders to arrange funds for such heavy investment during this pandemic. Most of the states were in complete lock down, and even Delhi government has declared lock down during that period. Even banking services were not in place for any facilitation of loan & finances. In such a situation, any obligation which requires something to be done on a particular date in a specific manner was truly impossible to perform. It cannot be possible to pay LOI amount during lockdown and even after immediate resumption of lockdown.

Further propounding **the law of frustration**, now after such breakdown in Indian Economy it is not possible for bidder to pay such heavy amount so conveniently. All industries have been said to pay all business fixed dues and considering no revenue despite forced to pay all fixed expenses shall hugely adversely affect all business person and the disruption has caused heavy losses in all industries. This has resulted in impracticality of performance of terms and conditions laid in Auction contract due to this unexpected occurrence of this pandemic situation. This has resulted in **frustrating the purpose of this obligation** between bidder and Competent Authority.

At the time of LOA payment due date whole Indian economy was affected due to all being at a stand-still, shutdown, self-isolation or quarantine. Considering the special circumstances, I request you to

grant me extension for LOA. I have already sent request letter for extension on 21st September 2020, 5th November 2020, 20th November 2020 via email and registered post but no response received, so any interest if applicable due to delay in payment shall not be bear by me as I am continuously following up with DDA team.

Looking forward to your positive outlook on the same."

11. This e-mail again admits that the payment was to be made by 15.07.2020, however, claims that the respondent was not in a position to make the payment due to the outbreak of the pandemic. This e-mail again does not raise any grievance regarding the LOI not mentioning the plot number or other submissions that are now being made by the learned counsel for the respondent.

12. From the above e-mails, it appears that the ruse of the respondent that the LOA did not mention the number of the plot in question is only an afterthought and an excuse for not having made the payment in time.

13. The submission of the learned counsel for the respondent that for the bidders to make the balance 75% payment, two extensions were granted till December, 2020, while for making initial deposit by 25% only one extension was granted, in our view, at least at this stage did not entitle the respondent for any interim relief.

14. We may also note that the respondent has preferred the writ petition in question only in April, 2021, after having come to know that the appellant has to be placed the plot in question in re-auction process.

15. In view of the above, the Impugned Order passed by the learned Single Judge is modified to the extent that the appellant shall be free to proceed with the auction process that it has already announced even qua the plot in question, however, the result thereof as far as the plot in question is concerned shall be subject to further directions of the learned Single Judge in the writ petition.

16. The appellant shall also be at liberty to move an application before the learned Single Judge seeking preponement of the date of hearing of the writ petition, if so advised.

17. The present petition is disposed of in the above terms.

(NAVIN CHAWLA)
VACATION JUDGE

(ASHA MENON)
VACATION JUDGE

JUNE 18, 2021
RN/U.