

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
APPEAL FROM ORDER NO. 361 of 2022
WITH
INTERIM APPLICATION NO. 2527 OF 2022
IN
APPEAL FROM ORDER NO. 361 OF 2022

Mystical Techplast Pvt. Ltd, thru Deepak .. Appellant
Shamu Kharat

Versus

The Maharashtra State Road Development .. Respondent
Corporation Ltd thru its Managing Director,

...

Mr. Surel S. Shah with Saurabh Butala for the appellant.
Dr.Milind Sathe, Sr. Advocate with Mr.Arun Siwach, Ms.Priyanka
Mitra with Mr.Karan Gandhi i/b Cyril Amarchand Mangaldas
for the respondent.

CORAM: BHARATI DANGRE, J.
DATED : 25th APRIL, 2022

JUDGMENT:-

1 The question that arises in the present Appeal is whether a condition stipulated in the letter of acceptance to the effect that a lease agreement will be executed only after the Government approval of Model Lease Agreement, with conditions regarding subleasing etc. and stipulation of signing of

the lease agreement on compliance of the said condition, would amount to a 'Concluded Contract'. Another ancillary point which need an appreciation in the Appeal, is whether absence of condition in the tender document to the effect that the lease agreement shall be subject to sanction of the State Government, would cease to have it's contingent effect.

2 Heard Advocate Surel S Shah for the applicant and Sr. counsel Dr. Milind Sathe for the respondent.

With the assistance of the respective counsel, I have perused the Memo of Appeal as well as the documents appended thereto, including the document of RFP (Request For Proposal) as well as the copy of the plaint, written statement and the impugned order.

3 The Maharashtra State Road Development Corporation (MSRDC), an undertaking of the Government, issued a Request for Proposal to bidders, inviting submission of 'proposal' for the lease of tender plots at Sanjgaon under Khalapur, Tahsil, District Raigad, Yashwantrao Chavan Express Way (YCEW) in the background that Mumbai-Pune corridor, a part of National Highway NH-4 was identified to be one of the congested National Highway corridor, and in order to decongest, it was developed as a part of "National Expressway System" which facilitated safeguard and faster employment of traffic and savings in fuel.

While developing the express way, MSRDC had acquired pockets of land along with the expressway for the carriage way and for support facilities like stone quarries, water resources, project offices, storage of materials and equipments etc. The MSRDC, therefore, proposed to develop the tender plots at Sanjgaon under Khalapur Tahsil of Raigad District in Environmentally Sensitive manner for commercialization proceeds to be utilized by MSRDC for maintenance of the YCEW – a public project.

4 The MSRDC proposed to offer it's tender plots of land for development through competitive bidding process. The tender notices published, set out the scope of the tender and provide instructions to the bidders to ensure a non-discriminatory and transparent bidding process to be conducted in an objective manner.

The tender document contemplated lease of the tendered plots at Sanjgaon for long lease of 80 years and the bid process contemplated the activities taken up MSRDC, leading upto the selection of successful bidder.

The 'tender document' defined certain terms and a few of them which are relevant, need a reproduction :-

“Contract” shall mean and include terms and conditions of RFP, Letter of Acceptance, the Offer/Bid, the Agreement and mutually accepted conditions in authorized correspondence exchanged with the bidder

by the Corporation and any other document forming part of contract”.

Letter of Acceptance (LOA) shall mean the letter issued by MSRDC to the Successful Bidder stating that the latter has been short listed as the Successful Bidder and can sign the Lease Agreement.

Lease Agreement means the agreement to be entered between MSRDC and the Successful bidder on the subject matter for the leasing of the land parcel by MSRDC to the Successful bidder.”

The project was also defined to mean and include all works to be carried out by the lessee, and the concept was set out as under :-

Project shall mean and include all works to be carried out by lessee(s) on any one or more of the Tendered Plots awarded to them at Sanjgaon unde Khalapur Tehsil of Raigad District including design, construction of building(s), infrastructure, entertainment facilities etc. and or operating various facilities, activities as per prevailing rules and regulations.

5 In response to the RFP, it is not in dispute that the plaintiff, a Company registered under the Companies Act, submitted an offer for plot ‘B’ admeasuring 15953.11 sq.m and was informed by MSRDC that the offer submitted by the plaintiff was highest. By letter dated 17/2/2011, the defendant called upon the plaintiff to submit enhanced offer price for plot ‘B’, pursuant to which the plaintiff, by its letter dated 18/2/2011, submitted

revised offer with enhanced offer price to the defendant. On 31/3/2011, the defendant called upon the plaintiff to provide consent for extending the bid validity period by additional 90 days and the plaintiff, by his letter dated 2/4/2011, accorded his consent. The plaintiff requested the defendant to issue acceptance letter and accordingly, on 11/7/2011, the defendant, issued a Letter of Acceptance to the plaintiff at consideration of total NPV of commitment fees of Rs.3,06,19,320/- for a total contract period of 80 years for plot 'B'. As per the said letter, the plaintiff was expected to make payment of Rs.32 lakhs within 10 days from the date of issuance of letter of acceptance and to pay performance security of Rs.4,80,000/- within 30 days.

Since the center of controversy between the parties is this letter, it would be fitting to reproduce the same.

- “1. To pay Rs.32,00,000/- (Rupees Thirty two lacs only) i.e. 1/3rd of the total Upfront Amount of Rs.96,00,000/- in the form of Demand Draft from Nationalized Bank in favour of MSRDC Ltd, payable at Mumbai within ten(10) days of date of issue of Letter of Acceptance (LOA)
2. To pay Performance Security of Rs.4,80,000/- (Rupees Four lacs Eighty thousand only) in the form of Demand draft from Nationalized Bank in favour of MSRDC Ltd, payable at Mumbai within thirty (30) days from the date of issue of LOA.
3. Lease agreement will be done only after government approval of model Lease Agreement with conditions regarding sub-leasing etc. and the same shall be applicable to this land disposal.

4. Signing of the Lease Agreement after compliance to the above items.

6 The plaintiff/appellant acted on the basis of the said communication and according to him, a concluded contract came into existence when the plaintiff deposited the amount of Rs.32,00,000/- as directed, in the letter dated 11/7/2011, by way of demand draft and also requested the defendant to adjust the EMD amount of Rs.4,80,000/- paid by the plaintiffs to the defendant towards performance security against lease of plot 'B' in compliance with terms and conditions of letter of acceptance. As per the plaintiff, by letter dated 24/9/2013, he paid an amount of Rs.3,29,600/-, towards payment of service tax and performed his part of the agreement and fulfilled his initial obligations under the contract.

The case of the plaintiff is there was readiness and willingness on their part to perform the part of the letter of acceptance and to pay the balance consideration amount i.e. commitment fees to the defendant in accordance with the terms and conditions of letter of acceptance and the plaintiff was in a position to make good the said consideration. However, despite repeated and continuous reminders, the defendants avoided to enter into the lease agreement with the plaintiff and failed to perform it's part of the agreement.

7 Alleging that to utter dismay, the defendant by letter dated 15/6/2015, informed that plaintiff that in the meeting of the Board of Directors held on 27/3/2015, it was resolved to cancel the letter of acceptance issued to the successful bidder in respect of land/plot situated at Sanjgaon, Taluka Khalapur, District Raigad and it was also informed that the letter of acceptance dated 11/7/2011 issued to the plaintiff in respect of the said land is revoked and cancelled and the amount deposited by the plaintiff will be refunded. The impugned letter only apprised that the decision of revocation and cancellation of letter of acceptance was taken on account of administrative and technical reasons.

The aforesaid action of the defendant constrained the plaintiff to file a Writ Petition before this Court and on 5/4/2017, this Court granted ad-interim relief in terms of prayer clauses (c) and at the same time, restrained the respondent MSRDC from refunding the amount. The petition was directed to be listed along with the petition filed by a similarly situated plot holder, who was also aggrieved by similar action initiated against him.

By order dated 12/7/2017, the Writ Petition came to be disposed off, in view of the contractual nature of the dispute by reserving the liberty to file a Civil Suit. This is how, after this event, the plaintiff filed a Special Civil Suit No.351/2017 seeking specific performance of the agreement i.e. letter of Acceptance, and also seeking permanent injunction against the MSRDC, and

in the alternative, claimed damages to the tune of Rs.1,38,19,00,000/- along with interest.

In the said Suit instituted by the plaintiff, MSRDC filed its written statement and projected clarification, justifying its action for cancelling the tender process and the claim of the plaintiff in the Suit came to be traversed by the defendants, by stating that the technical glitches compelled the MSRDC to cancel the entire tender process initiated for distinct plots. It specifically pleaded that there was no concluded contract between the parties, since the lands covered by plot A to F were acquired by the Government of Maharashtra (GoM) for the Expressway and handed over to MSRDC. However, the lease agreement between the Government and MSRDC was executed on 31/7/2012 and the draft lease agreement to be executed between the MSRDC and successful bidders modified as per the conditions laid down by the Government in the lease deed, were placed before the Board of Directors for its approval and at the end of long drawn process, it was envisaged that the lease cannot be executed with the successful bidders which included even the plaintiff.

8 Resultantly, in the wake of the resolutions passed by the Board expressing the technical glitches, which left it with no option then to cancel the letter of acceptance issued to successful bidders, since the tender was issued without measuring the area of land and without its proper demarcation and since tender

process itself was found to be defective. Further, the discrepancy between the terms and conditions of the lease deed dated 31/7/2012 executed between the MSRDC and the Government of Maharashtra and the terms and conditions of the draft lease agreement to be entered into with the successful bidders as detailed in the RFP was also one of the ground which constrained cancellation of the process. Since period of more than 5 years had elapsed without resolving the difficulties, it was deemed appropriate to cancel the letters of acceptance and return the upfront payment of each of the successful bidder.

9 The said action prompted the appellant to institute Special Civil Suit no.352/2017 for specific performance of an agreement in the background of the plea that a concluded contract was reached between the parties and therefore, its termination was illegal which called for compensating the plaintiff by payment of damages along with the interest.

The Suit was contested by the MSRDC by filing a written statement clarifying its stand to the effect that there is no concluded contract between the plaintiff and defendant and in case, if injunction is granted against the defendants, it would amount to restraining them from discharging their duties and functions and would irreparable harm and great hardship not only to the public authority but also the public at large. On the other hand, as far as the plaintiff is concerned, injury caused to him, if any, would be computable in terms of money.

10 It is in this Suit the impugned order came to be passed on an application filed vide Exhibit-5 seeking temporary injunction.

The impugned order on referring to the factual aspect to the effect that the plaintiff has responded to a tender document floated by the MSRDC and even was considered fit to be allotted a plot 'D' and even he deposited 1/3rd amount as an earnest money, but 'no work order' was issued to the plaintiff, and recording that the rights in respect of the said plot, were never transferred to him and while this process was ongoing, certain technical glitches created hindrance in it's conclusion and made it impossible to proceed further and execute an agreement.

Accepting the contention that there is no concluded contract, which had come into existence, and therefore, no right accrued in the plaintiff, he was held to have no *prima facie* case in his favour. Apart from this, the learned Judge also recorded that even if assuming that it is deemed to be a contract, still it cannot be executed because it has become frustrated since after issuance of the tender and acceptance of the bid of the plaintiff and though he was issued a letter of acceptance, it came to the notice of the defendants that by mistake, land of 7,000 sq.m of a private person was included in the plots, which were demarcated to be allotted on lease to the successful bidders.

The trial Court, recorded it's conclusion as under :-

“As per law of contract, if after a contract is made, something happens, though no fault of the parties, to make the performance impossible, the contract is said to be frustrated and the obligations under the contract come to an end. The same is applicable to the present case also. So, the act of revocation of letter of acceptance by defendants is proper and correct one”

11 By referring to catena of decisions revolving around the point, by recording that the plaintiff was unable to show a *prima facie* case, and since the balance of convenience was in favour of the defendants, the application at Exhibit-5 came to be rejected vide impugned order dated 6/3/2022.

12 In light of the aforesaid factual scenario, resulting in refusal of injunction in favour of the plaintiff, I have heard the rival contentions advanced.

Mr.Surel Shah, the counsel for the appellant would place reliance upon the Division Bench of this Court in case of GMR Airports Ltd Vs. MIHIAN India Ltd, through Chairman and Managing Director, 2021 SCC Online 2132, and he would submit that the authoritative pronouncement has clearly held that where the further approval of the Government of India (GoI) which was projected as a difficulty in executing the agreement did not form part of the tender document, the said condition cannot be insisted upon as a pre-condition before execution of the agreement and it shall not be construed as a mandatory

requirement, in absence of which concluded contract do not come into existence.

13 Per contra, the learned Senior counsel Dr.Sathe placed heavy reliance upon the decision of the Apex Court in case of Dresser Rand S.A. Vs. Bindal Agro Chem Ltd & Anr, (2006)1 SCC 751, and another decision of the Apex court in case of Rishi Kiran Logistics Pvt.Ltd vs. Board of Trustees of Kandla Port Trust and ors, (2015) 13 SCC 233.

By relying upon the aforesaid decisions, the learned Senior counsel would submit that ultimately, it is dependent upon terms of a document/letter, which is sought to be construed as a binding contract and only when the intention is evident from it, leading to an unequivocal conclusion, that the parties intended it to be a concluded contract, the said document shall be so construed, but then the intention to do so, must be clear and unambiguous, as it act as a deviation from how normally a letter of Intent has to be understood. In short, the learned senior counsel would submit that the letter of acceptance dated 11/7/2011 was clear in it's terms, when it stipulated that lease agreement will be done only after the Government accord it's approval to the Model lease agreement and conditions regarding sub leasing etc and the same shall be applicable to the disposal of land.

The learned senior counsel would submit that the facts of the case are clearly distinguishable from the contingency which arose before a Division Bench of this Court, in case of GMR Airports Ltd (*supra*) and in the case in hand, since the agreement between the MSRDC and the state Government itself was to be approved and the lease was sanctioned subsequently in its favour, by restricting the lease period, and by that time, since the land disposal rules for MSRDC were also published, it had become impossible to execute the agreement and hence, the contract was never concluded as the process itself was cancelled.

14 In the background of the assiduous assertions advanced, I have carefully perused the RFP document, which admittedly do not include a condition of prior approval from the State Government, while executing the lease document of tender plots at Sanjgaon in the wake of the RFP floated by the MSRDC. It is worth to note that the MSRDC is a Government of Maharashtra undertaking and the RFP was floated, calling a request for proposal document for lease of tender plots at Sanjgaon on the Yeshwantrao Chavan Express Way. The tender document defined the term 'contract' and also the terms 'LOA' and 'lease agreement' in stark distinction from one another.

The letter of acceptance is a connotation restricted to a letter being issued by the MSRDC to the successful bidder, stating that the latter has been shortlisted as a successful bidder and is competent to sign the lease agreement. A lease agreement

was conceptualized as the agreement to be entered between MSRDC and the successful bidder on the subject matter of leasing of the land parcel by MSRDC to the successful bidder.

The LoI indicates a party's intention to enter into a contract with other party in future. The legal scenario revolving around the same, which is by now well settled, as it is not a binding relation between the parties is created at this stage, and the totality of the circumstances have to be considered in each case. However, it is not always possible to construe a letter of intent as a binding contract, if such an intention is evident from it's terms, but in such a case, the intention to create a binding contract between themselves, must be clear and unambiguous as it is in deviation of the normal meaning assigned to the term 'LOI'.

15 Issues of contractual intention have arisen in number of cases concerned with legal effects of the commercial practice, whereby parties to a transaction issue or exchange "Letters of Intent" on which they act, pending the preparation of formal contracts. At times, such letters may, by their express terms, or on their true construction, negative the contractual intention. On the other hand, where the language of such document does not negate the contractual intention, it may result into a binding contract. It is open for the Courts to hold the parties bound by the documents and they will, in particular, be inclined to do so, where the parties have acted on the document for long period of

time or have extended considerable sum of money relying upon. However, where the intention of the parties is to further indulge into some act, before a formal contractual document comes into existence, this letter may not be construed as giving rise to a binding contractual obligation. The contingent conditions to a contract may either be expressed or it will have to be implied, a condition is precedent if it provides that the contract is not to be binding until the specified event occurs. Where an agreement is subject to or contingent upon a condition precedent, there is, before the occurrence of the condition, no duty on either party to render the principle performance, promised by him. Nor, in such a case, does either party undertake that the condition will occur, but an agreement subject to such a condition may impose some degree of obligation on the parties or on one of them. However, whether it is has this effect, and if so, what degree of obligation is imposed, depends on true construction of the term specifying the condition.

16 In Chetty's Law of Contract, the position of law of agreement 'subject to contract' is elaborately described in the following words :-

“Agreement “subject to contract” Agreements for the sale of land by private treaty are usually made “subject to contract”. Such agreements are normally regarded as incomplete until the terms of a formal contract have been settled and approved by the parties. Thus, in Winn Vs. Ball, the defendant agreed to take a lease of a house for a specified

time at a situated rent. “subject to the preparation and approval of a formal contract”. It was held that there was no enforceable contract and Jessel, M.R. said “It comes, therefore, to this, that where you have a proposal or agreement made in writing expressed to be subject to a formal contract being prepared, it means what it says: it is subject to and is dependent upon a formal contract being prepared”

17 The appellant/plaintiff rest his case for concluded contract, by submitting that upon the allotment letter being issued, the plaintiff has abided by the condition no.1 and 2 stipulated therein, being payment of 1/3rd of the total upfront amount and performance security of Rs.4,80,000/-. However, letter of acceptance also stipulate two another contingencies being clauses nos.3 and 4, which contemplated a lease agreement to be executed only after the Government's Model lease agreement, with the condition regarding sub-leasing etc and signing of the lease agreement after compliance of all the conditions.

 There is no dispute as to condition nos.1 and 2, in the letter of acceptance, which required a performance on part of the successful bidder, to be complied with, but condition no.3 and 4 which was contingent upon the approval of the Government, was not performed and the question that arises is whether the letter of acceptance without compliance of condition nos.3 and 4 would lead to a concluded contract.

18 In case of Dresser Rand S.A. (supra), the Hon'ble Apex Court has expounded the legal position revolving around a letter of Intent in the following words :-

“39. It is now well-settled 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. This Court while considering the nature of a Letter of Intent, observed thus in [Rajasthan Co-operative Dairy Federation Ltd. V. Maha Laxmi Mingrate Marketing Service Pvt. Ltd.](#) [1996 (10) SCC 405] :

“... The Letter of Intent merely expressed an intention to enter into a contract. There was no binding legal relationship between the appellant and Respondent 1 at this stage and the appellant was entitled to look at the totality of circumstances in deciding whether to enter into a binding contract with Respondent 1 or not.”

It is no doubt true that a Letter of Intent may be construed as a letter of acceptance if such intention is evident from its terms. It is not uncommon in contracts involving detailed procedure, in order to save time, to issue a letter of intent communicating the acceptance of the offer and asking the contractor to start the work with a stipulation that the detailed contract would be drawn up later. If such a letter is issued to the contractor, though it may be termed as a Letter of Intent, it may amount to acceptance of the offer resulting in a concluded contract between the parties. But the question whether the letter of intent is merely an expression of an intention to place an order in future or whether is a final acceptance of the offer thereby leading to a contract, is a matter that has to be decided with reference to the terms of the letter. Chitty on Contracts (Para 2.115 in Volume 1- 28th Edition) observes that where parties to a transaction exchanged letters of intent, the terms of such letters may, of course, negative contractual intention; but, on the other hand, where the language does not negative contractual intention, it is open to the courts to hold the parties are bound by the document; and the courts will, in particular, be

inclined to do so where the parties have acted on the document for a long period of time or have expended considerable sums of money in reliance on it.

19 In case of Rishi Kiran Logistics (supra), where the appellant participated in the tender process in allotment of plots and was allotted the Letter of Intent,, but since the Central Government clearance was delayed and other procedural requirements were never complied with, the entire tender process came to be cancelled. Dealing with the argument that the action of the respondent i.e. the Port Trust was malafide, as it could not have cancelled tender after the conclusion of the contract, the Hon'ble Apex court, upheld the action, which was taken in public interest for generating higher revenue. Considering the delay in getting the procedural requirements completed, when the respondent had sought legal opinion, it was held that there is no impediment to cancel the existing tender and since the price quoted, subject to which the bid was accepted, was very nominal and would have resulted in loss to the authority, the SLP came to be dismissed, with the pertinent observation as under :-

34. At this juncture, while keeping the aforesaid pertinent features of the case in mind, we would take note of the 'Rules and Procedure for Allotment of Plots' in question issued by Kandla Port Trust. As per clause 12 thereof the Port Trust had reserved with itself right of acceptance or rejection of any bid with, specific stipulation that mere payment of EMD and offering of premium will not confer any right or interest in favour of

the bidder for allotment of land. Such a right to reject the bid could be exercised 'at any time without assigning any reasons thereto'. Clause 13 relates to 'approvals from statutory authorities', with unequivocal assertion therein that the allottees will have to obtain all approvals from different authorities and these included approvals from CRZ as well. As per clause 16, the allotment was to be made subject to the approval of Kandla Port Trust Board/ Competent Authority. In view of this material on record and factual position noted in earlier paras we are of the opinion that observations in the case of Dresser Rand S. A. v. M/s. Bindal Agro Chem. Ltd. & Anr.; AIR 2006 SC 871, would be squarely available in the present case, wherein the court held that a letter of intent merely indicates a parties 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. It is no doubt true that a letter of intent may be construed as a letter of acceptance if such intention is evident from its terms. It is not uncommon in contracts involving detailed procedure, in order to save time, to issue a letter of intent communicating the acceptance of the offer and asking the contractor to start the work with a stipulation that a detailed contract would be drawn up later. If such a letter is issued to the contractor, though it may be termed as a letter of intent it may amount to acceptance of the offer resulting in a concluded contract between the parties. But the question whether the letter of intent is merely an expression of an intention to place an order in future or whether there is a final acceptance of the offer thereby leading to a contract, is a matter that has to be decided with reference to the terms of the letter. When the LOI is itself hedged with the condition that the final allotment would be made later after obtaining CRZ and other clearances, it may depict an intention to enter into contract at a later stage. Thus, we find that on the facts of this case it appears that a letter with intention to enter

into a contract which could take place after all other formalities are completed. However, when the completion of these formalities had taken undue long time and the prices of land, in the interregnum, shot up sharply, the respondent had a right to cancel the process which had not resulted in a concluded contract.

20 The above observation is squarely applicable to the present case since the letter issued to the Contractor, though in form of Letter of Intent, may also amount to acceptance of the offer resulting in a concluded contract, but the question to be pondered upon, is whether the letter of intent is merely an expression of an intention or whether it is a final acceptance of re-offer, leading to a contract which will have to be decided with reference to the background circumstances.

True it is, that the writ court would not be competent to delve into the disputed questions and therefore, the plaintiff was relegated to a remedy of civil suit, which he has invoked and on not finding a *prima facie* case in his favour, the temporary injunction has been rejected.

21 Ultimately, the dispute in the suit is whether a concluded contract came into existence between between the parties and whether it's cancellation amounted to breach of contract, and it will have to be determined at the end of full fledged trial, in the wake of the issues settled by the Court of competent jurisdiction, and in reaching a conclusion, the Civil

Court shall deal with the aspects like the parties to the contract, when and what was the offer, whether there was an acceptance, and whether the offer and acceptance lead to a concluded contract. The condition no.(3) in the Letter of Acceptance since acted as a pre-requisite for entering into a formal contract, as required by the RFP, and before this stage, had arisen, the tender itself was cancelled, the trial Judge has rightly decided Exhibit-5 against the plaintiff.

22 Coming to the decision in case of GMR Airports Ltd (supra), on a close reading of the law report, it can be discerned that the case of the petitioners was protected as, in response to the revised offer given by petitioner no.1, the respondent no.1 issued Letter of Acceptance, which petitioner construed as letter of award, accepting the revised bid, subject to further approval of Government of India for, (a) alienation of the land owned by the Airport Authority of India and (b) formation of Special Purpose Vehicle (SPV) for the project.

Referring to the said document, particularly in the background of the tender document, when the respondent no.1 argued that it is not a case of concluded contract and no right whatsoever, vested in the petitioner by issuance of letter dated 7/3/2019, the Division Bench searched for a stipulation in the RFP, whether the acceptance of the bid and issuance of Letter of Approval would be subject to further approval of the GoI, as regards the land alienation and SPV formation and on finding

that no such contingency was contemplated in the RFP, but was only found in the LoI dated 7/3/2019, the acceptance was made subject to approval of GoI.

Deriving an inference that this amounted to a departure from clauses No.3 to 3.5 of the RFP, it was held that the acceptance of letter by the petitioner has been absolute and unqualified and it has turned the promise held out by the respondent no.1 in the said letter, the promise to award the project with condition of GoI approval, into a binding contract in terms of Section 7 of the Contract Act. It was held that the LoI would create binding obligations for respective parties and which would conclude a contract.

The aforesaid observations are to be read in the background of the historical facts to the effect that initiative was taken to develop the 'multi modal passenger and Cargo Hub at Nagpur at MIHAN project, in co-ordination with MOCA, AAI and Ministry of defence and Maharashtra Airport Development Authority (MADC) was appointed as Nodal agency for taking further steps to implement the said project. A Memorandum of Understanding was entered into between the MOCA and AAI on one part and GoM and MADDC on the other part. By the MoU, it was agreed between the parties that a joint venture company consisted of MADDC and AAI would be incorporated, the purpose of JVC, being to develop and run the Nagpur Airport which would be transferred to the JVC. The Union Cabinet gave it's in

principle approval for transfer of the Nagpur Airport to the proposed JVC and it also permitted it to involve a strategy partner on built, operate and transfer basis for development of Nagpur Airport to World Class Standards. A joint venture Agreement (JVA) was also executed between MADC and AAI and in clause no.3.1 of the JVA, it specifically noted the fact that GoI had accepted approval of transfer of Nagpur Airport to the JVC, proposed to be formed for its development as MIHAN. JVA led for formation of JVC, MIHAN India Ltd (MIL), who was respondent no.1, established the primary object of maintaining, operating and developing Nagpur Airport as part of MIHAN project, and since the respondent no.1 took over Nagpur Airport for its operation, maintenance and further developments. It is in this background, when clause no.3.1 of the agreement itself had the approval of Government of India, condition in the letter of acceptance dated 7/3/2009, of obtaining its approval was considered to be a mere formality and the letter dated 7/3/2019 was construed as letter of award and not a letter merely communicating that the bid s accepted, since the said letter of award has resulted into concluded contract between the parties.

The observations made by the Division Bench would, therefore, have to be read in light of the facts before it and in no way, can govern the present case.

23 Ultimately, in order to ascertain whether the letter of acceptance create a concluded contract, it is necessary to extract the intention of the parties, both from their correspondence and from the circumstances, which surround and follow it. A search may be required to find out, whether preparation of a further document is a condition precedent to the creation of a contract or it is an incident in the performance of an already binding obligation” It would appear however, that whenever there is evidence that the parties have acted upon the faith of a written document, the Courts will prefer to assume that the document embodies a definite intention to be bound and will strive to implement its terms. Ultimately, the intention of the parties must always guide the Court and as Lord Tomlin remarked, “the problem for a Court of construction must always be so to balance matters that without the violation of essential principle, the dealings of men may as far as possible be treated as effective, and that the law may not incur the reproach of being destroyer of Bargains”.

The Court will do it best, if it is satisfied that there was an ascertainable and determinate intention to contract, and to give effect to that intention, looking at the substance and not form.

In the wake of the clear intention, flowing from the letter of acceptance, which do not convey, coming into existence of a concluded contract. Moreso, on account of lapse of time, the

Authority deemed it in public interest, that the bids were low in their value in value and could not be practically given effect, since no malafides are pleaded, the action of cancellation, was prima facie found to be sufficiently justified and injunction is refused.

In the wake of the aforesaid discussion, it cannot be held that the allotment letter dated 11/7/2011 resulted in a concluded contract and on recording so, the injunction has been refused to the plaintiff, who is assailing the same by filing the present Appeal. Upholding the impugned order, the present Appeal is dismissed.

In view of the dismissal of AO, Interim Application do not survive and is disposed off.

After pronouncement of judgment, Shri Surel Shah makes a request for continuation of the interim relief which is declined, since on merits it has been held that no concluded contract has come into existence.

(SMT. BHARATI DANGRE, J.)