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

Date of decision: 31st MAY, 2022

IN THE MATTER OF:

\+ W.P.(C) 8295/2022

SURJEET DHALL ..... Petitioner

Through: Mr. Sajal Manchanda, Advocate

versus

DELHI DEVELOPMENT AUTHORITY ..... Respondent

Through: Mr. Sanjay Katyal, Standing Counsel for DDA

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. The instant writ petition under Article 226 of the Constitution of India has been filed by the Petitioner with the following prayers:

> *"a) Set aside the order of the Respondent dated 27.12.2019 wherein the bid of the Petitioner has been cancelled and Rs 1,69,60,750/- paid by the Petitioner as EMD has been forfeited;*
>
> *b) Direct the Respondent to refund the entire Earnest Money Amount deposited by the Petitioner along with interest @ 15% per annum.*
>
> *c) In alternative direct the Respondent to allot an alternate plot of the same size and in the same area in which the Petitioner had been declared as a successful bidder in the e-auction and while doing so, the entire amount already paid by Petitioner in 2019, along with the interest accrued thereon, may be adjusted against*

the premium of the alternate Plot to be allotted;

d) Pass any other order and further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case"

2. The facts, in brief, leading to the instant petition are as under:-

i. It is stated that the Petitioner/bidder participated in an e-auction conducted by the Respondent/DDA on 14.01.2019 in respect of Plot No. 109, Block No. T-1, admeasuring 399 Sq. Meter in Mangolpuri Industrial Area Phase I, Delhi (*hereinafter referred to as, "the property in question"*) for Rs.6,78,43,000/-. It is stated that the Petitioner paid 5% of the total amount of the property in question, i.e. Rs.33,92,150/-, as Earnest Money Deposit (*hereinafter referred to as 'EMD'*).

ii. The bid of the Petitioner was accepted on 22.01.2019 and the Petitioner was declared a successful bidder of the property in question. In accordance with the terms of the e-auction notice, the Petitioner/bidder paid the remaining 20% of the premium amount, i.e. Rs. 1,35,68,600/- to the Respondent/DDA.

iii. It is stated that on 06.03.2019 a Demand-cum-Allotment letter was issued to the Petitioner/bidder by the Respondent/DDA wherein the Petitioner/bidder was asked to deposit the balance 75% of the premium amount, i.e. Rs. 5,08,82,250/-, within 90 days from the receipt of the said Demand-cum-Allotment letter.

iv. It is stated that on 23.05.2019, the Petitioner/bidder gave a representation to the Respondent/DDA seeking extension of time for depositing the balance 75% of the premium amount.

On 03.06.2019, the stipulated time for depositing the balance 75% of the premium amount expired. It is further stated that after 14 days of the expiry of stipulated time, i.e. on 17.06.2019, the request of the Petitioner/bidder was accepted by DDA, and the Petitioner/bidder was granted the first extension of time for a period of 90 days, i.e. till 01.09.2019, subject to the Petitioner/bidder paying applicable interest on the balance amount as mentioned in the e-auction document.

v. Material on record discloses that *vide* a letter dated 14.08.2019, the Petitioner/bidder sought a further extension for 90 days for depositing the balance 75% of the premium amount. It is stated that on 18.10.2019, the request of the Petitioner/bidder was accepted by DDA and the Petitioner/bidder was granted extension of time for a period of 90 days, i.e. till 30.11.2019, subject to the Petitioner/bidder paying applicable interest as mentioned in the e-auction document on the balance amount.

vi. It is stated that on 03.11.2019 the Petitioner/bidder wrote another letter to the Respondent/DDA requesting them to further extend the time for 90 days for depositing the balance 75% of the premium amount. It is stated that *vide* letter dated 27.12.2019 the request of the Petitioner/bidder for further extension of time by 90 days for payment of the balance 75% of the premium amount was rejected by the Respondent/DDA. Relevant portion of the letter rejecting the request of the Petitioner reads as under:

> *"As per chapter III of para II clause 08 of General*

Terms & Conditions of the E- Auction that the demand-cum-allotment letter would be sent to the successful bidder immediately after the bid is accepted by the competent Authority. The highest bidder is required to make payment of balance 75% bid amount, as demanded vide said demand letter referred to above, within 90 days from the date of issue of the demand letter by RTGS. The Competent Authority may in his absolute discretion may extend the last date of payment up to the maximum period of 180 days, beyond the last date for payment with reference to the date of issue of demand letter, subject to payment of interest on the balance amount @ 10.00% p.a. during the extended period failing which the bid will automatically stands cancelled.

2. The extended time limit of 180 days have expired. Therefore, in view of above provision, the Competent Authority has rejected the request for further extension."

vii. It is stated that the request for further extension of the Petitioner/bidder was rejected and in terms of the e-auction document, the Earnest Money Deposit amounting to 25% of the premium, i.e. Rs.1,69,60,750/-, was forfeited by the Respondent/DDA.

viii. It is stated that the property in question was re-auctioned by the Respondent/DDA in August 2020 at a loss of Rs.98,00,000/-. On 12.08.2021, the Petitioner sent a legal notice to the Respondent/DDA informing them about their arbitrary conduct and the monetary loss that has been caused to the Petitioner as well as the State exchequer. On 23.08.2021, the Petitioner filed an RTI application with the Respondent/DDA seeking information about his case file and the said application was rejected by the Respondent/DDA.

ix. The Petitioner has thereafter filed the instant writ petition seeking setting aside of letter dated 27.12.2019 wherein the bid of the Petitioner was cancelled by the DDA and the amount paid by the Petitioner as EMD was forfeited.

3. Mr. Sajal Manchanda, learned Counsel appearing for the Petitioner/bidder, submits that the Petitioner sought for extension of time from the Respondent/DDA to pay the balance 75% of the premium amount on three occasions and on all occasions the extension was sought well within the prescribed time limit of 90 days. He submits that this shows the bona fide of the Petitioner/bidder and the action of the Respondent/DDA in issuing the letter dated 27.12.2019, cancelling the allotment of the Petitioner and forfeiting the EMD amount, is arbitrary and illegal.

4. Mr. Manchanda relies on clause 2.4.4 and 2.4.5 of the e-auction document to contend that the Respondent/DDA was empowered to forfeit the entire EMD amount upon expiry of 90 days from issuing the Demand-cum-Allotment Letter, however, it was the Respondent/DDA themselves who did not comply with the time-line of the e-auction notice and, therefore, at this juncture, the Respondent/DDA cannot turn around and cancel the allotment of the Petitioner. He further submits that the conduct of the Respondent/DDA in cancelling the allotment of the Petitioner/bidder is arbitrary and has caused a substantial monetary loss to the Petitioner/bidder as well as the State exchequer as the property in question was re-auctioned in August 2020 at a loss of Rs.98,00,000/- against the price that had been quoted by the Petitioner. He further states that the manner in which the

Respondent/DDA has dealt with the case of the Petitioner/bidder was opaque and allowing such a conduct of the Respondent/DDA would be detrimental to public interest.

5. Heard, Mr. Sajal Manchanda, learned Counsel for the Petitioner, and perused the material on record.

6. A perusal of the material on record indicates that on 14.01.2019, the Petitioner had submitted his bid in respect of the property in question for Rs.6,78,43,000/- and paid 5% of the total amount of the property in question, i.e. Rs.33,92,150/-, as EMD. On 22.01.2019, the bid of the Petitioner/bidder was accepted and the Petitioner was declared a successful bidder of the property in question and in terms of the e-auction document, the Petitioner paid remaining 20% of the EMD amount, i.e. Rs. 1,35,68,600/-, to the Respondent/DDA. On 06.03.2019, a Demand-cum-Allotment letter was issued to the Petitioner by the Respondent/DDA wherein the Petitioner was asked to deposit the balance 75% of the premium amount, i.e. Rs. 5,08,82,250/-, within 90 days from the receipt of the said demand-cum-allotment letter.

7. Material on record further shows that on 23.05.2019, the Petitioner/bidder wrote a letter to the Respondent/DDA requesting for extension of time for depositing the balance 75% of the premium amount and the same was accepted by the Respondent/DDA on 17.06.2019, subject to the Petitioner/bidder paying applicable interest, i.e. 10% per annum on the balance amount, as mentioned in the e-auction document. Material on record also discloses that *vide* letter dated 14.08.2019, the Petitioner/bidder sought a further extension for 90 days for depositing the balance 75% of the premium amount and the same was also accepted by the DDA. On

03.11.2019, when the Petitioner further requested the Respondent/DDA to extend the time for another 90 days for depositing the balance 75% of the premium amount, the Respondent/DDA *vide* letter dated 27.12.2019, rejected the request of the Petitioner and the Earnest Money Deposit amounting to 25% of the premium, i.e. Rs.1,69,60,750/-, was forfeited by the Respondent/DDA in terms of the e-auction document.

8. At this juncture, it is necessary to refer to certain clauses of the Tender Document for E-Auction (2018-2019) conducted by the Respondent/DDA in which the Petitioner/bidder participated. Relevant clauses of the said e-auction document reads as under:

> *"2.4.4 After deposit of second stage EMD, the DDA shall issue a Demand- cum-Allotment Letter for the plot to the bidder whose bid has been accepted through registered post calling upon him to remit the balance 75% amount/premium of the bid offered within 90 (ninety) days of issue of this Letter.*
>
> *****
>
> *2.4.5. In case the payment of balance premium is not received within the stipulated period as indicated above and in the Demand-cum-allotment letter, the bid shall automatically stand cancelled and the entire EMD (25% of the premium offered) shall stand forfeited without any notice. In that eventuality, DDA shall at liberty to re-auction the plot.*
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> *****
>
> *2.5. **Validity of offer**.*
> *The Bidders shall keep their offer valid for acceptance by the Competent Authority for a period of 180 days. If the bidder withdraws his offer within the period of 180*

days, earnest money deposit paid by him shall be forfeited without any show case notice. Demand-cum-Allotment letter will be valid for 180 days from the date of issue and it will have ceased to be effective thereafter "

9. A perusal of the abovementioned clauses demonstrates that after deposit of 25% of the bid amount, the DDA shall issue a Demand- cum-Allotment Letter for the plot to the bidder whose bid has been accepted through registered post calling upon him to remit the balance 75% amount/premium of the bid offered within 90 days of issuance of Demand-cum-Allotment Letter. Clause 2.4.5 stipulates that if the balance premium is not received within the stipulated period as indicated in the Demand-cum-Allotment letter, the bid shall automatically stand cancelled and the entire EMD (25% of the premium offered) shall stand forfeited without any notice and the DDA would be at liberty to re-auction the plot. Clause 2.5 of the e-auction document stipulates that the maximum period for keeping the offer of acceptance open is 180 days and it also states that the Demand-cum-Allotment letter would be valid for 180 days from the date of its issuance and it would cease to be effective thereafter.

10. As has been stated above, the material on record indicates that Demand-cum-Allotment letter was issued to the Petitioner/bidder on 06.03.2019 which clearly stipulates that in case balance premium is not paid by the Petitioner/bidder within 90 days, the bid shall stands cancelled and the entire EMD (25% of the premium offered) shall stand forfeited without any notice and the DDA would be at liberty to re-auction the plot. Furthermore, Clause 2.5 states that the Demand-cum-Allotment letter is only

valid for a period of 180 days. In light of this, the balance amount of 75% ought to have been paid by the Petitioner/bidder on or before 01.09.2019. However, on 03.11.2019, the Petitioner wrote a letter to the Respondent/DDA seeking extension of time, and by letter dated 27.12.2019, the Respondent/DDA made it clear that the maximum time within which the balance 75% of the amount has to be paid by the Petitioner/bidder was 180 days from the date of issuance of Demand-cum-Allotment letter. The property in question was re-auctioned in August 2020 and was then handed over to the subsequent successful bidder. The Petitioner/bidder, after having accepted the terms of the e-auction document, now cannot turn around and refuse to comply with the conditions of the e-auction document.

11. In the instant case, the material on record indicates that the conditions that had been stipulated in the e-auction document have been duly followed by the Respondent/DDA. It was only the infractions on the part of the Petitioner/bidder that led to the allotment of plot being cancelled. The Petitioner/bidder, while bidding for the plot in question, must have been cognizant of the terms and conditions stipulated in the e-auction document, and cannot now turn around and refuse to adhere to the same, thereby taking advantage of its own wrong of not being able to deposit the bid amount on time.

12. It is settled law that bidders participating in the tender process have no other right except the right to equality and fair treatment in the matter of evaluation of competitive bids offered by interested persons in response to notice inviting tenders in a transparent manner and free from agenda [Refer: Meerut Development Authority and Ors. v. Association of Management Studies and Ors., **AIR 2009 SC 2894**]. It is equally well settled that the

Petitioner/bidder having participated in the bid process, accepting its terms and conditions, now cannot challenge the same [Refer: Judgement of this Court dated 05.10.2016 in **W.P.(C) 1501/2015** titled as Monnet Ispat and Energy Ltd. v. Union of India and Anr.].

13. The Petitioner/bidder herein has been treated fairly and has been granted extensions of 90 days twice for depositing the full bid amount. The Petitioner cannot now demand further extension as a matter of right when the e-auction document does not envisage such a situation. This Court is of the view that the impugned Order dated 27.12.2019 of the Respondent/DDA which records the decision of the Respondent/DDA to reject the request of the Petitioner/bidder for further extension, leading to the cancellation of the allotment of the plot to the Petitioner/bidder, is not riddled with arbitrariness or illegality, and therefore, is not liable to be set aside.

14. Accordingly, the instant writ petition is dismissed, along with the pending application(s), if any.

SUBRAMONIUM PRASAD, J.

MAY 31, 2022
Rahul