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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on : 14.07.2022

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Judgment pronounced on : 31.10.2022

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W.P.(C) 10124/2022 and CM APPL.29396/2022

YORK TECH PVT. LTD.

..... Petitioner

Through: Mr. Sandeep P. Agarwal, Senior Advocate with Ms. Priyanka Tiwary, Ms. Ritika Priya and Ms. Tanya Chanda,, Advocates with Mr. Dinesh Malik, COO.

versus

DELHI DEVELOPMENT AUTHORITY

..... Respondent

Through: Ms. Prabhsahay Kaur, Standing Counsel for DDA.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

JUDGMENT

SACHIN DATTA, J.

1. By way of the present petition filed under Article 226 of the Constitution of India, the petitioner seeks the following reliefs: -

“ 1. Issue a Writ of Mandamus or Certiorari or any other Writ or direction in the nature thereof thereby quashing the Respondent's letter dated 01.06.2022, vide which the Respondent has cancelled the auction and the bid by the Petitioner, and withdrawn the said plot of land from Auction;

2. Issue a Writ of Mandamus to the Respondent authority to consider and treat the deposit by the Petitioner as a fit and valid deposit as per the requirements towards the grant, through auction of the plot of land being A-1/60, WHS Kirti Nagar, Delhi, and direct the Respondent Authority to accept the remaining bid value and execute a

deed of conveyance qua the subject plot in favour of the Petitioner Company;

3. *Issue a Writ of Mandamus directing the Respondent Authority to withdraw the Plot A-1/60, WHS Kirti Nagar, Delhi, from 16th Phase of Mega E-auction announced/ advertised on 12.06.2022 by Respondent/ DDA;*

4. *Pass such other and further order(s) as this Hon'ble Court may deem fit in the interest of justice."*

FACTUAL BACKGROUND

2. The Delhi Development Authority (*hereinafter referred to as DDA*), came out with the 14th phase of e-auction for the sale of Industrial plots in December 2021, under the Delhi Development Authority (Disposal of Developed Nazul Lands) Rules, 1981. The plot with which the petitioner is concerned is A-1/60, WHS Kirti Nagar, Delhi (*hereinafter referred to as the said plot*) for which reserved price was fixed as Rs.4,78,48,000/-. The last date for submission of bid along with 5% EMD of the reserve price was 24.12.2021. On 22.12.2021, the Petitioner filed an online application for participating in the e-auction with respect to the said plot along with the 5% of reserve price / first stage EMD i.e., Rs.23,92,400/-.

3. The e-auction was conducted on 29.12.2021 and the petitioner submitted its bid for an amount of Rs.10,91,48,000/- against the reserve price of Rs.4,78,48,000/- in respect of the said plot. The petitioner was informed by the respondent vide email dated 30.12.2021 that it had emerged as the highest bidder, however, it was clearly stated in the said email that the bid was "subject to acceptance by the department/corporation".

4. Thereafter the respondent issued a Letter of Intent (*hereinafter referred to as LOI*) dated 18.04.2022 to the petitioner accepting the bid of the petitioner, and requesting the petitioner to pay the differential amount i.e., the amount by which 25% of quoted price exceeds the first stage EMD

within a period of 7 days i.e., second stage EMD. The said communication dated 18.04.2022 clearly stated that “your bid for the plot has been accepted by the Delhi Development Authority”. In the said LOI it was also made clear that in case the second stage EMD is not submitted (without penalty) by 24.04.2022 or (with penalty) by 26.04.2022, the first stage EMD/ 5% of the reserve price deposited by petitioner shall be forfeited. Further, it was mentioned that the acceptance of LOI on the portal was to be treated as acceptance of LOI and no signed copy of LOI was required to be uploaded. The demand-cum-allotment letter was to be issued after completion of the said formalities. The petitioner deposited the 25% bid premium/ second stage EMD amount i.e., Rs.2,48,94,600/- on 22.04.2022. The petitioner vide letter dated 09.05.2022 requested the respondent to pass orders for issuance of demand letter for the remaining 75% of the amount. The petitioner, vide the said letter, also informed the respondent that the area of the said plot was announced to be as 400 sq. m. though it actually measures approximately 330 sq. m. i.e., less than 10 sq. m. short of the variation limits limit of 15%, as mentioned in the Tender Document, nonetheless the petitioner expressed its willingness to accept the allotment of the said plot.

5. By the impugned letter dated 01.06.2022, which is stated to have been received by the petitioner on 06.06.2022, the respondent withdrew the said plot from 14th phase of e-auction and rejected the petitioner’s bid due to “administrative reason”. In the counter affidavit filed on behalf of the respondent, the respondent claims that the reason for withdrawal the said plot was due to the variation in plot size, as said plot was auctioned with area size 400 sq. m., whereas the actual area was. 330 sq. m. approximately, and the variation was found to be more than the permissible limit of 15% i.e., 17.5%.

6. On 02.06.2022 the petitioner had addressed a letter to Lieutenant Governor and Vice Chairman, DDA claiming that certain people in the builder lobby/system want to derail the entire e-auction process and are trying to ensure cancellation of the petitioner's bid. It was further stated by the petitioner that it has sufficient funds to pay the balance allotment money on an immediate basis.

7. It further emerges from the record that on 08.06.2022, a notice titled 'Joint Inspection Notice' was issued by the respondent which stated that a joint inspection was scheduled to be held on 10.06.2022 at 11:30 A.M. to measure the exact area/ dimension of the said plot. The petitioner and officials of the respondent participated in the said joint inspection on 10.06.2022. In the said inspection, the plot size was found to be 330.58 sq. m. Later, the respondent advertised the said plot for the 16th phase of e-auction vide advertisement dated 12.06.2022, which also included the said plot with the area size of 330.58 sq. m. and at a reserved price of Rs.9,02,05,365/-.

PETITIONER'S CONTENTIONS

8. Mr. Sandeep P. Agarwal, learned Senior Counsel for the petitioner has contended that once the LOI has been issued and the bid of the petitioner accepted by the respondent, a concluded contract comes into existence between the parties, even though no demand cum-allotment letter was issued to the petitioner. He draws attention to the letter dated 30.12.2021 by which the petitioner was informed that its bid stands highest subject to acceptance by department/corporation. He also draws attention to LOI dated 18.04.2022 by which the petitioner's bid has been accepted. It was contended that once the bid is accepted, and LOI issued, the bid cannot be rejected. To support the said contention, attention was drawn to Clause 1.8 of General

Instructions to Bidders and Clause 2.6 of Chapter I of Tender Documents; it was contended that the respondent had the right to reject to bid of the petitioner at any time prior to confirmation of bid but not after confirmation of the bid.

9. It was further contended that, the action of authority in withdrawing the said plot from 14th phase of e-Auction and rejecting the bid of the petitioner is vitiated inasmuch as the letter of respondent dated 01.06.2022 is not issued in consonance with Rule 30 of the Delhi development Authority (Disposal of Developed Nazul Lands) Rules, 1981. He further contends that the malafides on the part of the respondent is apparent from fact that the respondent re-tendered the said plot at a much higher reserve price and further from the fact that there was no requirement for joint inspection on 10.06.2022 after the said plot had already been withdrawn from e-auction on 01.06.2022.

10. He further contended, by placing reliance on Clause 2.2, 2.4.3 and 2.4.5 of Chapter I of Tender Documents, that on payment of 25% Bid Premium/ second stage EMD amount in compliance with conditions mentioned in the LOI, it had become incumbent on the respondent to issue the demand letter for remaining 75% of the amount. It was submitted that the issuance of the demand letter remains a mere formality in view of Clause II (9) of Chapter III of Tender Documents, whereby, the demand-cum-allotment letter was to be sent to the successful bidder, i.e., petitioner, immediately after the bid was accepted by the competent authority.

11. Lastly, it was contended that as per Clause I(3) of Chapter-III of Tender Document, the petitioner was obliged to accept variation in plot area up to 15% either way. The joint inspection of the said plot on 10.06.2022 revealed the variation in plot size to be 17.5%. It was submitted that despite

the variation being more than permissible limit, the petitioner agreed for the allotment of the said plot at reduced size. Attention was drawn to a letter dated 09.05.2022, sent by the petitioner to the respondent, to contend the petitioner accepted the said plot despite the reduced size of 330 sq. m. as opposed to the advertised size of 400 sq. m. It was further contended that Clause 7 in Office Order dated 24.11.2000 on which the respondent has placed reliance in counter affidavit, only delegates the power for regularisation of the 'excess area' of the plot within the permissible limit of 15%, to the respondent officers. It was contended that the said office order is wholly inapplicable to the present case where the issue pertains to regularisation of deficit area.

12. In support of his submission, learned Senior Counsel for the petitioner has relied on the following judgments:

- a. *South Eastern Coalfields Ltd. and Ors. vs. S. Kumar's Associates AKM (JV)*, 2021 SCC OnLine SC 486
- b. *Radha Krishan Industries vs. State of H.P.*, (2021) 6 SCC 771
- c. *Din Bandhu Dass vs. Delhi Technological University* MAUA/DE/2935/2019

RESPONDENT'S SUBMISSIONS

13. Ms. Prabhsahay Kaur, learned Standing Counsel for the respondent has contended that present dispute is purely contractual in nature and appropriate remedy for the petitioner is to approach the civil court. It is contended that the issue of there being a concluded contract or the issue of enforcement of a contract can only be decided by way of a suit and not by way of a petition filed under Article 226 of Constitution of India. She submits that this court ought not to decide whether the contract was complete in all respects or not. To support the said contention reliance has

been placed on the judgements in *Manmeet Singh v. South Delhi Municipal Corporation* 2020 SCC OnLine Del 763, *Rishi Kiran Logistics P.Ltd v. Board of Trustees of Kandla Port Trust* (2015) 13 SCC 233, *Jagdish Mandal v. State of Orissa* (2007) 14 SCC 517 and *Michigan Rubber (India) Ltd. v. State of Karnataka*, (2012) 8 SCC 216.

14. Without prejudice to the aforesaid submissions, she further submitted that though the LOI was issued to the petitioner and 25% Bid Premium/second stage EMD amount was also paid, no concluded contract can be said to have come into existence. It was submitted that issuance of a demand-cum-allotment letter was a *sine qua non* for the contract to be concluded. She further relies upon the decision of Supreme Court in *Dresser Rand S.A. v. Bindal Agro Chem Ltd. & Anr* (2006) 1 SCC 751 which holds that a LOI merely signifies a party's expression of interest to enter into contract with another party and is not intended to bind either party to enter into contract. It was submitted that after issuance of LOI, neither the possession of the plot had been transferred nor had any allotment letter been issued to the petitioner as per the terms and condition of the Tender documents.

15. It was also contended that Clause II (1) of Chapter-III of the Tender Document grants the respondent the unequivocal power to withdraw any plot from auction, at any stage, without assigning any reasons. Reliance was also placed on Clause 1.8 of General Instructions to Bidders and Clause 2.6 of Chapter-I of Tender document to contend that the respondent reserves the right to reject any/all proposals and e-bids without assigning any reason whatsoever to the bidder. It was submitted that the action of the respondent to withdraw the plot on 01.06.2022 cannot be termed as unreasonable, arbitrary or irrational, as after the issuance of LOI, it came to notice of the competent authority that said plot size has been inadvertently wrongly

mentioned in the Tender document for 14th Phase of E-auction as 400 sq. m., which was due to an error in the property register maintained by the respondent where the size of the said plot was recorded as 400 sq. yards (334.45 sq. m.), whereas as per as per Survey and Site inspection report of the respondent, the area of the said plot was measured and found to be 330 sq. m. It was further submitted, for removal of doubts a joint inspection was organised on 10.06.2022, wherein the said plot was indeed found to be 330.58 sq. m. as opposed to the advertised size of 400 sq. m. in Tender Document i.e., a variation of 17.5%.

16. Lastly, it was contended that the Tender Document only permits 15% variation in the plot size that has been auctioned. Reliance in this regard was made to Clause I (3) of Chapter-III of the Tender Document. Attention was also drawn to an office order dated 24.11.2000 issued by the respondent, to contend that the respondent does not have the power to regularise any auctioned plot with more than 15% variation in plot size.

ANALYSIS AND CONCLUSION

17. The central issue that arises for consideration in the present case is whether the purported decision to withdraw the said plot from e-auction, is sustainable in law. The impugned communication dated 01.06.2022, where the said decision is recorded, reads as under:-

*“File No. LD/LSBI/0018/2021/MISC/l-LSB(l)/464
Computer No. 22227*

Dated: 01.06.2022

*To
York Tech Private Limited
17, Hemkunt Colony opposite
Nehru Place, New Delhi-110048*

Sub: - Withdrawn of plot A-1/60, Kirti Nagar Industrial Area from 14th phase of e-auction.

Sir/Madam,

Please refer to the above mentioned subject regarding auction held on 29.12.2021.

In this regard, it is stated that the Competent Authority has withdrawn the Plot No.A-1/60, Kirti Nagar Industrial Area, from 14th phase of e-auction and rejected your bid due to administrative reason.

The refund of Earnest Money deposited by you shall be made soon.

*Sd/-
Assistant Director
Land Sales Branch (Industrial)''*

18. In the counter affidavit, filed on behalf of the respondent/DDA, the aforesaid letter is sought to be justified on the basis of a stipulation contained in Clause II (1) of Chapter III of the Tender Document. It has been stated in the counter affidavit as under:-

"7. That the Respondent's actions are well within the Terms and Conditions of the Tender document. Clause II (1) of Chapter III of the Tender document grant the Respondent the unequivocal power to withdraw any plot from the auction, at any stage, without tendering a reason to the Bidder.

"II. BIDDING AT AUCTION AND SUBMISSION OF APPLICATION

1. The competent authority may without assigning any reasons, withdraw any plot from Auction at any stage."

19. Apart from the aforesaid clause cited by the respondent/DDA in the counter affidavit, Clause 2.6 of Chapter I of the Tender Documents also provides as under:-

“2.6 Right to reject bid

(i) Delhi Development Authority reserves the right to reject any/all bids without assigning any reason.”

20. In the context of the aforementioned stipulations, the first issue that arises for consideration is whether the right of the respondent/DDA to withdraw any plot from auction at any stage or to reject any bid without assigning any reason is untrammelled, unrestricted or unhedged by any limitations?

21. In *Union of India Vs. Dinesh Engineering Corporation (2001) 8 SCC 491*, in the context of a tender issued by the railways, where reliance was placed upon a similar stipulation which enabled the tendering authority “to reject any tender offer without assigning any reason and to accept or not to accept the lowest offer”, it was observed by the Supreme Court as under:

“15. Coming to the second question involved in these appeals, namely, the rejection of the tender of the writ petitioner, it was argued on behalf of the appellants that the Railways under clause 16 of the Guidelines was entitled to reject any tender offer without assigning any reasons and it also has the power to accept or not to accept the lowest offer. We do not dispute this power provided the same is exercised within the realm of the object for which this clause is incorporated. This does not give an arbitrary power to the Railways to reject the bid offered by a party merely because it has that power. This is a power which can be exercised on the existence of certain conditions which in the opinion of the Railways are not in the interest of the Railways to accept the offer. No such ground has been taken when the writ petitioner's tender was rejected. Therefore, we agree with the High Court that it is not open to the Railways to rely upon this clause in the Guidelines to reject any or every offer that may be made by the writ petitioner while responding to a tender that may be called for supply of spare parts by the Railways. Mr Iyer, learned Senior Counsel appearing for EDC drew our attention to a judgment of this Court in Sterling

Computers Ltd. v. M & N Publications Ltd. which has held: (SCC p. 455, para 12)

“Under some special circumstances a discretion has to be conceded to the authorities who have to enter into contract giving them liberty to assess the overall situation for purpose of taking a decision as to whom the contract be awarded and at what terms. If the decisions have been taken in bona fide manner although not strictly following the norms laid down by the courts, such decisions are upheld on the principle laid down by Justice Holmes, that courts while judging the constitutional validity of executive decisions must grant certain measure of freedom of ‘play in the joints’ to the executive.”

16. But then as has been held by this Court in the very same judgment that a public authority even in contractual matters should not have unfettered discretion and in contracts having commercial element even though some extra discretion is to be conceded in such authorities, they are bound to follow the norms recognised by courts while dealing with public property. This requirement is necessary to avoid unreasonable and arbitrary decisions being taken by public authorities whose actions are amenable to judicial review. Therefore, merely because the authority has certain elbow room available for use of discretion in accepting offer in contracts, the same will have to be done within the four corners of the requirements of law, especially Article 14 of the Constitution. In the instant case, we have noticed that apart from rejecting the offer of the writ petitioner arbitrarily, the writ petitioner has now been virtually debarred from competing with EDC in the supply of spare parts to be used in the governors by the Railways, ever since the year 1992, and during all this while, we are told the Railways are making purchases without any tender on a proprietary basis only from EDC which, in our opinion, is in flagrant violation of the constitutional mandate of Article 14. We are also of the opinion that the so-called policy of the Board creating monopoly of EDC suffers from the vice of non-application of mind, hence, it has to be quashed as has been done by the High Court.”

(emphasis supplied)

22. In fact, the Supreme Court has gone to the extent of observing that even the possibility of bringing more money to the public exchequer would not by itself offer a valid justification. In this regard, reliance may be made to the observations of the Supreme Court in the case of ***City and Industrial Development Corporation of Maharashtra Ltd. v. Shishir Realty (P) Limited., 2021 SCC OnLine SC 1141***, wherein it was observed as under:-

58. When a contract is being evaluated, the mere possibility of more money in the public coffers, does not in itself serve public interest. A blanket claim by the State claiming loss of public money cannot be used to forgo contractual obligations, especially when it is not based on any evidence or examination. The larger public interest of upholding contracts and the fairness of public authorities is also in play. Courts need to have a broader understanding of public interest, while reviewing such contracts.

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72. Before we state the conclusions, this Court would like to reiterate certain well-established tenets of law pertaining to Government contracts. When we speak of Government contracts, constitutional factors are also in play. Governmental bodies being public authorities are expected to uphold fairness, equality and rule of law even while dealing with contractual matters. It is a settled principle that right to equality under Article 14 abhors arbitrariness. Public authorities have to ensure that no bias, favouritism or arbitrariness are shown during the bidding process. A transparent bidding process is much favoured by this Court to ensure that constitutional requirements are satisfied.

73. Fairness and the good faith standard ingrained in the contracts entered into by public authorities mandates such public authorities to conduct themselves in a non-arbitrary manner during the performance of their contractual obligations.

74. The constitutional guarantee against arbitrariness as provided under Article 14, demands the State to act in a fair

and reasonable manner unless public interest demands otherwise. However, the degree of compromise of any private legitimate interest must correspond proportionately to the public interest, so claimed.

75. At this juncture, it is pertinent to remember that, by merely using grounds of public interest or loss to the treasury, the successor public authority cannot undo the work undertaken by the previous authority. Such a claim must be proven using material facts, evidence and figures. If it were otherwise, then there will remain no sanctity in the words and undertaking of the Government. Businessmen will be hesitant to enter Government contract or make any investment in furtherance of the same. Such a practice is counter-productive to the economy and the business environment in general.

(emphasis supplied)”

23. Recently, in ***Mihan India Ltd. v. GMR Airports Ltd., 2022 SCC OnLine SC 574***, the Supreme Court once again had occasion to consider the validity of a communication whereby the bidding process was sought to be annulled after a communication had been issued to the highest bidder accepting the proposal of the said highest bidder. The bidding process was sought to be annulled based upon the following stipulations in the tender conditions, which are reproduced in paragraph 22 of the said judgment:-

“CHAPTER -2

2.16 : Rejection of Bids:

2.16.1 *Notwithstanding anything contained in this RFP, the Authority reserves the right to reject any Bid and to annul the Bidding Process and reject all Bids at any time without any liability or any obligation for such acceptance, rejection or annulment and without assigning any reasons therefor. In the event that the Authority rejects or annuls all the bids, it may, in its discretion, invite all eligible Bidders to submit fresh Bids hereunder.*

2.16.2 *: The authority reserves the right not to proceed with the Bidding Process at any time, without notice or liability, and to reject any Bid without assigning any reasons.”*

24. The Supreme Court while taking note of the judgment in the case of ***Dinesh Engineering Corporation (supra)*** held as under:-

*“46. Now, as per the material available and discussed hereinabove, it is clear that the appellants were aware of the procedure which is being adopted. After completion of the bidding process, GAIL was declared as a selected bidder on offering highest revenue share and on issuance of LoA, it has been declared as a concessionaire and at the stage of execution of Concession Agreement, all these formalities are not relevant and it amounts to arbitrary exercise of the power by the authorities which is not permissible under law. The said approach is fortified with the view taken in the judgment of this Court in **Union of India v. Dinesh Engineering Corpn., (2001) 8 SCC 491**, wherein while dealing with the rejection of bid of the respondent therein by Railways in a tender floated for procurement of certain items of spare parts for use in GE governors, this Court has held that power to reject bids cannot be exercised arbitrarily merely because Railways has the power to do so. Any arbitrary exercise of power to reject bids has been held violative of Article 14. Paragraphs 15 and 16 of the aforesaid judgment are relevant and reproduced thus...”*

(emphasis supplied)

25. The legal position is thus well settled that stipulations such as the one relied upon by the respondent/DDA, are not intended to confer a power on the respondent/DDA to arbitrarily reject any bid or to annul the tender process. The decision to reject the bid or to annul the tender process or to withdraw any plot from the auction, at any stage, must satisfy the requirements of Article 14 of the Constitution; it must be dictated by reason and must not be tainted by the vice of arbitrariness and/ or dictated by extraneous or irrelevant considerations. The right conferred under the tender conditions sought to be relied upon by the respondent/DDA is subject to these basic requirements and therefore cannot be said to be untrammelled or unrestricted.

26. I now proceed to examine the validity of the reasons sought to be given by the respondent/DDA for its actions.

27. In the present case, the invocation of Clause II (1) of Chapter III of Tender document is sought to be justified on the basis that the area of the said plot was lower than that mentioned in the e-auction notice. In this regard, it has been averred in the counter affidavit as under:-

"8. Furthermore, the Tender Document only permits for 15% variation in the plot size that has been allotted. In this regard, Clause I (3) provides as follows:

"1. ELIGIBILITY

3. The area of industrial plots announced are only approximate, and the persons whose bids are accepted should be prepared to accept variation upto 15 % either way in the area announced, subject to adjustment of cost in proportion to amount of accepted bid."

It is submitted that the Respondent does not have the power to regularise any Auctioned plot more with more than 15% variation in plot size. In this regard reliance is placed on the Respondent's Circular dated 24.11.2000, annexed herewith and marked as ANNEXURE R-1.

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15. Subsequently, after the issuance of LOI, it came to the notice of the competent authority that the said plot size had been inadvertently wrongly mentioned during the E-auction. Plot A-1/60, WHS Kirti Nagar was auctioned with area size 400 sq mtrs., whereas the actual area is aprox. 330 sq. mtrs. This error seemingly crept in for the reason that the property register mentioned the size of the Plot as 400 sq. yds. (334.45 sq. mtrs). Also, as per Site inspection Report by Survey wing of DDA, area of the Plot was measured and found to be 330 sq. m.
16. That forthwith, the internal processes for course correction started and after looking into the entire facts and circumstances, it was decided by the competent authority to reject the bid and re-auction the said plot with the corrected area in the next phase of E-auction, for the reason that the

variation in plot size was found to be more than the permissible limit of 15% i.e. 17.5. The Respondents intimated the same to the Petitioner vide letter dated 01.06.2022. ”

28. In the aforesaid context, it is notable that the tender conditions clearly stipulate that bids were invited from the bidders for sale of industrial plots on “as is where basis”. The e-auction was conducted on 29.12.2021, and the petitioner submitted its bid for an amount of Rs.10,91,48,000/- against the reserve price of Rs.4,78,48,000/-. Even prior to the aforesaid communication dated 01.06.2022, a letter dated 09.05.2022, was addressed by the petitioner to the Vice Chairman, DDA after issuance of LOI in its favour, wherein it was stated by the petitioner as under:-

*“The Vice Chairman,
Delhi Development Authority,
Vikas Sadan, INA
New Delhi*

Sub: Auction of Industrial Plot No.A-1/60, Kriti Nagar.

Dear Sir,

We would like to submit before your good self that aforesaid Industrial Plot No. A-1/61, Kirti Nagar measuring 400 sq. m. in area was scheduled for E-auction on 29-12-2021.

That as per terms and conditions of auction the said plot was being auctioned by the DDA on “as is where basis” and as such we got gully acquainted with the surroundings and area of the plot well before auction.

That we firmly determined to bid keeping in mind to accept the plot on “as is where basis” as provided in the terms and conditions of auction. On these foundations we took part in the bidding and gave out bids with full enthusiasm resulting out highest bid of Rs.10,91,48,000/-.

That the aforesaid highest bid of Rs. 10,91,48,000/- for purchase of freehold rights of the aforesaid plot was accepted / confirmed by the DDA and we were directed to make the

payment of second stage EMD by 24-4-2022 vide communication no 27700/Industrial/LOI/83 dated 18-4-2022. We have already paid Rs. 23,92,400- toward, first stage EMD on 22-12-2021. As thus second stage EMD being difference i.e. the amount by which 25% of quoted bid computed to Rs. 2,48,94,600 - was also paid on 21-04-2022. Hence the earnest money i.e. 25% of our bid totalling to Rs. 2,72,87,000/- stands paid.

In view of the above it is submitted that the area of the aforesaid plot was announced to be as 400 sq. m. though it now measures 330 sq. m. approximately i.e. just less than 10 sq. m. short of the variation limits. We are as such willing to accept the allotment of the aforesaid plot.

We would, therefore, request your honour to kindly pass orders for issuance of demand letter for the remaining 75% of the premium enabling us to make the payment.

Thanking you,

Regards,

Sd/-

Sandeep Sethi

Jt. Managing Director”

(emphasis supplied)

29. It is evident from the aforesaid communication that the petitioner did not seek to avoid paying the requisite amount to the respondent/DDA despite becoming aware that the area of the said plot was 330 sq. m. instead of 400 sq. m. Clearly, no prejudice was caused to the respondent/DDA as a result of the area of the said plot being smaller than what was mentioned in the e-auction notice. Even prior to issuance of the impugned communication dated 01.06.2022, the petitioner intimated that it was agreeable to make payment of the entire bid amount to the respondent/DDA. During the course of arguments, in response to a specific query, it has been

reiterated by Senior Counsel appearing for the petitioner that the petitioner is agreeable to pay the entire balance bid amount to the respondent/DDA notwithstanding the deficit area of the said plot.

30. In the circumstances, where the e-auction of plots was on “as is where basis”, where the bid of the highest bidder was more than twice the reserve price and where the bidder is agreeable to make the entire payment despite the deficit in area, the decision, as recorded in the impugned communication dated 01.06.2022, appears to be altogether unjustified and tainted with arbitrariness. As noticed hereinabove, the Supreme Court in *Shishir Reality (P) Limited (supra)* has emphasised that public authorities are expected to act with fairness even in contractual matters. Fairness and good faith standards expected from public authorities mandate that such public authorities should conduct themselves in a non-arbitrary manner even while entering into commercial contracts.

31. Reliance sought to be placed by the respondent/DDA on its Office Order dated 24.11.2000 to justify its action is also misconceived. Vide the said office order, certain powers have been sought to be delegated to concerned officers of the land disposal department of the DDA. One of the powers which has been conferred is for “regularization of the excess area of the plot within the permissible limit of 15% as per the circular”. As noticed hereinabove, in the present case, we are not confronted with a situation where the area of the said plot was in excess of what was mentioned in the e-auction notice. In the present case, the area of the plot is less than what was informed to the prospective bidders. As such, the said office order relied upon by the respondent to contend that it does not have the power to regularise any auctioned plot with more than 15% variation in plot size, is completely misconceived.

32. Arbitrariness is also writ large from the manner in which the respondent/DDA has proceeded in the matter. This is evident from the fact that although the impugned communication, whereby the said plot was sought to be withdrawn from the e-auction, was issued on 01.06.2022, it was only on 08.06.2022 that a joint inspection notice was issued by the DDA stating that a joint inspection is scheduled to be held on 10.06.2022 to measure exact area/dimensions of the said plot. A copy of the said joint inspection notice was also marked to the petitioner. The joint inspection was thereafter conducted on 10.06.2022 to ascertain the dimensions of the plot. It is remarkable that having already taken the decision on 01.06.2022 to withdraw the said plot from e-auction, on the basis of deficient plot size, the actual joint physical inspection to ascertain the area of the said plot was conducted only thereafter.

33. Apart from the aforesaid aspect, there is another, independent reason which necessitates that impugned communication dated 01.06.2022 be quashed. Even assuming that the respondent/DDA was entitled to take recourse to the relied upon tender stipulations to withdraw the plot from e-auction, the same could not have been done after acceptance of the bid of the petitioner. In the present case, it is notable that it was vide communication dated 30.12.2021 it was communicated to the petitioner that it had emerged as the highest bidder. However, the said communication clearly mentioned that the bid was “subject to acceptance by the department/ corporation”. It was not until 18.04.2022 that the bid of the petitioner was finally accepted. If at all the respondent/ DDA was desirous of withdrawing the said plot from the auction process, there is no reason why the same could not have been done prior to acceptance of the bid, considering that there was a time

period of more than 3 months (between 31.12.2021 and 18.4.2022), when the necessary verification/s could have been done.

34. Reference may also be made to the Letter of Intent dated 18.04.2022 issued by the respondent/DDA in favour of the petitioner which reads as under:

“File No. 27700/INDUSTRIAL/LOI/83 Date 18/04/2022

Sub: Letter of Intent (LOI) for successful (H1) Bidder in respect of e-auction for sale of INDUSTRIAL plots.

Sir/Madam,

This is with reference to the e-auction programme held on 29-12-2021, the undersigned is pleased to inform you that your bid for the Plot has been accepted by Delhi Development Authority.

You are, therefore, requested to pay the difference amount i.e. the amount by which 25% of quoted price exceeds the first stage EMD within a period of 7 days of issue of this LOI (Date of issuance is included in the time given for above payment). In case the second stage EMD is not submitted by (without penalty) 24-04-2022 or (with penalty) by 26-04-2022, the first stage EMD 5% of the reserve price) submitted by you shall be forfeited as per Chapter-I, clauses 2.4 of tender documents of 14th phase of e-Auction. It is to be noted that the above payment shall be made through online mode (E-Payment/ NEFT/RTGS) only on the e-auction portal i.e. <https://eservice.dda.org.in/user>.

The acceptance of Letter of Intent on portal shall be treated as acceptance of LOI. No signed copy of LOI is required to be uploaded. The Demand-cum-allotment letter shall be issued after completion of the above stated formalities.

Name of the bidder

*York Tech
Private Limited*

Plot Description

*Plot No. A-1/60 Pocket-NA
Block NA, KIRTI NAGAR*

Second Stage EMD Amount Rs. 24,894,600.00

*sd-
Assistant Director
(INDUSTRIAL)”
(emphasis supplied)*

35. A bare perusal of the aforesaid communication makes it clear that the bid of the petitioner for the said plot was “accepted by Delhi Development Authority”. The aforesaid acceptance was an unequivocal acceptance without any conditions.

36. The relevant tender conditions also contemplate that the communication demanding the second stage EMD would be issued only after confirmation/acceptance of the bid in question. In this regard, reference may be made to Clause 2.4.3 of Chapter I of Tender Document, which read as under:

“2.4.3 After the bids are confirmed/accepted by the Competent Authority, a communication shall be sent to the successful bidder and the second stage EMD (25% of the Bid premium minus stage EMD already paid) to be submitted within 7 days from the Date of issue of LOI through online payment.”

37. In line with the aforesaid tender condition, the respondent/DDA proceeded to demand the second stage EMD after confirmation/ acceptance of the bid by the competent authority.

38. Even in the counter affidavit filed on behalf of the respondent/DDA, it has been admitted that the bid of the petitioner was accepted and the Letter of Intent was issued so as to communicate acceptance of the petitioner’s bid. In this regard, reference may be made to paragraph 14 of the counter affidavit filed on behalf of respondent/DDA wherein it is stated as under:

“14. That the petitioner herein participated in E-auction dated 29.12.2021 for property bearing A-1/60, WHS Kirti Nagar at a

bid price of Rs.10,91,48,000/-. Consequently, a Letter of intent (LOI) dated 18.04.2022 was issued to the Petitioner by the answering Respondent/DDA communicating acceptance of his bid, wherein the Petitioner was required to pay 25% of the quoted price exceeding the Reserve Price amounting to Rs.2,48,94,000/- as per Clause 2.2 of the Tender Documents within 7 days from the issuance of LOI.”

(emphasis supplied)

39. Once there was an unequivocal acceptance of the bid in question, there can be no occasion for the respondent/DDA being permitted to reject the bid or to withdraw the said plot from the auction process, as sought to be done.

40. In this respect, the facts of the present case are akin to the facts in the case of **Mihan India Ltd (supra)**. In the said case, a letter had been issued in favour of the bidder accepting its proposal; however, the concession agreement was not executed in favour of the said bidder, and the tendering authority took the plea that issuance of the aforesaid communication to the bidder was merely an intimation regarding acceptance subject to further approval and it did not prevent tendering authority from annulling the tender process prior to the concession agreement being executed. In this background, the Supreme Court held as under:

“25. ... As per Clause 3.3.6, on receiving the acknowledgment of the LoA by the selected bidder, it shall cause the Concessionaire to execute the Concession Agreement within 60 days of award of LoA as prescribed in Clause 1.3 at serial No. 11. It is also clarified that the selected bidder shall not be invited to cause any default, modification of amendment in the Concession Agreement, so executed. Thus, as per the scheme of RFP, if the highest bidder has qualified the test of responsiveness without any order of rejection or annulment and has offered highest revenue share, he be declared as a selected bidder and in terms of Clause 3.3.5, LoA be issued which shall be acknowledged and after signing duplicate copy shall be

returned within specified time. Thereafter, the concessionaire is required to execute the Concession Agreement. ...

XXX

XXX

XXX

27. As per the above discussion, we do not have any hesitation to hold that letter dated 07.03.2019 is a LoA after selecting the GAL as a highest bidder and it acquired the status of concessionaire. It was only the Concession Agreement required to be executed and there was no fault on the part of the GAL in complying with the provisions of RFP. The conduct of appellant MIL also indicates that concession agreement is required to be executed by concessionaire (GAL). Thus, after proposal of highest revenue share on issuing the letter of acceptance and also as reflected by conduct, it has become a concluded contract.

(emphasis supplied)

41. It is noticed that even in the present case, the LOI was required to be issued only upon confirmation/acceptance of the bid by the competent authority. Moreover, it was clearly stipulated in the tender conditions as under:

“2.4.5 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 the allotment/demand letter.”

42. As such, it was incumbent on the respondent/ DDA to issue a demand-cum-allotment letter to the petitioner after acceptance of its bid and deposit of second stage EMD by the petitioner.

43. In *Mihan India Ltd (supra)*, the Supreme Court has also affirmed that recourse to stipulations in the tender which permit annulment of the bidding process, is permissible only prior to acceptance of the bid. In this regard, paragraph 47 of *Mihan India Ltd (supra)* holds as under:

“47. Bare perusal of the above stated case-law in light of the facts of the instant case makes it clear that merely having the power of rejection of bids does not entitle authorities to exercise the said power arbitrarily. While discussing the applicability of Clauses 2.16.1, 3.3.1 and 3.3.5, it is made clear that in pre-bid procedure prior to acceptance, the bidding process may be annulled otherwise after issuance of LoA, the annulment cannot be done. The authorities further acted arbitrarily relying upon the GoM's letter dated 16.03.2020 in reference to PMIC's meeting dated 14.10.2019 in which re-tendering was directed. Re-tendering was not possible without ignoring the bid already accepted. Therefore, the order of annulment has been directed applying Clause 2.16.1 arbitrarily.”

(emphasis supplied)

44. In the present case as well, a reading of the tender conditions as whole leave no manner of doubt that although it is provided that the respondent/DDA has freedom to either reject the bid or annul the bidding process altogether or to withdraw any plot from the auction at any stage, such option must be exercised prior to communicating acceptance of a validly submitted bid.

45. Reliance placed by learned counsel for the respondent on paragraph 39 of *Dresser Rand S.A. vs. Bindal Agro Chem Ltd. & Anr. (2006) 1 SCC 751*, is completely misconceived. The said paragraph read as under:

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 Coop. Dairy Federation Ltd. v. Maha Laxmi Mingrate Marketing Service (P) Ltd.: (SCC p. 408, para 7)

“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.”

46. Relying upon the aforesaid observations, it is contended by learned counsel for the respondent/DDA that issuance of a Letter of Intent in the present case was merely indicative of an intention to enter into contract with the petitioner in future; it was not intended to bind the DDA to enter into any contract. However, paragraph 40 of the same judgement clarifies that “the question whether the letter of intent is merely an expression of an intention to place an order in future or whether it 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.” The said paragraph 40 reads as under :

“40. 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 it 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 Vol. 1, 28th Edn.) 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 that 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. Be that as it may.”

(emphasis supplied)

47. Recently in the case of ***South Eastern Coalfields Ltd. v. S. Kumar's Associates AKM (JV)***, (2021) 9 SCC 166, the Supreme Court had occasion to consider the aforesaid judgement of ***Dresser Rand S.A.***(*supra*), and it was observed therein as under:

“13. In Dresser Rand S.A. [Dresser Rand S.A. v. Bindal Agro Chem Ltd., (2006) 1 SCC 751], the contract was to come into force upon receipt of the LoI by the supplier. The Supreme Court recognised the well-settled principles of law that an LoI merely indicates party's intention to enter into a contract with the other party in future and is not intended to bind either party ultimately to enter into a contract. In this behalf observations in an earlier judgment in Rajasthan Coop. Dairy Federation Ltd. v. Maha Laxmi Mingrate Mktg. Service (P) Ltd. [Rajasthan Coop. Dairy Federation Ltd. v. Maha Laxmi Mingrate Mktg. Service (P) Ltd., (1996) 10 SCC 405] were referred to, which reads as under : (Dresser Rand S.A. case [Dresser Rand S.A. v. Bindal Agro Chem Ltd., (2006) 1 SCC 751], SCC p. 773, para 39)

“39. ... ‘7. ... 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.’ (Rajasthan Coop. Dairy Federation Ltd. case [Rajasthan Coop. Dairy Federation Ltd. v. Maha Laxmi Mingrate Mktg. Service (P) Ltd., (1996) 10 SCC 405], SCC p. 408, para 7)”

This was, however, followed by a caveat that it could also not be disputed 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, that in order to save time, a letter of intent communicating the acceptance of the offer is issued asking the contractor to start the work with a stipulation that the detailed contract would be drawn up later. Though such a letter may be termed as a letter of intent, it may amount to acceptance of the offer resulting in a

concluded contract between the parties. This is a matter to be decided with “reference to the terms of the letter”. It was further observed that where the parties to a transaction exchanged letters of intent, the terms of such letters may have negative contractual intention but where the language does not have negative contractual intention, it is open to the courts to hold that the parties are bound by the document and the courts would 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.”

(emphasis supplied)

48. Reliance placed by learned counsel for the respondent on the judgment of Division Bench of this Court in ***Manmeet Singh vs. South Delhi Municipal Corporation 2020 SCC OnLine Del 763*** is also misconceived for various reasons. In said case there was no unequivocal acceptance/confirmation of the bid in question. On the contrary, an offer letter was issued to the petitioner therein informing him that he was “eligible to be offered” the sites in question. Some further formalities were also required to be completed by the petitioner before actual acceptance of its bid. Also, in the said case, it was noticed that the decision to annul the tender was on account of the fact that certain important tender conditions were not notified to the prospective bidders. Moreover, no pre-bid meeting was conducted. There was also an apprehension of cartel formation by the bidders. In this regard reference may be made to paragraph 37 of the said judgment, in which it was observed as under:

“ 37. We thus proceed to examine the validity of the reasons that have propelled the respondent/SDMC to recall the entire tender process. On distilling the report of the Committee, following were the prominent reasons offered for recommending annulment of the tender process and revision of the terms and conditions of the new NIT that have found favour with the Commissioner, SDMC:—

- a. While the approved tender document stated that the contract was for a period five years without mentioning any breakup of the period, the NIT advertised in the newspapers, mentioned that the tender was to be awarded for a period for three years, extendable up to two years. This would have created confusion in the mind of the prospective bidders regarding the actual contract period and its potential of revenue generation.
- b. Though the tender documents mentioned a date for conducting the pre-bid meeting, no pre-meeting had taken place which would have afforded an opportunity to the Department to get an insight into the problems of the prospective bidders, clarify any doubts and take remedial steps.
- c. The short burst of the online auction activity at the fag end of 13.05.2020, between 05:17 pm to 05:38 pm indicated a serious possibility of cartel formation by the bidders which was detrimental to the e-auction process. The Committee concluded that this showed that there was a lack of healthy participation in the bidding process.”

49. It was in the aforesaid context that in the said case, the Division Bench of this Court refrained from examining as to whether the contract with the successful bidder stood concluded or not.

50. Likewise reliance by the learned counsel for the respondent on the judgment of the Supreme Court in ***Rishi Kiran Logistics P. Ltd (supra)*** is also misconceived. In the said case, the LOI issued by the tendering authority to the successful bidders mentioned that a formal letter would be issued to successful bidders after obtaining certain clearances. It was in these circumstances, the court held that the LOI depicted merely an intention to enter into contract at a later stage. In this regard, reference may be made to paragraph 43 of the said judgment, which reads as under:

“43....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.”

(emphasis supplied)

51. In the facts of the present case, the letter of intent issued in favour of the petitioner was a clear and unequivocal acceptance/confirmation of the bid submitted by the petitioner and resulted in a concluded contract between the parties. As mentioned hereinabove, it was thereafter incumbent on the respondent/DDA to issue a demand-cum-allotment letter as mandated under Clause 2.4.5 of Chapter I of tender document.

52. The scope of judicial review in contractual disputes has been the subject matter of discussion in a plethora of judgments. It has emphasised by the Supreme Court that judicial review of administrative action is intended to prevent arbitrariness, irrationality, unreasonableness, bias and mala fides and its purpose is to check whether choice or decision is made 'lawfully' and not to check whether choice or decision is 'sound'. In the present case, the arbitrariness and irrationality in the decision making process is writ large in the facts and circumstances of the case.

53. Accordingly, the impugned letter dated 01.06.2022, whereby the said plot had been sought to be withdrawn from the e-auction, is quashed. The respondent/DDA is directed to act in terms of Clause 2.4.5 of Chapter I of tender document, which contemplates that after deposit of second stage EMD, the DDA shall issue a demand cum allotment letter to the bidder whose bid has been accepted through registered post calling upon it to remit the balance 75% amount/premium of the bid offered within a period of 90 days of the issuance of demand letter. Once the petitioner pays the said

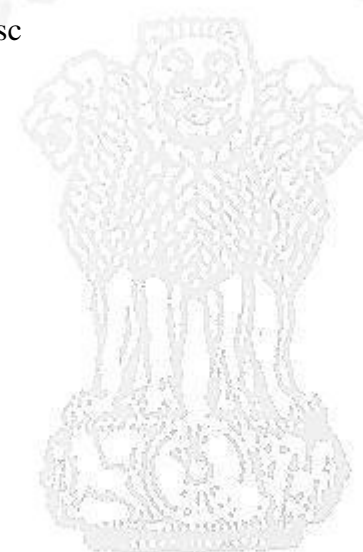
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amount, the respondent/DDA may thereafter proceed to hand over the vacant physical possession to the petitioner and to execute the conveyance deed as contemplated in the tender conditions, subject to compliance with all applicable formalities in this regard.

54. The present writ petition is allowed in the aforesaid terms. The pending application also stands disposed off.

OCTOBER 31, 2022//ssc

SACHIN DATTA, J.



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