IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

FAO-CARB-45-2023 (O&M)
Date of Decision: 20.10.2023

M/S LEKH BUILDTECH P LTD. ......APPELLANT

Vs.

HARYANA SHEHRI VIKAS PRADHIKARAN ....RESPONDENT

CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA
HON'BLE MS. JUSTICE HARPREET KAUR JEEWAN

Present: Mr. Chetan Mittal, Senior Advocate,
Mr. Akshay Bhan, Senior Advocate,
Mr. Aashish Chopra, Senior Advocate, with
Mr. Parmanand, Mr. Kunal Dawar, Ms. Rupa Pathania,
Ms. Rubina Vermani and Mr. Himanshu, Advocates,
for the appellant.

Mr. Deepak Sabherwal, Advocate,
for the respondent-HSVP.

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HARPREET KAUR JEEWAN, J

1. The present appeal under Section 13 of Commercial Courts Act, 2015, (for short the "*Act of 2015"*) read with Section 37 of Arbitration and Conciliation Act, 1996, (for short the "*Act of 1996"*) has been filed assailing the order dated 21.09.2023, passed by the Additional District Judge-cum-Presiding Judge, Exclusive Commercial Courts at Gurugram, (for short "*Commercial Court*") whereby the petition filed by the appellant under Section 9 of the Act of 1996, was dismissed.

2. It is contended by the appellant that on 12.03.2022, the respondent had issued an advertisement for auction of 3.54 acre of commercial land in Sector 43, Urban Estate, Gurgaon-II by way of publication in newspaper. On 30.03.2022, the appellant had deposited an

amount of Rs. 20,19,41,600/- towards 5% earnest money and on 31.03.2022, he was declared as a highest bidder for Rs. 495,11,61,200/- in the e-auction. Thereafter, on 04.04.2022, he further deposited a sum of Rs. 29,31,76,520/- to make a total deposit of Rs. 49,51,16,120/- to make the good 10% of the bid amount. On 19.05.2022, the Letter of Intent dated 19.05.2022 (Annexure P-6) (for short "*the LOI"*) was issued in favour of the appellant by the respondent. On 23.05.2022, the appellant sent a letter dated 23.05.2022 (Annexure P-7) to the Chief Administrator, HSVP for clarification regarding difference of the area as mentioned in the LOI and as existed at the site; existence of a wine shop and other unauthorized construction; and further requested to modify the LOI by way of providing an option to pay 75% of the balance amount, as per point 31 of the e-auction policy dated 28.03.2022 (Annexure A-1) (for short the "*2022 policy"*).

2.1. On 16.06.2022, the appellant deposited a sum of Rs. 74,26,74,180/- to complete the payment of 25% of the bid amount. On 17.06.2022 the appellant sent a letter (Annexure A-8), and requested the respondent to take action on the previous letter dated 23.05.2022 (Annexure A-7). On 21.07.2022, the respondent issued a memo Annexure A-9 giving a response to the appellant's letter dated 23.05.2022 (Annexure A-7) wherein it was mentioned that the contention for making the payment of 75% of the bid amount in 6 half yearly installments can be considered only if the appellant furnishes a bank guarantee equivalent to 75% of the bid amount with 03 yearly validity. On 09.08.2022, the appellant sent a reply dated 09.08.2022 (Annexure A-10), requesting to withdraw the demand of bank guarantee and seeking permission to pay the balance amount in 6 half yearly installments spread over 3 years, in terms of 2022 policy. On 14.09.2022 the appellant further made a similar formal request on the portal of the respondent (Annexure A-11).

2.2 On 19.11.2022, a petition under Section 9 of the Act of 1996 (Annexure A-12) before Commercial Court, Gurugram, was filed seeking a direction not to cancel the LOI of the appellant, not to change the zoning plan provided to the appellant at the time of auction. Request was also made for issuance of a fresh LOI and allotment letter after conducting the demarcation and to withdraw the demand of bank guarantee in respect of the remaining 75% of the sale consideration. Prayer was also made to direct the respondents to get the wine shop and trees removed from the spot.

2.3 On 23.11.2022 (Annexure A-13) an interim order was passed by the Commercial Court not to cancel the LOI issued in favour of the appellant nor to change the zoning plan of the land in question till the next date of hearing.

2.4 On 10.02.2023 (Annexure A-15), the respondent issued a public notice giving last and final chance to the bidders/allottees who had purchased the residential, commercial and institutional plots in the e-auction after 22.06.2021 and whose plots status is shown as cancelled in the PPM system as on 03.12.2022 to make the balance payment along with the interest as also specifying that the bidders can avail one time relief and make the payment of all the dues within 30 days w.e.f. 10.02.2023 (Annexure P-15). On 13.02.2022, the appellant received an e-mail (Annexure A-14) along with copy of the said public notice dated 10.03.2023 wherein the plot in question was shown as cancelled in the list dated 03.12.2022 and was mentioned at serial No. 271 of the list.

2.5 Vide interim order dated 16.02.2023 (Annexure A-17), the application dated 14.02.2023 filed by the appellant for urgent hearing was disposed of by the Commercial Court upon the submissions by the counsel for the respondent that LOI was cancelled even prior to grant of stay by the Commercial Court, vide order dated 23.11.2022 and counsel for the respondent gave an undertaking that the respondent is not going to hold auction of the land in question as of now and would file the reply to the main petition. Thereafter, respondents filed reply to the petition under Section 9 of the Act of 1996.

3. Vide order dated 21.09.2023, the Commercial Court dismissed the petition under Section 9 of the Act of 1996. While dealing with the preliminary objections raised by the respondent regarding the jurisdiction of the Court and that the dispute is not a “commercial dispute” under Section 2 (c) (vii) of the Act of 2015, the learned Commercial Court observed that a specific plea has been taken by the appellant in paragraph 26 of the petition that the agreement between the parties is in respect of trade and commerce of purchase of commercial site notified by the Government. The respondents had pleaded that the wine shop at the spot is operated by the tenants of the respondents which in itself is a commercial activity, therefore, the dispute is a commercial dispute and is covered under the Act of 2015. In view of the said admission, the contention of the respondent that the dispute is not a commercial dispute was repelled.

3.1 While relying upon the letter dated 21.07.2022 (Annexure P-9), the Commercial Court observed that *prime facie* the e-auction in the present case is governed by 2022 policy. However, the Commercial Court observed that the appellant should have approached the Court before the period provided to it for making the balance payment of 75% of bid amount, i.e. within 120 days + 30 days grace period, i.e. within 150 days from the date of issuance of the Letter of Intent by the respondents which was admittedly issued on 19.05.2022 (Annexure P-6). It was observed that the appellant did not approach before the said period so the allotment of the commercial site in favour of the appellant stood already cancelled before it approached the Court.

4. Learned counsels for the appellant contended that the Commercial Court has wrongly rejected the petition under Section 9 of the Act of 1996 even though the Court accepted the plea of the appellant that case of the appellant is governed under the 2022 policy (Annexure A-1). The said policy was framed and notified by the respondent regarding e-auction of independent commercial properties which are governed by zoning plan. Despite accepting the said plea, the learned Commercial Court rejected the petition merely on the ground that lump sum payment of 75% of the auction price was not paid within 120 days as such the allotment stood cancelled. The learned Commercial Court further observed that the possession was to be offered after payment of 75% of the amount. The said findings recorded was stated to be illegal and erroneous, in view of the fact that the earlier e-auction policy of the respondent dated 20.05.2021 (Annexure A-2) (for short "*2021 policy*") was regarding e-auction of residential institution and commercial sites/building which stood modified with the 2022 policy. As per the 2022 policy, there was no question of any forfeiture or lapse of allotment as the appellant opted for half yearly installments plan and the life of LOI would lapse only as per the new

policy of 2022 and not after the expiry of 120 days as wrongly observed by the Commercial Court.

4.1. Learned counsels for the appellant further contended that respondents were bound to give possession under 2022 policy after the deposit of 25% amount but the same was not offered despite payments being made in time and moreover, there was an issue of the size of the plot. On receipt of LOI there was non-disclosure of certain material facts on the part of the respondent in relation to the said plot which came to the notice of the appellant. As such, the appellant sent a communication dated 23.05.2022 (Annexure A-7) to the respondent referring about the fact that the area of the plot was less than what has been mentioned in the LOI and requested to demarcate the plot to ascertain the actual area/size of the plot. These issues have not been considered and appreciated by the learned Court below and it wrongly dismissed the application under Section 9 of the Act of 1996 despite the fact that appellant had already deposited a total amount of Rs.1,23,77,90,300/-

4.2. It is further contended that learned Court below did not appreciate the fact that 100% bid amount was not required to be paid for transfer of the possession. The case of the appellant is covered under the new policy of 2022. The vacant possession was required to be transferred to the appellant in view of clause 33 and 34 of 2022 policy as per which after payment of 25% of the bid amount, the Letter of Allotment was required to be issued to the appellant and possession of the plot was required to be transferred. As such the plot in question could not have stood cancelled after the expiry of 120 days which has been wrongly observed by the learned Court below.

4.3. Learned counsel for the appellant further submitted that on 23.05.2022, the petitioner sent a letter to the respondent to ascertain the area of the plot as the actual area at the spot was 12261.98 m2 (3.03 acre). The appellant also apprised the respondent that there is a wine shop operating at the land and also there is unauthorized construction on the site and appellant requested the respondent to hand over the physical vacant possession of the site as per the new policy. The petitioner also requested the respondent to consider for issuing a fresh zoning under TOD policy having 3.5 FAR and GRIHA FAR of 0.12. The petitioner also requested for issuance of a fresh Letter of Intent which was not done by the respondent but the appellant was informed by the respondent by way of letter dated 21.07.2022 (Annexure A-9) that the request for making payment of 75% of the bid amount in six half yearly installments, can be considered only if the petitioner furnish's a bank guarantee equivalent to 75% of the bid amount with 03 years validity. The appellant gave a response to the said letter submitting that there was no requirement of furnishing bank guarantee for the remaining payment of 75% and the said demand is beyond the scope of the 2022 policy and requested to withdraw of the said demand. Thereafter, despite various communications sent by the appellant, no action was taken by the respondents. It was argued on behalf of the appellant that the petition under Section 9 of the Act of 1996 is maintainable as there is an arbitration clause in the modified policy of 2022 contained at clause (k) of the said policy. It was contended that the respondents have no right to treat the said allotment as cancelled or to re-auction the said plot. As such the appellant is entitled for interim relief under Section 9 of the Act of 1996 which has been wrongly denied by the Commercial Court.

5. On the other hand, learned counsel for the respondent has submitted that the application under Section 9 of the Act of 1996 was not maintainable. The Letter of Intent stood withdrawn well before the filing of the petition under Section 9 of the Act and the petition has been rightly dismissed. It was submitted that the appellant participated in the auction on "as is where is basis" on the basis of the advertisement dated 12.03.2022 and being the highest bidder in the auction, Letter of Intent was issued. Letter of Intent was issued clearly specifying in Clause No. 3 that remaining 75% amount of the total bid price was payable without interest in lump sum in 120 days from the date of dispatch of the Letter of Intent failing which the Letter of Intent shall stand withdrawn without any further notice and 25% amount shall be forfeited to HSVP.

5.1. It was further contended that the possession was to be offered after receipt of 100% of the quoted bid amount and the allotment letter was to be issued only after receiving the entire payment as per the condition of the Letter of Intent. The appellant did not deposit the remaining 75% of the bid amount. The petition which has been rightly dismissed by the learned Commercial Court was filed merely to wriggle out of payment obligations and the appellant was trying to re-write the contractual obligations through intervention of the Court which has been rightly rejected. It was vehemently contended that the appellant having participated in the auction after accepting the terms and conditions cannot be allowed to blow hot and cold in same breath and refuse to comply with the said terms. The appellant is estopped by his own act and conduct from filing the application under Section 9 of the Act of 1996 as even after receiving the Letter of Intent, he deposited another 15% amount on 16.06.2022, knowing he is bound by the old policy.

5.2. Learned counsel for the respondent further submitted that the present dispute is not covered under 2 (c) (vii) of the Act of 2015 as in the present case, there was no agreement involved relating to immoveable property which was exclusively used for trade of commerce as no Letter of Allotment was issued. Therefore, the appellant has wrongly invoked the extra-ordinary jurisdiction of the Commercial Court in a matter which is purely a contractual matter. Raising the above submissions, it was contended that the application having rightly been dismissed by the learned Court below as the appellant had de-faulted in terms and conditions fixed in the advertisement as well as in the Letter of Intent.

6. We have considered the aforesaid submissions.

7. The present appeal requires the determination of the following points.

1. Whether the LOI issued in favour of the appellant was a legally enforceable contract or it was merely an invitation to offer by the respondent?

2. Whether the appellant could invoke Section 9 of the Arbitration & Conciliation Act, 1996?

3. If the point No.2 is answered in affirmative as to whether the impugned order of dismissal of petition by the Commercial Court under Section 9 of the Act of 1996 is liable to be set aside?

<u>Question No.1</u>

8. It is not disputed that the publication of the notice for auction

of various sites was issued by the respondent by way advertisement dated 12.03.2022, this fact is mentioned at page No. 112 of the paper-book which is a list of properties which were fixed for e-auction scheduled for 31.3.2022 (Annexure A-3). At the time of issuance of advertisement, the policy of 2021 (Annexure A-2) was in operation. After deposit of 5% of the earnest money, the appellant participated in the e-auction and gave the highest bid. Thereafter, he was issued Letter of Intent (Annexure P-6).

9. In order to determine the first question, the terms and conditions of the "notice for e-auction" and "Letter of Intent (LOI)" are material. The advertisement dated 12.03.2022 has not been placed on record. Appellant has only relied upon Annexure A-3 which is list of properties/sites offered by the respondent for auction which was scheduled for 31.03.2022. As per note given below the said list (page 113 of paper book), the detailed information of sites and terms and conditions of e-auction were available on website i.e. https://hsvphry.org.in. The said terms and conditions were required to be pleaded by the appellant, which were available on record. It is also mentioned in a note given below Annexure A-3 that "for any query email us at e-auction query.hsvp@gmail.com". No such query is stated to have been made by the appellant.

10. We have gone through the contents of the LOI. Clause II of the LOI (Annexure A-6) dated 19.05.2022 clearly provides that bid given the appellant was considered and the respondent has only "<u>intended to offer</u>" the plot in question for allotment subject to completion of terms and conditions prescribed therein qua <u>time limits</u>. It was also specifically mentioned that failing which the offer would stand cancelled without any

notice and it further provides that appellant would have no claim for allotment of site or damages or interest. The said clause reads as under:-

> "2. Your bid for site/plot/building No.4 in Sector 43, Urban Estate Gurgaon-II has been considered and the (Commercial) site/plot/building as detailed below, is intended to be offered to you for allotment on free hold basis on completion of following terms and conditions within prescribed time limits failing which this offer shall stand cancelled without any notice and earnest money deposited by you shall be forfeited to the Pradhikaran and you will have no claim for allotment of site/plot/building or damages or interest. The details of site/plot/building are as under:-

Sector No.	**Name of urban Estate**	**Site/plot/building No.**	**Approximate dimension or description as notified at the time of auction**	**Area (in sq. mtr.)**	**Price (in Rs.)**
43	Gurgaon II	4	231 x 62.02	14326.37	4,95,11,61,200.00
Rs. Four Hundred Ninety-Five Crores Eleven Lakhs Sixty One Thousand Two Hundred Rupees only.					

11. Clause II of LOI (Annexure A-6) clearly provides that "<u>time limit</u>" was the essence of the <u>"intended offer"</u>. The "time limit" regarding payments being the essence of the said "intended offer" (Annexure A-6) is further clear from the <u>"terms and conditions"</u> as mentioned in the said LOI. As per condition No.2, 15% amount i.e. Rs.74,26,74,180.00/- was required to be deposited within a period of 30 days from the dispatch of the said

letter; failure would have entailed cancellation of the said "intended offer" (LOI). The said clause reads as under:-

> "2. You shall be further required to deposit another 15% of the quoted bid amount i.e. Rs.74,26,74,180.00/- (Rs. Seventy Four crores twenty six lakhs seventy four thousand one hundred eighty rupees only) in order to make the 25% price of the said) plot/building/site within a period of 30 days from the date of dispatch of this Letter of Intent (LOI) on the registered email ID of the successful bidder. In case of failure to deposit the said amount within the above specified period, the LOI shall stand automatically withdrawn without any further notice in this behalf and the 10% of the bid amount deposited by you shall stand forfeited to the Pradhikaran against which you shall have no claim for allotment of site/plot/building or damages or interest."

12. Condition No.3 of the said "intended offer" (LOI) further strength the intention of the respondent regarding "time limit" to be the essence of the intended offer. The said condition also provides deposit of remaining 75% amount of bid in lump-sum within a period of 120 days failing which the "intended offer" shall stand withdrawn without any further notice. It reads as under:-

> "3. Thereafter, remaining 75% amount i.e. Rs.3,71,33,70,900/- (Rs. Three hundred seventy one crores thirty three lakhs seventy thousand nine hundred rupees only) of the bid amount of the above said plot/building/site shall be paid in lump sum without interest within a period of 120 days

from the date of dispatch of this Letter of Intent, failing which the LOI shall stand withdrawn any further notice. In this behalf and the 25% amount deposited shall stand forfeited to the HSVP against which successful bidder shall have no claim for allotment of site/plot/building or damages or interest."

13. The conduct of appellant shows that the said terms and conditions of the "intended offer" (LOI) were accepted by him by way of depositing 15% of the bid amount on 16.06.2022 after receiving the said LOI. The said payment being done on 16.06.2022 is an accepted fact.

14. Appellant had participated in the e-auction in view of the terms and conditions of the advertisement by accepting the same. Thereafter, he accepted the terms and conditions of the Letter of Intent on 19.05.2022 by way of depositing further payment after issuance of the Letter of Intent. It is only thereafter, he started approaching the respondent by moving a letter dated 23.5.2022 (Annexure A-17), whereby he requested for a concession in making the balance payment of 75%, in terms of subsequent policy dated 28.03.2022 (Annexure A-1). It is not disputed that at the time when auction was advertised on 12.03.2022 the subsequent policy dated 28.03.2022 (Annexure A-1) was not in existence. Moreover, the appellant had accepted the terms and conditions of the Letter of Intent by way of making subsequent payment of 15% on 16.06.2022 in terms of the said Letter of Intent which specifically provided in Clause No.3 that the remaining 75% amount of the bid amount shall be paid in lump sum within a period of 120 days from the date of dispatch of the letter.

15. It is not disputed that appellant has only made the payment of 25% of the bid amount. He has not adhered to the time line for making the

payment of remaining 75% of bid amount.

16. It is not disputed that letter of allotment was not issued. As per clause 5 of Letter of Intent (LOI) (Annexure A-6) regular letter of allotment was to be issued only after 100% payment of bid amount is made. Clause 6 of LOI (Annexure A-6) further provides that property would continue to belong to the respondent until entire bid money is paid. The said clause(s) reads as under:-

> "5. The regular letter of allotment will be issued to the successful bidder only after 100% payment of the bid amount is made."
>
> "6. The property shall continue to belong to HSVP until the entire bid money together with interest and any other outstanding dues to HSVP on account of sale of that property are fully paid and deed of conveyance in favour off successful bidder/allottee is executed. The successful bidder shall have no right to transfer the property or create any right/title/interest thereon without prior written permission of the Estate Officer, HSVP concerned even after execution of deed of conveyance. However, (till full price is paid and conveyance deed is executed), the allottee may mortgage or create any right/interest on the property only to secure the loan amount against the property towards payment of price including dues etc. of the property but prior written permission of the Estate Officer, HSVP concerned shall be mandatory."

17. The terms and conditions of the LOI are very clear on the point that the respondent had given the "intended offer for sale" of the plot

in question making the "time limit" for payments as the essence of the intended offer. There is no ambiguity in the terms and conditions of Letter of Intent and it nowhere provides for any option for making the balance 75% amount of the bid by way of instalments. The LOI was issued on 19.05.2022. The appellant relies upon policy of 2022 (Annexure A-1) which was issued on 28.03.2022 i.e. prior to issuance of LOI. The intention of the respondent was very clear that the auction which was advertised on 12.03.2022 would be governed by the policy which was in existence at the time of issuance of the said advertisement. At the time of issuance of the advertisement, the previous policy dated 20.05.2021 (Annexure A-2) was in existence and the said policy specifically provides in Clauses 30 and 31 that after verification of the requisite documents, the successful bidder will be issued LOI. The allottee was further required to deposit 15% of the bid amount within 30 days from the date of dispatch of LOI and it also provides that remaining 75% of the bid amount shall be payable within a period of 120 days from the date of dispatch of LOI failing which the LOI would stand withdrawn without any further notice. The said Clauses read as under:-

> "30. After acceptance of the bid and verification of requisite documents, the successful bidder will be issued letter of intent (LOI) by the Estate Officer concerned. The LOI will be sent through registered post and through email at the registered address and email ID of successful bidder. All the payment schedule of the bid amount is linked with the date of dispatch of LOI through email. HSVP will not be responsible if LOI is not received by the successful bidder due

to change in his correspondence address or email ID. It will be in the interest of such bidder to get his correspondence address of email ID if any, updated from time to time. The allottee will be further required to deposit another 15% of the quoted bid amount within 30 days from the date of dispatch of LOI. In case of failure to deposit the said amount within the above specified period, the LOI shall stand automatically withdrawn without any further notice in this behalf and the 10% amount deposited shall stand forfeited to the HSPV against which successful bidder shall have no claim for damages."

"31. Thereafter, remaining 75% of the bid amount shall have to be paid within a period of 120 days from the date of dispatch of LOI without interest, failing which the LOI shall stand withdrawn without any further notice in this behalf and the 25% amount deposited shall stand forfeited to the HSVP against which successful bidder shall have no claim for damages."

18. The same terms and conditions as in 2021 policy were incorporated in the LOI. The LOI was issued in resonance with the terms and conditions of the policy which was in existence at the time of issuance of an advertisement for sale of the plot in question.

19. It is only after issuance of LOI, the appellant requested for a permission to deposit 75% remaining amount of the bid by way of instalment and that too subsequently accepting the terms and conditions by way of deposit of 15% of the bid amount on 16.06.2022. Merely by

submitting the letter dated 23.05.2022 after issuance of the LOI and making a request for permission to make the payment of 75% of the bid amount in terms of the policy of 2022 (Annexure A-1), the appellant was not exempted from adhering to the schedule of payment which was the essence of the intended offer.

20. Merely that the Account Officer had sent a communication dated 21.07.2022 (Annexure A-9) by replying the queries of the appellant stating that your contention for making the payment for 75% of bid amount in 06 half yearly instalments can be considered only if you furnish a bank guarantee would not bind the respondent. It would not amount to an admission on the part of the respondent that the policy of 2022 which was not in existence at the time of issuance of advertisement for sale of the plot would be applicable and would govern the terms and conditions of the intended offer. The LOI specifically provides the terms and conditions for giving an intended offer that timeline is the essence of the intended letter.

21. We are also of the considered opinion that LOI was not an "offer". It was merely an "intended offer". It was a stage prior to giving the offer. The inference can be raised from the terms and conditions of the LOI that it was an "invitation to offer" and the intended buyer was to accept the said invitation by way of adhering to the schedule of payment. The intended buyer was required to give an "offer" by way of making 100% payment of the bid amount which was to accept by the seller (respondent) by way of issuance of "letter of allotment." The law is settled on the point that merely being the highest bidder and without there being, an allotment letter the contract between the parties is not complete. In the present case, the appellant had merely made the payment of 25% of the bid

amount and the remaining 75% of the bid amount has not been paid till today. No allotment letter has been issued in his favour. The Hon'ble Apex Court in Haryana Urban Development Authority and others Vs. Orchid Infrastructure Developers Pvt. Ltd. AIR 2017 SC 882 held that in the absence of a concluded contract which takes place by issuance of allotment letter, there is no vested right of the plaintiff without approval of the bid by the competent authority. Para No.16 of the said decision reads as under:-

> "16. In the light of the aforesaid discussion, it is evident that in the absence of a concluded contract i.e. in the absence of allotment letter and acceptance of highest bid, the suit by the plaintiff was wholly misconceived. Even if non-acceptance of the bid was by an incompetent authority, the Court had no power to accept the bid and to direct the allotment letter to be issued. Merely on granting the declaration which was sought that rejection was illegal and arbitrary and by incompetent authority, further relief of mandatory injunction could not have been granted, on the basis of findings recorded, to issue the allotment letter, as it would then become necessary to forward the bid to competent authority-Chief Administrator-for its acceptance, if at all it was required."

22. In view of the ratio of the said decision and the facts and circumstances of the present case, we are of the considered opinion that the LOI issued in favour of the appellant was merely an invitation to offer the

plot for sale at that bid amount and there was no legally enforceable contract. This question is accordingly, answered.

Question No.2

23. An application was filed before the Commercial Court invoking Section 9 of the Arbitration and Conciliation act, 1996 seeking an interim relief. It was pleaded in para No.25 of the said petition (Annexure A-12) that cause of action to file the petition under Section 9 of Act of 1996 firstly arose when respondent notified the policy dated 28.03.2022 for e-auction. During the arguments, learned counsel for the appellant while referring to the policy of 2022 (Annexure A-1) contended that there is an arbitration clause in the said policy as such the appellant was competent to invoke Section 9 of Act of 1996. The Commercial Court, while dealing with the said issue in the impugned order observed that there was an arbitration clause in the 2021 policy as well as in 2022 policy as such the petition was maintainable. The objection of bar of jurisdiction of civil Court under Section 50 of the HSVP Act 1997 was brushed aside by the Commercial Court by observing that civil suit on original side has not been filed. The Court is only dealing with a dispute under Section 9 of the Act of 1996.

24. We have gone through the arbitration clauses contained in both policies. The clause in 2022 policy reads as under:-

> "K. All disputes and differences arising out of or in any way concerning this allotment whatsoever shall be dealt as per the provisions of the Arbitration and Conciliation Act, 1996."

A similar clause in the policy of 2021 (Annexure A-2) reads as under:-

> "L. All disputes and differences arising out of or in any way concerning this allotment whatsoever shall be dealt as per the provisions of the Arbitration and Conciliation Act, 1996."

The arbitration cause in both the policies clearly indicate that only the <u>matter arising out of or in any way concerning the allotment</u> shall be within the purview of Arbitration and Conciliation Act, 1986. As already discussed in the present case, no allotment letter was issued. Merely, the payment of 25% of the bid amount was made and the remaining payment as per the terms and conditions of the intended offer given by the respondent by way of issuance of Letter of Intent was not complied with by the appellant as such the allotment was not issued. In such circumstances, we are of the considered opinion that in the absence of an allotment letter, the appellant was not competent to invoke the provisions of Section 9 of the Act of 1996 merely on the basis that there is an arbitration clause in the said policies. As such, the exercise of the jurisdiction by the Commercial Court under Section 9 of the 1996 Act was without jurisdiction. This point is accordingly, answered.

<u>Question No.3.</u>

25. Since, we have of the considered opinion that the appellant was not competent to invoke Section 9 of the Arbitration Act (Point No.2) and the exercise of jurisdiction by the Commercial Court was beyond jurisdiction as such no further discussion is required on this point.

26. In view of the aforesaid discussion, we are of the considered opinion that the observations made by the Commercial Court that policy of 2022 (Annexure A-1) was applicable to the facts of the present case is without jurisdiction. Since, the appellant was not competent to invoke Section 9 of the Act of 1996 as no allotment letter was issued in favour of the appellant at the time of filing of the petition under Section 9 of 1996 Act. The said findings are liable to be set aside. So far as the jurisdiction exercised by the Commercial Court is concerned, though, in para No.26 of reply to the application under Section 9 of the Act of 1996 (Annexure A-18), the respondents have denied that the agreement between the parties is in respect of trade and commerce of the purchase of commercial site notified by the Government and it was also denied that the Commercial Court has the jurisdiction but in the same paragraphs, the respondent have admitted that dispute is covered under Section 2 (c) (vii) read with other provisions of the Commercial Court Act, therefore, the present dispute is liable to be decided by the Commercial Court. Taking note of the said admission that Commerce Court has refuted the arguments raised by learned counsel for the respondents that the Commercial Court has no jurisdiction. No doubt the admission of a party would not provide jurisdiction to a Court but since we have observed that the appellant was not competent to invoke the Arbitration Act seeking interim relief so we would not go into the merits of the issue as to whether it is a "commercial dispute" as defined in the Commercial Courts Act.

27. Though, the commercial Court has declined to grant the interim relief for different reasons i.e. the LOI stood already cancelled on the day of approaching the Court, but we are of the considered opinion that

the appellant is not entitled to any interim relief in view of the fact that the provisions of Section 9 of the Act of 1996 could not have been invoked by the appellant. As such the appellant is not entitled to any relief and present appeal is devoid of any merits.

28. Consequently, the present appeal stands dismissed.

29. Any pending miscellaneous application, if any, also stands disposed of.

(G.S. SANDHAWALIA)
JUDGE

(HARPREET KAUR JEEWAN)
JUDGE

October 20, 2023
nitin /ramandeep

Whether Speaking	Yes
Whether Reportable	Yes