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IN THE HIGH COURT OF DELHI AT NEW DELHI*Date of decision: 24th January, 2023*

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W.P.(C) 553/2023 and CM APPL. 2174/2023**M K ENTERPRISES**

..... Petitioner

Through: Mr. R.K. Jain, Mr. Amaresh Singh &
Mr. Mudit Bansal, Advocates (M-
9811558111)

versus

DELHI STATE INDUSTRIAL AND INFRASTRUCTURE**DEVELOPMENT CORPORATION LIMITED** RespondentThrough: Ms. Richa Dhawan, Mr. Anuj
Chaturvedi, Advocates with Mr. Ajay
Gulati, Sr. Manager (M-9810473166)
and Mr. Waseem Ahmad, Legal
Assistant, DSIIDC**CORAM:****JUSTICE PRATHIBA M. SINGH****Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. An e-auction tender was floated by the Respondent for allotment of commercial plots to set up a Weigh Bridge and Fuel Station in Narela and Bawana Industrial Area on 8th March, 2019. The Petitioner had deposited the Earnest Money Deposit ('EMD') of Rs.13,86,000/- on 6th April, 2019 in respect of a plot measuring 300 square meter in Narela Industrial Area. The Petitioner was declared as successful bidder on 21st May, 2019 for the said plot and 20% of the bid premium amount, i.e., Rs.1,80,24,000/- and an Auction Processing Fee @ 0.70% of Bid Premium Plus GST, i.e., Rs.7,44,391/- as sought, was duly deposited by the Petitioner on 27th May, 2019.

3. After the allocation of the plot, disputes were raised between the parties in respect of certain issues relating to the plot including the location etc. Arbitration ensued between the parties before the Sole Arbitrator in which the award was passed on 15th April, 2021. The operative portion of the award reads as under:

“1. Claimant's allegation that respondent is seeking to change location of the plot is held as not established and, thus, not admitted.

2. Claimant is directed to remit the balance amount of Rs.7,07,10,000/- within a period of 90 days from the date of receipt of the copy of this Award without interest and thereafter with interest in accordance with the provisions of clause 3.4 (ii) of General Instructions to Bidders/Prospective Bidders in e-auction document.

3. Respondent is directed to allot the plot measuring 15 Mx20 M = 300 Sqm as per serial no.2 of Annexure-I of e-auction document which is behind Petrol Pump, geographically located opposite Fire Station, after the claimant deposits the said balance amount and completes other requisite formalities in terms of e-auction document.

4. Respondent is further directed to provide entry to the plot from the existing 30 M wide road, and also to provide 18 M wide side road between Petrol Pump and the subject plot for Weight Bridge.

5. In case claimant fails to remit the balance amount as per clause 3.4 of General Instructions to Bidders/Prospective Bidders, respondent

will be at liberty to take further action in accordance with the terms and conditions of thee-auction document.

6. The parties to bear their own costs.”

4. A perusal of the above award would show that the Arbitrator directed the reliefs in two forms. The first was to direct the Petitioner to remit the balance amount of approximately Rs.7 crores and secondly a direction to the Respondent to allot the plot. The location of the plot is also mentioned in the award.

5. After the award was passed, the DSIIDC issued notice to the Petitioner to deposit the balance amount. Once again disputes ensured between the parties in respect of location of the plot, high tension wires, clearing of trees etc. at the plot. A joint inspection was also conducted; however, the disputes were not resolved.

6. Vide show cause notice dated 13th July, 2022, the DSIIDC issued notice to show cause as to why the allotment of plot ought not to be cancelled and the EMD amount ought not to be forfeited.

7. Reply was filed by the Petitioner and finally, vide letter dated 12th October, 2022, the DSIIDC directed the Petitioner to remit the balance payment within 90 days. The said order, which is titled as final opportunity, reads as under:

“Sub: Final opportunity for depositing for Balance payment in respect of Commercial weighbridge plot measuring 300sqm. in Narela Industrial Area Delhi-110040.

This is reference to the reply furnished by you in response to the Show Cause Notice issued by DSIIDC *vide letter*

no.DSIIDC/REM/83/ARB/MK/ Award/2021/346 dated 13.07.2022. The reply was placed before the Competent Authority, and considering the grounds mentioned in the reply, the Competent Authority has acceded to your request for granting one final opportunity for depositing the balance payment against the plot measuring 300sqm. at Narela Industrial Area allotted vide e-auction dated 12.04.2019.

Accordingly, the undersigned is directed to convey that the balance payment against the above mentioned plot along with applicable interest, may be deposited within 90 days from the date of issue of this letter. The amount to be deposited as on date is Rs.800,66,967/- including applicable interest. The per day interest on the balance amount is Rs. 29,058.90

DSIIDC shall complete all requisite formalities after the receipt of balance amount as per the arbitral award.

In case the balance amount is not deposited within stipulated time the allotment of the plot will be cancelled and the amount deposited till date will be forfeited. ”

8. Despite this notice, the Petitioner did not deposit the amount and continued to challenge the location of the plot and raised further issues in respect of the plot itself. Finally, the Petitioner has filed this writ petition seeking direction to the Respondent for compliance with either in terms of the agreement dated 15th April, 2021 and seeking restraint against the DSIIDC from raising further demands as also for implementation of the award.

9. On the last date of hearing, the Petitioner was directed to serve the DSIIDC.

10. Today, Ld. Counsel for the parties have made their submissions. Ld. Counsel for the Petitioner submits that the Petitioner is willing to abide by the arbitral award, which has been passed, so long as the plot in terms of the award is given to the Petitioner. Ld. Counsel for the Petitioner, upon the instructions from Mr. Mukesh Goel submits that the Petitioner is willing to deposit the amount, if some reasonable time is given by the Court in terms of the award.

11. On the other hand, Ld. Counsel for the DSIIDC submits that the entire proceedings have been culminated in the arbitral award and if any implementation is being sought, the Petitioner ought to approach the Executing Court in accordance with law and the present writ petition is not maintainable. Ld. Counsel for the Petitioner reverts and submits that the DSIIDC being a public body has to abide by the award and the Petitioner has no remedy in the Executing Court.

12. It is clear from the submissions made by the parties that the parties are willing to abide by the arbitral award dated 15th April, 2021. The award is clear in terms of the obligations of both the parties. The amount to be deposited by the Petitioner is clearly mentioned in the award as also the location of the plot. The Petitioner is obviously aware of the status of the plot – its location, conditions on ground etc., before making the EMD payment.

13. Under such circumstances, since the parties are willing to abide by the arbitral award, it is directed that the amount in terms of the award dated 15th April, 2021 to the tune of Rs.7,07,10,000/- shall be deposited with the DSIIDC on or before 15th March, 2023. Upon the said deposit being made, the Respondent shall comply with the remaining directions given in the

arbitral award. The allotment of the plot, after demarcating the same, in terms of the award, shall be done within a period of one month from the date of deposit.

14. It is made clear that if the deposit is not made by the Petitioner on or before 15th March, 2023 as directed by this Court, the DSIIDC shall be free to proceed in accordance with law and take steps to recover even interest for the amounts due

15. The writ petition, along with all pending applications, is disposed of in the above terms.

**PRATHIBA M. SINGH
JUDGE**

JANUARY 24, 2023/dk/am

