



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

Date of decision: 03rd JULY, 2023

IN THE MATTER OF:

+ **LPA 468/2023 & CM APPL. 29394/2023**

DELHI DEVELOPMEN AUTHORITY

..... Appellant

Through: Mr. Sanjay Katyal, Standing Counsel
for DDA with Mr. Gaganmeet
Sachdeva and Mr. Nihal Singh,
Advocates.

versus

YORK TECH PVT. LTD.

..... Respondent

Through: Mr. Sandeep P. Agarwal, Sr.
Advocate with Mr. Priyankar Tiwari
and Ms. Tanya Chanda, Advocates.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT

SUBRAMONIUM PRASAD, J

1. Aggrieved by the Judgment dated 31.10.2022 passed by the learned Single Judge in W.P.(C) 10124/2022 allowing the writ petition filed by the Respondent herein by quashing the letter dated 01.06.2022 issued by the Appellant/DDA withdrawing the Plot No.A-1/60, WHS Kirti Nagar, Delhi (*hereinafter referred to as 'plot in question'*) from the e-auction which was concluded in favour of the Respondent herein, the instant LPA has been filed.

2. Shorn of unnecessary details, facts leading to the filing of the instant LPA are as under:



- a) In December, 2021, the Appellant/DDA came out with the 14th phase of e-auction for the sale of industrial plots. The plot in question i.e., Plot No.A-1/60, WHS Kirti Nagar, Delhi was also put to auction for which the reserved price was fixed as Rs.4,78,48,000/-. As per the terms and conditions, the bid had to be submitted along with 5% EMD of the reserve price on 24.12.2021.
- b) The Respondent herein participated in the e-auction and submitted its bid along with 5% EMD of the reserve price. The e-auction was conducted on 29.12.2021 and the Respondent's bid for an amount of Rs.10,91,48,000/- against the reserve price of Rs.4,78,48,000/- was the highest bid. Thereafter, a letter of intent dated 18.04.2022 was issued in favour of the Respondent accepting the bid of the Respondent and it was directed to pay the differential amount i.e., the amount by which 25% of the quoted price exceeds the first stage EMD, within a period of 7 days. The said amount was to be deposited by 24.04.2022 or with penalty by 26.04.2022. The Respondent deposited the amount as sought for by the Appellant/DDA on 22.04.2022.
- c) Later, it was found by the Respondent herein that though the area of the plot in question was announced to be as 400 sq. m., however, on actual verification it measures approximately 330 sq. m. However, the Respondent did not raise any issue and it was prepared to pay the entire amount of money which was for 400 sq. m. and take a smaller plot measuring 330 sq. m.
- d) The Respondent, thereafter, received a letter dated 01.06.2022 from the Appellant/DDA wherein it was informed that the auction of the



plot in question has been cancelled. Aggrieved by the same, the Respondent herein approached this Court by filing a writ petition bearing W.P.(C) 10124/2022.

- e) It was contended by the Respondent herein (Petitioner therein) before the learned Single Judge that the Respondent was prepared to accept a smaller plot and was also prepared to pay the entire amount. The Respondent relied upon Clause I (3) of Chapter – III which is the General Terms and Conditions of the E-Auction and lays down that the area of industrial plots announced are only approximate, and the persons whose bids are accepted should be prepared to accept variation up to 15% either way in the area announced, subject to adjustment of cost in proportion to the amount of the accepted bid.
- f) It was contended by the Appellant/DDA (Respondent therein) before the learned Single Judge that since the variation was more than 15%, the auction for the plot in question was cancelled. Reliance was also placed upon Clause 1.8 of General Instructions to bidders and Clause 2.6 of Chapter I of Tender Document to contend that the DDA had the right to reject any/all proposals and e-bids without assigning any reason whatsoever to the bidder.
- g) The learned Single Judge *vide* Judgment dated 31.10.2022 (impugned herein) allowed the writ petition and held that the letter of intent issued in favour of the Respondent was a clear and unequivocal acceptance/confirmation of the bid submitted by the Respondent herein and resulted in a concluded contract between the parties, and therefore, it was incumbent on the Appellant/DDA to issue a demand-cum-allotment letter as mandated under conditions of the auction. The



learned Single Judge held that the Respondent was prepared to purchase a smaller plot than the one announced in the auction. The learned Single Judge held that Chapter – III which brings General Terms and Conditions of the E-Auction only mandates that if there is a variation up to 15% i.e., if the plot is of a lesser size up to 15%, then the auction purchaser cannot back out from the auction on the ground that the plot size is lesser than the one announced which would not apply to the present facts and circumstances of the case.

h) It is this Judgment dated 31.10.2022 passed by the learned Single Judge in W.P.(C) 10124/2022 which is under challenge in the instant LPA.

3. Heard learned Counsel appearing for the Parties and perused the material on record.

4. It is surprising that the DDA has decided to withdraw the plot in question which was auctioned and purchased by the Respondent herein where the Respondent was prepared to pay the price of a 400 sq. m. and in return, the Respondent was getting actually a 330 sq. m. plot. Clause I (3) of Chapter – III which brings General Terms and Conditions of the E-Auction reads as under:

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

5. The aforementioned Clause I (3) of Chapter – III states that a variation up to 15% in either way in the area announced should be acceptable to the auction purchasers. In the present case, the variation is



more than 15% but the auction purchaser is prepared to pay the entire amount and take the plot in question which is lesser in size by around 18%, and therefore, the said condition does not give a right to the Appellant/DDA to cancel the auction. The reliance placed by the Appellant/DDA upon Clause 1.8 of General Instructions to bidders and Clause 2.6 of Chapter I of Tender Document to contend that the DDA had the right to reject any/all proposals and e-bids without assigning any reason whatsoever to the bidder is also equally unacceptable for the reason that the State cannot act arbitrarily, irrationally and unreasonably.

6. The Respondent had participated in the e-auction and submitted its bid for an amount of Rs.10,91,48,000/- against the reserve price of Rs.4,78,48,000/- which was the highest bid. A letter of intent dated 18.04.2022 was issued in favour of the Respondent accepting the bid of the Respondent and it was directed to pay the differential amount i.e., the amount by which 25% of the quoted price exceeds the first stage EMD, within a period of 7 days. Even then, the said letter of intent dated 18.04.2022 has been quoted by the learned Single Judge in the impugned Judgment, the same is being again quoted here 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.

<i>Name of the bidder</i>	<i>York Tech Private Limited</i>
<i>Plot Description</i>	<i>Plot No. A-1/60 Pocket-NA Block NA, KIRTI NAGAR</i>
<i>Second Stage EMD Amount</i>	<i>Rs. 24,894,600.00</i>

Sd
Assistant Director
(INDUSTRIAL)"

(emphasis supplied)

7. It is well settled that a tender is an invitation to offer, the bid is an offer and a letter of intent is an acceptance. The contract had, therefore, been concluded by the issuance of letter of intent in the present case. A contract could only be broken if either of the parties to the contract does not perfume his part of obligation. The Respondent is prepared to deposit the entire



amount for the plot measuring 400 sq. m. Once the contract has been concluded, it is not open for the Appellant/DDA to cancel the e-auction for the plot in question. The Apex Court in Dresser Rand S.A. v. 1. Bindal Agro Chem Ltd. 2. K G Khosla Compressors Ltd., (2006) 1 SCC 751, has held 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."

8. Applying the said decision to the facts of the present case, the letter of intent clearly shows that the bid of the Respondent has been accepted by the



DDA and it is on the acceptance of the said bid, the Respondent was directed to pay the differential amount, i.e., the amount by which 25% of the quoted price exceeds the first stage EMD within a period of 7 days of the issuance of the letter of intent. The further payments are governed by the tender document. The failure of adhering to the plan of payment by the Respondent gave the authority to DDA to forfeit the EMD. This indicates that the contract concluded between the parties. The DDA, therefore, could not wriggle out from the contract on the ground that there was a variation of 15% of the size of the plot. The Respondent could have exercised the option of not going ahead with the conclusion of the contract, in case it was getting a plot which is less than 15% of the size of plot as given in the advertisement. Assuming the DDA had the right to withdraw from the auction it had to do the same before the issuance of the letter of intent. After conclusion of the contract, the DDA could not have exercised that option of withdrawing from the contract. The action of the DDA in the impugned letter dated 18.04.2022, therefore, is a complete arbitrary exercise of power, which could not pass the test of Article 14 of the Constitution of India.

9. The learned Single Judge was, therefore, correct in holding that the decision of the Appellant/DDA to withdraw the plot in question from e-auction is completely arbitrary. The so-called joint inspection of the plot in question was conducted on 10.06.2022 which was after the auction was held. The inspection was jointly conducted and once the Respondent is prepared to accept a smaller plot, it is not open for the Appellant/DDA to withdraw the plot in question from e-auction. It could have been well within the rights of the auction purchaser to withdraw from the auction in terms of



Clause I (3) of Chapter – III of the Tender Document but not for the Appellant/DDA.

10. In view of the above, this Court does not find any reason to interfere with the Judgment passed by the learned Single Judge.

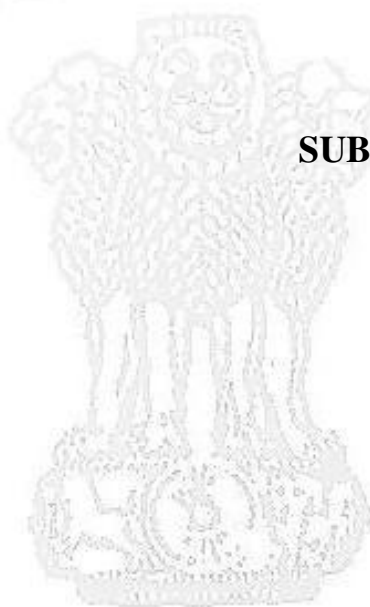
11. Resultantly, the LPA is dismissed, along with pending application(s), if any.

SATISH CHANDRA SHARMA, CJ

SUBRAMONIUM PRASAD, J

JULY 03, 2023

S. Zakir/Urvi



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