

10th April,
2024
(AK)
23

W.P.A 8170 of 2024

Palash Ghosh
Vs.
Union of India and others

Mr. Suddhasatva Banerjee
Mr. Shounak Mukhopadhyay
Mr. Hemant Tiwari

...for the petitioner.

Mr. Mayank Shah

...for the respondent nos.2, 3 & 4.

1. Affidavit-of-service filed in court today be kept on record.
2. Learned counsel for the petitioner contends that the petitioner participated in an auction sale held by the respondent nos.2 to 4.
3. The petitioner turned out successful and paid the first tranche of the payments. The outer limit of paying the second and last installment was February 28, 2024.
4. It is contended that the petitioner was a day late in making the payment due to certain medical exigencies.
5. Learned counsel places reliance on Clause 19, sub-Clauses (c) and (f) of the tender document to argue that those clauses give sufficient leeway to the SEBI to consider relaxation of the last date.

6. Since the petitioner showed its *bona fides* in depositing the entire amount, although a bit late, it is submitted that the SEBI ought to condone the delay and go through with the sale in favour of the petitioner.
7. Learned counsel for the respondent nos.2 to 4 contends that the recovery officer does not have the power to enlarge the time in view of the communication dated February 13, 2024 annexed at page-44 as well as the terms of the tender document.
8. Learned counsel particularly places reliance on the provisions of Clauses 10, 11 and 16 of the tender document to submit that there is no scope of any relaxation of the last date.
9. That apart, it is submitted by learned counsel for the SEBI that the payment was actually made 48 hours after the deadline.
10. Apparently, there were certain glitches at the end of the petitioner's banker, for which, although the petitioner tendered the amount on February 29, 2024, the payment was made on March 1, 2024.
11. Learned counsel for the respondents argues that if a relaxation is made for the petitioner, other similarly placed auction purchasers shall come up and a floodgate of litigation will be opened.

12. A careful consideration of the terms of the tender document as well as the communication dated February 13, 2024 shows that the SEBI is justified in arguing that in terms of Clauses 10, 11 and 16 in particular of the tender document, in the event the payment is not made within the last date, the EMD may be forfeited at the discretion of SEBI, either full or in part.
13. However, Clause 19, sub-Clause (c) provides that the SEBI shall be at liberty to amend/modify/delete any of the conditions as may be deemed necessary in the light of the facts and circumstances of each case.
14. Again, sub-Clause (f) of Clause 19 stipulates that the terms and conditions given thereinabove are general in nature, subject to change and are in addition to other specific conditions given in the proclamation of sale.
15. Even the stipulation in Clause 11(b) leaves it open for the SEBI, at its discretion, to consider whether the forfeiture EMD shall be in full or in part, thereby indicating that the said consequence of forfeiture is not absolute but confers certain amount of discretion on the SEBI.
16. Moreover, Clause 19(c) uses the expression that the SEBI may amend/modify or delete any of the conditions “as may be deemed necessary” *in the*

light of facts and circumstances of each case,
thereby leaving it to the discretion of the SEBI to
consider the circumstances of each case in order to
interpret the terms of the tender document.

17. Seen from such perspective, the petitioner's laches are, at the most, for 48 hours.
18. In fact, the petitioner tendered the last tranche of the payment on the very next date after the expiry of the last date but the same could not take place due to technical glitches at the end of the banker of the petitioner, for which neither the SEBI nor the petitioner can be held liable.
19. That apart, the interpretation of the terms of the tender document must also be visited with a consideration of the larger backdrop of the fallout in the event, at such mature stage, despite an intending auction purchaser having deposited a substantial portion of the consideration and ready with the rest, the sale is cancelled.
20. The obvious consequence of the same will be that despite the petitioner being ready to pay the entire amount of money, the sale would stand cancelled, which would entail huge paraphernalia for the SEBI who will then be compelled, with public money, to hold a fresh auction sale upon the attending steps being taken such as issuance of an auction notice and the subsequent steps.

21. The huge expenditure and unnecessary investment of resources in such case can very well be avoided in the event the miniscule delay in payment of the last tranche by the petitioner is considered to be waived by the SEBI, particularly since the petitioner has shown its *bona fides* at all other stages by making the first installment in time and being ready and agreeable to put in the amount only a day after the expiry of the time for doing the same.
22. Seen from such perspective, in exercise of the discretion vested in Clause 19(c) of the tender conditions, it would be appropriate if the respondent nos.2 to 4 reconsider their decision on cancelling the sale and given opportunity to the petitioner to explain his delay in depositing the second tranche of the consideration amount.
23. Accordingly, WPA 8170 of 2024 is disposed of by directing the respondent no.3 to give an opportunity of hearing to the petitioner for the purpose of explaining the delay made by the petitioner in making the payment of the second and last installment of consideration.
24. Upon such hearing being given, the respondent no.3 shall take into consideration the span of the delay and take a fresh decision on whether the sale should go through in favour of the petitioner.

25. Such entire exercise shall be completed by the respondent no.3 within three weeks from date and the outcome thereof communicated to the petitioner immediately thereafter.
26. The impugned decision of cancellation of the petitioner's bid at this stage is thus set aside in the light of the above observations.
27. It is, however, made clear that it will be at the discretion of the respondent no.3 to take a call on the issue, as indicated above.
28. There will be no order as to costs.
29. Urgent photostat copies of this order, if applied for, be given to the parties upon compliance of all requisite formalities.

(Sabyasachi Bhattacharyya, J.)