

**In the High Court At Calcutta
Constitutional Writ Jurisdiction
Appellate Side**

**28.11.2024
SL 10
Court No. 14
BP/AGM**

WPA 28355 of 2024

**Karukrit Advertising Private Limited
vs.
The Cricket Association of Bengal & Ors.**

**Mr. Jishnu Chowdhury, Sr. Adv.
Mr. Dipanjan Sinha Roy
Mr. Abhilash Chatterjee
... For the petitioner.**

**Mr. Joydip Kar, Sr. Adv.
Mr. Soumya Majumder, Sr. Adv.
Mr. Paritosh Sinha
Mr. Amitava Mitra
Ms. Sonia Nandy
..For CAB**

**Mr. Sirsanya Bandyopadhyay
Mr. Arindam Mandal
Ms. Anusmita Bhattacharya
..For the respondent no.3**

1. Affidavit of service filed in Court today is taken on record.
2. The issue in the instant writ petition revolves around a notice inviting Expression of Interest (EOI) dated 6th November, 2024 issued by the Cricket Association of Bengal. EOI was invited from reputed firms for providing sole selling rights for in-stadia advertisement.
3. The response to the EOI was to be opened on 16th November, 2024. The e-bidding auction was scheduled to start at 1 p.m. on 20th November, 2024 as per the rules mentioned in Annexure III and Annexure IV of the tender document.

4. The evaluation criteria and selection method indicates that the successful interested party/tenderer shall be chosen by evaluating the proposal submitted by the interested parties/tenderers through quality and cost based selection method.
5. The total marks for evaluation is 100, out of which the highest bidder (financial bid) will obtain 50 marks, past experience with BCCI or any State Cricket Association or any National or State Level Sports Body carries 30 marks and the past experience with non-sports advertising contract at any mentioned stadium, conventional centre etc. 20 marks.
6. The terms and conditions of the tender of online bidding and the e-auction process in Annexure IV mentions that eligible bidders will be permitted to submit online financial bids only during the scheduled bid duration which includes extended bid duration. The scheduled bid duration will be of 30 minutes or such other duration as may be communicated before the online auction commences.
7. CAB and/or the service provider (with the prior approval of CAB) will have the right to extend the duration of the e-auction. In case a bid is received during the last five minutes before the closure of the online auction (including during the extended time of the online auction), the online auction will get auto extended and the auction run time will be reset to 30 minutes. The period for which the online auction remains open beyond the

scheduled bid duration on account of such auto extension shall be the extended bid duration.

8. It further mentions that bidding for all the packages at the e-auction shall start at the same time. Closure time for the auction of any package may be auto extended as per auto extension principle. Auction shall close for bidding when no bid is received in the last five minutes before the closure of e-auction (or the extended closure time of the e-auction).
9. The e-auction principle mentions that notwithstanding anything stated above, all bids, for any of the packages, shall have to be higher than the current highest bid prevailing for the respective package at that time.
10. The e-auction will involve a continuous bidding process, where an eligible bidder can raise the highest bid at any point of time during the auction run time. E-auction shall continue until no valid bids are received in any of the packages prior to the auction closure. A bidder quoting the highest price will be declared as the H-1 bidder. The starting bid price is Rs. 2.75 crore including GST and any other charge and the bid can be increased by multiples of Rs. 5 lakh.
11. Any tenderer who intends to participate in the auction process is required to sign a consent form which mentions that the service provider retains the right to cancel or reschedule or re-launch the online

auction if there is infrastructural failure at the service provider's end, resulting in unavailability of the online auction platform to bidders for bidding purpose.

12. The petitioner submits that the auction process started at the right time and at 13.31.31 hrs. the status of the petitioner's bid was shown as rank one with confirmation pending.
13. At 4.06 p.m. the petitioner was intimated by the respondent no. 3 i.e, the service provider who was conducting the online auction process that, the subject auction did not close as per the EOI terms and conditions mentioned in Annexure IV Schedule 1 e-auction process due to technical configuration issue at their end. It was informed that the auction process will resume from 5 p.m. on the same day and will run for minimum of 30 minutes. The petitioner was requested to acknowledge participation.
14. At 4.52 p.m. a further e-mail communication was made to the petitioner mentioning that the acknowledgement from the side of the petitioner was awaiting. It was indicated that the auction will start at 5 p.m. At 5.10 p.m. the petitioner was intimated over e-mail that the auction started at 5 p.m. and the petitioner is yet to acknowledge and/or participate in the said process.
15. At around 5.16 p.m. the petitioner, through its legal representative, submitted a protest

letter to the Honorary Secretary of CAB against resumption of the e-auction process.

16. The petitioner contends that the e-auction process could not have resumed at 5 p.m. According to the terms and conditions of the EOI the same ought to have been over by 1.30 or could have been extended for 30 more minutes. By no chance could the e-auction process resume at 5' O clock.
17. The petitioner refers to a communication made by the learned advocate of CAB dated 26th November, 2024 in response to the protest letter sent through its advocate whereby the petitioner was informed about the timeline of the bids put in by the bidders.
18. It mentions that the petitioner placed bid for Rs. 2.75 crore at 13.15.04 hours when its rank was shown as 2 in the bidding screen. The petitioner revised its bid to Rs. 2.85 crore at 13.16.18 hours when the auction portal showed the rank of the petitioner as 1. The competing bidder was shown the rank 2. The competing bidder revised its bid to Rs. 2.85 crore at 13.26.31 hours when the system still showed him as rank 2 as the said bid was a tie.
19. As per the EOI the last bid was received within the last five minutes of the scheduled closing time of auction and the system ought to have reset by 30 minutes but because of configuration issue the system closed at 1.31 p.m. As the default runtime of 30 minutes could not be met, accordingly, the auction resumed at 5' O clock.

20. The petitioner contends that the respondent authority deliberately with mala fide intension resumed the e-auction process to give further opportunity to the competing bidder to revise its bid. Till the time the last bid was made, the rank of the petitioner was shown as 1 and, accordingly, the petitioner ought to be treated as the highest bidder.
21. Learned senior counsel representing CAB opposes the submission made by the petitioner. It has been denied that there was any mala fide intension in resuming the bid at a belated time.
22. It has been submitted that the process of evaluation and selection of the bidders is yet to be over. The evaluation and the selection method is done in phases and only the first stage is over. There are two more stages left. The petitioner is not yet out of the fray and still has chance of selection if it secures more marks in the remaining two rounds.
23. There is an arbitration clause in the notice inviting EOI and if the petitioner has any dispute, the petitioner ought to have availed the remedy under the said clause.
24. It has been argued that as per the notice inviting EOI, there is provision to reschedule the bid duration. As there was a technical glitch and the system closed down prior to the scheduled time, accordingly, the auction had to be resumed to give opportunity to the bidders to revise their bids.
25. Learned advocate representing the respondent no. 3 i.e, the concern that was actually conducting the online bidding

refers to the provision permitting the service provider the right to cancel or reschedule or re-launch the online auction in the event of any infrastructural failure. It has been submitted that because of the technical issue, the system closed and enough opportunity was granted to the bidders to revise their bids when the bid process resumes.

26. I have heard the submissions made on behalf of all the parties and perused the materials on record. From the facts which appear from the communication made on behalf of CAB, it is seen that the first bid by the petitioner of Rs. 2.75 crore was at 13.15.04 hours and the position of the petitioner was at rank 2. On revision of the bid by the petitioner at 13.16.18 hours to Rs. 2.85 crore, its rank was shown as 1 and the competing bidder's rank as 2.
27. The competing bidder revised the bid to Rs. 2.85 crore at 13.26.31 hours but the rank of the competing bidder was still shown as 2 because the petitioner placed the same bid at an earlier point of time. To secure rank 1, a bidder is to outbid the other. In case of a tie, the bidder who bids first is taken as the H-1 bidder.
28. It has been admitted by all the parties that none of the bidders could see the bid amount that was placed. So both the bidders kept guessing the bid amount of the other by seeing the rank position. When the

system stopped abruptly the petitioner was in the first position, but after bidding resumed once the system became functional the competing bidder revised its bid and outbid the petitioner who did not participate in the extended bid period.

29. The submission of the petitioner that the system will not record and register similar bid by the competing parties and there is no scope for a tie is denied by the service provider. It has been specifically stated that a tie bid will be registered but the bidder who puts in the bid first is ranked above the other.
30. As per the e-auction process in case the bid is received during the last five minutes before closure of the scheduled bid duration, then the online auction gets auto extended for a further period of 30 minutes. The last bid from the competing bidder came at 13.26.31 hours. At this juncture the system ought to have auto extended for a further period of 30 minutes but only after 5 minutes of the extended bidding time the system closed down for which there could not have been any revision of bids by the bidders.
31. The authority, for providing a level playing field to all the bidders, extended the auction time for the balance period of the extended bidding time and the said extension was made upon giving prior notice to both the competing bidders.

32. None of the parties knew the bids placed by the other. Hence, none can be said to be prejudiced by the extension of the time period to meet up the time limit as prescribed in the e-auction process. Both got equal opportunity to revise their bid.
33. The submission of the petitioner that there was a mala fide attempt on the part of the respondent authorities in resuming the e-auction at 5' O clock does not appear to be proper. Had the petitioner not been put on notice of the resumption of the auction process then the allegation could have been accepted. Here, it appears that both the parties were put on notice and none were disclosed the figures put in by the other. The petitioner could have very well continued with its bid but, for reasons best known, chose not to do so. The petitioner literally left the competition midway and merrily gave a walkover to its competitor who continued the bidding and emerged as the H-1 bidder.
34. The petitioner at the time of participating in the auction process signed a consent form clearly accepting the condition that the service provider had the right to cancel or reschedule or re-launch the online auction if there is infrastructural failure on the part of the service provider resulting in unavailability of the online auction platform to the bidders for the bidding purpose.

35. It cannot be said with certainty that a machine or a device will never malfunction. It is not unnatural for a system to develop errors. Technical glitches cannot be ruled out completely. The same is beyond human control. To handle and overcome such a situation the tender document provided a clause to cancel or reschedule or re-launch the online auction. The service provider has exercised its right and conducted the e-auction by maintaining the time limit as mentioned in the EOI.
36. From the notice inviting EOI it is clear that the selection process is yet to be over. There are two more rounds to go before final selection is made.
37. In view of the discussion made hereinabove, the prayer made by the petitioner cannot be accepted and the relief sought for cannot be granted.
38. The writ petition fails and is hereby dismissed.
39. Urgent certified photocopy of this order, if applied for, be supplied to the parties expeditiously on compliance of usual legal formalities.

(Amrita Sinha, J.)