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C.S. (Comm. Div.) No.319 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 22.04.2024

Coram:

THE HONOURABLE MR. JUSTICE P.VELMURUGAN

C.S. (Comm. Div.) No.319 of 2023

M/s.Navin Housing & Properties Pvt. Ltd.,
having its registered office at
802-804, Anna Salai,
Nandanam, Chennai – 600 035
rep.by its Chief Operating Officer
N.Kalyanaraman.

... Plaintiff

Vs.

Rail Land Development Authority,
a Statutory Authority, set up
under an amendment to the
Railways Act, having office at
Unit No.702-B, 7th Floor,
Konnectus Tower-II,
New Delhi – 110021
Rep. By its authorized signatory

... Defendant

Prayer: Suit filed under Order VII Rule 1 Civil Procedure Code
1908 read with Section 2(1)(c)(vi) of the Commercial Courts Act, 2015
and Order IV of the Madras High Court Original Side Rules, praying to



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pass a decree in favour of the plaintiff and the against the defendant as follows;

- a) declaring that the forfeiture of the bid security amount by the defendant is illegal, null, void, unlawful and amounts to unjust enrichment.
- b) direct the defendant to pay a sum of Rs.1,17,23,836/-
- c) direct the defendant to pay subsequent interest of 18% from the date of suit till date of realization
- d) awarding cost of the suit

For Plaintiff : Mr.T.Ravichandran for
M/s.Shree Law Services.

For Defendant : set ex-parte on 01.04.2024

JUDGMENT

This suit is filed by the plaintiff seeking (i) for a declaration declaring that the forfeiture of the bid security amount by the defendant is illegal, null, void, unlawful and amounts to unjust enrichment; (ii) to direct the defendant to pay a sum of Rs.1,17,23,836/- and with subsequent interest of 18% from the date of suit till date of realization and (iii) for the costs of the suit.



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2. Heard the learned counsel appearing on behalf of the plaintiff.

Despite service of summons, the defendant had not chosen to enter appearance through a counsel and file a written statement. Nor any representative of the defendant was present in court on 01.4.2024. Therefore, the sole defendant was set ex parte by this Court on 01.04.2024.

3. In order to substantiate the claim of the plaintiff, the Chief Operating Officer of the plaintiff was present before the Master on 15.4.2024 and filed a proof affidavit reiterating the averments made in the plaint, through whom, 14 documents were marked as Ex.P.1 to Ex.P.14. Ex.P.1 is the Original Board Resolution dated 22.08.2022. Ex.P.2 is the Non-Starter Report dated 23.03.2021. Ex.P.3 is the copy of RFP Notice No.RLDA/RFP/CD/03 dated 15.02.2019. Ex.P.4 is the copy of Corrigendum No.3 request for proposal issued by the defendant dated 13.06.2019. Ex.P.5 is the copy of the Audit Trail Details dated 05.07.2019.



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Ex.P.6 is the copy of the letter received from the defendant regarding undertaking dated 12.07.2019 through E-mail. Ex.P.7 is the copy of the regulations for bids and lease agreements dated 26.03.2014. Ex.P.8 is the the copy of the Undated Letter issued by the plaintiff to the defendant. Ex.P.9 is the copy of the E-Mail from the defendant to the plaintiff dated 25.07.2019. Ex.P.10 is the the copy of the communication received from the defendant forfeiting of bid security amount dated 14.10.2019. Ex.P.11 is the copy of the letter from plaintiff to the defendant dated 14.11.2019. Ex.P.12 is the copy of the E-mail from the plaintiff to the defendant dated 02.01.2020. Ex.P.13 (series) are the copies of RFP issued by the defendant vide RFP No.RLDA/RFP/CD/16 of 2020 dated 10.08.2020, RFP No.RLDA/ RFP/CD/32 of 2021 dated 29.06.2021, RFD No.RLDA/RFP/ CD/42 of 2021 dated 04.10.2021 and RFP No.No.RLDA/RFP/CD/37 of 2022 dated 23.05.2022. Ex.P.14 is the copy of the Mediation Application form of the plaintiff dated 12.01.2021.



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4. From the reading of the plaint, the proof affidavit and the documentary evidence, it is seen that the plaintiff is a private limited Company and the defendant is the Rail Land Development Authority, which is a statutory authority, set up under an Amendment to the Railways Act. The plaintiff, which is a private limited company incorporated under the Companies Act, is engaged in the business of real estate development and has been developing real estate projects in Chennai and other places.

5. The defendant is a Statutory Authority established under the Ministry of Railways, set up by an Amendment to the Railways Act, 1989 for development of vacant railway land for commercial use for the purpose of generating revenue by non-tariff measures. The defendant had issued a request for proposal (RFP) on 15.02.2019 inviting proposals through e-tendering single stage 2 cover bidding system from the interested eligible bidders as per conditions of bid documents for “Grant of Lease for



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Residential Development on Plot of approximate area of 4,296.83 Sq.Mtrs.
of Railway land at Victoria Crescent, Chennai, Tamil Nadu for 99 years”.

6. The defendant had issued a corrigendum viz. Corrigendum No.3 dated 13.06.2019 extending the last date for submission to 12.07.2019. The plaintiff submitted its bid on 05.07.2019. The tender was successfully submitted and the same generated a reference No.100583. The defendant had earlier issued RFP in respect of the same project under RPF No. RLDA/RFP/CD/25 of 2018 dated 08.10.2018 and the plaintiff had participated in the process and had submitted its bid. Since there was no other bidder, the bid submitted by the plaintiff was treated as non-responsive by the defendant, which resulted in the issue of RFP dated 15.02.2019 and the defendant had returned the bid security amount deposited by the plaintiff.



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7. Further, the plaintiff received a letter on 12.07.2019 inviting its attention to the opening of the bid process which took place on 12.07.2019 and requested the plaintiff to give an undertaking that the plaintiff does not have any conflict of interest with any of the bidders including their consortium members in respect of sites, for which, the plaintiff had submitted the bids in terms of Clause 5.4 of Part-I of the Regulations within 3 days of the receipt of the said letter. The letter dated 12.7.2019 also contained a draft undertaking. But, it did not contain the alternate clause. In addition, in terms of Clause 5.5, it is open for the bidder in two stages bid to remove within 15 days from its consortium any member, who suffers from the conflict of interest provided the consortium meets the eligibility criteria and such removal shall be deemed to cure the conflict of interest arising thereof.

8. After receipt of the said letter dated 12.7.2019, the plaintiff did not



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give any undertaking. But, an undated reply was sent requesting the defendant to refund the bid security amount. On 14.10.2019, the defendant sent a letter, which was received by the plaintiff on 26.10.2019, forfeiting the bid security of Rs.75 lakhs. Before the receipt of the letter dated 14.10.2019, the plaintiff's representative visited the office of the defendant at Delhi on 21.10.2019 requesting to refund the bid security. Subsequently on 14.11.2019, the plaintiff sent a mercy petition to the defendant seeking refund. Further, in the letter dated 21.10.2019, it was mentioned clearly that there was no conflict of interest and the plaintiff did not attempt to influence the bidding process and requested the defendant to refund the bid security.

9. However, without following principles of natural justice and without considering the plaintiff's representation, the defendant issued a letter dated 14.10.2019, which received by the plaintiff on 26.10.2019, in



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which, the defendant had stated that the Competent Authority had approved the forfeiture of bid security. Apart from the fact that the letter dated 14.10.2019 was received by the plaintiff only on 26.10.2019, the defendant did not even consider the letter dated 21.10.2019 given by the plaintiff nor the defendant established his claims. When the plaintiff filed this suit, the defendant remained ex-parte.

10. The plaintiff has proved their case by way of this suit. The plaintiff has also substantiated their claim by oral and documentary evidence.

11. Therefore, the suit is decreed with cost as prayed for.

22.04.2024
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List of Witness : 1

Mr.N.Kalyanaraman (P.W.1)

List of documents marked : 14

S.No.	Exhibits	Description of Documents
1	Ex.P.1	Board Resolution dated 22.08.2022
2	Ex.P.2	Non-Starter Report dated 23.03.2021
3	Ex.P.3	Printout of RFP Notice No.RLDA/RFP/CD/03 dated 15.02.2019 (Certificate u/s 65-B of Indian Evidence Act produced)
4	Ex.P.4	the printout of Corrigendum No.3 request for proposal issued by the defendant dated 13.06.2019 (Certificate u/s. 65-B of Indian Evidence Act produced)
5	Ex.P.5	Printout Audit Trial Details dated 05.07.2019 (Certificate u/s.65-B of Indian Evidence Act produced)
6	Ex.P.6	Printout of the letter received from the defendant regarding undertaking dated 12.07.2019 through E-mail (Certificate u/s. 65-B of Indian Evidence Act produced)
7	Ex.P.7	the printout of the document comprising of rules and regulations in relation to RFRP dated 26.03.2014 (Certificate u/s. 65-B of Indian Evidence Act produced)
8	Ex.P.8	Photocopy of the Undated Letter issued by the plaintiff to the defendant (Certificate u/s. 65-B of Indian Evidence Act produced)
9	Ex.P.9	Printout of the E-Mail from the defendant to the plaintiff dated 25.07.2019 (Certificate u/s. 65-B of Indian Evidence Act produced)



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S.No.	Exhibits	Description of Documents
10	Ex.P.10	Photocopy of the letter communication from the defendant forfeiting of bid security amount dated 14.10.2019
11	Ex.P.11	Photocopy of the letter from plaintiff to the defendant dated 14.11.2019
12	Ex.P.12	Printout of the E-mail from the plaintiff to the defendant dated 02.01.2020 (Certificate u/s. 65-B of Indian Evidence Act produced)
13	Ex.P.13	THE PRINTOUT OF RFP issued by the defendant vide RFP No.RLDA/RFP/CD/16 of 2020 dated 10.08.2020, RFP No.RLDA/RFP/CD/32 of 2021 dated 29.06.2021, RFD No.RLDA/RFP/CD/42 of 2021 dated 04.10.2021 and RFP No.No.RLDA/RFP/CD/37 of 2022 dated 23.05.2022 (Certificate u/s.65-B of Indian Evidence Act produced)
14	Ex.P.14	Photocopy of the Mediation Application form of the plaintiff dated 12.01.2021.

List of Witnesses examined on the side of the defendant-**NIL**

List of documents marked on the side of the defendant - **NIL**

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Index : Yes / No

Speaking Order : Yes / No

Neutral Case Citation : Yes/No

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