IN THE HIGH COURT AT CALCUTTA

Civil Appellate Jurisdiction

Appellate Side

Present:
The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Prasenjit Biswas

FMA 1093 OF 2025
IA NO: CAN 1 OF 2025
Panorama Electronics Pvt. Ltd.
Vs.
The State of West Bengal and Others

For the Appellant	: Mr. Biswajit Deb, Sr. Adv. Mr. Piyush Chaturvedi, Sr. Adv. Mr. Sayan Dev Kumar, Adv. Ms. Priyakshi Banerjee, Adv. Mr. Sourav Ghosh, Adv.
For the State	: Mr. Lalit Mohan Mahata, Ld. A.G.P. Mr. P. B. Mahata, Adv.
For the Respondent Nos. 2 to 4	: Mr. Abhratosh Majumdar, Sr. Adv. Mr. Chayan Gupta, Adv. Mr. Syutimoy Paul, Adv. Mr. Saaqib Siddiqui, Adv.
Hearing Concluded on	: July 10, 2025
Judgement on	: July 18, 2025

DEBANGSU BASAK, J.:-

1. Appellant has assailed the judgement and order dated May 21, 2025 passed by the learned Single Judge in WPA 11072 of 2025.

2. By the impugned judgement and order, learned Single Judge has dismissed a writ petition filed by the appellant challenging a memorandum dated May 6, 2025 issued by the respondent No. 2.

3. Appeal has been taken up for final hearing, by consent of the parties, on the basis of the materials made available to Court,

4. Learned Senior Advocate appearing for the appellant has contended that, appellant participated in a tender process pursuant to a Notice Inviting Expression of Interest for allotment of 27 vacant plots of land at Bengal Silicon Valley IT Hub on 99 years leasehold basis. He has pointed out that, such Notice Inviting Expression of Interest was subsequently corrected on May 29, 2019. He has referred to the terms and conditions of the Notice Inviting Expression of Interest and in particular to clause D (ii), force and amendment to contract clauses thereof.

5. Learned Senior Advocate appearing for the appellant has contended that, appellant deposited the first instalment with 25% of the land premium of Rs. 1,21,45,740/- with the respondent No. 2. Thereafter, covid-19 pandemic had struck the world including the country. The appellant had issued 3 letters dated August 3, 2021, November 3, 2021 and February 8, 2022 requesting for refund of the first instalment paid.

Despite receipt of such notices, respondent No. 2 did not reply thereto.

6. Learned Senior Advocate appearing for the appellant has contended that, the appellant was allotted 3 plots of land in the same Notice Inviting Expression of Interest. He has pointed out that, we are concerned with only one plot being SV-12.

7. Senior Advocate appearing for the appellant has drawn the attention of the court to the force majeure clause in the Notice Inviting Expression of Interest as also the amendment to the contract clauses. He has contended that, the Covid-19 pandemic was a force majeure scenario and that, there was no amendment to the contract for the State Cabinet or the Committee of Secretaries to interfere with the jural relationship between the appellant in the respondent No. 2.

8. Learned Senior Advocate appearing for the appellant has contended that, by a letter dated August 30, 2022, the appellant called upon the respondent No. 2 to allow the appellant to pay the balance amount. Again, the respondent No. 2 did not respond thereto.

9. Learned Senior Advocate appearing for the appellant has submitted that, the appellant received a letter dated

September 4, 2024 from the respondent No. 2 by which the respondent No. 2 imposed penalty charges on account of the late payment of the land premium at the rate of 12.5% per annum claiming it to be in terms of the decision of the State Cabinet dated February 21, 2022. He has pointed out that, such letter also referred to a meeting of the Committee of Secretaries on Bengal Silicon Valley held on August 2, 2024 allegedly deciding that the prayer of the appellant for waiving of penalty charges cannot be accepted.

10. Learned Senior Advocate appearing for the appellant has contended that, neither the State Cabinet nor the Committee of Secretaries alluded to in the letter dated September 4, 2024 of the respondent No. 2 are not parties to the contract between the appellant in the respondent No. 2. He has contended that, the so-called decisions were taken without hearing the appellant. The appellant has not been favoured with the copies of the decision so taken.

11. Learned Senior Advocate appearing for the appellant has contended that, by letters dated September 9, 2024 and September 12, 2024, appellant requested for copies of the decision of the State Cabinet dated February 21, 2022 and the minutes of the meeting of the Committee of Secretaries on

Bengal Silicon Valley held on August 2, 2024. He has pointed out that, the respondent No. 2 did not furnish copies of such documents despite the request. He has also pointed out that, under cover of the letter dated September 12, 2024, appellant forwarded a cheque for the 2nd premium being ₹ 3,39,37,220 to the respondent No. 2. He has pointed out that, as on the date of such a cheque, there was sufficient balance available in the bank account of the appellant for payment.

12. Learned Senior Advocate appearing for the appellant has referred to the letter dated September 19, 2024 and submitted that, request was made for encashing the cheque and receiving the balance premium and making over possession of the plot of land, in question, to the respondent No. 2. He has pointed out, that despite receipt of such letter, the respondent No. 2 did not encash the cheque or make over possession of the plot of land in question to the appellant.

13. Learned Senior Advocate appearing for the appellant has submitted that, instead of encashing the cheque for the balance premium amount, the respondent No. 2 issued the impugned memorandum dated May 6, 2025 purporting to impose penalty charges at the rate of 12.5% on simple interest basis for the alleged delay in payment.

14. Learned Senior Advocate appearing for the appellant has contended that, imposition of penalty charges is not conceived of in the Notice Inviting Expression of Interest. The rate of 12.5% was never agreed to. Imposition of such penalty charges, is contrary to the terms and conditions of the Notice Inviting Expression of Interest. Therefore, the respondent No. 2 had acted arbitrarily capriciously and in colourable exercise of power.

15. In support of his contentions, learned Senior Advocate appearing for the appellant has relied upon ***2024 SCC online SC 1682 (Subodh Kumar Singh Rathour vs. Chief Executive Officer and Others)***.

16. Learned Senior Advocate appearing for the respondent No. 2 has contended that, all terms and conditions to attract clause D of the Notice Inviting Expression of Interest did not occur for clause D (ii) to be attracted. He has contended that, possession of the land is still with the respondent No. 2 and that, lease deed has not been executed.

17. Learned Senior Advocate appearing for the respondent No. 2 has contended that, subsequent to the appellant participating in the Notice Inviting Expression of Interest, a Letter of Intent was issued by the respondent No. 2 on

December 9, 2020. He has referred to the contents of such Letter of Intent and submitted that, one of the conditions is that, failure to meet the payment terms would lead to cancellation of the offer, and forfeiture of the deposit including Earnest Money Deposit. He has contended that, instead of forfeiting the first instalment paid along with the Earnest Money Deposit, the respondent No. 2 has taken a sympathetic view in terms of the decision of the State Cabinet to impose interest at the rate of 12.5% per annum from the date of default till the date of actual payment. Moreover, the Committee of Secretaries on Bengal Silicon Valley had decided on the same course of action in order to allow defaulters pay the balance premium.

18. Learned Senior Advocate appearing for the respondent No. 2 has drawn the attention of the Court to the letter dated February 4, 2021 of the appellant by which, it paid the first instalment. He has contended that, payment of the first instalment was also delayed.

19. Learned Senior Advocate appearing for the respondent No. 2 has contended that, the 2nd instalment became due and payable on May 6, 2021 when, the appellant failed to make the payment.

20. In response to a query of the Court, learned Senior Advocate appearing for the respondent No. 2 has made over to Court a copy of the State Cabinet decision dated February 21, 2022. He has contended that, respondent No. 2 being faced with the issue of delay in payment of the premium amount by various allottees, sent a proposal to the Finance Department of the State, which in turn considered such proposal at the State Cabinet level. He has contended that, the action taken by the respondent No. 2 in seeking interest for the delay in payment cannot be said to be arbitrary. Such decision has been applied uniformly across all defaulting allottees. The appellant has not been singled out in this regard.

21. Learned Senior Advocate appearing for the respondent No. 2 has contended that, land value increased substantially since the issuance of the Letter of Intent in 2020. Therefore, the compensation sought for in the memorandum dated May 6, 2025 should not be struck down.

22. Learned advocate appearing for the State has adopted the contentions advanced on behalf of the respondent No. 2.

23. The respondent No. 2 had published a Notice Inviting Expression of Interest dated March 7, 2019 in respect of 27 vacant plots located in the Bengal Silicon Valley IT Hub from firms/institutions willing to set up units in Information Technology/Information Technology Enabled Services activities relating to Telecom Projects as described in Annexure A thereto.

24. One of the terms and conditions of the Notice Inviting Expression of Interest is that, an applicant who will quote the percentage increase over and above the Special Promotional Price of ₹ 4.70 crores per acre as one-time lease premium excluding all applicable taxes, if any, its proposal as the highest bidder will be assessed and that, such proposal will be placed before the Standing Committee of the Cabinet on Industry, Infrastructure and Employment for final approval.

25. The appellant before us had quoted 18% above the Special Promotional Price in respect of Plot No. SV-12 by a letter dated June 18, 2019.

26. By a letter dated July 2, 2019, the respondent No. 2 had informed the appellant that, the technical evaluation committee requested a presentation from the appellant on the subject specified therein.

27. By a letter dated December 19, 2020 the respondent No. 2 had issued the Letter of Intent for allotment of 0.876 acre bearing Plot No. SV-12 to the appellant. It had referred to the approval accorded by the Standing Committee of the Cabinet on Industry Infrastructure and Employment of the State in its 80th meeting held on December 1, 2020. Such Letter of Intent had required the appellant to pay the first instalment of the land premium being 25% thereof amounting to Rs.1,21,45,740/- within 30 days from the date of issuance of the Letter of Intent. It had also required the 2nd and final instalment of 75% of the land premium amounting to ₹ 3,39,37,220 to be paid within 150 days from the date of issuance of the Letter of Intent after adjustment of the amount of Earnest Money Deposit of ₹ 25 lakhs. Letter of Intent had also specified that, failure to meet the payment terms would lead to cancellation of the offer and forfeiture of the deposit including Earnest Money Deposit.

28. Appellant had paid the first instalment of Rs. 1,21,45,740/- on February 4, 2021 to the respondent No. 2. The first instalment had therefore been paid beyond the period prescribed by the Letter of Intent.

29. Thereafter, on the plea of the Covid 19 pandemic the appellant had written letters dated August 3, 2021, November 3, 2021 and February 8, 2022 requesting for refund of the first instalment. The respondent No. 2 did not reply thereto.

30. By a letter dated August 30, 2022, appellant had changed its stance from one of refund to extension of time to pay the 2nd instalment in respect of the plot concerned, without levy of any interest burden. By a letter dated February 28, 2024 the appellant had repeated this request for permission to pay the 2nd instalment without interest.

31. By a letter dated September 4, 2024, the respondent No. 2 had informed the appellant that, State Cabinet decided upon February 21, 2022 to levy 12.5% interest per annum on the delay in payment of the instalment and that, the prayer for waiver of interest was rejected by the Committee of Secretaries on Bengal Silicon Valley held on August 2, 2024. By such letter, the respondent no. 2 had called for an explanation from the appellant as to why, it did not pay the 2nd instalment within the time stipulated.

32. In response, by a letter dated September 1924, appellant had called upon the respondent No. 2 for copies of the decision of the State Cabinet dated February 21, 2022 and the minutes of the meeting of Committees of Secretaries on Bengal Silicon Valley held on August 2, 2024. Thereafter, by a letter dated September 12, 2024, the appellant had sought to furnish explanation for the delay in payment of the 2nd instalment and enclosed a cheque for the 2nd instalment being ₹ 3,39,37,220 with a prayer for waiver of the interest.

33. The respondent No. 2 had refused to accept the cheque. Appellant by a letter dated September 9, 2024, had forwarded the cheque to the chairman of the respondent No. 2. Cheque was never encached by the respondent No. 2.

34. By the impugned memorandum dated May 6, 2025, the respondent No. 2 had called upon the appellant to pay interest at the rate of 12.5% per annum on the delay in payment of the 2nd instalment. It had referred to the decision of the State Cabinet as also the decision of the Committee of Secretaries on Bengal Silicon Valley in this regard.

35. The respondent No. 2 is a Government of West Bengal enterprise under the Department of Urban Development and Municipal Affairs, Government of West Bengal. It is therefore natural that, its affairs are controlled by the State. The Expression of Interest for Bengal Silicon Valley IT Hub when it describes the background of the project, specifies that, the government of West Bengal adopted a policy for allocation of land by the respondent No. 2 for technology-based enterprises working in the domains of Information Technology/Information Technology Enabled

Services/Telecom/Venture Capital/Start-Up. It also notifies the mode of allotment of the proposal. Mode of allotment of the plots prescribes that, eligible application will be finally placed before the Standing Committee of the Cabinet on Industry, Infrastructure and Employment for final approval.

36. Appellant was well aware of the involvement of the State Government in the project including the assessment of the proposal it submits in respect of any plot. Under the Notice of Expression of Interest appellant submitted proposal for 3 plots. One of the plots is the subject matter of the writ petition in the present appeal.

37. Therefore, the contention of the appellant that, State Cabinet or its decision dated February 21, 2022 is beyond the scope of the Notice for Expression of Interest is without any substance and cannot be accepted.

38. Moreover, respondent No. 2 had submitted a proposal as to the steps to be taken in the case of default of payment of instalment to the finance department. Such proposal was ultimately considered at the level of the State Cabinet where it had been decided that interest at the rate of 12.5% per annum would be levied for the delayed payment.

39. The course of action taken by the respondent No. 2 cannot be said to be arbitrary. Significantly, it is not limited to the appellant only. All defaulters are to be treated in the same manner. Appellant did not produce any materials before us to establish that, respondent No. 2 accepted delay payment of land premium without levyingd interest at the rate of 12.5% per annum on such defaulter.

40. Request for waiver of interest as made by the appellant was considered by the Committee of Secretaries. Decision of the Committee of Secretaries refusing to waive of levy of interest was communicated to the appellant.

41. Admittedly, there is default in payment of both the first instalment as also the 2nd instalment. Plea of Covid 19 pandemic for waiver of interest for the entirety of the period of default is not acceptable since, firstly, from its initial stance of refund of the first instalment, appellant changed its stance to permission to pay the 2nd instalment without any interest. Secondly, Covid 19 pandemic did not run for the entirety of the period of the default. Learned Single Judge, in exercise of discretion, granted interest holiday for such period, in the impugned judgement and order.

42. The decision of the respondent No. 2 as communicated by the impugned memorandum dated May 6, 2025 is not vitiated by the breach of principles of natural justice. The respondent No. 2 considered the prayer for waiver of interest made by the appellant and communicated its decision of rejection of such prayer to the appellant, by a letter dated September 4, 2024. By such letter the respondent No. 2 also called upon the appellant to explain the delay in making payment of the 2nd instalment. Respondent No. 2 replied to the letter dated September 4, 2024. Such reply was considered and the decision of the respondent No. 2 on the issue was communicated by the impugned memorandum dated May 6, 2025.

43. In such fact scenario, we are not in a position to hold that, the respondent No. 2 acted in breach of the principles of natural justice or that, the appellant was not heard. Representations made by the appellant were considered prior to the impugned memorandum dated May 6, 2025 being issued.

44. The decision to levy interest cannot be termed as arbitrary. The view taken by the respondent No. 2 as communicated by the impugned memorandum dated May 6, 2025 is plausible. In a commercial contract, one of the contracting parties cannot be allowed to act in breach the terms of payment without corresponding liability of payment of interest for the default.

45. ***Subodh Kumar Singh Rathour (supra)*** has considered decision of an Article 12 authority in cancelling a tender subsequent to work order being issued and some portion of the work executed. It has dwelt upon the scope of judicial review of actions of the State in matters relating to contract/tender under the Constitution. In the facts and circumstances of that case, it has held that, the action of cancelling the tender was arbitrary and consequently violated Article 14 of the Constitution.

46. Fact scenario obtaining in the instant case is completely different. Here, the appellant admittedly defaulted in payment of the first instalment and the final instalment in time. The respondent No. 2 evinced the intention by the impugned memorandum dated May 6, 2025 to allow the appellant to put in the 2nd and final instalment along with interest at the rate of 12.5% per annum from the date of default till the date of payment. This stand of the respondent No. 2 cannot be classified as arbitrary or beyond the contract.

Decision of respondent No. 2 as communicated by the impugned memorandum dated May 6, 2025 can be construed to be in terms of the Letter of Intent dated December 9, 2020 which allows for a forfeiture.

47. Learned Single Judge has rightly refused to allow the appellant to pay the 2nd and final instalment without any interest. Learned Single Judge has exercised discretion and permitted the respondent No. 2 to recalculate the dues imposing 12.5% simple interest per annum till the date of actual payment excluding the period of Covid from May 8, 2021 till February 28, 2022. We are not minded to overturn such discretion exercised in view of the fact that, it is a plausible view which can be taken given the Covid 19 pandemic situation prevailing at that relevant point of time. Learned Single Judge has rightly allowed the respondent No. 2 to act in terms of the Letter of Intent dated December 9, 2020 in the event of default of the appellant paying the re calculated dues.

48. The appellant was forwarded with the re calculated dues by a writing dated May 28, 2025 as on May 23, 2025, in terms of the impugned judgement and order. Appellant did not pay the same.

49. Time to make payment of the re-calculated dues expired on June 30, 2025 as stipulated by the impugned judgement and order.

50. We deem it appropriate to extend the time to make payment of the recalculated dues for a period of 7 days from date. We however clarify that, appellant will pay the interest for the period from May 24, 2025 till the date of actual payment at the same rate of 12.5% per annum, to the respondent No. 2.

51. In the event of default of payment of any part of portion of the amount as specified herein, respondent No. 2 is at liberty to take appropriate steps in terms of the Letter of Intent dated December 9, 2020 as against the appellant.

52. FMA 1093 of 2025 along with the connected application are disposed of without any orders to cost.

[DEBANGSU BASAK, J.]

53. I agree.

[PRASENJIT BISWAS, J.]