

**(2009) 03 CAL CK 0037**

**In the Calcutta High Court**

**Case No :** G.A. No. 675 of 2009, A.P.O.T. No. 86 of 2009 and W.P. No. 122 of 2009

Steel Union Private Ltd. and Another

APPELLANT

Vs

Commissioner of Customs and Others

RESPONDENT

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**Date of Decision :** 23-03-2009

**Acts Referred:**

**Citation :** AIR 2009 Cal 282 : (2010) 1 BC 586 : (2010) 8 RCR(Civil) 2369

**Hon'ble Judges :** Surinder Singh Nijjar, C.J.;Biswanath Somadder, J

**Bench :** Division Bench

**Advocate :** Bhaskar Sen, Samit Talukdar and D. Manna, for the Appellant;Tilak Bose, for the Respondent

**Final Decision :** Dismissed

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## **Judgement**

1. We have heard learned Counsel for the parties at length. We have also perused the papers. Learned single Judge has noted the very brief facts, which may be recapitulated.

2. The customs authorities has conducted an e-auction for sale of 1956 wheel sets with shaft of Romanian origin weighing about 2398 MT. The goods were offered on as is where is basis and the successful bidders were required to pay the earnest money of 10 per cent of the bid value within seven days of the declaration of the result of the auction. The auction was open to bidders registered with the customs as access to the auction website was only by keying in the allotted user ID and password. The duration of the process of auction was to be notified on the website.

3. The first petitioner put in a bid. which according to the first petitioner was the highest. Upon the bid of the petitioner being accepted, 10% of the earnest money was deposited within the stipulated time, amounting to Rs. 68 Lac. Thereafter, according to the petitioners, respondents failed to confirm the auction as required under the. General Conditions of Sale.

4. Mr. Bhaskar Sen, learned Sr. Counsel appearing for the appellants, made reference to Clauses 13 and 14 of the aforesaid General Conditions of Sale, which are as under:

13. The highest bid for each lot shall be subject to confirmation by the Seller. In the event of any dispute about the highest bid, the decision of the Seller shall be final. Seller reserves the right to sell the lot to any bidder other than the highest bidder without assigning any reasons.

14. Subject to confirmation/subject to approval shall be decided on or before fifteen working days excluding the day of auction.

5. According to the learned Counsel, clause 14 clearly provides that confirmation and approval of the bid had to be decided on or before 15 working days excluding the day of auction. Thereafter under clause 17(f), the remainder amount of bid money was to be deposited within 45 days. Clause 17(f) of the General Conditions of Sale is set Out as under:

f) Rs. 1 Crore and above - Within 45 days from the date of confirmation/approval.

6. Learned Counsel submits that even on repeated requests having been made by the appellants, the confirmation order was not issued by the respondents. Consequently, the appellants wished to withdraw the bid. When the request of the appellants was not acceded by the respondents, the appellants were constrained to file the writ petition.

7. According to Mr. Sen, the writ petition has been dismissed by the learned single Judge on wholly erroneous interpretation of the clauses of the General Conditions of Sale together with the correspondence between the parties.

8. On the other hand, Mr. Tilak Bose, learned Counsel appearing for the respondents, has submitted that a bare perusal of the relevant provisions of the Procedure and Sale Conditions would make it abundantly clear that the delivery of the goods would only be effected upon full amount of the bid money being paid. The entire bid money could, therefore, only be paid upon the confirmation of sale by the respondents. There was no doubt in the mind of the appellants that sale has been confirmed which, according to Mr. Bose, is evident from the letters dated 26-9-2008, 3-10-2008 and 6-11-2008. The letter dated 26-9-2008 has been written by the respondents to the appellants with the subject, "Acceptance of your bid offered in e-auction No. 04/08-09 Conducted on 22-9-2008 reg." In that letter, it is clearly stated as under:

This is to inform you that the following bid offered by has/have been accepted by the department.

Sl. No. 1

Lot No. 1045

Goods : Wheel Sets

Bid Offered : Rs. 6,75,00,000/-

You are, therefore, required to pay the EMD (10% of the bid amount) within 7 days after declaration of the result and remaining amount within 45 days from the date of confirmation/approval.

Failure to do so would make you liable to actions as per the conditions of the sale.

9. One Sankar Chatterjee, on behalf of the appellants responded to the aforesaid letter on 3-10-2008 by stating as follows:

Please note that I am in receipt of your acceptance letter dated 26-9-2008 regarding confirmation of the above-mentioned lot of Wheel Sets. I have purchased the lot on behalf of M/s. Steel Union Pvt. Ltd. 40, Strand Road, Room No. 5, Ground Floor, Kolkata-700001. I request you to issue Delivery Order and Invoice etc. in the name of the same. Thanking you.

10. Thereafter, the appellants in their letter dated 6-10-2008 again clearly and categorically stated that they were the successful bidder and that the sale has been confirmed. In the aforesaid letter, the appellants were also seeking delivery of the goods.

11. We have perused the aforesaid provisions as also the letters. We are of the considered opinion that the reasoning of the Learned Single Judge in dismissing the writ petition cannot be said to be erroneous, as submitted by Mr. Sen. A perusal of the Procedure and Sale Condition would show that the registered bidders will be able to access the auction site by using the user ID and password. Thereafter, under the specific heading of "Auction Process", it is clearly provided that in cases where only EMD is paid, delivery of the goods will be made only after the full amount is paid within the time limit specified in the Conditions of Sale. It is only upon the full amount being paid that a delivery order will be issued to the bidder to receive the goods. Clearly understanding these terms and conditions, the appellants responded to the letter of the respondents dated 26-9-2008 with the observations that they are in receipt of the acceptance letter dated 26-9-2008 regarding confirmation of the above-mentioned lot of Wheel Sets. This letter is followed by the letter of Sankar Chatterjee dated 3-10-2008 and another letter dated 6-10-2008 in which it is again reiterated that the appellants are successful bidder for the above lot. The sale has been confirmed. Thereafter, it is stated that the deliveries be made to the appellants after payment duly recording the pieces and the weight delivered. Having made such a request the appellants have sought to challenge the action of the respondents on the ground that there has been no confirmation of the auction. We are thus of the considered opinion that there is sufficient material on the record to justify the conclusion reached by the Learned Single Judge.

12. We see no reason to take a different view of the matter. In our opinion, the appellants are now trying to wriggle out of a completed contract upon realising that the prices of the steel purchased by them have fallen in the international

market.

13. The appeal is thus dismissed.

14. We may notice here that upon conclusion of the arguments Mr. Sen had submitted that the appellants be permitted to invoke the provisions with regard to arbitration. We are of the considered opinion that such a request cannot be accepted at this stage as the Learned Single Judge by his finding has opined that the contract is concluded between the parties and the appellants are trying to wriggle out of the same.

15. There shall be no order as to costs.

16. Urgent xerox certified copy of this order, if applied for, be supplied to the parties subject to compliance with all requisite formalities.