(2025) 12 CAL CK 1752

In the Calcutta High Court, Appellate Side

Case No : W.P.A. No. 17422 Of 2025

Techno E-Minds Private Limited APPELLANT

Vs

Syama Prasad Mookerjee Port & Ors RESPONDENT

Date of Decision : 19-12-2025

Acts Referred:

Citation : (2025) 12 CAL CK 1752

Hon'ble Judges : Krishna Rao, J

Bench : Single Bench

Advocate : Soumava Mukherjee, Indrani Munshi, Ashok Kr. Jena, Ritoban Sarkar

Final Decision : Dismissed

Judgement

Krishna Rao, J

1. The petitioner has filed the present writ application praying for a direction upon the respondent Port Authorities to refund the Earnest Money Deposit (EMD) amounting to Rs. 29,42,418/-. The respondent nos. 1 and 2 invited bids through E-Tender-cum-E-Auction vide NIT No. SMP/KDS/LND/87-2023 dated 1st November, 2023 for allotment of vacant land at East Medinapore, Jellinghan, Gangrachar being Plot No. 82/23(A), on long term lease of 30 years, on ‘as is where is basis’ without renewal option against payment on annual rent/ upfront basis.

2. The petitioner had participated in the said tender by depositing the earnest money amounting to Rs. 29,42,418/- out of which an amount of Rs. 55,200/- was for the bank guarantee.

3. Mr. Soumava Mukherjee, Learned Advocate representing the petitioner submits that the e-auction was conducted on the server of the respondent no. 4. The e-auction portal of the respondent no. 4 is designed in such a fashion that in case an abnormal price bid is submitted by any bidder, by way of a pop-up, the portal would show an alert to the concern bidder. On 16th February, 2024, the

authorized representative of the petitioner participated in the e-auction. The petitioner has been quoting its price bid one rupee more than the quote of the highest competitor bidder. He submits that there was an inadvertent mistake in the last quote submitted by the petitioner wherein instead of Rs. 2000701.00, quoted of Rs. 20007001.00. He submits that the said inadvertent mistake could not be noticed since the portal did not send any alert by way of a pop-up.

4. Mr. Mukherjee submits that the petitioner had opted to submit a bid amount of Rs. 20,00,701/- but when the confirmation of the bid amount was issued to the petitioner, it was noticed by the petitioner that the bid amount has been wrongly mentioned as Rs. 2,00,07,001/-. He submits that immediately after the e-auction was over and the bids submitted by the respective bidders were disclosed, the petitioner realized the inadvertent mistake by mentioning the bid amount of Rs. 2,00,07,001/- instead of Rs. 20,00,701/.

5. Mr. Mukherjee submits that the petitioner has not authorized Shri Rabi Sankar Mohanty to communicate officially with the tendering authorities who has sent an email on 16th February, 2024 with the request to consider the 2nd last e-auction bid submitted by the petitioner and not the last e-auction bid, which was submitted inadvertently with an extra "0" (zero) between the digits "7" and "1". He submits that the petitioner has never made any request for withdrawal of its offer.

6. Mr. Mukherjee submits that the inadvertent error in the last quote submitted in the e-auction on behalf of the petitioner was also sent to the respondent no. 4 by an email dated 17th February, 2024 and the respondent no. 4 intimated that the flashing message with an alert with a quote more than five (5) times must have been displayed on the screen. The respondent no. 4 further intimated that the last bid submitted by the petitioner in the e-auction cannot be cancelled and the same is legally binding on the petitioner. In response to the said e-mail of the respondent no. 4 dated 17th February, 2024, Mr. Rabi Sankar Mohanty responded to the e-mail clarifying that no flashing message with alert of bid submitted five times more than the last bid was displayed on the screen due to which the inadvertent mistake in quoting the last bid could not be noticed. He submits that the respondent no. 4 further informed that there is no provision to cancel any recorded bid in the MSTC portal during auction whether the error is typographical or inadvertent.

7. Mr. Mukherjee submits that on 24th February, 2024, the petitioner has requested the respondent authorities for refund of EMD but the respondent authorities had neither intimated the petitioner about the rejection of the bid nor issuance of letter of allotment to the petitioner. The petitioner has waited for six (6) months after expiry of the bid validity period for 180 days, the petitioner had sent a letter through e-mail on 19th June, 2024 requesting the respondent authorities for refund of EMD. The petitioner has again made a request on 19th July, 2024 for refund of EMD and in reply to the same, the respondent no. 3 by an email dated 19th July, 2024, has intimated the petitioner that the bid of the

petitioner with respect to the said tender has been discharged due to withdrawal of the bid by the petitioner by an email dated 16th February, 2024. It was also informed to the petitioner that as per Clause 14(i) of the NIT, EMD submitted by the petitioner has been forfeited.

8. Mr. Mukherjee submits that the tender was floated for the purpose of leasing of the said vacant land for a period of three (3) years and the reserved rent was fixed at Rs. 17,32,331/-, thus no stretch of imagination, the petitioner would have opted the bid amount of Rs. 2,00,07,001/- as reserved rent. He submits that inspite of several representations submitted by the petitioner, the respondent authorities failed to refund the EMD to the petitioner even after the bid of the petitioner was not accepted by the respondent authorities.

9. The petitioner has relied upon the judgment in the case of Subodh Kumar Singh Rathour vs. Chief Executive Officer & Ors. reported in (2024) 15 SCC 461 and submits that in the contractual matter, the writ petition is maintainable.

10. Mr. Barnik Ghosh, Learned Advocate representing the respondent no. 4 submits that the software of e-auction is such that, apart from a candidate being required to confirm its bid amount before the bid is uploaded in the tender process, a candidate is also informed that the confirmed bid amount is abnormally high, if it shows whether the candidate still continues to make such bid or not. In support of his contention, he has relied upon a screenshot of the tender process undertaken by the respondent no. 4. He submits that there cannot be any mistake on the part of any participant in the e-auction tender process to make an abnormally high bid. He submits that the case made out by the petitioner is without any basis. The petitioner has deliberately made an abnormally high bid so that the other candidates in the tender process may not succeed in the tender process.

11. Mr. Ghosh submits that the e-auction portal is designed in such a fashion that in case an abnormal price bid is submitted by the bidder, by way of pop-up, the portal would show an alert to the bidder. In this case, the petitioner has avoided the same and continued the price of Rs. 2,00,07,001/- and also written the said amount in word also. He submits that the petitioner has made false allegation that the portal did not send any alert by way of pop-up.

12. Mr. Ashok Kr. Jena, Learned Advocate representing the respondent nos.1 to 3 and submits that the petitioner with full knowledge has quoted Rs. 2,00,07,001/- and has now made out a case that inadvertently, the said amount was quoted instead of Rs. 20,00,701/-.

13. Mr. Jena submits that the similar issue was raised by another firm in WP No. 519 of 2017 (Haldia Alloys and Ispat Pvt. Ltd. Vs. Kolkata Port Trust and Ors.) and the Coordinate Bench of this Court held that no doubt the bid made by the petitioner at the last stage was abnormally high. That can be a mechanism to drive away the actual bidder and claim innocence and ask for refund of earnest money. Such methodology should not be allowed to be implemented by a bidder

with impunity. Such course should be visited with necessary consequences.

14. Mr. Jena submits that Clause 14(i) of the General Information of bid provided that in case the bidder withdraws the offer before expiry of the validity period as per Tender terms, the earnest money shall be forfeited. He submits that the petitioner has withdrawn the offer on the ground that the petitioner has inadvertently quoted the said amount, thus the respondents have forfeited the earnest money.

15. The respondent nos. 1 and 2 invited bids through e-Tender-cum-e-auction for allotment of vacant land at East Medinapore, Jellingham, Gangrachr being plot No. 82/23(A), on long term lease of 30 years on ‘as is where is basis’ without renewal option against payment on annual rent/upfront basis. The petitioner has participated in the said tender process. The bidders were to make payment of an Earnest Money Deposit amounting to Rs. 28,87,218/-. The petitioner has deposited the Earnest Money Deposit amounting to Rs. 28,87,218/-along with the bank guarantee of Rs. 55,200/-. Clause 14 of the tender document provides for forfeiture of Earnest Money Deposit, which reads as follows:

“14. Conditions for forfeiture of Earnest Money: Any of the following will be sufficient ground for forfeiture of EMD.

(i) In case the bidder withdraws the offer before expiry of the validity period as per Tender terms as at (15) below.

(ii) In case of non-acceptance of the allotment letter.

(iii) In case of non-acceptance of the terms and conditions of the NIT.

(iv) In case of non-compliance of the terms & conditions of the offer of lease.

(v) In case of deviation from any of the terms & conditions of the offer of lease till submission of Security Deposit along with adjustment of EMD with other dues or refund.

(vi) In case of non-remittance of all payment due before handover of the plot within the specified period.

(vii) In case of furnishing any false/ misleading/ tampered information in the tender offer.

(viii) In case of furnishing any false/ misleading/ tampered information before finalization of tender.

(ix) In case of non-submission of Price or non participation in re-bidding (submission of fresh price/ e-auction or both) in case of tie, if so decided by SMP, Kolkata. The bidder may refer to Evaluation Criteria in this regard.

(x) In case of non quoting above the reserved rent or floor price.

(xi) In case of formation of Cartel or influencing bidders to abstain from participation in the Tender.”

16. The e-auction was conducted by the respondent no. 4 through online mode. In case an abnormal price bid is submitted by the bidder, the e-auction portal of the respondent no.4 will show a pop-up to alert the bidder. The petitioner has quoted an amount of Rs. 20007001/-through e-auction instead of Rs. 2000701/-. It is the contention of the petitioner that the petitioner could not noticed as the portal did not send any alert by pop-up.

17. Learned Advocate representing the respondent no.4 has handed over screen shorts of the ‘bidding sequence’ conducted through on line wherein in it reveals that if a bidder enters one digit extra, the first pop-up display the figure in words. If inadvertently clicks “OK”, then next five times pop-up alert will show on the screen so that the bidder can identify the clerical error and he can cancel the bid and submit a fresh/ rectified bid. Inspite of the pop-up alert, if he clicks as “OK”, the subsequent alert once again appears to show that he has clicked as “OK”. If at this stage, if he clicks as “OK”, then Digital Signature Certificate (DSC) signer tab appears on the screen and the bidder can click on the “Cross” sign on the pop-up and can go back. If the bidder still chooses to proceed, the bidder can click on “Proceed to sign your bid” button to open DSC signer form. At this point of time also the bidder has the option of clicking cancel and going back to revise his bid. If the bidder selects his DSC at this stage, enters the DSC PIN and signs the bid, then system will accept the bid.

18. There are multiple stages at which the bidder has the option to cancel its bid and to revise the same or to submit a fresh bid in same tender without being cancelled. Taking into consideration of the above sequence, the case made out by the petitioner that the portal did not send any alert by pop-up is not believable.

19. In the case of Haldia Alloys and Ispat Pvt. Ltd. and Others (supra) in the similar circumstances, the Coordinate Bench of this Court held that:

“In the present case, the previous bid amount of the competitor of the petitioner was Rs.7,60,800/-. The petitioner made a bid amount of Rs 76,08,001/- in respect of the same property. The increase was about of about Rs.70 lakh. Consequently, the software required the petitioner to confirm such an abnormal high bid. The petitioner has not explained in his petition or in the affidavit in reply as to what measures it took with regard thereto. The software required the petitioner to confirm such an abnormally high bid pointing out that, the bid was few times higher than the last bid. Therefore, it cannot be said that, the petitioner made a mistake that too bona fide by increasing its last bid. There are sufficient checks and balances in the software of the respondent no. 4 in order to avoid any mistake being committed by a bidder. The amount of bid goes into the bid process only after the bidder confirms the same and after a prompt pointing out an exceptionally high bid is responded to by such bidder. With two such barriers being crossed over, it does not remain in the realm of a mistake for a bidder to claim that it committed a mistake in making such an abnormally high bid. No doubt, the bid made by the petitioner at the last stage was abnormally high. That can be a mechanism to drive away the actual bidder and claim innocence and ask for refund of earnest money. Such methodology should not be allowed to be implemented by a bidder with impunity. Such course of action should be visited with necessary consequences.

KoPT authorities forfeited the earnest money deposit. Forfeiture of earnest money is governed by clause 15 of the tender process. Clause 15 (ix) of the tender process allowed KoPT authorities to forfeit the earnest money if it finds that the participant provided incorrect or incomplete information or tampered the document deliberately to mislead KoPT authorities. In the fact of the present case, the last bid of the petitioner can be construed to be a process by which bidder sought to tamper with the tender process deliberately in order to mislead the KoPT authorities. Therefore, I find no infirmity the action of KoPT in forfeiting the earnest money deposited. In my view, the forfeiture is within the terms of the tender process."

20. As per Clause 14 (i) of the tender documents in case the bidder withdraws the offer before expiry of the validity period as per the tender terms. The petitioner through Rabi Sankar Mohanty requested to consider the 2nd last e-auction bid and not last e-auction bid which itself proves that the petitioner has withdrawn its offer. The petitioner after thought made out a case that Rabi Sankar Mohanty has not been authorized to communicate officially with the tendering authorities.

21. In the present case at first the petitioner has withdrawn the offer on the ground that the petitioner by mistake offered an amount of Rs.20007001/- instead of Rs. 2000701/- and secondly, requested to consider 2nd last e-auction bid and not last e-auction bid of Rs. 20007001/-.

22. In such view of the above, W.P.A. No. 17422 of 2025 is dismissed. Parties shall be entitled to act on the basis of a server copy of the Judgment placed on the official website of the Court. Urgent Xerox certified photocopies of this judgment, if applied for, be given to the parties upon compliance of the requisite formalities.