

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
C. P. NO. D-5670 / 2023

Date Order with signature of Judge

For hearing of main case.

12.03.2024.

Mr. Danial Muzaffar, Advocate for Petitioner.
Mr. Kashif Nazeer, Assistant Attorney General.
Mr. Agha Shahid Majeed Khan, Advocate for Respondents
No. 2 & 3.

Through this Petition, the Petitioner has sought the following prayers:-

- A. Carry out a proper assessment of the auctioned lot, in the presence of the Petitioner and / or his representative, and determine the actual weight of the lot so auctioned by them; and
- B. Following re-examination of the auctioned lot and assessment of its proper weight issue a letter under Rule 67 to enable the Petitioner to deposit the outstanding / remainder auction price adjusted in terms of the actual weight of the lot auctioned; or
- C. Cancel the auction dated 11.04.2023 and refund the pay order No. 02515006 dated 30.03.2023 drawn on Dubai Islamic Bank amounting to PKR 6,750,000/-“

Heard Counsel for the parties and perused the record. It is the case of the Petitioner that pursuant to an Auction Schedule dated 11.04.2023 issued by Respondent No. 2, its highest bid of Rs. 22,800,000/-in respect of goods at serial No. 5 of the Schedule was accepted and 25% earnest money amounting to Rs. 57,00,000/- was deposited; however, subsequently during inspection, it came into knowledge of the Petitioner that the total weight of the consignment is less than what has been auctioned by the Respondents and therefore, the Respondents be directed to carry out actual weight of the auctioned lot and only then the balance sale consideration be directed to be paid on the actual weight. We have confronted the Petitioner’s Counsel as to how on a mere deposit of earnest money of 25%, the Petitioner can dictate the terms of

auction, when he was required to deposit the balance sale consideration (remaining 75% amount) within 07 days as per Rule 68 of Customs Rule, 2001, whereas, as the auction was supposed to be conducted on as is where is basis; but he could not satisfactorily respond. In our view, inspection, if any, ought to have been done prior to participating in the auction, and not thereafter. We are unable to agree with the arguments of the Petitioner's Counsel for the reason that until the Petitioner deposits the total sale consideration / auction amount, no right accrues in its favor, as a highest bid and even deposit of earnest money, does not ipso facto creates any vested rights. Such right only matures when the bid is finally accepted by the competent authority¹. It is a matter of fact that the balance sale consideration was to be deposited within the stipulated period; however, this was never done and instead letters were written on 01.08.2023 and 10.11.2023 creating dispute regarding the actual weight of the auctioned lot. It is also a matter of record that the Respondent Collector wrote a Letter to the Petitioner on 09.06.2023 and in response the Petitioner sought extension of 36 days' time until 15.07.2023 for depositing the remaining amount. These facts have been brought on record by the Respondents through their comments to which no affidavit in rejoinder has been filed. In such circumstances, the objection of the Petitioner appears to be an afterthought as it was only raised when the Petitioner had failed to deposit the balance sale consideration within the stipulated time as provided in Rule 68 ibid. Moreover, Rule 74(2) ibid caters to the situation in hand, if the Petitioner had deposited the balance sale consideration within the stipulated time and could have sought refund of the excess amount, if any. However, the Petitioner does not qualify under the said Rule as it never paid the balance amount.

¹ Muhammad Javed v First Women Bank Ltd (2020 CLD 254); Nadia Malik v Makki Chemical Industries Ltd (2011 SCMR 1675); Muhammad Ali Asghar Sabir Raja v Sajida Bashir (2006 SCMR 801);

In view of hereinabove facts and circumstances of this case, no case for exercising any discretion in favor of the Petitioner was made out and therefore, by means of a short order dated 12.03.2024 this Petition was dismissed and these are the reasons thereof.

J U D G E

Arshad/

J U D G E