

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**R/SPECIAL CIVIL APPLICATION NO. 24959 of 2022**

With
CIVIL APPLICATION (FOR JOINING PARTY) NO. 1 of 2022
In R/SPECIAL CIVIL APPLICATION NO. 24959 of 2022

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AMINA TRADERS
Versus
GUJARAT SECONDARY AND HIGHER SECONDARY EDUCATION
BOARD,

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Appearance:

MR APURVA R KAPADIA(5012) for the Petitioner(s) No. 1
MEHUL A SURATI(7870) for the Respondent(s) No. 2
MR AD OZA(515) for the Respondent(s) No. 1
MR P A MEHD(3489) for the Respondent(s) No. 3

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE MR.
JUSTICE A.J.DESAI
and
HONOURABLE MR. JUSTICE BIREN VAISHNAV

Date : 02/05/2023

ORAL ORDER

**(PER : HONOURABLE THE ACTING CHIEF JUSTICE MR. JUSTICE
A.J.DESAI)**

1 By way of present petition under Article 226 of the Constitution of India, a writ in the nature of mandamus is sought by the petitioner to hold re-auction for the tender published by the respondent No.1-Board i.e. Gujarat Secondary & Higher Secondary Education Board, mainly on the ground that the portal through which the auction was to be finalized, did not work on the last date of the

auction i.e. on 30.09.2022 from 06:00 p.m onwards till 12:00 a.m of 01.10.2022, and therefore, the petitioner though had tried level best, could not participate therein.

2 The auction was finalized through Government E-Market Place and the Board has accepted the tender submitted by one M.S. Traders. By an order dated 06.03.2023, both these parties were ordered to be joined as party respondents.

3 In response to the notice, the respondent No.1, i.e. the Gujarat Secondary Education Board, as well as the respondent No.2, i.e. the Government e-Marketplace (hereinafter referred to as "GeM") have filed their affidavits. Respondent No.3 has also filed affidavit-in-reply, to which rejoinder has been filed by the present petitioner. The affidavit filed on behalf of the GEM through one Mr. Manoj Kumar, S/o Shri Ram Keshwar, who is working as Director, Government e-Marketplace (GeM) in his affidavit dated 15.03.2023 has categorically

stated in paragraph 11 which reads as under:

“11 That as per the planned downtime, the portal was put under maintenance from 9:00 pm onwards on 30.09.2022. The deployment however, got extended beyond 10:00 pm, and the system was fully up at around 2:00 am on 01.10.2022. In view of the same, the system downtime period was from 09:00 PM till 02:00 AM.”

4 Considering the above aspect, we asked the learned advocates appearing for the petitioner as well as appearing for the respondents, as to whether they are ready to go for auction in the Court room itself? On the readiness and willingness shown by all of them, the Court proceeded further with the auction. The advocates, in the presence of their respective clients have taken part in the auction proceedings in the presence of learned advocate Mr.A.D.Oza, appearing for the Gujarat Secondary Education Board.

5 Initially, the present petitioner had shown his readiness and willingness to offer an amount of Rs.25,00,000/- (Rs.Twenty Five Lakhs Only/-) in addition to the tender granted to the tune of Rs.59.90 lakhs.

Thereafter, the respondent No.3, enhanced the same amount and ultimately the last offer was made by the present petitioner to the tune of Rs.2,52,00,000/- (Rs.Two Crores and Fifty Two Lakhs Only/-).

6 The respondent No.3 has not raised the aforesaid amount, and therefore, the highest amount offered by the petitioner in the auction which has taken place in the open Court is required to be accepted which is more than that offered by the respondent No.3 at the initial stage.

7 Hence, the petition is required to be considered and the tender granted in favour of the respondent No.3 is hereby quashed and set aside. The petitioner shall file an undertaking about the offer made in the open Court i.e. to the tune of Rs.2,52,00,000/- (Rs.Two Crores & Fifty Two Lakhs Only/-) on, or before, 03.05.2023 at 5:00 p.m. before this Court and a copy thereof be supplied to the learned advocate Mr.A.D.Oza failing which the original order accepting the tender in favour of the respondent

no.3 shall be revived. Subsequent proceedings, including granting of contract shall be proceeded by the Board in accordance with law. The amount shall be paid as per the tender notice and as per the contract which shall follow the tender notice. Rule is made absolute accordingly.

In view of disposal of the main matter, civil application also stand disposed of, accordingly.

(A.J.DESAI, ACJ)

(BIREN VAISHNAV, J)

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