

**BEFORE THE RECOVERY OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
EASTERN REGIONAL OFFICE (KOLKATA)
Recovery Certificate no. 1587, 1588, 1589 & 1599 of 2018**

ORDER

**Certificate under Section 28A of the Securities and Exchange Board of India Act, 1992 read with
Section 222 of the Income Tax Act, 1961 in respect of Bishal group of companies**

Order *qua* Shri Palash Ghosh in the matter of auction of properties of Bishal group of companies

Background:

1. In the matter of Recovery Proceedings against Bishal group of companies (hereafter 'Bishal group'), immovable properties belonging to them were put up for e-auction vide Notice of Sale dated January 11, 2024. The last date for submitting bid forms and EMD was February 8, 2024 and the e-auction was scheduled on February 13, 2024. In response to the said Notice of Sale, SEBI received EMD from 1 bidder for the following property of Bishal group.

*S No	Property description	Name and PAN of bidder
B6	Vacant land at LR Khatian No 400, Plot No. (R.S. & L.R.) 251 & 243 (Schedule 1) & RS Khatian No. 215, 218, 731, 220, LR Khatian no 1027, Plot No. (R.S. & L.R.) 218, 223, 224, 228, 230, 233 & 240 (Schedule 2), AREA- 202 decimal AND Vacant land at LR Khatian 400, Plot No. (R.S. & L.R.) 213, 220, 221, 222, 225, 227, 229, 232, 235, 237, 238, 239, 241, 242 & 245, AREA- 201 decimal J.L. No. 47, Touzi No. 7, Mouza Mayakol, P.S.- Dhubulia, Dist. Nadia	Palash Ghosh BHWPG4464Q

**S No as appearing in published Notice of Sale*

2. The auction of the abovementioned property was knocked down in favour of the sole bidder, viz. **Palash Ghosh**, for a bid value of Rs. 73,74,900/- (Rupees Seventy-Three Lakhs Seventy-Four Thousand Nine Hundred Only). Post auction, the bidder was supposed to make payment of sale consideration in 2 tranches- payment of 25% of sale value less EMD already paid (first tranche) within 48 hours of receiving intimation of successful bid, and balance payment of 75% of sale value along with 1% poundage (second tranche) within 15 days of date of sale (i.e. February 28, 2024).
3. They defaulted in making payments for the sale value (their highest bid placed during the bidding process on February 13, 2024) within the stipulated timeline. They had made full payment after the due date (i.e. February 28, 2024) and informed that the delay in making payment of second tranche



by 48 hours was due to unavoidable technical difficulties. As they failed to make payment within timeline given by Recovery Officer, their bid was cancelled by Recovery Officer in terms of the provisions of Point 11 (*Default of payment*) of the detailed terms and conditions of the sale notice dated January 11, 2024 and Point 16(b) (*Stay/Cancellation of Sale*) of the same, and EMD paid by them stood forfeited.

4. Subsequently, bidder filed a writ petition (WPA 8170 of 2024) before the Hon'ble Calcutta High Court (hereafter 'Hon'ble HC'), seeking recall/rescinding of the cancellation of the bid and confirmation of the sale in their favour in view of the fact that full payment had been made by them. They also sought prohibition on any subsequent action in furtherance of the cancellation of the bid and sale of the impugned property.
5. It is pertinent to note that in its order dated April 10, 2024, Hon'ble HC observed that while SEBI is justified in rejecting the bid, the obvious consequence of such a decision will be to conduct a fresh auction at the expense of public money. It was also observed that under Clause 19(c) of the Auction Notice, SEBI is at liberty to amend/modify/delete any of the conditions as may be deemed necessary. The Ld. Court further noted that since the Petitioner has acted in a *bona fide* manner throughout the auction process, the Recovery Officer was directed to grant an opportunity of hearing to the petitioner to justify the said delay and the decision of the Recovery Officer to cancel the said sale was set aside. Discretion was conferred on Recovery Officer to take a fresh call regarding cancellation or confirmation of the sale, and the entire exercise was required to be completed within three weeks from date of order.

Submissions of Shri Palash Ghosh:

6. Petitioner/bidder was afforded an opportunity of hearing on April 22, 2024, which was rescheduled to April 24, 2024 on their request. One Mr Ranit Ghosh appeared on behalf of bidder Mr Palash Ghosh before Recovery Officer on April 24, 2024, and reiterated that they could not make the payment in time owing to myriad inconveniences. Thereafter, the following submission was also made via email-

"I had duly made the payment of the first and second tranche within the stipulated period but due to shortage of funds I could not arrange to make the balance payment within the stipulated period as also I fell down and suffered a severe back pain on the last day on which I was supposed to make the balance payment. I most humbly beseech you to kindly condone the delay in making payment and request you to kindly issue a sale certificate in my favour".

Consideration of submissions:

7. I have carefully considered the submissions made on behalf of Mr Palash Ghosh and the other material available on record. I find that the issues raised by them pertain to and emanate from their delay in making payment of 75% of the sale price/second tranche in respect of the abovementioned property within the given due date. The timelines for making payment in respect of properties purchased in public auction which are followed in SEBI's recovery proceedings are specified in Rules 57(1) and 58 of Second Schedule of the Income-tax Act 1961, which are quoted below:-



57. Deposit by purchaser and resale in default. - (1) On every sale of immovable property, the person declared to be the purchaser shall pay, immediately after such declaration, a deposit of twenty-five per cent on the amount of his purchase money, to the officer conducting the sale; and, in default of such deposit, the property shall forthwith be resold.

(2) The full amount of purchase money payable shall be paid by the purchaser to the Tax Recovery Officer on or before the fifteenth day from the date of the sale of the property.

58. Procedure in default of payment- In default of payment within the period mentioned in the preceding rule, the deposit may, if the Tax Recovery Officer thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be resold, and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may subsequently be sold.

8. In terms of the aforesaid rules, the timeline for making full payment of sale consideration by the bidder is 15 days from the date of sale, and default thereof results in the property being put up for resale.
9. In respect of reason provided by the bidder for not making payment of second tranche as per timelines is shortage of funds followed by medical exigency, I note that after he was declared as the successful bidder for the abovementioned property after conclusion of auction on February 13, 2024, he was informed to make full payment before February 28, 2024 via email and tele communication by SEBI through empanelled agency assisting with SEBI for conducting the auction. However, the bidder he sent intimation of payment of second tranche to SEBI on March 1, 2024 with the reason that the delay in making payment was owing to technical difficulties. It is worthwhile to note that the bidder had not informed SEBI about any medical exigency until March 5, 2024, well after the intimation of cancellation of bid was sent to them by SEBI via email on March 1, 2024. If one were to consider all the facts and circumstances indicated above in totality, it is hard to ascertain whether the real reason for delay in making full payment was technical difficulties, shortage of funds, medical exigency, negligence, or a combination of all of them.
10. I note that the observation by Hon'ble HC regarding Clause 19(c) of the sale notice i.e. "*SEBI is at liberty to amend/modify/delete any of the conditions as may be deemed necessary*". In this regard, Recovery Officer can exercise this discretion to amend/modify/delete any of the conditions of auction only in a manner for conducting free, fair and transparent manner of the sale, and after following due procedure of issuing public notice to that effect. Further, Recovery Officer does have limited discretion in modifying the terms and conditions of notice of sale, however, only to the extent the same do not violate any possible statutory provisions.
11. The bidder has submitted before the Hon'ble HC that they had tendered the last/second tranche of the payment on the very next date after the expiry of the last date but the same could not take place due to technical glitches at the end of the banker of the petitioner, for which the petitioner cannot be held liable. Hon'ble HC has accepted the same. Here, I note that after they were declared the successful bidder for the property, the bidder had faced some technical difficulty in making payment of the first tranche of purchase money, which was supposed to be made within 48 hours of receipt of intimation of successful bid from SEBI/agency (i.e. on February 15, 2024). In view of the bona



fide of the bidder and the information provided to SEBI that the technical difficulty was on the end of the banker over which the petitioner had no control, allowance was made at the time for the delay of 1 hour. However, there is no legal provision which allows Recovery Officer to condone the delay in making payment of second tranche for the same bidder for the same reason.

Order:

12. The sale of the abovementioned property cannot be confirmed in favour of bidder Shri Palash Ghosh, and said property will be put up for resale in terms of the provisions of the Second Schedule of Income-tax Act, 1961. The actual expenses incurred for such sale has been proportionately defrayed from the amount deposited with SEBI by the bidder towards the said property in terms of Rule 58 of second schedule of Income Tax Act, 1961 and the remaining amount will be refunded to him. In compliance with the directions of the Hon'ble HC, the representation/petition of Shri Paalsh Ghosh is disposed off in terms of the abovementioned directions. True copy of this order to be served on Shri Palash Ghosh for information.

Given under my hand and seal at Kolkata this 3rd day of May, 2024.

SEAL



le. N. K. R.
RECOVERY OFFICER

राजकुमार कलुरि / Rajkumar Kaluri
वसूली अधिकारी एवं उप महाप्रबंधक
Recovery Officer & Dy. General Manager
भारतीय प्रतिभूति और विनियम बोर्ड
Securities and Exchange Board of India
कोलकाता / Kolkata