

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

WRIT PETITION (L) NO. 2070 OF 2017

1. Shapoorji Pallonji & Company Private) ... Petitioners.
 Limited, a Company incorporated under)
 the Companies Act, 1956 with its registered)
 office at Contractor Building Basement,)
 Ramjibhai Kamani Marg, Ballard Estate,)
 Mumbai – 400 038.)
)
 2. Mr. Jai Laxmikant Mavani,)
 Director of Shapoorji Pallonji & Company)
 Pvt. Ltd. Aged 47 years and having his)
 office at 41/44, S.P.Centre, Minoo Desai,)
 Marg, Colaba, Mumbai-400 005.)

V/s.

1. State of Maharashtra, acting through its)
 department of Housing at Mantralaya,)
 Madam Cama Road, Hutatma Rajguru)
 Square, Nariman Point, Mumbai -32.)
)
 2. Maharashtra Housing Development)
 Authority, acting through the Chief Officer,)
 Mumbai Housing & Area Development)
 Board at Grihanirman Bhavan Kalanagar,)
 Bandra (East), Mumbai – 400 051.)
)
 3. National Informatics Centre, having its) ... Respondents.
 office at 11th Floor, New Administrative)
 Building, Mantralaya, Madam Cama Rd,)
 Mumbai 400 032.)

Mr. Iqbal Chagla, Senior Advocate with Mr. Ravi Kadam, Senior Advocate, a/w. Mr. Prashant Mali, Ms. Shoma Maitra i/by M/s. Wadia Ghandy & Co. for the Petitioners.

Mr. Kedar Dighe, AGP for the State- Respondent No.1.

Mr. Girish Utangale, Advocate a/w. Mr. Chetan Mhatre, i/by M/s. Utangale & Co. for Respondent No.2.

Mrs. N. Masurkar, Advocate, with Mr. Vinay Shankar Masurkar for Respondent No.3.

Mr. Siddeshwar Konur, - Ex. Engineer (MHADA), is present.

**CORAM : ANOOP V. MOHTA AND
SMT. BHARATI H. DANGRE, JJ.**

DATE : 28th SEPTEMBER, 2017

**[JUDGMENT RESERVED ON : 22.09.2017
JUDGMENT PRONOUNCED ON : 28.09.2017]**

JUDGMENT : (Per Bharati H. Dangre, J.)

1 Rule.

2 Heard the matter finally by consent of the parties at the stage of admission.

3 Respondent No.2-Maharashtra Housing Development Authority, through its Chief Officer, issued e-Tender notice inviting proposals for the work of "Technical designing, co-

ordination and construction for rehabilitation/sale/ commercial /amenities alongwith construction of habitable temporary transit camps and other various works in respect of redevelopment project”. The bidders were to submit their bids in a single stage, two e-envelops e-tendering process. The first e-envelope/the technical bid was to be evaluated to ensure technical and financial qualification and was to contain the documents of eligibility, depicting technical and financial capacity of the bidder including the other documents. Envelope no. 2 was to contain the financial bid in the format prescribed. The bidding companies were to comply experiences and required conditions mentioned in RFQ cum RFP document. The time limit for the said project was prescribed as 96 calendar months and the bid security/EMD in the form of the demand draft or bank guarantee was to be submitted for each project site with value of INR 54,00,00,000/-.

4 The bid document was to be down loaded from the e-tender website www.mahatenders.gov.in from 3rd April, 2017 to 17th May, 2017 and the bidders were advised to refer to bidders' manual kit available at <http://mahatenders.gov.in> for details about e-tender process to be followed. The last date of the submission of the OnLine bid was scheduled as 17th May, 2017 which was extended from time to time and lastly it was fixed as 27th July, 2017 at 13.00 hours IST.

5 Petitioner No.1 is a company incorporated under the Companies Act, engaged in the business of executing construction, redevelopment and infrastructure projects and it claims to pose vast experience, including the construction and redevelopment project in the city of Mumbai.

In furtherance of the e-tender notice issued by Respondent No.2, the petitioner no. 1 company, being desirous of participating in the tender process, raised certain pre-bid queries and uploaded its technical and financial bid on 27th July, 2017 at about 12.16 hrs on e-procurement system on the

website of respondent no.1- www.mahatenders.gov.in. The Petitioners relies upon a screen shot on the bid sreen, confirming such uploading on date of submission to demonstrate that their envelope nos. 1 and 2 were duly uploaded on the schedule date and before the scheduled time prescribed. According to the petitioners, the bid documents were admittedly uploaded on the e-portal, however, the freeze bid button was not logged or recorded in the respondents' system, as a result, the petitioners could not get any acknowledgement. As per tender conditions, a bank guarantee equivalent to 5% of the contract value i.e. Rs. 50 crores was also submitted by the petitioners in the office of second Respondent, which is still lying with the second respondent. The petitioner states that when the petitioner did not receive the acknowledgment, the correspondence was entered into between the petitioners and respondent nos. 1 and 2. The petitioners also made a request to the second respondent for postponing the date of opening of the technical packages, scheduled on 21st July, 2017, till the issue was

resolved. However, respondent no. 2 proceeded with the opening of technical bids and in the process, the petitioners also participated. The petitioner was orally informed that the petitioner's bid was not received in the respondents' system and therefore, its bid will not be considered as "valid bid". The petitioners sought an experts' opinion from the private consultants, who advised that since the e-bid of the petitioners was properly uploaded on the respondents' server, which should be available for access by the second respondent and can be retrieved in time but since respondent no.2 was not ready to consider the bid of the petitioners, the petitioners approached this Court by filing the present petition on 01.08.2017.

6 On 03.08.2017, this court directed the Respondent No.2 MHADA to seek instructions as to why the bid of the petitioners, though duly submitted on the schedule date and time, is not seen on the Website of the respondents department and that the counsel for the respondent no. 2 was

specifically asked to verify whether it can be retrieved from the server of the MHADA with assistance of the NIC. The matter was, thereafter, posted to 07.08.2017. On the said date of hearing, we thought it appropriate to implead the National Informatics Centre, Mumbai as a party Respondent and on that day, submission was made by the learned senior counsel for the MHADA that the evaluation is in progress and it will take approximately 7 days' time and the matter was adjourned.

The matter was adjourned from time to time and the respondent no. 2 has submitted the affidavit-in-reply on 07.08.2017. In the affidavit in-reply, the respondents stated that on the date of opening of technical bid, the bid of the petitioners was not found on e-tender portal though in total three bids were received, on e-tender portal on 27.07.2017 and, therefore, those bids which were received, were opened.

According to respondent no.2, the NIC had intimated that "if the acknowledge slip was not generated through the system, then the process of submitting bid is not complete" Thereafter, correspondence entered between

respondent no.2 and respondent no. 3-NIC. Respondent No. 2 alongwith the affidavit has placed on record the report submitted by respondent no. 3-NIC, which is dated 04.08.2017. It was intimated that the bidder did not click the freeze button and therefore, the bid is invalid and data uploaded by the bidder is not retrievable through web application. The tender details and bidder's logging details on server were also supplied which showed the bid status of the petitioners as "Invalid bid" .

In view of the report of the NIC, we directed the NIC, respondent No.3, to file an affidavit in reply. Accordingly, on 16.08.2017 an affidavit-in-reply is filed before us by Mrs. Ireni A, Co-ordinator, e-Procurement Software Division, Mumbai. It is categorically stated that the bidder has not clicked the freeze bid button and therefore, it did not generate the acknowledgment, indicating all details in respect of the completion of the bid submission.

The petitioners disputed the said statement and filed an affidavit of Shri Arun Gupta, Managing Partner &

Director Ingenium Advisory Pvt. Ltd., who is an expert in the field of information technology. The said affidavit was filed on 21.08.2017, wherein it was categorically stated that even if the clicking/effect of the freeze bid button is not recorded by the system, the uploaded bid document will be encrypted and stored on NIC's server or associate either on a 'file server', 'network attached storage', 'storage area network' or within a database, as the case may be.

7 Considering the said affidavit, which discloses the technical viability of the process, we thought it necessary to afford an opportunity to the NIC to deal-with the said affidavit. The NIC has again filed an affidavit on 23.08.2017, reiterating its earlier stand that clicking freeze bid button is mandatory requirement to complete the bid process which would automatically generate an acknowledgement which would indicate all details with respect to completion of the bid submission. However, there is no reply to the specific affidavit of Mr.Arun Gupta filed on behalf of the petitioners

and it has only stated in the affidavit that the affidavit of Shir Gupta may not be considered by this court.

8 We have considered the rival contentions of the parties. We have heard learned senior counsel Shri Iqbal Chagla and learned senior counsel Shri Ravi Kadam on behalf of the Petitioners and learned counsel Shri Girish Utangale appearing for the MHADA and the NIC. The learned senior counsel appearing on behalf of the Petitioners argued that when their bid documents were admittedly uploaded in the e-portal within stipulated time in spite of pressing freeze bid button, the system of respondents did not record the same and did not generate the acknowledgement. It is also attempted to canvas before us that the pressing of freeze bid button is not essential requisite for submission of the bid document, as tender documents makes no reference to the freeze button. According to the learned senior counsel, the petitioners' essential requirement is the uploading of bid document within the stipulated time. Learned senior counsel Shri Chagla placed reliance on section 13 of the Information

Technology Act, 2000, which provides for time and place of despatch and receipt of electronic record. According to him the opinion of the expert in information technology, who had filed an affidavit before this court, stating that the bid document would be available on the NIC's server in the same format and composition, as at the time of their uploading to the said e-portal, is not disputed by the NIC. The learned senior counsel argued that even assuming the case against himself, if bid freeze button is not pressed, at the most the documents do not transmit to MHADA but they surely remain in the server of the NIC since the NIC hosts the e-portal system website on www.mahatenders.gov.in and has a complete access to all data readers to use e-portal including such documents that may be uploaded by the users on the site of e-portal. According to the learned senior counsel the screen shot copy produced by the petitioners reveals that the technical as well as financial documents of the petitioners were successfully uploaded on 27.07.2017 at 12.16 p.m. with a full size of 40087.00 for the technical bid and 814.00 for the financial

bid. Thus according to him, the said files uploaded are available on the server of the e-tender portal and with the help of a technical staff, it is possible for the MHADA to retrieve the submitted documents i.e. the technical and financial bid of the petitioners.

Learned senior counsel for the Petitioners also argues that since the process has the participation of three bidders, who are technically qualified, there will be one more bidder in the arena and it would sub-serve the public interest by allowing one more bidder in the project of the huge magnitude and according to him if the bid is retrieved, it would not cause any prejudice to any other bidders or MHADA. He placed reliance on the judgment of the Apex Court in the case of **M/s. Scania Commercial Vehicles India Pvt. Ltd., vs. Govt. of Karnataka (2016 SCC OnLine Kar 6744)**. He also relied upon the judgment of the Division Bench of this court (Coram : Swatanter Kumar, C.J. & A.M. Khanwilkar,J.) in the case of **Infrastructure Leasing and Financial Services Ltd., & Anr. vs. State of Maharashtra &**

Anr. in Writ Petition No. 1454 of 2009 with Chamber Summons No. 266 of 2009 in WP-1454 of 2009. He also placed reliance on the judgment in the case of **Khare and Tarkunde Infrastructure Pvt. Ltd., vs. the State of Maharashtra** - (2015 (4) MLJ 474).

9 On the very first date of issuing notice to the respondents, we had specifically asked the learned counsel for respondent no.2 to verify whether the bid of the petitioners which is uploaded can be retrieved from the server of the MHADA with the assistance of the NIC. We also repeatedly inquired from the NIC, who is entrusted with the duty of officially hosting, designing and developing websites and servers for various governmental agencies as an expert body, however, both the respondent nos. 2 and 3 have failed to technically answer the question posed to them by us. The Respondent No. 2 - MHADA is relying upon the report of the NIC to contend that the bid of the petitioners did not reach to them and the NIC do not either explain to us technically as to

what happens to the bid once it is uploaded on the system and whether the encryption technology permits the decryption, by using the key available with the NIC and MHADA. We had asked NIC to reply technically to the affidavit of expert filed by the petitioners, but the NIC fails to touch the technical aspects of the matter, and keeps on reiterating that if the freeze bid button is not pressed, it is a invalid bid.

10 We are conscious of the fact that we are not a technical expert, however, we cannot completely shut our eyes to certain factual statements of the petitioners which are not disputed by the NIC. The NIC has submitted a report which is annexed by respondent no.1 alongwith its affidavit dated 04.08.2017 and the report mentions the logging ID from which the bid of the petitioner no. 1 was uploaded. It also reflects that on 27.07.2017 the petitioners logged 5 times with its IP address -182.72.45.2. The report also gives file upload details of the petitioners bid reflecting the uploaded

date to be 27.07.2017 and shows that on the site/ on the given dates, the of following files are uploaded :-

G. File uploaded details :

Sr. No.	File Name	Uploaded date	File size in KB
1	TECH.rar	27/07/17 12:06:24 PM	40087
2	FinancialBid.pdf.	27/07/17 12:16:43 PM	814

The report shows the number and time when the petitioner bidder logged, as also other bidders logged in, showing that there was no problem in the server during that time. Further the report contains the following statement :

“In this case, the bidder has uploaded the technical and financial documents before the bid submission end date and time. However, the bidder has not clicked on the freeze button. Unless or otherwise the freeze button is clicked, the document will not be available to the tender inviting authority and will remain in the area allocated for the bidder.”

Further, in the affidavit filed by the NIC, the Coordinator of Respondent No.3 , a following statement is made :

“When the documents are uploaded they are encrypted using PKI technology and digital signature certificates of Bid Openers pre-designated by Tender Inviting Authority for each tender. The encrypted bids are stored safely in the storage attached to the server. These encrypted bids would not be available to tender Inviting Authority and cannot be decrypted manually by any means. This full proof process is followed as the electronic tendering is a critical and sensitive application and no intervention from any source should be able to tamper the bids. This encryption methodology assures complete security of the system. It is also submitted that NIC does not have any access to the data.”

11 The expert of the petitioners who has filed an affidavit before this court makes a following submission in para nos. 4 and 5 thereof :

“4. My present technical clarification deals with the question as to whether the aforesaid bid documents have been successfully uploaded by the First Petitioner and whether the same can be accessed and

retrieved from the e-tender system and/or its associated servers. Accordingly, I state that after having attached the files comprising the bids documents and hitting the submit or upload button by the First petitioner, the First Petitioner's bid documents get uploaded, i.e. copied, encrypted & saved, from First Petitioner's Computer to remote server/s of NIC in the hosted place given for MHADA. I further clarify that the present Affidavit and my views expressed hereinafter proceeds on the basis that the Freeze Button did not get logged in the Respondents system.

5. I say that even if the clicking/effect of the freeze bid button is not recorded by the system, the uploaded bid documents will be encrypted and stored on NIC's server or associates either on a 'File Server', 'Network Attached Storage', 'Storage Area Network', or within a database as the case may be. I say that in the unnumbered paragraph 2 on Page 43 of the said Affidavit, the Respondent No.3 clearly admits that the bids are stored safely in storage attached to the server. The server referred to in the said paragraph is NIC's server as the documents have been uploaded through NIC's e-portal and cannot be a reference to the server of the First Petitioner.”

12 The technical expert of the petitioners, on whom the petitioner relies upon, has also filed his affidavit before this court in response to the query of this court and states that the petitioners' bid documents got uploaded i.e. copied, encrypted and saved from the Petitioners Computer to the server of the NIC. The said documents are encrypted and stored on the NIC server or at the database and that the server is the NIC's e-portal. The expert has explained that the bid openers i.e. the MHADA is authorized and duly equipped to open the bids with decryption key to unlock the bids. It is true that since the decryption key is held by the MHADA it will be possible for MHADA and the NIC to jointly retrieve the documents from NIC's server using the MHADA's decryption key.

This particular technical aspect of the matter is not replied to or answered either by the respondent no.2 or by the respondent no.3 . The NIC in its report has specifically admitted that after the bid was uploaded (the technical and

financial documents) before the bid submission date and time but since the freeze button is not pressed, the document is not available to the tender inviting authority i.e. the MHADA but it will remain in the area allocated for the bidder. In the affidavit of NIC it is categorically stated that the encrypted bids are stored safely in the storage attached to the server. Thus there is a clear admission given by the NIC that the encrypted bids are stored in the storage attached to the server which has the space allocated by the NIC for e-tendering process for the Maharashtra Government and Respondent No. 2 - MHADA was using the e-portal provided by the NIC. This statement appears to be borne from the record as the government's e-procurement system of the NIC which was produced before us and it involves various steps to be followed by the bidder while logging in the government e-procurement system. The said system provides logging ID to the bidder which is generated by the pass-word and thereafter the bidder gets access to various tenders and several details of the tender document. The bidder then proceeds to upload the

document needed for bidding in the technical stage and then proceeds to fill the financial bid. Every time, he presses an encryption button, on which the documents get uploaded. Thereafter, he again enters the pass-word and on clicking “Ok” button, the packed bid document gets uploaded successfully. Similar process is repeated in respect of the financial bids.

When the petitioners receive the message that his technical and financial bid documents have been uploaded successfully and if either freeze button is not pressed, generating an acknowledgment or if it is pressed but did not get registered with the respondents website, then necessarily the document did not get transmitted to the tendering Authority and the NIC has rightly stated in its report dated 04.08.2017 that they “remain in the area of allocated for the bidder”, which was created by the bidder by using pass-word and logging ID on the e-portal of Respondent No.3. As we are not a technical expert as to know what manner the data can be de-encrypted, but considering the admission and

submission of the parties, it is apparent that on uploading of the documents they are saved on the server and since the MHADA did not receive it, they lie within the server of the NIC and it is not possible to accept the submission of the NIC that it cannot be retrieved. Further more the NIC has itself stated in the affidavit that no manual intervention is possible and once the data got encrypted it remains saved in the server, thus according to us, by following the methodology stated by the expert in respect of the petitioners' in his affidavit dated 21.08.2017, we feel that the interest of justice can be subserved by permitting the petitioners to participate in the process and by giving directions to the respondent nos. 2 and 3 to access the bid documents of the petitioners which would not cause prejudice to any of the participants since the financial bids are not still opened and on the contrary it would be in the interest of the State to have a wider choice of the bidders since it would add one more bidder.

13 In the case of **M/s. Scania Commercial Vehicles India** (cited supra), the Karnataka High Court dealt with the similar situation where during the uploading of the tender, the system displayed a message “unexpected error” in the e-portal which reflected a technical glitch. After dealing with the factual scenario, the Karnataka High Court was pleased to observe that it was not the case where the petitioner bidder had not responded to the tender by attempting to upload the bid within the prescribed time limit but due to some technical hindrance, the bid was not uploaded and it was only available in the ‘draft’ in the e-portal of the respondent. The Court was, therefore, called upon to deal with the question about acceptance of the same and not to add anything to it or uploading any further documents but only by retrieving, viewing and evaluating the same. In this background, the Karnataka High Court observed in paras 23 and 24 thus :

“23.. Though such recording is at the back end of the system, what was displayed on the screen was as ‘unexpected error’ which made the

petitioner to contact the help desk, get clarification and act accordingly which resulted in loss of time. Hence, an appropriate software to display the exact reason on the screen would have been beneficial, which should also be the object if one is to boast of adopting e-governance in its true intent. In these circumstances when there is marginal delay of less than 2 minutes in completing the process, if an opportunity is granted and that too when it is not an insertion or addition as fresh material, it will neither be contrary to the Rules or the terms of the tender requiring consideration of bids submitted through e-process. It will also not be contrary to the dictum laid down in the above cited decisions.

24. If such benefit is granted, in my opinion, it will in fact be in public interest. As noticed the tender floated is for procurement of 150 AC premium buses and 350 non-AC buses involving the cost of Rs.250 crores. The petitioner is a well known manufacturer of buses and if they are allowed to remain in the field it will only increase the competition though ultimately it will all depend on the technical as well as financial evaluation and that too subject to the entire details being available in the 'draft' that is already uploaded. On the other

hand if an opportunity is not granted only because of the delay of less than 2 minutes and that too in the circumstance stated above, it will leave only the respondents no. 5 and 6 in the field without much competition. To allow a tender of such magnitude to the benefit of one or two tenderers due to default rather on merit, it certainly is not in public interest. While stating so, this court is also conscious of the fact that it should not cause prejudice to the bidders who are already in the field. The petitioner should therefore, have benefit of only the details which is in the digital form as 'draft', in the e-portal of the respondent no. 4, which only shall be enabled by the respondent no. 4 to be retrieved, viewed and noted by respondent no.3 and no other addition or subtraction can be permitted".

In the judgment of Division Bench of this court in **Infrastructure Leasing and Financial Services Ltd.'s** case, cited supra, relied upon by the learned senior counsel for the petitioners, where the court was dealing with the acceptance of bid through manual mechanism and where the bid was received few minutes before the closing time but due to the

mistake of the clerk, the time was shown, two minutes after the bid process was complete and the said bid was categorized was 'late bid' and was not permissible to be accepted. The Bombay High Court observed in para 28 of the said judgment as follows :

“28. This entire problem can even be viewed from another angle. Does any of the parties including the Respondent particularly would suffer from any prejudice if the tender of the Petitioners is also permitted to be considered?. Obvious answer would be in the negative. It is a tender of huge amount and it will be in the interest of the State on the one hand to have a wider choice out of the lowest bidders and on the other hand, it would serve the public interest. It can hardly serve any public purpose and public interest if fair competition is suppressed at this juncture. We are told that there are only three tenderers including the Petitioners. Nothing substantial has happened as yet. In our view, no prejudice will be caused to any of the parties including the Respondent who will get wider zone of consideration by offering greater competition which will always be in the public

interest. Obviously, the Petitioners would not gain anything as all the bids are in a sealed cover and it is for the State to take appropriate decision depending upon the clear technical bids and financial bids offered by the tenderers in accordance with the terms and conditions of the tender document.”

Further the Bombay High Court in dealing with a similar issue as to whether the financial bid can be retrieved when the system is closed, in **Khare and Tarkunde Infrastructure Pvt. Ltd.'s** case, in a judgment delivered by the division bench of this court (Coram : B.R. Gavai and V.M. Deshpande, JJ) had summoned an expert in the information and technological department and had made a particular query as to whether it is possible to open financial bids after its closing date and it received an answer in the positive and the court has recorded so in paragraph 26 of the said judgment :

“26. It was submitted by the learned Government Pleader yesterday that since the petitioner’s tender was rejected and his bid was locked and, therefore,

it will not be possible for the State to open its financial bid. We, therefore, requested the learned Government pleader to ask the officer who is conversant with the process of technology applied in the tender matters to remain present in the Court. Accordingly, Mr. Shrikant Golkutwar, Assistant Engineer in Information and Technology Department of the Public Works Department, Nagpur is personally present in the Court. He has stated that it is possible to open the financial bid of the petitioner. On a specific query, he has stated that it is not possible for the petitioner to change his bid and the Department possesses the technical experience to open the financial bid of the petitioner as was submitted by it in its original tender.”

Though the learned senior counsel for the petitioners has argued before us that freezing button is not an essential condition of the tender. In the light of the parameters laid down by the Apex Court, as regards essential and non-essential conditions of the tender, by making the reference to the judgment in the case of **Rashmi Metaliks Limited & Anr. vs. Kolkata Metropolitan Development Authority & Ors.**

[2013 (10) Supreme Court Cases 95], we do not propose to go into the issue whether the said condition was essential or not, since the technology requires a particular thing to be done to complete the process, it ought to be followed when the bidders were given manual kits to follow. We are examining the issue that when this system had failed, what is the solution to be offered to a bidder, who cannot be said to be at fault. We, therefore, do not feel necessary to refer to this judgment cited by the learned senior counsel.

On perusal of the aforesaid position of law, as reflected in various judgments, it is clear that technology has its own glitches and the moot question is whether such glitches, which causes substantial injustice are permitted to be cured manually, when as on today we have not reached a stage where the systems is full proof and gives a guarantee that it is not susceptible to any error.

14 The impact of technology in our life today, is unimaginable. We use technology every day and it has saved

us of time and efforts. Introduction of the e-tendering system has made the cumbersome process of tenders simple, faster and also free from unnecessary human intervention. However, in a situation with which we have dealt with above, the question is whether the use of the technology has offered solutions or it has created issues. The increased dependency on modern technology has reduced our creativity and human being is dependent upon the said technology which undisputedly is an useful servant but a dangerous master. In words of Albert Einstein “human spirit must prevail over technology”. In the present case in hand we have observed that uncertainty prevails in certain areas and no technology can make the system 'full proof' and as such a situation where the technology can err, we cannot completely exclude the element of human intervention in exceptional circumstances. Ultimately, it is the human being who controls the technology and when it errs, it is for the human being to rectify it. No solution is coming from the expert and the technology operator-NIC as to what happens if the “freeze button is not

clicked”. On the other hand, the NIC itself shows that once the bids are uploaded, they remain safe and saved and human intervention is not possible. In this background and for the reasons which we have already discussed above, we feel it expedient to intervene in the technological procedure since we feel that the technology has failed to serve its intended purpose in the present case and interest of justice call for intervention. Every citizen has legal and fundamental rights which are required to be protected and in a digital world the said rights cannot be lost sight of but the same are to be protected by providing alternative and effective solutions, to be introduced into the modern technology/web-system and in the process of tender it is very much necessary to ensure that the bidders are not shunted out of the procedure only on account of any technical glitch and technology needs to be developed in a manner to cater to their needs without causing any delay in the scheduled time. We also makes it clear that we are inclined to grant relief to the petitioners, considering 'public interest and the fact that the bid of

petitioners (technical/financial) are already sealed after their uploading and no changes are possible now, and we treat this as sealed packets submitted within date and time as per tender document.

15 In the aforesaid facts and circumstances, we issue directions to the NIC to access the files containing the bid documents of the petitioners and transfer and/or make it available to respondent no.2 MHADA which would decrypt the said files and consider the bid documents of the petitioners as a “valid bid” with the assistance of the NIC and open the technical bid of the petitioners forthwith since we are conscious of the fact that the learned counsel for the MHADA had made a statement before us on 07.08.2017 that the technical evaluation of the bids is going on and in any case we do not intend to stall the project. If the petitioners bid satisfies the technical conditions, his financial bid can be considered alongwith the other three bidders who are already in the fray.

16 In the result, the writ petition is allowed in the aforesaid terms. Rule is made absolute accordingly. No order as to costs.

(SMT. BHARATI H. DANGRE,J.)

(ANOOP V. MOHTA,J.)

