

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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**Civil Writ Petition No.8712 of 2016
Date of Decision:20.05.2016**

The Vijay Co-op L & C Society Ltd.petitioner

Versus

The State of Punjab and othersrespondents

**CORAM: HON'BLE MR.JUSTICE S.J.VAZIFDAR, ACTING CHIEF JUSTICE
HON'BLE MR.JUSTICE ARUN PALLI**

Present: Mr.T.P.S.Makkar, Advocate
for the petitioner

Mr.J.S.Puri, Addl.AG Punjab

S.J.VAZIFDAR, ACTING CHIEF JUSTICE (ORAL):

The petitioner has challenged the official respondents' decision to reject his tender on the ground that it is non-responsive. The official respondents contend that the petitioner is not eligible in view of Clause 9 and 10 of the Notice Inviting Tenders (NIT) which read as under:

9. The tenderer should have executed equal amount of work during the closure period within any year of last three years. The capacity of work will not be reckoned if the agency has not successfully completed his on going work under this Division.

10. Contractor/Agency shall have to submit his financial capacity for

(i) equal amount of the tender amount of each work separately in the form of Bank Account/FDR

(ii) The amount as mentioned should be available on the date of downloading bid form.

2. The petitioner had bid for items 1,5 and 6. The petitioner

had been awarded the work at Sr.No.6.

3. The petitioner was not eligible with regard to the works at Sr.No. 1 and 5 as it admittedly did not demonstrate its financial capacity as required by Clause 10. The petitioner admits that it was not in a position to demonstrate the financial capacity as required by Clause 10.

4. The petitioner however, relies upon a notification dated 02.10.2014. Clause 4 thereof, inter alia, states; "No bank guarantee or security will be taken from the co-operative L & C Societies". The petitioner submits that it is accordingly not required to fulfil the eligibility stipulated in Clause 10.

5. The submission is not well founded. The notification absolves a Society such as the petitioner from furnishing a bank guarantee or security deposit. Clause 10 of the NIT however does not require the bidder to furnish either a bank guarantee or a security deposit. It requires the bidder to establish its financial capacity. Financial capacity is different from a guarantee or a security.

6. As far as item No.1 is concerned, the petitioner in any event would be ineligible in view of Clause 9 of the NIT as the single work done by it was less than 80% of the value of the work.

7. In the circumstances, the petition is dismissed.

**(S.J. VAZIFDAR)
ACTING CHIEF JUSTICE**

May 20, 2016
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**(ARUN PALLI)
JUDGE**