$~11

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment delivered on: 23.03.2017

\+ **W.P.(C) 892/2017 & CM 4114/2017 & 8713/2017**

VF WORLDWIDE HOLDINGS LTD. .... Petitioner

versus

MINISTRY OF EXTERNAL AFFAIRS, GOVT. OF INDIA & ANR ..... Respondents

Advocates who appeared in this case:

For the Petitioner	: Mr MahinderAcharya, Sr. Adv. with Mr Samar Kachwaham & Mr Raghavendra M Bajaj.
For the Respondent Nos.1 & 2	: Mr Ajay Digpaul, CGSC with Ms Arti Bansal.
For the Respondent No.3	: Mr Rakesh Tikku, Sr. Adv. with Mr Arvind Sharma.

CORAM:-
HON'BLE MR JUSTICE BADAR DURREZ AHMED
HON'BLE MR JUSTICE ASHUTOSH KUMAR

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

1. This writ petition is directed against the letter dated 23.01.2017 which has been addressed by the respondent no.2 to the petitioner whereby the petitioner was informed that since its bid security was a New Zealand dollar and not in US dollar, the petitioners bid for providing Visa /Passport /Consular support services at three locations in New Zealand i.e. Wellington, Auckland and Christchurch by establishing India Visa Application Centres (IVACs) was rejected.

2. The short point of controversy is with regard to the currency in which the earnest money deposited was made. According to the learned counsel for the petitioner, the RFP as it originally stood, require the bidders to submit the bid security amount of NZ$70,000. This would be cleared from paragraph 8 (n) of the RFP which reads as under:

> *"(n) The Bidding Company must deposit a Bid Security of NZ$70,000. The Bid Security is refundable not later than 15(fifteen} days from the opening of financial bid and award of Contract, except in the case of the selected Bidding Company whose Bid Security shall be retained till it has provided Bank Guarantees as indicated in Para X - Bank Guarantees of this document."*

3. The above condition clearly stipulated that the bidding company must deposit a bid security of NZ$70,000.

4. However, the very RFP by virtue of paragraph 17(n) permitted the mission to amend the RFP or its enclosures at any time prior to the deadline for receipt of bids. The relevant clause reads as under:

> *"n) The Mission reserves the right to amend the RFP and or its enclosures at any time prior to the deadline for receipt of bids. Any such amendment will be numbered, dated and issued by the Mission and will be intimated to the Bidding Companies by Email and also uploaded in the websites of the Ministry and the Mission/Post. Where amendments are significant, the Mission may, at its discretion, extend the deadline for receipt of bids."*

5. It would be seen from the above paragraphs that when an amendment is made, it has to be numbered, dated and issued by the mission and has to be intimated to the bidding companies by emails and also uploaded in the website of the Ministry and the Mission.

6. It is an admitted position that a Corrigendum-II to the RFP dated 16.12.2016 was issued. The said Corrigendum reads as under:

"No. WEL/ 415/2/2016 December 16, 2016

CORRIGENDUM-II TO RFP ANNOUNCED ON NOVEMBER 15, 2016

CHANGE IN THE CURRENCY OF BID SECURITY

This has reference to the RFP announced for outsourcing of consular/visa services in the High Commission of India, Wellington, New Zealand. The penalties in the RFP have been specified in US Dollars, whereas the bid security has been mentioned in NZ Dollars.

2. In order to have a uniformity in the dealing currency, and in view of the convertibility of US Dollars, it has now Been decided that the bid security shall be US $50,000 (US Dollars Fifty thousand only) to be provided through a demand draft in the name of 'High Commission of India, Wellington'.

3. It may be noted that any bank charges or commission or any other charges, which may cause a variation in this amount of US$ 50,000 shall be borne by the company submitting the bid security, and the company shall be responsible for making up the shortfall, if any, occurring out of any such charges.

> *4. The above may considered to have been substituted in the RFP, and in the Annexures, wherever the bid security is mentioned."*

7. The learned counsel for the petitioner contended that those corrigenda was placed in the website of the mission as well as of the Ministry that no email was sent to the petitioner or in fact to any of the bidders with regard to the change in the currency of the security deposit.

8. This is also admitted by the learned counsel appearing for the respondent nos.1 & 2 that the corrigendum was uploaded on the said websites but had not been sent through email to the bidders including the petitioner.

9. It is in this context that the learned counsel for the petitioner submitted that since the email had not been received intimating the petitioner with regard to the said corrigendum-II, the petitioner deposited the bid security amount in NZ$70,000 which on the date of deposit if converted into US dollar would amount to Rs.50,800/-. This meant that in fact an excess of US$800 had been deposited by way of bid security. Therefore, by way of substantial compliance, the bid security was available with respondent nos.1 & 2. In an event, he submitted that since the corrigendum had not been notified to the bidders in the manner

prescribed in paragraph 17(n) of the RFP, the corrigendum would not be relied upon to disqualify the petitioner for having submitted in the bid security in the original currency of the New Zealand dollar.

10. The learned counsel for the respondent nos.1 & 2 submitted that the corrigendum dated 16.12.2016 was the second corrigendum. Though this corrigendum like the earlier corrigendum dated 12.12.2016 had not been sent by email to the bidders. The petitioner had responded to the first corrigendum but kept silent about the second corrigendum. Therefore, according to the learned counsel for the respondent nos.1 & 2, the petitioner was well aware of the corrigendum-II dated 16.12.2016 and they could not take the plea that they were not informed particularly because the corrigendum had not been uploaded on the website of the Ministry and the Mission.

11. This argument was also fully supported by Mr Tikku appearing for the respondent no.3.

12. Having considered the arguments advanced by the learned counsel for the parties, we are of the view that since on a technical plea, the petitioner bid is sought to be rejected. The technicality would also apply the other way. Paragraph 17(n) clearly stipulates that in case any

amendment is made, it must be numbered, dated and issued by the Mission "and also" uploaded in the website of the Ministry or the Mission. Clearly, unless the amendment was intimated both through email and also uploaded on the websites. The corrigendum could not be said to have in communicative to the bidders and therefore cannot be relied upon to reject the bids of any of the bidding parties on the ground that the bid security amount had been submitted in New Zealand dollar (as already contemplated in RFP) and not in US dollar (as contemplated in corrigendum-II).

13. The petitioners bid had been rejected solely on the ground that supply in the prescribed currency....... Since the corrigendum had not been communicated to the petitioners which was a condition precedent for the corrigendum to have taken effect. The petitioners bid cannot have been rejected on this ground.

14. Consequently, we set aside the letter dated 23.01.2017 and in order to set the records stated that he petitioner is aware of the corrigendum, the petitioners shall furnish the bid security amount in US dollar to the tune of US$50,000 within 7 days. Simultaneously, within the period of 7

days, the respondent no.2 shall refund the amount of NZ$70,000 to the petitioner.

15. Thereafter, the petitioners bid shall be processed as provided and evaluated to as provided in the RFP.

16. The writ petition stands allowed.

17. Dasti.

BADAR DURREZ AHMED, J

MARCH 23, 2017 **ASHUTOSH KUMAR, J**
ab