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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **W.P.(C) 6781/2010 & CM 13414/2010**

IL AND FS TRANSPORT NETWORKS LTD Petitioner

Through Mr Rishi Agrawala, Ms Gunika
Gupta, Advocates.

versus

NATIONAL HIGHWAY AUTHORITY OF

INDIA AND ORS Respondents

Through Ms Gunjan Sinha Jain, Advocate with
Ms Bhavana Singh, Mr Mukesh Kumar,
Advocates for NHAI.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **19.09.2017**

1. The petitioner has filed the present petition, *inter alia*, praying that respondent no.1 (hereafter 'NHAI') be restrained from invoking the bid security provided by the petitioner in the form of a bank guarantee dated 29.04.2010.
2. Pursuant to the request for proposal (hereafter 'RFP') issued by NHAI, the petitioner had submitted a bid for the works relating to *six laning of Tumkur-Chitradurga Section (excluding Tumkur & Chitradurga Bypass) from km 75.00 to km 189.00 of NH4 (Approx 114.00 km) in the State of Karnataka*. In terms of the RFP documents, the petitioner was required to submit a duly notarised Power of Attorney (hereafter 'POA') in the prescribed format. Although, the petitioner submitted the POAs, the same were dated 11.01.2010 and 31.12.2009, but were notarized on 14.01.2010.

The petitioner's bid had been signed by Mr Ravi Sreehari on 31.12.2009, whereas the POA authorizing him for signing the bid was issued on 11.01.2010.

3. In view of the above, the petitioner's bid was found to be non-responsive. In terms of clause 2.20.7 of the RFP, the bid security furnished by a contractor is liable to be forfeited as damages in certain eventualities including where the contractor's bid has been found to be unresponsive.

4. Ms Gunjan Sinha Jain, learned counsel appearing for the NHAI had referred to the decision of the Supreme Court in ***National Highway Authority of India v. MEIL-EDB LLC (JV) : Civil Appeal No. 3053 of 2015 decided on 18.03.2015***. In the said decision, the Supreme Court had observed that the controversy whether deduction/forfeiture of 5% of the Bid security is punitive or otherwise must be left to the Civil Courts. She submits that in this view, the present petition must be dismissed, leaving it open for the petitioner to avail other remedies.

5. Mr Rishi Agrawala, learned counsel appearing for the petitioner was unable to counter the aforesaid submission. He, however, requests that interim orders passed on 05.10.2010, restraining the NHAI from encashing the bank guarantee be continued for a further period to enable the petitioner to avail of other remedies.

6. In view of the above, the present petition is disposed of with liberty to the petitioner to avail of other remedies. The petitioner would be at liberty to seek exclusion of the time spent in pursuing the present petition.

7. The interim order granted on 05.10.2010 is extended for a further period of four weeks from today to enable the petitioner to avail other remedies.

8. The petition is disposed of with the aforesaid observations.

VIBHU BAKHRU, J

SEPTEMBER 19, 2017

pkv