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

\+ W.P.(C) 10723/2016 & CM No. 41987/2016

SURAJ CHAUDHARY ..... Petitioner

Through: Mr Roshan Lal Goel and Ms Anju Gupta, Advocates.

versus

THE EXECUTIVE DIRECTOR AND ORS ..... Respondents

Through: Mr Gautam Narayan, ASC with Mr R. A. Iyer, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

<u>O R D E R</u>

% 12.07.2017

1. The petitioner has limited his relief in the present petition to seeking refund of the amounts paid for allotment of shop no.26 at the Departure Block, ISBT, Kashmere Gate, Delhi.

2. Briefly stated, the relevant facts are that in June 2016, Delhi Transport Infrastructure Development Corporation Ltd. (DTIDC) issued a notice inviting tenders (hereafter 'the NIT') for licensing of shops/sites/spaces at Maharana Pratap ISBT, Kashmere Gate, Delhi for commercial utilisation.

3. Pursuant to the NIT, the petitioner submitted a bid for a shop (shop no. 26) at Departure Block, ISBT, Kashmere Gate, Delhi. Along with its bid, the petitioner also deposited earnest money (hereafter 'EMD') of a sum of ₹1,00,000/-. The NIT *inter alia* provided that the EMD would be forfeited, if the petitioner withdrew his bid at any stage.

4. The petitioner's bid was successful and he was allotted the shop (shop no.26) at a monthly licence fee of ₹1,13,999/- and an allotment letter dated 02.08.2016 was issued to the petitioner. However, prior to the said allotment, a writ petition had been filed before this court, *W.P.(C) No.6335/2016* titled *"Seema Tiwari & Ors. v. Govt. of NCT of Delhi and Anr."* by the earlier occupant/licensee of the shop in question. And, at the instance of the petitioners therein an *ad interim* order was passed on 22.07.2016 (in W.P.(C) No.6335/2016) to not to disturb the petitioners till the next date of hearing.

5. In view of the above, the allotment letter specifically stated as under:-

> "To
>
> Sh. Suraj Choudhary,
> S/o Sh. Nathan Choudhary,
> H.No.7952, Kharia Street,
> Roshanara Road, Near Subzi Mandi,
> Railway Station, Malka Ganj,
> Delhi-7.
>
> Sub: - Letter of Acceptance (LOA)
>
> Name of Tender:- Licensing of Shop/Sites/Spaces at Maharana Pratap ISBT, Kashmere Gate, Delhi, Delhi, June, 2016 for commercial utilization.
>
> Sir,
>
> Reference to your tender submitted on 18.07.2016, it is hereby informed that your tender for the **Shop No.26, Departure Block, ISBT**, Kashmere Gate, Delhi (area measuring **19.16 sq.ft.**) is accepted by the competent authority on your quoted price of licence fee of **Rs.1,13,999/- (Rupees One Lac Thirteen Thousand Nine Hundred Ninety Nine Only)** per month. Consequently, you are

requested to deposit the following amounts with DTIDC:-

(i) Advance Licence fee, maintenance charges @ Rs.30/- per sq.ft/month, applicable service tax for the first three months in shape of demand draft/banker cheque/RTGS only drawn in favour of Executive Director, DTIDC in terms of clause 4.7 of the NIT. The Bill in this regard may be obtained from Accounts Branch of this office.

(ii) Interest Free Security Deposit (IFSD) amount, equivalent to 06 months licence fee i.e. **Rs.6,83,994/- (6X 1,13,999/-)** in shape of FDR/Pay order/demand draft/Bank Guarantee (valid for at least 24 months) in favour of Executive Director, DTIDC in terms of clause 4.10 of the NIT. The EMD/Bid Security is adjustable against the IFSD in terms of clause 5.5 of the NIT.

The Hon'ble High Court of Delhi vide order dated 29.7.2016 in the WPC No.6335/2016 - Seema Tiwari & others had directed not to disturbed the existing licencee of shop in question till next date of hearing which is scheduled for 27.09.2016. Thus, possession of above shop in question is subject to outcome of further orders to be passed by the Hon'ble High Court of Delhi in the above matter. The licence fee & other charges shall be commenced from the date of actual possession of licence premises/shop.

You are, therefore requested to submit the above amounts within 15 days of the issue of this letter of acceptance (LOA), failing which your EMD of Rs.1,00,000/- will be forfeited without prejudice to the other rights and remedy available to DTIDC under the NIT conditions against the tenderer.

Yours faithfully

S/d

Dy. General Manager"

6. The petitioner accepted the said allotment. The respondents were not in a position to hand over the shop in question; nonetheless, it collected the advance licence fee which would be payable once the licence period commenced.

7. However, it appears that the *ad interim* orders issued in W.P.(C) 6335/2016 were not vacated on 27.09.2016 and even after a considerable time of issuing the allotment letter, the respondents were not in a position to handover the shop in question.

8. In view of the non-availability of the shop, the petitioner requested for withdrawal of its bid. This was considered by this Court on 22.11.2016 and the following order was passed:-

> "Learned counsel for the respondent submits that the proposal given by the petitioner cannot be accepted.
>
> Learned counsel for the petitioner submits that in view of the fact that respondents are not in a position to hand over the possession of the shop, which was bid for the petitioner, the petitioner would like to withdraw the bid and seeks withdrawal of all the amounts paid by the petitioner. The petitioner, apart from the bid security amount, has given an advance licence fee, maintenance charges and interest free security deposit equivalent to six months licence fee.
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> Learned counsel for the respondents submits that possession of the said shop could not be given, in view of the interim orders passed by this Court in W.P.(C) No.6335/2016 and since the petitioner is withdrawing the bid, the petitioner is liable to forfeiture of the security bid amount.
>
> Since the petitioner is now withdrawing the bid and the respondents are not in a position to hand over the shop, there is no question of the respondents charging any licence fee or maintenance charges for the same. Therefore, the

respondents are directed to refund the advance licence fee and maintenance charges as also interest free security deposit amount paid by the petitioner, within a period of two weeks. The right of the petitioner to seek possession of the shop for which he had submitted his bid ceases from the time of the refund the amount deposited by the petitioner. With regard to the bid security amount of Rs.1 lakh paid by the petitioner, the same shall be subject to further orders of the Court.

The respondents are directed to file the counter-affidavit limited to the aspect of the forfeiture of the bid security amount within a period of four weeks. Rejoinder, thereto, if any, be filed within four week thereafter."

9. It is apparent from the aforesaid order that this Court had proceeded on the basis that the respondents were not in a position to handover the shop in view of the orders that came to be passed in W.P.(C) 6335/2016 after the tender was floated.

10. In the aforesaid circumstances, the petitioner now seeks refund of the EMD.

11. Mr Gautam Narayan, learned additional standing counsel for the respondents has drew the attention of this Court to clause 5.5 of the NIT which specified that *"if the selected Tenderer/bidder withdraws his/her bid/tender at any stage, his/her Bid Security (EMD) shall be forfeited by DTIDC and he/she will also debarred from taking participation in Tenders/RFP of DTIDC for this financial year and next four financial years."* And, contended that on the petitioner having withdrawn his tender, the said condition is applicable.

12. This Court is not persuaded to accept the contention advanced by Mr

Narayan and finds it unmerited. The NIT was premised on the basis that the respondents were in a position to handover the possession of shops for which tenders are invited. At that material point of time, the respondents were perhaps in a condition to handover the possession but however were interdicted to do so thereafter.

13. The allotment of the shop was made on 02.08.2016 and almost a year has elapsed and even as of date, the injunction granted by this Court continues and the respondents are not in a position to fulfil the tender conditions by handing over the possession of the shop which was bid for.

14. The bid submitted by the petitioner had fructified in an allotment, which was accepted, thus the stage of withdrawing the bid had passed. The petitioner had not withdrawn his offer, but had accepted the allotment.

15. In the present circumstances, there would be a travesty of justice to hold down the petitioner to the NIT which was premised on a promise which the respondents are incapable of fulfilling.

16. The allotment letter clearly stated that the possession would be subject to the outcome of the orders passed by this Court. However, the same cannot be read to mean that irrespective of the time period, the petitioner would be continued to be bound to persist with his offer and has no option to exit the transaction.

17. The EMD, by its very nature, is for the purposes of ensuring that the bidders are serious in their bids. In this case, there is not any doubt as to the petitioner's seriousness; the petitioner has persisted with his offer for a

considerable period of time and was constrained to withdraw his offer only for the purposes that DTIDC was not in a position to handover the shop. This is also amply clear from the order dated 22.11.2016.

18. Indisputably, the EMD was furnished in terms of the NIT, which did not contain (and could not contain) any condition that the possession of the shop in question would be subject to outcome of any proceedings and therefore, DTIDC, not being in a position to hand over possession of the shop in question cannot withhold the EMD.

19. In the circumstances, the respondents are directed to handover the EMD to the petitioner. The said payment shall be made within a period of two weeks from today. In view of the above, no further orders are required to be passed in this petition.

20. The petition and the pending application are disposed of.

21. Order *dasti* under the signature of Court Master.

VIBHU BAKHRU, J

JULY 12, 2017
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