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

+ **W.P.(C) 5810/2017**

KIRAN MAKKAR

..... Petitioner

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

versus

GOVT. OF NCT OF DELHI & ORS

..... Respondents

Through Mr. Gautam Narayan, ASC for
GNCTD with Ms. Mahamaya
Chaterjee, Advocate with Mr. Prem
Mishra, LA, DTIDC.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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08.10.2018

C.M No.41963/2018

1. The petitioner has filed the present application seeking refund of the earnest money deposit (EMD) of ₹1 lakhs, which was deposited by the petitioner for allotment of a shop on licence at the Departure Block, Ground Floor, ISBT, Kashmere Gate, Delhi. The notice inviting tenders (NIT) for the said shop in question (shop no. 52) was issued in August 2017. The NIT unambiguously stated that allotment of shop No.52 would be subject to the outcome of the *WP(C) No.6335/2016*, captioned *Seema Tiwari & Ors. v. Govt. Of NCT of Delhi & Anr.* This Court had granted stay a order in favour of the petitioner therein (who was the erstwhile licensee of shop

No.52).

2. The petitioner was fully aware of the said litigation, nonetheless, submitted a bid for shop No.52 and was allotted the same. The allotment letter dated 08.09.2016 clearly indicated that the possession of the premises would be subject to the outcome of the writ petition in *Seema Tiwari's* case.

3. Thereafter by letter dated 27.03.2017, the petitioner sought to withdraw her offer and sought refund of the security money, license fee and other charges paid by her. Insofar as other charges are concerned, the respondent had no objection for refunding the same. However, as far as the EMD is concerned, the respondent submitted that the same was liable to be forfeited as the petitioner was withdrawing her bid. This was in terms of Clause 5.5 of the NIT.

4. This Court examined the said controversy and concluded that the respondent would not be entitled to retain the EMD in the event Seema Tiwari (and other petitioners) prevailed in the petition filed before this Court; because in that event, the respondent would not be in a position to give possession of the shop to the petitioner and thus, would have no right to retain the EMD. However, it was also clarified that in the event, the erstwhile licensee (Seema Tiwari) does not prevail in the petition and respondents are in a position to hand over the possession of shop No.52 to any other allottee, there would be no question of refund of the EMD to the petitioner.

5. The writ petition in question (*W.P.(C) No.6335/2016*) captioned as *Seema Tiwari & Or. v. Govt. of NCT of Delhi & Anr.* was dismissed by an order passed by this Court on 04.12.2017. Thus, there would have been no impediment for the respondents to give possession of the said shop to the

petitioner.

6. The petitioner has already withdrawn her bid and, therefore, was not entitled to refund of the EMD. As discussed in the order dated 14.07.2018, the said EMD could be refunded to the petitioner only in case where the petitioners in *Seema Tiwari's* case had prevailed in their writ petition.

7. In view of the above, the present application is unmerited and is, accordingly, dismissed.

OCTOBER 08, 2018
dr

VIBHU BAKHRU, J