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

\+ **<u>W.P.(C) 6020/2017 & CM No. 25026/2017</u>**

SURAJ CHAUDHARY ..... Petitioner

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

versus

THE EXECUTIVE DIRECTOR DELHI TRANSPORT INFRASTRUCTURE DEVELOPMENT CORPORATION LTD. AND ORS ..... Respondents

Through: Mr Gautam Narayan, ASC for GNCTD.

AND

\+ **<u>W.P.(C) 6021/2017 & CM No. 25028/2017</u>**

DAYAL CHAND KANDPAL ..... Petitioner

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

versus

THE EXECUTIVE DIRECTOR DELHI TRANSPORT INFRASTRUCTURE DEVELOPMENT CORPORATION LTD. AND ORS ..... Respondents

Through: Mr Gautam Narayan, ASC for GNCTD.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

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

% **19.07.2017**

<u>VIBHU BAKHRU, J</u>

<u>CM APPL. 25027/2017 in W.P.(C) 6020/2017</u>
<u>CM APPL. 25029/2017 in W.P.(C) 6021/2017</u>

1. Exemptions are allowed, subject to all just exceptions.

2. The applications are disposed of.

W.P.(C) 6020/2017 & W.P.(C) 6021/2017

3. The petitioners have filed the present petitions, *inter alia,* seeking refund of a sum of ₹3,00,000/- each, which was deposited by the said petitioners along with their bids for allotment of shops, which were submitted pursuant to a notice inviting tender (hereafter 'the NIT') dated 04.01.2017. The said NIT was issued by respondent no. 1 (DTIDC) for inviting offers for allotment of shops in Departure Block, Ground Floor, ISBT, Kashmere Gate, Delhi. The petitioner in W.P.(C) No.6020/2017 bid for shop no.41 and the petitioner in W.P.(C) No.6021/2017 submitted a bid for shop no.47. Both the bids were furnished on the last date for submission of bids; that is, on19.01.2017.

4. It is an admitted case that no allotment letter was issued to the petitioners within a period of 120 days from submission of the bids. Mr Gautam Narayan, learned counsel for the respondents submits that this was so because a petition had been filed by another bidder (Mr Raman Kalra) : *W.P.(C) No.713/2017* captioned as *'Raman Kalra v. Govt. of NCT of Delhi and Ors'* in respect of the said shops. Mr Raman Kalra, for the same shops bid in an earlier round but had failed to accept the allotment within the specified time. Although, no interim order was passed in that petition; nonetheless, in deference to the proceedings instituted before this Court, DTIDC refrained from issuing an allotment letter to the petitioners herein. The petitioners requested for refund of the earnest money deposited (EMD) by them after a period of 120 days from the submissions of bid had elapsed.

5. The only question to be examined is whether they are entitled to such refund.

6. Clauses 5.5 and 5.6 of the NIT are relevant to address the aforesaid controversy and are set out below:-

> "**5.5 Bid Security/Earnest Money Deposit (EMD)**: Tenderer have to deposit, along with its tender, a refundable bid security/EMD of an amount mentioned in the Annexure-1 of this tender against each shop in the prescribed form. The Bid Security/EMD shall be payable in the form of a Demand Draft/Pay Order/FDR drawn or any Indian Scheduled Bank/Indian Branch of Foreign Bank in favour of "**Executive Director, DTIDC" payable at New Delhi only**. The tender/bid offer shall be valid for a period not less than 120 days from the date of submission of tender. The bid security/EMD has to be re-validated by the Tenderer/bidder on the demand of DTIDC, it has validity period of less than 120 days. If Tenderer does not comply with the request of DTIDC the bid security/EMD will be encashed by DTIDC. The bid security/EMD of the selected Tenderer shall be adjusted against the Interest Free Security Deposit/Licence fee etc. as per tender Document. The bid security/EMD of unsuccessful Tenderer shall be refunded after finalization of tender process, without considering any interest thereof. The Tender shall be summarily rejected if it is not accompanied by the appropriate amount or form of Bid Security/EMD. If the selected Tenderer/bidder withdraws his/her bid/tender at any stage, his/her Bid Security (EMD) shall be forfeited by the DTIDC and he/she will also be debarred from taking participation in Tenders/RFP of DTIDC for this financial year and next four financial years.

> 5.6 No tender/bid shall be modified or withdraw by the Tenderer/bidder after the submission of tender on due date of submission of tender. Withdrawal of a tender/bid during the interval between the due date of submission of tender and date of expiry of the tender validity period would result in automatic forfeiture of Bid Security/EMD. Apart from that the Tenderer will also debar from participating in the Tenders/RFP of DTIDC for this financial year and next four financial years."

7. A plain reading of the said two clauses clearly indicates that bidder was not permitted to withdraw his bid within a period of 120 days and any attempt to do so would result in forfeiture of his bid security. The bid security was also to be kept alive for a period of 120 days. It is plainly clear from the above that after the validity period of 120 days was over, there was no impediment in the petitioners' withdrawing their bid. There was no obligation on the part of the petitioners to persist with their offer after the period of 120 days from the submission of the bids had elapsed. Concededly, the petitioners' tender had not been accepted and no contract had fructified between the parties. It is trite law that an offer can be withdrawn at any time before it is accepted. In these cases there was an added obligation that precluded the petitioners from withdrawing the bids prior to the lapse of 120 days from the date of submission of the bids; but, thereafter, there was no restriction to do so.

8. The petitioners would thus be well within their right to seek withdrawal of the EMD. In the circumstances, the present petitions are allowed and the respondents are directed to refund the EMD furnished by the petitioners within a period of two weeks from today.

9. The petitions and the pending applications are disposed of.

10. Order *dasti* under signatures of the Court Master.

VIBHU BAKHRU, J

JULY 19, 2017
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