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

+ **W.P.(C) 7005/2017**

RAJ MANISHA JV

..... Petitioner

Through: Mr Jay Savla and Ms Shilpi
Chowdhary, Advocates.

versus

**MINISTRY OF ROAD TRANSPORT &
HIGHWAYS AND ORS**

..... Respondents

Through: Mr Kirtiman Singh and Mr Prateek
Dhanda, Advocates for R-1 & 2.
Mr Rajiv Kapur and Ms Srishti
Nigam, Advocates for SBI.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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16.08.2017

CM No. 29091/2017

1. Exemption is allowed, subject to all just exceptions.
2. The application stands disposed of.

W.P.(C) 7005/2017 and CM No. 29090/2017

3. The petitioner has filed the present petition, *inter alia*, impugning the letter dated 21.06.2017 issued by respondent no.2, informing the petitioner that its bid was not found technically responsive. The petitioner has also sought orders restraining respondent no.1 from invoking the Bank Guarantee bearing no.0896617BG0000417 dated 28.04.2017 submitted by the petitioner as bid security.

4. Admittedly, the petitioner's financial bid was not the lowest and the petitioner had not complained about the disqualification of its technical bid. In the circumstances, this Court is not inclined to entertain the petitioner's challenge to its bid being declared as not responsive. It appears that the petitioner has approached this Court mainly for the reason that it apprehends that its bid security would be forfeited.

5. The petitioner was served with the show cause notice dated 21.07.2017 whereby the respondent nos. 1 and 2 have alleged that the petitioner is guilty of misrepresentation which amounts to fraudulent practice as defined under clause 4.3(b) of the RFP and is liable for action as per provisions of clause 2.20.5 of the RFP.

6. Clause 2.20.5 of the RFP reads as under:-

"2.20.5 The BID Security shall be forfeited and appropriated by the Authority as damages payable to the Authority for, inter-alia, time cost and effort of the Authority without prejudice to any other right or remedy that may be available to the Authority under the bidding documents and / or under the Agreement, or otherwise, under the following conditions:

- (a) Deleted
- (b) If a Bidder engages in a corrupt practice, fraudulent practice, coercive practice, undesirable practice or restrictive practice as specified in Section 4 of this RFP;
- (c) If a Bidder withdraws its BID during the period of Bid validity as specified in this RFP and as extended by mutual consent of the respective

Bidder(s) and the Authority;

- (d) In the case of Selected Bidder, if it fails within the specified/extended time limit by Authority -
 - (i) to sign and return the duplicate copy of LOA;
 - (ii) to sign the Agreement; or
 - (iii) to furnish the Performance Security/ Additional Performance Security within the period prescribed thereof in the Agreement; or
- (e) In case the Selected Bidder, having signed the Agreement, commits any breach thereof prior to furnishing the Performance Security."

7. It is, thus, apparent on a plain reading of the aforesaid clause that the respondent no.1 would be entitled to forfeit the bid security if it is found that the bidder had indulged in corrupt or fraudulent practices.

8. The learned counsel appearing for the petitioner submits that even if the petitioner is found to have indulged in such practices, respondent no.1 could only invoke the bid security to the extent of the time, cost and efforts spent by the said respondent and the bank guarantee cannot be invoked, however, without establishing the damages suffered by the said respondent.

9. Mr Kirtiman Singh, learned counsel, who appears on advance notice has countered the aforesaid submission. He has opposed this petition on two grounds. First, he submits that the petition is not maintainable as there is no question of public importance involved and the petitioner would have its remedies by way of a civil suit. Second, he submits that the matter is only at the show cause stage and the concerned authorities have not - as yet - determined whether the bid security is to be forfeited.

10. There is much merit in Mr Kirtiman Singh's contention that no interference at this stage would be called for since the matter is only at a show cause stage. Accordingly, this Court is not inclined to entertain this petition. However, since the petitioner apprehends that its bank guarantee would be invoked immediately after respondent no.1 passes an order pursuant to the show cause notice, it is directed that respondent no.1 shall not invoke the bank guarantee for a period of three working days after communication of the decision that may be rendered in relation to the show cause notice dated 21.07.2017.

11. The question whether a writ petition would be maintainable in the aforesaid circumstances, is left open. In the event the petitioner is aggrieved by the decision rendered by the concerned authorities, the petitioner would be at liberty to take such steps as available in law.

12. The petition and the application are disposed of.

13. Order *Dasti*.

VIBHU BAKHRU, J

AUGUST 16, 2017
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