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

+ LPA 618/2017, CM APPL.34115-34117/2017

RAMAN KALRA Appellant
Through: Ms. Seema Bengani, Advocate.

Versus

GOVT OF NCT OF DELHI & ORS Respondents
Through: Mr. Gautam Narayan, ASC, GNCTD with
Mr. R.A. Iyer, Advocate.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE SUNIL GAUR

% **ORDER**
18.09.2017

The appellant is aggrieved by an order of the Single Judge. He had challenged the decision and order of the DTIDC (hereafter referred to as a 'public agency') forfeiting the earnest money deposited ('EMD') and proceeding to consider it as a black listed entity so as to preclude it from submitting public tenders for the next four years.

Learned Single Judge after considering all circumstances was of the opinion that the black listing order was unwarranted; he, therefore, set it aside mainly on the ground that such decision was not preceded by proper hearing or after fulfilling the principle of natural justice. The public agency was given the liberty to grant a hearing in that regard and pass appropriate order. However, the Single Judge declined to grant relief of any direction with respect to the forfeiture of the EMD.

Ms. Seema Bengani, appellant's counsel urges that an overall consideration of the relevant tender conditions (clauses 2.4 & 5.26)

discloses that the public agency was under a duty to consider the first instance if the request for extension of time made in the circumstances of the case - to deposit the license fee expected and required for a successful tender had been considered. The submission here is that though the appellant was given time till 26.12.2016, to deposit the amount, on account of illness, he was precluded from doing so. Reliance is placed upon letter dated 21.12.2016 seeking 20 days' time which was written to the public agency. It was further contended that the appellant's wrote *inter alia* on 02.01.2017 asking for some time. However, the respondent/public agency did not intimate its decision and rather on 11.01.2017 decided to forfeit the EMD and also to consider the appellant as blacklisted. Learned counsel submitted that the Single Judge fell into error in not considering that the EMD forfeiture was identical to the blacklisting issue which was also not preceded by any hearing.

The Single Judge was conscious of the fact that the petitioner had applied to the Court and after considering the judicial record, further considered the circumstance that the counsel had sought instructions on 30.01.2017 as to the willingness of the appellant to deposit the money. Apparently, the petition was not taken up subsequently and was listed sometime in May, 2017 before which an application for urging additional grounds was made on behalf of the appellant which revealed that the EMD condition was questioned in an indirection fashion by contending that the Govt. of NCT of Delhi had proposed to alter the route which would have changed the contractual conditions.

This Court has considered the materials on record which revealed that clause 5.26 specifically states that the public agency had the discretion to consent to extension of time. In the present case, the appellant's request

for extension was no doubt made before the time lapsed, i.e., 26.12.2016. However, the appellant made no attempt to elicit any response and rather appeared to assume that the extension would be granted as a matter of course. Even if the appellant's assumptions were *arguendo* accepted, the fact remains that at the time of hearing before the Court on 30.01.2017, there was no clarity on whether the appellant was willing to deposit the EMD. His subsequent conduct in contesting the terms on the ground that there was an alteration, in the circumstances, appears to have weighed with the Single Judge in declining the relief. This Court is of the opinion that given these circumstances, the complaint of lack of natural justice did not warrant exercise of discretion under Article 226 of the Constitution of India.

In these facts, the learned Single Judge, we feel, did not fall into any error nor does the impugned order disclose any unreasonable approach as to necessitate the appellate review.

The appeal is, therefore, dismissed along with pending applications.

S. RAVINDRA BHAT, J

SUNIL GAUR, J

SEPTEMBER 18, 2017

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