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

\+ W.P.(C) 10065/2017

M/S PSS SECURITY SOLUTIONS THROUGH
ITS SOLE PROPRIETOR ..... Petitioner

Through: Through: Mr Tanuj Khurana and Mr Sahil Gupta, Advocates.

versus

GOVT OF NATIONAL CAPITAL TERRITORY
OF DELHI AND ANR. ..... Respondents

Through: Mr Sanjoy Ghose, ASC GNCTD with Mr Rishabh Jetley, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **30.11.2017**

CM No. 43683/2017

1. This is an application filed on behalf of the petitioner/applicant, *inter alia,* praying that directions be given to respondents not to encash the Fixed Deposits Receipts dated 12.02.2016 and 10.07.2015 for the sums of ₹5,95,229.50/- and ₹24,60,000/- respectively, which are in possession of respondent no.2.

2. The petitioner had filed the above captioned petition, *inter alia,* praying that respondents be directed for forthwith release the funds deposited by the petitioner by way of Fixed Deposit Receipts in lieu of performance guarantee. The petitioner's case was that since the respondents had not entered into the contract with the petitioner, the question of the

petitioner performing the contract did not arise and, therefore, the respondents could not withhold the performance security, which was given in anticipation of the contract being awarded to the petitioner.

3. The aforesaid petition was disposed of by the order dated 14.11.2017 on the statement made on behalf of the respondents that respondent no.2 shall consider the averments made in the petition as well as documents filed along with the petition and pass a speaking order in connection with the show cause notice which was issued on 04.04.2016.

4. In view of the above statement, the learned counsel for the petitioner did not press for any relief with liberty to challenge the order that may be passed by respondent no.2.

5. The petitioner/applicant now states that a letter dated 27.11.2017 was issued by Director General of Health Services to the Syndicate Bank, Ashok Vihar seeking to encash the Fixed Deposit Receipts. The reason for encashing the FDRs as stated in the said letter is "*The validity of the same is expired therefore the matured amount is to be credited to DGHS, Government of Delhi*". This letter is plainly contrary to the statement made on behalf of the respondents before this Court on 14.11.2017.

6. It is further relevant to state that as on that date respondent no.2 had not passed any speaking order with regard to the show cause notice dated 04.04.2016.

7. Mr Sanjoy Ghose, learned counsel appearing for respondent no.2 has today handed over a copy of the letter dated 29.11.2017 addressed to the

petitioner. The last two paragraphs of the said letter read as under:-

> "Whereas the Deptt. received the request for release of performance security in r/o M/s PSS Security was placed before the higher authorities.
>
> Therefore the higher authorities re-affirmed that your request for releasing security deposit cannot be acceded to & your performance security stands forfeited."

8. A perusal of the said letter also indicates that the averments made by the petitioner have neither been alluded to nor considered by the respondents. It is also apparent that the decision to encash the FDRs had been taken prior to issuance of the said communication as a letter to the said effect had already been forwarded by respondent no.2 to the petitioner's bankers two days earlier.

9. It is apparent from the above that the respondents have been less than candid before this Court. Further, it was incumbent upon the respondents to address the issues raised by the petitioner before taking any precipitate steps for forfeiting the bid security.

10. In view of the above, the present application is disposed of by directing that no further steps shall be taken by respondent no.2 pursuant to his request for encashing the fixed deposit in question. The petitioner is also at liberty to approach its bankers, and on the strength of this order, request them not to release the proceeds of the Fixed Deposit Receipts and continue to maintain them in an interest bearing deposit. This order shall continue for a further period of four weeks from today to enable the petitioner to take such steps as the petitioner may be advised.

11. Order *dasti* under the signatures of the court master.

VIBHU BAKHRU, J

NOVEMBER 30, 2017
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