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

% *Date of Judgment: 28th May, 2019*

+ W.P.(C) 3043/2019 & CM Appl. 14042/2019
KMS MEDISURGI LTD.

..... Petitioner

Through: Mr.Kirti Uppal, Sr.Adv. with
Mr.Rajan Bajaj and Mr.Abhimanyu
Redhu, Advocates

versus

UNION OF INDIA AND ANR.

..... Respondents

Through: Mr.Ashim Sood, CGSC with
Ms.Payal Chandra, Adv. for R-1/UOI.
Mr.Ratan K.Singh and Ms.Priyanka
Solanki, Advocates for R-2.
Mr.P.Niroop and Mr.Chandan Kumar,
Advocates for R-3.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. (ORAL)

1. This is a petition filed under Article 226 of the Constitution of India for issuing directions to the respondents restraining the respondent no.2 from technically disqualifying the petitioner with respect to the tender no.HITES/PCD/PMSSY-III/30/URLG/18-19.
2. With the consent of the parties, the writ petition is set down for final hearing and disposal. The petitioner is a company incorporated under the Companies Act, 1956 and claims to be one of the leading manufacturer and preferred supplier of surgical instruments in the health-care industry. The respondent no.1 floated a tender bearing no.HITES/PCD/PMSSY-III/30/URLG/18-19 through respondent no.2 on 10.04.2018 on its website, calling bidders to participate in the tender for supply of medical equipment to medical colleges/institutes, getting

upgraded to super specialties under PMSSY Phase-III mentioned. It is the case of the petitioner that he is the successful tenderer having met all the conditions of the tender. The bid was submitted on 05.11.2018 and was duly supported with the Earnest Money Deposit (EMD) by way of a bank guarantee to the tune of Rs.1,14,00,000/- (rupees one crore fourteen lacs only) in favour of respondent no.2, in compliance with clause 11 of the tender document. Admittedly, respondent no.2 extended the said tender multiple times by various amendments/corrigendum incorporating certain changes in the said tender as per the tender amendment 10 (final amendment). The last day for online submission of the bids was reserved for 20.11.2018. It is also admitted that on account of the multiple amendments by respondent no.2, the petitioner got the old bank guarantee dated 07.06.2018 valid upto 28.12.2018 and a fresh bank guarantee valid upto 31.03.2019 was also furnished. The evaluation of the bid of the petitioner was technically rejected and declared non-responsive due to non-meeting of the preliminary qualification criteria as per GIT Clause 11.1 (A) (ii) and GIT 19 i.e. validity of the EMD submitted in form of Bank Guarantee was short of the prescribed period. By a communication dated 17.01.2019, the petitioner made a representation seeking clarification from the respondent no.2 stating that due to the submission of the bank guarantee by respondent no.2 before the due date, it was highly improbable for the petitioner to revalidate the bank guarantee without receipt of the original bank guarantee. In response to the communication dated 02.02.2019, the petitioner was informed that the bank guarantee of the petitioner was short by approximately 34 days and due to non-compliance of GIT clause 19 read with clause 27.05, the

bid of the petitioner was declared non-responsive at the time of evaluation. The communication dated 13.02.2019 addressed to the respondent remained unacknowledged by the respondent. In absence of any response, the petitioner has knocked the door of this Court for justice.

3. **SUBMISSIONS OF ON BEHALF OF THE COUNSEL FOR THE PETITIONER**

- (i) Mr.Kirti Uppal, learned senior counsel appearing for the petitioner has submitted that the order rejecting the bid of the petitioner being non-responsive dated 15.01.2019 is arbitrary, unlawful and devoid of any merit.
- (ii) The communication of 15.01.2019 is mechanical in nature and has been issued without any application of mind. Mr.Uppal submits that declaring the bid of the petitioner as non-responsive is arbitrary, unconstitutional and illegal and thus, liable to be quashed, else it would lead to serious miscarriage of justice.
- (iii) Mr.Uppal also submitted that although the bank guarantee was short by 90 days from the date of bid and 34 days from the 10th amendment, however, the condition 27.2 read with 19.05 was not a material condition or a mandatory requirement and thus, it was a curable defect. In short, it is submitted that if an opportunity had been granted as requested by the petitioner, the technical defect could have been cured at the final stage, itself which has been denied to the petitioner.
- (iv) It is also the contention of the petitioner that the respondent no.2 should have considered the fact that the petitioner was all-along ready to protect the interest of the respondents as far as EMD was concerned but no opportunity was granted.

4. **JUDGMENTS RELIED UPON BY THE COUNSEL FOR THE PETITIONER**

- (i) Strong reliance is placed by Mr.Uppal on a judgment rendered by a Division Bench of this Court in the case of ***PES Installations Pvt. Ltd. & Anr. Vs. Union of India & Anr.*** reported in AIR 2015 Delhi 108. Para 2 of this judgment sets out the basic facts which are reproduced as under:

“2. The respondent No.2 had issued a Notice Inviting Tender (NIT) dated 03.03.2014. The respondent No.2 had floated a Global Tender Enquiry for procurement of Medical Gas Pipeline System for six AIIMS for and on behalf of respondent No.1. Nine amendments were made by the respondent No.2 to the tender document from time to time, the ninth amendment being issued on 26.12.2014. As per the said NIT dated 03.03.2014, the date for opening of techno-commercial bid was 29.12.2014. The NIT dated 03.03.2014 specified that If EMD is submitted in the form of BG, then the validity of the BG should be at least 165 days from the date of tender opening, i.e. up to 30.06.2015. The NIT dated 03.03.2014 was amended by amendment No. 9 dated 26.12.2014 and the date of opening was amended to 15.01.2015 and the validity condition for EMD was amended to read that the validity of the BG should be at least 165 days from the date of tender opening, i.e. up to 29.06.2015.”

- (ii) What was contended by counsel for the petitioner in the said case is reflected in para 6, which is also reproduced below:

“6. Learned counsel for the petitioners contended that the petitioners had furnished the earnest money deposit by way of a bank guarantee prior to the scrutiny of the bids of the various bidders and, as such, no prejudice was caused to the Respondents inasmuch as the earnest money deposit was made valid for the entire period as stipulated. He further contended that the discrepancy and error had occurred on account of the amendment of the bid document by the respondents from time to time. He further contended that the bank guarantee was short by only seven days and the same was a minor

discrepancy, which discrepancy had been cured prior to the evaluation and consideration of the bids. It is contended that the condition was not an essential condition that would go to the root of the bid but was a condition prescribed to protect the Respondent from any default on the part of the Bidder.”

- (iii) The conclusion in the case of *PES Installations Pvt. Ltd.* (*supra*), which is relied upon by Mr.Uppal finds mentioned in para 21, 23, 24, 26 & 27.

“21. In the present case, 09 amendments were made by the respondent No.2 to the tender document from time to time. As per the NIT dated 03.03.2014, the validity of the BG was to be valid at least 165 days from the date of tender opening. By the amendment No. 9 dated 26.12.2014 and the date of opening was amended from 29.12.2014 to 15.01.2015. Calculated from 29.12.2014 as stipulated by the NIT dated 03.03.2014, the two bank guarantees would have been valid, however the same were short by a period of seven days when calculated in terms of the amended opening date of 15.01.2015. The Petitioners on coming to know of the error, on 15.01.2015 itself got the bank guarantees extended and submitted the same to the Respondent No. 2 on the very next day.

23. Furthermore, the earnest money deposit is required to protect the purchasers against the risk of the bidder's conduct, which would warrant the forfeiture of the EMD. The EMD is to be forfeited in case the Petitioner withdraws or amends its tender or impairs or derogates from the tender in any respect within the period of forfeiture of its tender or, in case, any information/document furnished in the tender is incorrect, false, misleading or forged. Further, the successful bidder's earnest money is liable to be forfeited, in case, the successful bidder fails to furnish the required performance security within the specified period. None of the stipulated eventualities have arisen. The Petitioner has furnished the EMD, though the same was short by a period of 07 days but the error was rectified immediately on the bid opening and prior to the scrutiny, evaluation and consideration of the bids of the various bidders. The plea of the Petitioner that the discrepancy and error had occurred on account of the amendment of the bid document by

the respondents from time to time is plausible. The object of securing the Respondent against the risk of the bidder's conduct was not, in any way, threatened or imperiled. No unfair advantage had been gained by the petitioner in this process. The petitioner is not stealing a march over any of its competitors by altering its bid amount.

24. The deviation, in our view, is not a material deviation of an essential condition. It is settled law, that as a matter of general proposition it cannot be held that an authority inviting tenders is bound to give effect to every term mentioned in the notice in meticulous detail, and is not entitled to waive even a technical irregularity of little or no significance. The requirements in a tender notice can be classified into two categories — those which lay down the essential conditions of eligibility and the others which are merely ancillary or subsidiary with the main object to be achieved by the condition. In the first case, the authority issuing the tender may be required to enforce them rigidly. In the other cases, it must be open to the authority to deviate from and not to insist upon the strict literal compliance of the condition in appropriate cases.

26. Further, the decision of M/S. Balkrishna Ramkaran Goyal (Supra) is also not applicable in the facts of the present case. In the said case, the respondents had rejected the Bid Security on the ground that there were different dates of validity mentioned in the Bank Guarantee and the different dates mentioned in the guarantee bond confused the matter and rendered the document defective, uncertain, unclear and ineffective. It was contended on the part of the respondent that in the matters of bid security the respondent could not accept any uncertainty or unambiguity as it was necessary that they are able to invoke and call bid security in terms of their entitlement and did not wish to be caught up in uncertainties and ambiguities of the documents. In the said case, first of all, there were discrepancies in the Bank Guarantee furnished and, secondly, the Petitioner therein had not rectified the defect till the same were evaluated by the evaluation committee.

27. We are of the view that the Bid of the Petitioner cannot be held to be materially non-responsive. Rejecting the Bid of the Petitioner, in these circumstances, would be hyper technical

and would not be in the public interest requiring wider participation of bidders to ensure healthy competition. Further, in our view, no unfair advantage has been gained by the petitioners in this process and the petitioners are not stealing a march over any of their competitors by altering their bid amount.

- (iv) Relying on the aforesaid decision, Mr.Uppal submits that the case of the petitioner is identical to the case of *PES Installations Pvt. Ltd. (supra)* and hence, the technical bid of the petitioner should be opened and in case he is the lowest tenderer then the tender be awarded in his favour.

5. **SUBMISSION OF COUNSEL FOR THE RESPONDENT NO.2**

- (i) Mr.Ratan Singh, learned counsel appearing for respondent no.2 (the contesting party) has opposed this petition. At the outset, Mr.Singh submits that there is no infirmity in the stand taken by respondent no.2 declaring the bid of the petitioner to be non-responsive. It is submitted that the decision rendered on 15.01.2019 declaring the bid of the petitioner as non-responsive is squarely based on the terms and conditions of the tender document, more particularly, Clauses 19 and 27.05.
- (ii) Mr.Singh also contends that Clauses 19 and 27.05 are material conditions and since admittedly, the EMD submitted was short by 19 days upto the 9th amendment and 34 days up to the 10th amendment. It is submitted that there is no infirmity or irregularity nor the decision taken by the respondents can be termed as arbitrary and illegal as claimed by the petitioner.
- (iii) Elaborating his arguments further, Mr.Singh contends that the terms of the tender document cannot be varied and no opportunity would have been granted as claimed by the petitioner to rectify the error as no procedure has been laid down in the tender document to permit such

an opportunity and thus, it would be beyond the scope of the judicial review.

- (iv) It is also submitted by Mr.Singh that in the absence of any plea with regard to malafides, the decision of the respondent cannot be faulted as they have acted strictly in accordance with law and with the terms of the tender document and declared the bid of the petitioner 'non-responsive'. It is also the stand of the respondent that the tender conditions are to be adhered to scrupulously and any variation or relaxation in a tender document unless so provided in the document itself would encourage scope of discrimination, arbitrariness and favouritism. It is also submitted that in the absence of any malafides and arbitrariness in the decision-making process, no ground for judicial review would be made out.

6. **JUDGMENTS RELIED UPON BY MR.RATAN SINGH, COUNSEL FOR RESPONDENT NO.2**

- (i) Mr.Singh submits that the case of *Balkrishna Ramkaran Goyal vs. Union of India & Ors.* reported in 2005 (80) DRJ 268 (DB) squarely applies to the facts of the present case. Mr.Singh has relied on paragraphs 19 and 20, which we reproduce below in support of his submissions.

“19. Having examined the original files produced by the NHAI, wherein all the bids received by them were evaluated, we are of the view that though the NHAI has failed to scrupulously adhere to the conditions stipulated in Clauses 16.4 and 23.3. of the ITB, extracted above, yet the decision to declare the technical bid of the petitioner as non-responsive for the aforementioned reason cannot be said to be arbitrary or capricious, warranting our interference in exercise of the power of judicial review. As noticed supra, the technical bids received by NHAI were opened on 24 June 2004 and a tabulated statement showing the name of the agency, details of

the earnest money in the form of bank guarantee and its validity up to 6 December 2004 was prepared. Except for the bank guarantee furnished by the petitioner all other bank guarantees were valid up to 6 December 2004 or beyond that date. In the case of the petitioner two dates of validity, namely 31 October 2004 and 30 November 2004 have been noted against their name. The said statement is signed by the representatives of all the bidders including the petitioner. It is true that specific minutes as stipulated in Clause 23.3 were not recorded but the tender evaluation committee met on 14 July 2004 and as per its minutes the technical bids of three agencies including the petitioner were declared as technically non-responsive. It is recorded that "M/s.Balkrishan Ramkaran Goyal have submitted the bid security for a lesser period than required as per Clause 16.2 of Section II of the ITB of the bid document". Similarly, the earnest money of the petitioner, whose technical bid was declared as non-responsive on 24 June 2004 was not refunded within 28 days of the end of the bid validity period, as stipulated in Clause 16.4 of the ITB. But we are of the view these omissions on the part of the NHAI would not, per se, lead to the conclusion that it was done to somehow non-suit the petitioner and to show undue favor to respondent No. 3 as alleged by the petitioner. We do not find any material on record to hold that the impugned decision of the NHAI was actuated by mala fides.

We are also unable to persuade ourselves to agree with learned senior counsel for the petitioner that the petitioner has been discriminated against, inasmuch as they were not afforded an opportunity to rectify the alleged defect in the bank guarantee, as was done in the case some other bidders, who were given a week's time to furnish requisite documents to "demonstrate" the availability of construction equipment and technical personnel, as stipulated in Clause 4B(b) of the ITB. A plain reading of Clauses 4B(b) and 16.2 of the ITB, makes it clear that whereas Clause 16.2, being in the nature of a mandate, is an essential condition, instructions contained in Clause 4B(b) are subsidiary inasmuch as they do not have material bearing on the terms of the bid submitted by any party. That being the fine distinction, the tender evaluation committee could deviate from and not insist upon a strict literal compliance of the condition in Clause 4B(b) of the ITB.

20. As noted supra, as per Clause 16.2, the bank guarantee was to remain valid for 45 days beyond the validity period i.e. 120 days after the deadline date for the bid submission, but, somehow, in the format of the bank guarantee supplied as a part of the bid documents, the period was printed as 30 days. The plea of the petitioner that before rejecting the bid of the petitioner, the NHAI should have sought clarification from the bank or afforded an opportunity to them to furnish a fresh bank guarantee is stated to be rejected. No such methodology is envisaged in the ITB. On the contrary, as noted above, Clause 9.1 of the ITB clearly provided that a prospective bidder could seek clarification of the bid documents within a specified time i.e. ten days prior to the deadline for submission of bids. Though there may be some substance in the contention of learned counsel for the petitioner that the petitioner could not ignore the format of the bank guarantee supplied by the NHAI but at the same time the petitioner was equally bound to comply with the specific terms of the bid documents. Even if we were to accept the stand of the petitioner that the Bank Guarantee furnished was valid up to 30 November 2004 and not 31 October 2004, still its validity period fell short by six days. Thus, the technical committee on evaluation of petitioner's bid in the light of the documents furnished, rightly came to the conclusion that the bank guarantee furnished was for a shorter period and could not be accepted. It was a conscious decision by the technical committee and we are unable to read into it any arbitrariness or bias in favor of the third respondent, as alleged by the petitioner.”

- (ii) It is contended that in somewhat similar facts, a Division Bench of this Court has taken the view that the submission of the bank guarantee was a material condition and it is not within the power of the respondents to vary or change the terms to allow any future amendments in extending the bank guarantee.
- (iii) Mr. Singh has relied on a recent decision of the Apex court in the case of *Vidarbha Irrigation Development Corporation vs. Anoj Kumar Garwala* reported in 2019 SCC Online SC 89 to buttress his arguments

that an essential condition of a tender has to be strictly complied with. He submits that in view of the aforesaid recent judgment, the writ petition is liable to be rejected. Reliance is placed on paragraphs 9, 11, 15, 16 and 17 of the said judgment, which read as under:

“9. Mr. Naphade’s argument that had a demand draft been drawn instead of a bank guarantee, its validity would only be a minimum of three months from the date of submission of tender, which would show that a deviation from the 40 months period would certainly be permissible, (had a demand draft given instead of a bank guarantee), cannot be countenanced. On the facts of this case, no demand draft was given. Only a bank guarantee was given, and clearly for a much lesser period than that mandated by this Clause.

11. We may now come to Clause 2.35 which makes it clear that a substantially responsive bid is one which conforms to all terms, conditions and specifications without any material deviation. Inter alia, a material deviation is one which limits, in any substantial way, or is inconsistent with the 10 bidding documents or the employer’s rights or bidder’s obligations under the Contract. It cannot be gainsaid that a bank guarantee, which is for a period of six months and not for a period of 40 months, would not only be directly inconsistent with the bidding documents but would also be contrary to the employers’ right to a bank guarantee for a longer period. This being the case, since a material deviation from the terms and conditions of the tender document was made by Respondent No. 2, when it furnished a bank guarantee for only six months initially, it would be clear that such bid would have to be considered as not substantially responsive and ought to have been rejected by the employer. Clause 2.35.2 also makes it clear that such a bid would have to be rejected outrightly and may not be subsequently made responsive by correction.

15. The law on the subject is well settled. In *Bakshi Security and Personnel Services Pvt. Ltd. v. Devkishan Computed Pvt. Ltd. and Ors.*, (2016) 8 SCC 446, this Court held:

“14. The law is settled that an essential condition of a tender has to be strictly complied with. In *Poddar Steel Corpn. v. 12 Ganesh Engg. Works* [*Poddar Steel Corpn. v. Ganesh*

Engg. Works, (1991) 3 SCC 273] this Court held as under: (SCC p. 276, para 6)

“6. ... The requirements in a tender notice can be classified into two categories—those which lay down the essential conditions of eligibility and the others which are merely ancillary or subsidiary with the main object to be achieved by the condition. In the first case the authority issuing the tender may be required to enforce them rigidly. In the other cases it must be open to the authority to deviate from and not to insist upon the strict literal compliance of the condition in appropriate cases.”

15. Similarly in *B.S.N. Joshi & Sons Ltd. v. Nair Coal Services Ltd.* [*B.S.N. Joshi & Sons Ltd. v. Nair Coal Services Ltd.*, (2006) 11 SCC 548] this Court held as under: (SCC pp. 571-72, para 66)

“(i) if there are essential conditions, the same must be adhered to;

(ii) if there is no power of general relaxation, ordinarily the same shall not be exercised and the principle of strict compliance would be applied where it is possible for all the parties to comply with all such conditions fully;

(iii) if, however, a deviation is made in relation to all the parties in regard to any of such conditions, ordinarily again a power of relaxation may be held to be existing;

(iv) the parties who have taken the benefit of such relaxation should not ordinarily be allowed to take a different stand in relation to compliance with another part of 13 tender contract, particularly when he was also not in a position to comply with all the conditions of tender fully, unless the court otherwise finds relaxation of a condition which being essential in nature could not be relaxed and thus the same was wholly illegal and without jurisdiction;

(v) when a decision is taken by the appropriate authority upon due consideration of the tender document submitted by all the tenderers on their own merits and if it is ultimately found that successful bidders had in fact substantially complied with the purport and object for which essential conditions were laid down, the same may not ordinarily be interfered with;...” 16. We also agree with the

contention of Shri Raval that the writ jurisdiction cannot be utilised to make a fresh bargain between parties.”

16) However, learned counsel appearing on behalf of the appellant strongly relied upon *Afcons Infrastructure Ltd. v. Nagpur Metro Rail Corpn. Ltd.*, (2016) 16 SCC 818, and paragraphs 14 and 15 in particular, which state:

“14. We must reiterate the words of caution that this Court has stated right from the time when *Ramana Dayaram Shetty v. International Airport Authority of India* [*Ramana Dayaram Shetty v. International Airport Authority of India*, (1979) 3 SCC 489] was decided almost 40 years ago, namely, that the words used in the tender documents cannot be ignored or treated as redundant or superfluous — they must be given meaning and their necessary significance. In this context, the use of the word “metro” in Clause 4.2(a) of Section III of the bid documents and its connotation in ordinary parlance cannot be overlooked.

15. We may add that the owner or the employer of a project, having authored the tender documents, is the best person to understand and appreciate its requirements and interpret its documents. The constitutional courts must defer to this understanding and appreciation of the tender documents, unless there is mala fide or perversity in the understanding or appreciation or in the application of the terms of the tender conditions. It is possible that the owner or employer of a project may give an interpretation to the tender documents that is not acceptable to the constitutional courts but that by itself is not a reason for interfering with the interpretation given.”

17) It is clear even on a reading of this judgment that the words used in the tender document cannot be ignored or treated as redundant or superfluous — they must be given meaning and their necessary significance. Given the fact that in the present case, an essential tender condition which had to be strictly complied with was not so complied with, the appellant would have no power to condone lack of such strict compliance. Any such condonation, as has been done in the

present case, would amount to perversity in the understanding or appreciation of the terms of the tender conditions, which must be interfered with by a constitutional court.

- (iv) Mr.Singh has also submitted that the case of *PES Installations Pvt. Ltd. (supra)* would not apply to the facts of the present case for the reasons (1) in the case of *PES Installations Pvt. Ltd. (supra)* the petitioner had approached the respondent prior to opening of the bid. Whereas in the present case, the bid stands opened, respondent no.3 has been declared as the L-1 and tender is likely to be awarded to him; (2) In the present case, the bank guarantee was not opened. Also, in the case of *PES Installations Pvt. Ltd. (supra)*, the petitioner had furnished earnest deposit by way of bank guarantee prior to scrutiny of bids of various bidders, whereas in the present case, the bids already stand opened; and (3) Mr.Singh contends that in the present case, the period was short by 19 days from the first date when the bank guarantee was furnished for the first time, which is an extremely important factor and was not so in the case of *PES Installations Pvt. Ltd. (supra)* in which the Division Bench has taken into account the various amendments which were made.
7. Learned counsel for the respondent no.3/L-1 has supported the submission made by Mr.Singh. Additionally, he submits that equity is in his favour and all the technical specifications, post the opening of the bid are now in public domain and the price is also known and in case of re-bidding serious prejudice would be caused to his rights.
8. We have heard the learned counsels for the parties and considered their rival submissions.

9. In order to appreciate the submissions made by the counsels, we deem it appropriate to reproduce clauses 19.5 and 27.05 (ii) of the tender conditions, which read as follows:

“19.5. The earnest money shall be valid for a period of forty-five (45) days beyond the validity period of the tender. As validity period of Tender as per Clause 20 of GIT is 120 days, the EMD shall be valid for 165 days from Techno-Commercial Tender opening date.

27.5 The following are some of the important aspects, for which a. tender shall be declared nonresponsive during the evaluation and will be ignored;

(ii) Required EMD or its exemption documents have not been provided.”

10. The reading of clause 27.05 would show that requirement of EMD was one of the important aspects, in the absence of which, a tender was likely to be declared non-responsive.
11. The reading of the aforesaid conditions leaves no room for doubt that the furnishing of EMD is an important and material condition of the tender. Thus, the submission of Mr.Uppal, learned senior counsel appearing for the petitioner, that the EMD being short by 19 days/34 days is a curable defect, cannot be accepted. The case of ***PES Installations Pvt. Ltd.*** (*supra*) would not apply to the facts of the present case as in that case the Division Bench had reached a conclusion that the conditions sought to be relied upon were not material conditions and in any case, the petitioner therein had approached the respondent prior to the opening of the bid. The submissions made by the senior counsel for the petitioner were that the notification of 15.01.2019 is arbitrary, unlawful, issued in a mechanical manner and without any application of mind are without any merit in view of the clear tender conditions which have been extracted

hereinabove as admittedly, the terms of the tender were not complied with. It may also be noted that in the case of *PES Installations Pvt. Ltd.* (*supra*), the Division Bench was persuaded by the fact that there were amendments to the bid documents from time to time while in the present case, the EMD provided by the petitioner was short by 19 days at the very instant date and the bid was likely to be declared non-responsive on day one. The judgment of the Supreme Court in the case of *Vidarbha Irrigation Development Corporation* (*supra*) would squarely apply to the facts of the present case. The conditions of the tender have to be strictly complied with.

12. No ground is made out. The petition is accordingly dismissed.

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13. In view of the order passed in the writ petition, the application stands disposed of.

G.S.SISTANI, J

JYOTI SINGH, J

MAY 28, 2019/rb