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

\+ **W.P.(C) 4026/2020 & CM APPLs. 14434-37/2020**

AFSHA ..... Petitioner
Through: Mr. Mehmood Pracha, Advocate. (M:7217710552)

versus

GOVERNMENT OF NCT OF DELHI AND ANR ..... Respondent
Through: Mr. Gautam Narayan, ASC with Ms. Shivani Vij, Advocate.

CORAM:
JUSTICE PRATHIBA M. SINGH

O R D E R

% **15.09.2020**

1. This hearing has been held through video conferencing.

2. The Petitioner has filed this petition seeking extension of time for paying the license fee in respect of the Shop No.43, Departure Block, ISBT, Kashmiri Gate, New Delhi, which was allotted to him. The Petitioner also seeks reimbursement of the forfeited Earnest Money Deposit (*hereinafter "EMD")* amount of Rs. 3 lakhs. Vide order of this Court dated 8th July, 2020, the Petitioner was granted a total period of three weeks to pay the entire outstanding licence fee in two equal instalments. It was directed that if the said payments are made by 30th July, 2020, the forfeiture of the EMD amount of Rs. 3 lakhs shall stand withdrawn. The operative portion of the order dated 8th July, 2020 is extracted below:

> *"6. After perusing the writ petition and the facts in this case, the Petitioner is granted a total period of three weeks to pay the entire outstanding license fee in two equal instalments. The first instalment of 50% shall be paid on or before 22nd July, 2020 and the second instalment of the remaining 50% shall be*

> *cleared by 30th July, 2020. If the said payments are made by 30th July, 2020 the forfeiture of the EMD amount of Rs.3 lakhs shall stand withdrawn. Further, re-tendering of Shop No.43 shall stand withdrawn by the GNCTD. However, if the payment of the first instalment is not made, the counter affidavit shall be filed by the GNCTD within a period of four weeks from today. Rejoinder be filed within two weeks thereafter.*
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> *7. This Court has not examined the validity or otherwise of the order dated 30th May, 2020, which, if required, shall be adjudicated after the pleadings are complete. Payment of the license fee shall also be subject to the orders that may be passed in the connected writ petitions as to whether licence fee is payable and if so to what extent."*

3. Pursuant to the above order, the Petitioner made some deposits and in lieu of the second instalment of deposits, the Petitioner handed over an FDR to the Respondent-Corporation. The Corporation however took the view that the deposit of FDR was not in terms of Clause 4.10 of the Notice Inviting Tender for Licensing of Shops/Sites/Spaces at Maharana Pratap, ISBT, Kashmere Gate *(hereinafter, "NIT"),* and cancelled the allotment on 19th August, 2020. The matter was then adjourned to enable the ld. Counsel for the Corporation to seek instructions.

4. The issue at this stage is whether the fixed deposit which has been submitted by the Petitioner can be accepted, in terms of Clause 4.10 of the NIT or not.

5. Mr. Gautam Narayan, ld. ASC submits that as per Clause 4.10 of the NIT, the interest free Security Deposit can only be accepted in the form of a Pay Order or a Demand Draft or a Bank Guarantee.

6. Mr. Mehmood Parcha, ld. counsel for the Petitioner, on the other

hand, submits that the Fixed Deposit in favour of the Corporation has already been handed over to them, the Corporation can encash the same and as per the terms of the Tender, the same can be returned within a week upon the expiry of three years.

7. A perusal of Clause 4.10 of the NIT, shows that interest free security deposit is to be made in the form of a Pay Order, Demand Draft or a Bank Guarantee in favour of the Executive Director, DTIDC. The said security deposit is for a sum equivalent to six months license fee for a shop in ISBT. A copy of the fixed deposit has been placed on record, which shows that the same is valid till 13th July, 2023.

8. Since the fixed deposit is already lying with the Corporation, without treating this as a precedent, the Corporation shall be free to encash the said Fixed Deposit for the sum of Rs.8,50,000/-, with a clear undertaking that upon the expiry of three years, the said amount shall be returned to the Petitioner, within a period of two weeks.

9. Since the Fixed Deposit is already lying with the Corporation, the cancellation of the allotment is set aside. The present order shall not be treated as a precedent.

10. The Petitioner's remedies, if any, in respect of whether the license fee is payable during the lockdown period, is left open, post the decision in connected writ petitions including ***WP (C) 4302/2020 titled Afshana and Ors v. GNCTD***, which are currently pending before this Court.

11. The petition is disposed of, in the above terms. All pending applications are also disposed of.

PRATHIBA M. SINGH, J.

SEPTEMBER 15, 2020/*dj/Ak/A*