
(2018) 12 CAL CK 0135
In the Calcutta High Court
Case No : Writ Petition No. 619 Of 2018

Essem Enterprise

APPELLANT

Vs

Kolkata Municipal Corporation & Ors

RESPONDENT

Date of Decision : 20-12-2018

Acts Referred:

Citation : (2018) 12 CAL CK 0135

Hon'ble Judges : Debangsu Basak, J

Bench : Single Bench

Advocate : Biswajit Mukherjee, Shreyashi Saha, Debleena Ganguly, Alok Kumar Ghosh, Manisha Nath

Final Decision : Disposed Off

Judgement

The act of forfeiting the earnest money deposit amounting to Rs. 11,99,536 is under challenge in the present writ petition.

Learned Advocate appearing for the petitioner submits that, the petitioner participated in a tender process initiated by the Corporation. The petitioner became the lowest bidder. He draws the attention of the Court to the tender conditions. He submits that, the tender conditions allows the Corporation to forfeit the earnest money deposit, in the event, a prospective bidder withdraws the bid within 120 days from the date of its acceptance. In this case, he submits that, the bid of the petitioner was live for 120 days from the date of its acceptance. At the request of the Corporation, the petitioner extended the validity period of such offer of another four months. Even then, the bid of the petitioner was not finally accepted and a work order issued. The Corporation was neither finalizing the contract nor refunding the earnest money deposited. The petitioner made repeated requests to the Corporation for refund of earnest money deposit. At such stage the Corporation, sought to contend that, earnest money deposit stands forfeited. According to him, the Corporation has acted beyond the terms of the tender conditions in purporting to forfeit the earnest money deposit and such deposit should be refunded along with interest.

Learned Advocate appearing for the Corporation submits that, the petitioner did participate in the tender process. The bid of the petitioner was opened finally on November 20, 2016 and the petitioner was found to be the 'L1' bidder. In terms of the general condition of the tender, the petitioner was required to keep the bid valid for a period of four months. The petitioner wanted an extension of the validity period, which was granted. The petitioner, however, within the extended validity period sought to withdraw from the bid. As such juncture, the Corporation, in consultation with the State, decided to forfeit the earnest money deposit. He submits that, the project covered under the subject tender is financed by the State. Therefore, the Corporation thought it prudent to consult the State for the purpose of forfeiture of the earnest money deposit.

I have considered the rival contentions of the parties and the materials made available on record.

As noted above, a decision to forfeit the earnest money deposit made by the Corporation is under challenge in the present writ petition.

The petitioner participated in a tender process. The bid of the petitioner was found to be lowest. The petitioner kept the bid live for initial period. The validity period was subsequently extended. The bid was kept live initially and also for the extended period. According to the petitioner, the extended validity period expired on January 9, 2017 while according to the Corporation, the validity period expired much later.

Be that as it may, since, prima facie, it appears that, the petitioner succeeded in keeping the bid live for the initial period of time and since the parties are governed by the terms and conditions of the tender which allow the Corporation to forfeit the bid earnest money deposit if the bidder withdraws from the bid, in the facts of the present case, in my view, interest of justice would be subserved by requiring the Corporation to set aside a sum of Rs. 11,99,536/- in a suitable interest bearing fixed deposit account maintained with any nationalized bank of its choice, without any lien, till final disposal of the writ petition.

Let affidavit-in-opposition be filed within three weeks after the Christmas Vacation. Affidavit-in-Reply thereto, if any, be filed within one week thereafter.

List the writ petition under the heading "For Hearing" in the monthly list of February, 2019.