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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) No.4197/2016 & CM No.17730/2016 (for stay).
M/S COMVISION (INDIA) PVT LTD Petitioner
Through: Mr. Saket Singh and Mr. Devanshu
Kumar Devesh, Advs.

Versus

NEW DELHI MUNICIPAL COUNCIL Respondent
Through: Mr. Anil Grover with Ms. Noopur
Singhal and Ms. Kanika Singh, ASC
with Mr. Sukesh Aggarwal, AAO
(Pension), NDMC.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER
% **11.05.2016**

1. The petition under Article 226 of the Constitution of India (i) impugns the letters dated 7th September, 2015, 1st October, 2015 and 13th April, 2016 of the respondent New Delhi Municipal Council (NDMC) threatening to encash the Bank Guarantee (BG) furnished by the petitioner in favour of the respondent NDMC in the sum of Rs.1,60,000/- in pursuance to a Work Order placed by the respondent NDMC on the petitioner; (ii) seeks recovery of Rs.1,60,000/- received by the respondent NDMC by encashment of BG; (iii) seeks to restrain the respondent NDMC from taking any coercive action against the petitioner in pursuance to the Work Order; and, (iv) seeks mandamus declaring the petitioner to have complied with his obligations under the Work Order.

2. It is unfortunate that inspite of the dicta of the Supreme Court in *Joshi Technologies International Inc. Vs. Union of India* (2015) 7 SCC 728

clearly laying down the law qua the maintainability of writ petitions in contractual matters and plethora of subsequent judgments of this Court and a large number of which have been reported in Law Journals, writ petitions continue to be filed.

3. Upon the same being put to the counsel for the petitioner he, instead of justifying the maintainability of the writ petition, states that the respondent NDMC is holding the petitioner guilty of breach of contract for not supplying the source code of the work done for the respondent NDMC when the petitioner under the contract was not required to furnish the said source code to the respondent NDMC. It is further stated that unless the respondent NDMC is restrained, it is likely to blacklist the petitioner, severely damaging the reputation and goodwill of the petitioner.

4. I am afraid, the same do not constitute a ground for maintaining a writ petition.

5. The counsel for the respondent NDMC appearing on advance notice on enquiry states that there is no arbitration clause in the agreement between the parties.

6. The petitioner can seek all the remedies as claimed in this writ petition in a suit and by way of interim relief in the suit. Moreover the law qua blacklisting also requires a show cause notice to be issued and the petitioner will again have ample opportunity of hearing to represent before any order for blacklisting is passed.

7. The Court in any case cannot peremptorily injunct the respondent NDMC from proceeding to blacklist the petitioner if according to the respondent NDMC the petitioner is required to be blacklisted.

8. Rather I have enquired from the counsel for the petitioner as to why the petitioner does not want to give the source code for the computer application developed for the respondent NDMC. The counsel for the petitioner states that the petitioner is willing to and has already offered the source code of the customised application but the respondent NDMC is wanting the basic source code and which the petitioner cannot give.

9. Suffice it is to state that the same also reflects the disputed nature of the facts requiring adjudication and which cannot be conveniently resolved in jurisdiction under Article 226 of the Constitution of India.

10. The petition is dismissed as not maintainable with liberty to the petitioner to avail of appropriate remedies in law for the same grievance.

No costs.

facet

RAJIV SAHAI ENDLAW, J

MAY 11, 2016

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