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

% *Order delivered on: 8th February, 2016*

\+ **OMP (I) (COMM.) No.59/2015**

Fortune Grand Management Pvt. Ltd. ..... Petitioner
Through Mr.Sandeep Sethi, Sr. Adv. with Mr.P.S. Bindra, Adv.

versus

DTTDC ..... Respondent
Through Mr.R.K. Dhawan, Adv. with Ms.Richa Dhawan and Mr.Teng, Advs.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The present petition has been filed under Section 9 of the Arbitration and Conciliation Act,1996 for seeking stay of the operation of letter dated 3rd December, 2015 bearing F.No.355 (B)/DTTDC/DHPP/4/2015- 16/4274 issued by the respondent and restrain the respondent, its agents, employees, representatives and / or anybody claiming through him or on his behalf from in any manner interfering in the petitioner's peaceful use, occupation and enjoyment of the project facility defined in Clause 1.1 of the Agreement.

2. It is an undisputed fact that the parties entered into an agreement dated 16th August, 2013 whereby the petitioner was

required to operate, manage the Project Facility in question at Dilli Haat, Pitampura, Delhi.

3. The petitioner's case is that in terms of the agreement after taking approval of respondent it carried out renovation / construction work.

4. The respondent issued show Cause Notice dated 28th September, 2015 alleging violations of the agreement and affording an opportunity to the petitioner to clarify the same within 15 days, otherwise the respondent would terminate the agreement. The said show cause notice was replied by letter dated 12th October, 2015, however, the respondent by letter dated 23rd December, 2015 terminated the agreement.

5. The petitioner has filed the present petition seeking stay of termination since there is an arbitration clause in the agreement.

6. Notice of the petition was issued on 11th December, 2015. While issuing notice, this Court prima facie took the view that the decision taken by the respondent to put a lock on the premises on the pretext of Public Premises (Eviction of Unauthorized Occupation) Act was not fair and not equitable and the respondent should take a fresh look in the matter on the decision taken by them.

7. A Local Commissioner was appointed to inspect the alleged unauthorized construction and directed to submit a report. The Local Commissioner submitted the report and keys of the property along with the report.

8. On 18th December, 2015, the Court noted that since parties were at variance with respect to unauthorized construction in the property, it was appropriate to refer the matter to the Chief Project Manager of the respondent to examine the contentions of both the parties and to record the finding with respect to unauthorized construction carried out by the petitioner in the premises. The said order is reproduced here as under:

"1. Learned counsels for both the parties have handed over the affidavits in terms of the order dated 16th December, 2015, which are taken on record.

2. The parties are at variance with respect to the unauthorised construction in the subject property. It would, therefore, be appropriate to refer this matter to the Chief Project Manager of the respondent to examine the contentions of both the parties and to record the finding with respect to the unauthorised constructions carried out by the petitioner in the premises.

3. Learned senior counsel for the petitioner submits that the local commissioner appointed by this Court vide order dated 11th December, 2015 be also associated with the Chief Project Manager to examine the matter. It is submitted that the local commissioner has already inspected the subject property and given the report, which is on record. Learned counsel for the respondent has no objection to this.

4. In that view of the matter, the Committee consisting of Mr. Vibekanand Bivek, Chief Project Manager of the respondent, and Mr. Satyam Thareja, Advocate shall consider the contentions of both the parties The proceedings shall be conducted by the Committee at the site. Both the parties shall appear before the Committee on December, 2015 at 11:00 a.m. Both the parties shall place the copy of the affidavit filed today before the Committee.

The respondent shall also make available the original records relating to the approvals given by them from time to time for perusal of the Committee.

5. The fees of Mr. Satyam Thareja, Advocate is fixed at Rs.75,000/- to be paid by the petitioner.
6. The Committee shall submit a report to this Court in which they shall specify the unauthorised constructions which have been carried out by the petitioner without an appropriate approval. The Committee shall deal with the contentions of the parties in their report. The Committee is at liberty to take more photographs.
7. The keys of the subject property, deposited by the Local Commissioner along with his report dated 14th December, 2015, be given to the Local Commissioner who shall re-deposit the keys alongwith the report of the Committee.
8. The Committee shall submit the report to this Court before the next date of hearing and simultaneously furnish a copy of the same to both the parties to enable them to take instructions.
9. The reply to the petition be also filed by the respondent before the next date of hearing.
10. List for hearing on 23rd December, 2015.
11. Copy of this order be given dasti to counsels for the parties under the signatures of the Court Master.

Sd/-
J.R. Midha
Judge"

9. A committee consisting of Chief Project Manager of the respondent and Mr. Satyam Thareja, Advocate who had earlier been appointed as Local Commissioner vide order dated 11th December,

2015 was constituted. The Committee was directed to deal with the contents of both the parties . The Committee filed its report.

10. On 23rd December, 2015 my predecessor Bench had passed the following order:

> "1. The Committee appointed by this Court has submitted its report.
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> 2. Mr. Sandeep Sethi, learned senior counsel for the petitioner submits that the petitioner is ready and willing to remove the unauthorized constructions pointed out by the Committee within a period of one week. Learned senior counsel for the petitioner further submits that after removal of the unauthorized constructions pointed out by the Committee, the petitioner may be permitted to use the subject premises in terms of the licence agreement. It is further submitted that the petitioner has no objection to a Committee of four persons to be constituted with two nominees of the petitioner and two nominees of the respondent to ensure the usage of the subject premises strictly in terms of the licence agreement. It is further submitted that if there is any violation in future, the premises may be sealed by this Court and the petitioner shall not raise any objection to the same. It is further submitted that the petitioner shall not claim any equities with respect to the removal of the unauthorized construction.
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> 3. Mr. R.K. Dhawan, learned counsel for the respondent submits that the respondent is not agreeable to the above submissions. The removal of the unauthorized construction would take a long time and not one week as stated by the petitioner.
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> 4. Since the respondent has to recover the possession of the subject premises from the petitioner under the

Public Premises (Eviction of Unauthorized Occupants) Act, 1971, this Court is of the prima facie view that the premises in question should be restored to its original condition without prejudice to the rights and contentions of the parties and the premises be used strictly in accordance with the licence deed till the proceedings under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971 are concluded. As a result, the respondent would get the licence fee during this period and the public would be able to use the facilities for which the premises were made. However, this is not acceptable to the respondent. In that case, the respondent would suffer loss of licence fee which it would have earned from the petitioner during this period. Question arises that who will be responsible for the loss to the public money to be suffered on account of keeping the premises locked.

5. Reply has been filed by the respondent. Rejoinder to the reply be filed before the next date of hearing.

6. List this matter for final hearing on January, 2016. This matter shall not be treated as part heard.

7. Both the parties shall file brief note of submissions not exceeding five pages before the next date of hearing.

8. Copy of this order be sent to the concerned Secretary of Govt. of NCT of Delhi who shall consider the implications of the loss of public money in case the premises remain lying locked till the conclusion of the proceedings under the Public Premises (Eviction of Unauthorized Occupants) Act, 1971. The response of Govt. of NCT of Delhi be placed before this Court on the next date of hearing.

9. Copy of this order be given dasti to counsel for the parties as well as to Mr. Rahul Mehra, learned senior standing counsel for GNCTD.

Sd/-
J.R. Midha
Judge"

11. It appears from the said order that it was directed that the Secretary (Tourism) Govt. of NCT of Delhi to look into the matter and consider the loss of public money in case the premises remain locked and fixed the matter on the next date.

12. Accordingly, the Secretary (Tourism), Govt. of NCT of Delhi submitted a letter dated 7^{th} January, 2016 through Mr. Rahul Mehra, Standing Counsel for Government of NCT of Delhi stating that the respondent had valid concern for the loss of license fee.

13. The operative part of the report is reproduced here as under:

> "Since the respondent has to recover the possession of the subject premises from the petitioner under the Public Premises (Eviction of Unauthorised Occupants) Act 1971, the directions of the Hon'ble Court that the premises should be restored to its original condition and should be used directly in accordance with the License Deed, till the proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act 1971 are concluded, are respectfully acceptable. The Hon'ble Court's valid concerns about the loss of license fee during the period of conclusion of proceedings under the Public Premises (Eviction of Unauthorised Occupants) Act 1971 are in the best interest of the public exchequer. In accordance with the same directions, the following contentions of the Corporation may also be taken into account by the Hon'ble court:-
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> Dilli Haat Pitampura had been constructed by the Engineering Wing of DTTDC, with aesthetic supervision of

the renowned Architect, Shri Pradeep Sachdeva. In order to avoid any further damage to the aesthetics of this public asset, removal of all unauthorized construction and its restoration to its original condition may be done departmentally by DTTDC, as per CPWD norms, at the cost and expense of the operator. The operator may be directed to deposit Rs.14.65 lakhs as per preliminary estimate, in advance.

The dues recoverable from the operator are listed at Annexure A, which includes 5% share of revenue. The operator may be directed to immediately deposit Rs.2.90 lakhs before the premises is re-opened for use.

Schedule D of the Agreement, listed the prohibited list of activities, including wedding ceremonies, gambling, sale of liquor etc. It would be unfair if the operator is allowed to enjoy the revenues from these illegal activities and he may be directed to deposit the same with the public exchequer. In absence of any transparent sharing of revenue statements by the operator, a conservative estimate based on sale of entry tickets for these activities and as per prevailing rates of banqueting has been calculated by the Corporation as Rs.19.10 lakhs.

DTTDC is a wholly government owned undertaking. Thus while the financial aspect of the matter, is of vital importance to this commercial entity, yet, the primary purpose of the Corporation, remains to provide tourism facilities to the citizens of Delhi. The interests of the common citizens have to be kept at the forefront, while running Dilli Haat Pitampura. All the Violations of the agreement, done by the operator, resulted from his focus on banqueting, and the revenues inherent therein, at the cost of non provision of simple food court facilities to the visiting tourists, being less remunerable as compared to banqueting. Thus, the committee to be constituted to ensure the usage of the said premises, in accordance with the terms of the license agreement, may be directed to ensure that the primary focus of all activities of the operator in Dilli Haat is to provide attractive food court facilities to the common citizens, to the total exclusion of banqueting activities. This is pertinent in light of prohibited activity number 5 in Schedule D to the Agreement which states "Any activity that does not gel with the theme of Dilli Haat Pitampura".

14. As per one of the condition of the report, the petitioner is to deposit Rs.14.65 Lacs to remove the unauthorized construction.

15. The petitioner has filed response to the aforesaid letter stating that it was willing to remove the unauthorized construction as noted by Local Commissioner except one toilet in Hall No.2 and Tin sheet roof of the kitchen by itself.

16. When the report was discussed after small hearing, counsel for the petitioner had agreed to deposit Rs.14.65 Lacs for removing the alleged unauthorized construction expeditiously within two weeks from the date of passing of the order. However, counsel did not agree with the other demand of amounts under different heads as according to him, those are unnecessary. But even on first part it was objected to by the respondent on the ground that the toilet was not approved by the respondent which has again been disputed by the petitioner.

17. On 3rd February, 2016, the petitioner agreed to remove the toilet stating that roof of the kitchen cannot be removed as it even existed prior to when the premises were given to the petitioner. The petitioner alleged that the existing slate roof was leaking, the tin sheet

had been put and kitchen cannot be open to sky and it shall claim no equity or any right whatsoever for the said makeshift position.

18. The petitioner has handed over the pay order bearing No.203437 dated 3rd February, 2016 of Rs.14,65,000/- drawn on ICICI Bank in favour of DTTDC. An affidavit filed by the petitioner is also taken on record.

19. On the objection of the respondent for appointment of Arbitral Tribunal, the Counsel for the respondent handed over a copy of order dated 27th January, 2016 passed by Coordinate Bench of this Court in Writ Petition (Civil) No. 588/16 wherein on 29th January, 2016 the following issue was framed:

> "Whether the Public Premises (Eviction of Unauthorised Occupants) Act, 1971 would prevail over the arbitration agreement within the meaning of the Arbitration and Conciliation Act, 1996"

20. The order in the said matter is already reserved. Counsel for the petitioner is agreeable that in the proceedings of Public Premises, the liberty be granted to the petitioner to raise all objections in accordance with law and the petitioner be permitted to appear and argue the matter for which the counsel for the respondent has no objection.

21. In view of the above said discussion and circumstances, the present petition is disposed of with the direction to the respondent to restore the premises in terms of the Local Commissioner report after removing the unauthorized construction as agreed except removing

the roof of the kitchen within a period of two weeks for which the petitioner has paid Rs.14.65 Lacs. The respondent shall assist the representative of petitioner in the said process.

22. For the said purpose, keys deposited in Court be given to the respondent by the Registry forthwith. The respondent shall give the keys to the petitioner for due compliance after 2 weeks and without any further delay.

23. The petitioner shall run the premises strictly in terms of the agreement executed between the parties.

24. As far as the disputes between the parties would be adjudicated on merit and without any influence of the order passed in the present petition by the appropriate Forum i.e. the Arbitrator or the Estate Officer, the same would be subject to decision in Writ Petition (Civil) No.588/2016.

25. The present petition is accordingly disposed of with the above directions.

26. No costs.

27. *Dasti* under the signatures of the Court Master.

(MANMOHAN SINGH)
JUDGE

February 8, 2016