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

+ **O.M.P.(I) (COMM.) 84/2017**

HONSHU BUILDCON PRIVATE LIMITED Petitioner

Through: Mr Rajesh Gupta, Mr Harpreet Singh
and Mr Pranjal Saren, Advocates.

versus

**NORTH DELHI MUNICIPAL CORPORATION
& ANR.**

..... Respondents

Through: Ms Mini Pushkarna, Standing
Counsel, North DMC with Mr Ajay
Kadian, ADC (North DMC, Mr
Sandeep Chopra, North DMC with
Ms Anushruthi, Advocate.

**CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU**

ORDER
20.02.2017

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IA No.2281/2017

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

O.M.P.(I) (COMM.) 84/2017

3. The petitioner has filed the present petition under Section 9 of the Arbitration and Conciliation Act, 1996 (hereafter 'the Act'), *inter alia*, praying as under:-

“(a) Stay the implementation of the impugned demand notice no. ADC/(Advtt.)/NDMC/2017/D-4654 dated 09.02.2017 [annexure P-24].

- (b) Restrain the Respondents, its employees and officers etc. from taking any coercive action in furtherance of impugned demand notice dated 09.02.2017 (Annexure P-22) and/or cancelling or creating any third party rights in respect of display of advertisement through Kiosks on Lamp posts/Streets Light Poles in Central Verge of Commercial and MLU Road maintained by PWD or MCD in the jurisdiction of Civil Lines Zone.
- (c) Pass ad-interim ex-parte order in terms of prayer (a) and (b) above and confirm the same after notice to the Respondents;
- (d) award costs of the present proceedings in favour of the Petitioner and against the Respondents.”

4. The petitioner entered into an agreement for advertisements through Kiosks on Lamp Poles/Street Light Poles in Central verge of Commercial and MLU Roads maintained by PWD or MCD within Civil Line Zone on 19.05.2016. In terms of the contract, the petitioner was required to pay monthly licence fee of ₹24,20,000/-.

5. Certain disputes have arisen between the parties and the petitioner, *inter alia*, claims that it has been unable to exploit the opportunity due to *inter se* disputes between the PWD and MCD. The petitioner’s application under Section 11 of the Arbitration and Conciliation Act, 1996 (hereafter ‘the Act’) was allowed by this Court by an order dated 06.12.2016 and the parties were referred to Delhi International Arbitration Centre (DIAC). The petitioner states that although that the arbitral tribunal was in the process of being constituted but has not been so constituted as yet.

6. In the meantime, the respondents raised demands pursuant to the contract. Ms Pushkarna, learned counsel appearing for the respondents has

drawn the attention of this Court to clause 6(3) of the contract which required the successful bidder to pay monthly license fee on quarterly basis 15 days prior to the end of each quarter. In terms of the contract, the petitioner was required to pay the quarterly license fee for the quarter 19.11.2016 to 18.02.2017, 15 days prior to the said date. It is stated that the said payment had not been made by the petitioner within time. Further, the payments for quarter commencing on 19.02.2017 and ending on 18.05.2017 have also become due. Accordingly, the respondent had raised a demand (in aggregate ₹1,33,28,774/-) by letter dated 09.02.2017. The said amount has not been paid by the petitioner as yet.

7. The learned counsel for the petitioner submits that in view of mitigating circumstances including withholding of material by PWD, the petitioner has not been able to exploit the sites as agreed. Nonetheless, the petitioner had issued four cheques under cover of the letter dated 16.02.2017 last of which was dated 10.03.2017.

8. It is seen that the petitioner had also approached this Court by way of a petition under Section 9 of the Act with similar reliefs. The said petition was disposed of by an order dated 23.11.2016 in OMP(I)(COMM) 338/2016. Paragraph 2 of the said order is relevant and is set out below:-

“2. Subject to the Petitioner continuing to make monthly payments as and when due, the Court restrains the Respondents from taking any coercive steps pursuant to the impugned demand notices dated 12th and 17th August 2016 and/or cancelling or creating any third party rights in respect of display of advertisement through kiosks on Lamp Posts/Streets Light Poles in Central Verge of Commercial and MLU Road maintained by PWD or MCD in the jurisdiction of Rohini Zone.”

9. In view of the expressed direction of this Court that the petitioner would pay the monthly license fee within time, the present petition cannot be entertained and no further time ought to be granted to the petitioner. Nonetheless, giving the mitigating circumstances, claimed by the petitioner, it is directed that the petitioner shall meet the entire payment as demanded by the respondents within a period of four weeks from today. The said payment shall be made by way of demand drafts/ pay orders. 50% of the above amount shall be paid within a period of two weeks from today. Subject to the payment being made as directed, the respondents shall keep the order of cancellation in abeyance and not implement the same. This is, plainly, without prejudice to the rights of the parties to make such claims as they may be advised before the Arbitral Tribunal. It will also be open for the respondents to make claim for interest on delayed payments.

10. Needless to mention that nothing stated in this order may be read as an expression of opinion on the merits of the disputes between the parties.

11. The petition is disposed of with the aforesaid observations.

VIBHU BAKHRU, J

FEBRUARY 20, 2017
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