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

Date of Decision: 25.10.2017

+ W.P.(C) 11736/2016 & CM Nos.46180/2016, 7913/2017,
14809/2017 & 20476/2017

LIBAS INVESTMENTS PRIVATE LIMITED Petitioner
Through: Mr. Rajesh Gupta with Mr.
Harpreet Singh & Mr. Pranjal Saran, Advs.

versus

NORTH DELHI MUNICIPAL CORPORATION Respondent
Through: Ms. Mini Pushkarna, Standing
Counsel, North DMC with Ms. Vasundhara
Nayyar and Ms. Anushruti, Advs. for North
DMC.
Mr. Nimish Chib, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE SANJEEV SACHDEVA

MR. JUSTICE S. RAVINDRA BHAT (ORAL)

1. The writ petitioner challenges the rejection of its bid, for allotment of parking sites, by the North Delhi Municipal Corporation (NDMC). The petitioners were not allowed to participate in the e-auction on account of denial of access by the respondent – NDMC.

2. The NDMC was of the opinion that the petitioner's bid could not be considered on account of a bar contained in the eligibility condition 1(c).

3. In this regard, the relevant condition is extracted below:

"1. Eligibility for participation in the tender:

a. *****

b. *****

c. *Any person/ party/ firm or registered parking contractor who is disqualified or ineligible to participate in the tender according to the aforesaid conditions shall not be qualified to offer the tender in the name of its associate concern subsidiaries/ principals/ front/ **related concerns in which he has substantial financial stakes/shows common addresses/ common partners or Directors/ frequent financial transaction of huge amounts** and the commissioner/ authorized officer on his behalf may declare the tenderer disqualified on this ground, if he is of the opinion that the said tenderer is acting in collusion with for the benefit of any other party who would have been disqualified to participate in tender of his own. **The decision of the Competent Authority shall be final and binding on such bidders.**"*

4. The petitioner's bid was rejected and the intimation given in this regard, was as follows:

“Sub.:- Allotment of NDMC parking sites on regular basis through e-auction

This is to inform you that an e-auction for allotment of authorized 26 parking sites of North DMC, was held on 01.12.2016. During the scrutiny of mandatory documents uploaded online by you, the following discrepancies were observed-

S.No.	Name of the Bidder	Details of the discrepancies
1.	M/s Kake Finvest Pvt. Ltd.	<i>Huge transactions are found related with the company namely M/s Ashima Infrastructure Pvt. Ltd., which is already a defaulter, as per “Clause No. 1 (C) of the Terms and Conditions”. Hence, you were not allowed to participate in the live e-auction on 01.12.2016.</i>
2.	M/s Libas Investment Pvt. Ltd.	<i>Huge transactions are found related with the company namely M/s Ashima Infrastructure Pvt. Ltd., which is already a defaulter, as per “Clause No. 1 (C) of the Terms and Conditions”. Hence, you were not allowed to participate in the live e-auction on 01.12.2016.</i>
3.	Sh. Raj Mani Tiwari	<i>Found un-fit due to not uploading the requisite documents on MCD-website portal. Accordingly, you have not allowed to participate in the live e-auction on 01.12.2016.</i>

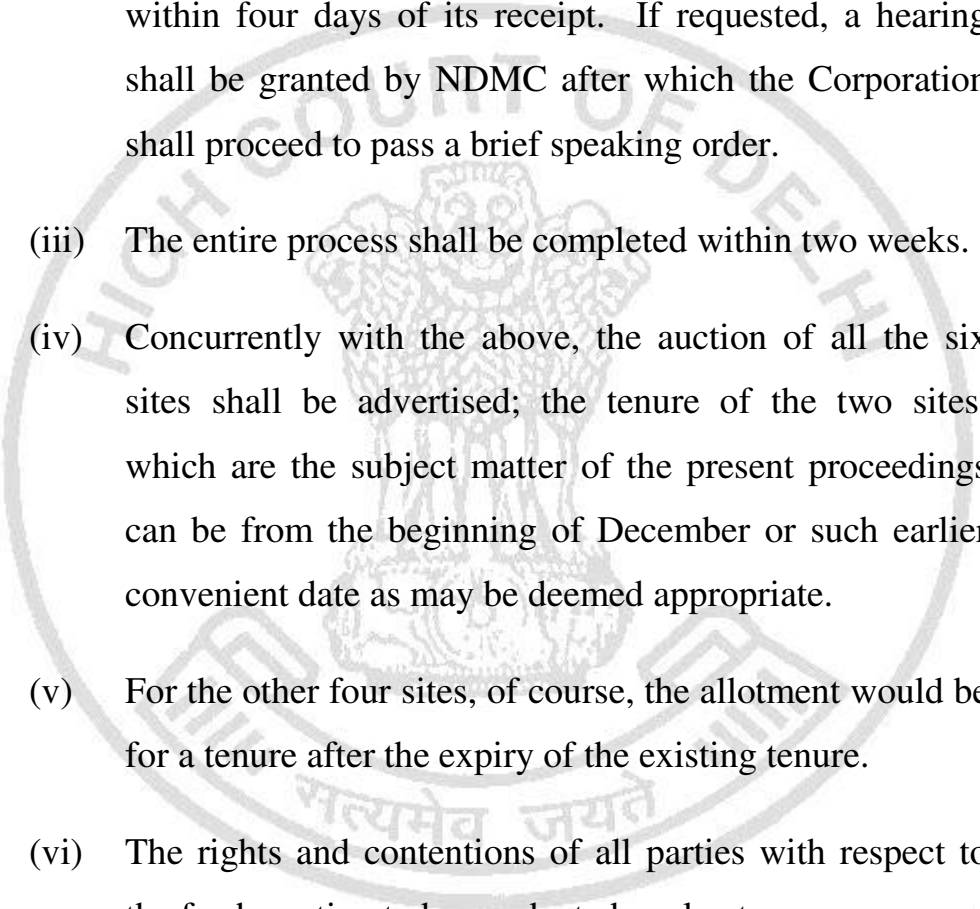
This issues with the prior approval of the Competent Authority.”

5. It is contended that the inference drawn with respect to petitioner's connection with M/s Ashima Infrastructure and the disqualification condition are untenable. Learned counsel contends that there is no material to substantiate that the petitioner concern is related to M/s Ashima Infrastructure or that it has substantial financial stakes or common address or common partners or directors. Elaborate submissions were made in this regard by the parties.

6. During the course of hearing, it was noticed that the award of contract was for the period of one year from 02.12.2016, when the allotments were intimated. Out of the six sites advertised, four have already become operational; in respect of the fifth site – of which the second respondent – Sunil Kumar was the successful tenderer, the Court had interdicted the allotment by an interim order and upon being apprised of the fact that the order was not complied with, stayed handing over of the site.

7. The Court had expressed the opinion that having regard to the facts and circumstances – especially that four sites have been operational and that tenure of the sites is likely to end within the next 60 days, it would be more appropriate to re-tender all the sites, depending upon the expiration of the existing tenure of the allotment in the other four sites. This course was acceptable to the NDMC.

8. In the light of the above, the following directions are issued:

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- (i) NDMC shall within three days from today indicate to the petitioner the reasons for its decision to not permit it to participate in the e-auction (i.e. spell out the grounds for its conclusions that clause 1(c) applies).
- (ii) The petitioner shall file its representation to such notice within four days of its receipt. If requested, a hearing shall be granted by NDMC after which the Corporation shall proceed to pass a brief speaking order.
- (iii) The entire process shall be completed within two weeks.
- (iv) Concurrently with the above, the auction of all the six sites shall be advertised; the tenure of the two sites, which are the subject matter of the present proceedings can be from the beginning of December or such earlier convenient date as may be deemed appropriate.
- (v) For the other four sites, of course, the allotment would be for a tenure after the expiry of the existing tenure.
- (vi) The rights and contentions of all parties with respect to the fresh auction to be conducted are kept open.
- (vii) The earnest money furnished by the petitioner and the second respondent shall be refunded to them within two weeks from today. Furthermore, the amounts paid towards instalments, etc. in terms of the allotment (which

could not be utilized or operationalized) shall also be refunded to the second respondent over and above the said amount.

9. The writ petition is disposed of in the above terms.
10. Copy of the order be given *Dasti* under the signatures of the Court Master.

S. RAVINDRA BHAT, J

SANJEEV SACHDEVA, J

OCTOBER 25, 2017
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