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

+ **W.P.(C) 10427/2017 and CM APPL. 42611-42612/2017**

M/S IN AND OUT ADVERTDSING PVT. LTD..... Petitioner

**Through Mr. Rohan Thawani and Ms. Gunjan
Ahuja, Advs.**

versus

SOUTH DELHI MUNICIPAL CORPORATION..... Respondent

Through Mr. Sandeep Bajaj, Adv.

CORAM:

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

% 12.12.2017

Instant petition has been filed seeking issuance of Writ of
Certiorari and Mandamus, with the reliefs as under :

“(A) Issue a writ of Certiorari or any other appropriate writ order or direction, quashing the impugned order No. CO(Adv.)/SZ & SNZ/SDMC/2017/D-1292 dated 25.10.2017 issued by the Respondent South Delhi Municipal Corporation as it is arbitrary, unlawful, and violates the fundamental rights of the petitioner as guaranteed under Article 14 of the Constitution of India;

(B) Issue a writ of Mandamus or any other appropriate writ, order or direction, commanding the Respondent SDMC to refund to the Petitioner the Earnest Money Deposit of Rs.56,51,800/- (Fifty Six Lakhs Fifty One Thousand & Eight Hundred Only) which has been forfeited by the Respondent through the impugned order No. CO(Advt.)SZ & CNZ/SDMC/2017/D-1292 dated 25.10.2017.”

The impugned order dated 25.10.2017 is the off-shoot of the alleged default attributable to the petitioner in not depositing advance license fee and the security deposit on having been awarded the

contract dated 27.7.2017, copy whereof, finds place at running page 60 of the paper book.

During the course of hearing, ld. counsel for the petitioner concedes that as regards the refund of any money including the security deposit, the instant petition would not be tenable and that, the writ petition is pressed only as regards the black-listing order passed there-under. Ld. counsel for the respondent concedes that before issuance of the impugned black-listing order, no show cause notice giving reasons to proceed in that direction has come to be issued.

In (2014) 9 SCC 105 **Gorkha Security Services Vs. Government (NCT of Delhi) and others**, it has come to be held, as under :

“21) The Central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of Show Cause Notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same. Another requirement, according to us, is the nature of action which is proposed to be taken for such a breach. That should also be stated so that the noticee is able to point out that proposed action is not warranted in the given case, even if the defaults/ breaches complained of are not satisfactorily explained. When it comes to black listing, this requirement becomes all the more imperative, having regard to the fact that it is harshest possible action.

22) The High Court has simply stated that the purpose of show cause notice is primarily to enable the noticee to meet the grounds on which the action is proposed against him. No doubt, the High Court is justified to this extent. However, it is equally important to mention as to what would be the consequence if the noticee does not satisfactorily meet the grounds on which an action is proposed. To put it otherwise,

we are of the opinion that in order to fulfil the requirements of principles of natural justice, a show cause notice should meet the following two requirements viz:

- i) The material/ grounds to be stated on which according to the Department necessitates an action;**
- ii) Particular penalty/action which is proposed to be taken. It is this second requirement which the High Court has failed to omit.**

we may hasten to add that even if it is not specifically mentioned in the show cause notice but it can be clearly and safely be discerned from the reading thereof, that would be sufficient to meet this requirement.”

In view of the afore-going, the writ petition pressed to the limited extent of impugned black-listing order, is granted and the impugned black-lasting order is quashed and set aside. Liberty is however, reserved to the respondent to issue a fresh show cause notice for black-listing giving reasons therefor, to be disposed off in a time bound manner, giving an opportunity of hearing to the petitioner. As agreed, in the event of a fresh cause notice is issued to the petitioner, instant petition shall be treated to be the response thereto. Liberty is also reserved to the petitioner to make any other plea or file additional documents, as may be required in response to the show cause notice to be issued. Petition and the pending application(s) stand disposed off accordingly.

Dasti under the signatures of the Court Master.

A. K. CHAWLA, J

DECEMBER 12, 2017

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