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

+ **W.P.(C) 10911/2017**

REHAB CAFE @ REHAB GASTROPUB Petitioner

Through: Mr Prashant Katara and Mr Soin
Khan, Advocates.

versus

SUB DIVISIONAL MAGISTRTE (S.D.M.)

AND ANR.

..... Respondents

Through: Mr D. Rajeshwar Rao, Mr B
Mahapatra and Mr Abhinav
Srivastava, Advocates for DPCC.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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15.12.2017

CM No. 45581/2017

1. Issue notice.
2. The learned counsel appearing for the respondents accept notice.
3. The petitioner has filed the present petition, *inter alia*, praying as under:-

“(i) Issue an appropriate writ quashing and setting aside the order dated 23/09/2017 (Annexure P-10), as issued by the respondent No.1 and further directing the respondent No.1 to desal the unit of the petitioner bearing details “Rehab Cafe @ Rehab Gastro Pub, 30, second Floor, rear portion, Hauz Khas Village, New Delhi” immediately.”

4. The petitioner's restaurant named Rehab Cafe @ Rehab Gastro Pub located at 30, Second Floor, rear portion, Hauz Khas Village, New Delhi had been sealed pursuant to an order passed by respondent no.2 (Delhi Pollution Control Committee) as the petitioner was found to be in violation of the pollution laws. The petitioner thereafter applied for a fresh Consent to Establish, which was granted by an email dated 20.09.2017. The said email reads as under:-

“Subsequent to your filing an application for Consent to Establish vide Enquiry Counter ID No. dated 10-09-2017 in Delhi Pollution Control Committee for category cases II(b), headed by the Member Secretary, DPCC in its 5 meeting held on 20-09-2017. Following decision was taken on the said date:

Consent to Establish granted. Take action regarding closure directions as per office order dated 02.08.2017.

This is system generated email from DPCC Website.

Don't reply to this email.

For any query, please contact concerned Cell Incharge in DPCC for more information.

Thanks & regards

DPCC I.T. Cell”

5. In terms of the office order dated 02.08.2017, the sealed premises have to be desealed on receipt of an undertaking and Environmental Compensation Security (hereafter 'ECS'). Respondent No.2 is further required to carry out an inspection after 10 days of the issue of desealing of the unit and if the unit is found operating without obtaining fresh consent to establish/consent to operate/authorisation, the unit would be asked to deposit

the ECS in form of Demand Draft in favour of respondent no.2. Clause (iii) and (iv) of the Office Order dated 02.08.2017 reads as under:-

“(iii) If the unit intend to run the same unit, they have to submit an undertaking stating that it would not run the unit till a fresh CTE/CTO/Authorization is obtained and also submit a ‘Environmental Compensation Security (ECS) for one year as per schedule below.

Capital Investment	ECS*
Upto Rs 50 Lacs	Rs 2 lacs
Above Rs 50 Lacs to Rs 5 Crores	Rs 5 lacs
Above Rs 5 Crores	Rs 10 lacs

(*) *The ‘Environmental Compensation Security’ amount would be doubled in the case of Seriously Polluting Industry (SPI), before fresh CTE/CTO/Authorization is granted.*

(iv) On submission of undertaking and ECS, an order would be issued to allow the desealing of premises and restoration of electricity/water connections. Further, an inspection shall be carried out after 10 days after issue of such order by the concerned CMC and if unit is found operating without obtaining fresh CTE/CTO/Authorization, unit shall be asked to deposit ‘Environmental Compensation Security’ amount in form of Demand Draft in favour of Delhi Pollution Control Committee and the prosecution may be initiated against the unit if the unit fails to deposit ‘Environmental Compensation Security’ amount.”

6. It is pointed out that the petitioner has already deposited the ECS and, therefore, the petitioner’s unit is required to be de-sealed and accordingly, respondent no.1 is directed to desal the petitioner’s premises. Respondent

no.2 shall carry out the necessary inspections as required before granting the Consent to Operate. In the event the petitioner is found to be not compliant with the relevant clauses, respondent no.2 shall take necessary steps to again re-seal the premises in accordance with law.

7. The aforesaid order is passed with the concurrence of the learned counsel for respondent no.2.

8. The petition alongwith the application is disposed of with the aforesaid directions.

9. The date fixed on 05.01.2018 stands cancelled.

10. Order *dasti* under signature of Court Master.

DECEMBER 15, 2017
RK

VIBHU BAKHRU, J