

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: March 19, 2018

Judgment delivered on: June 01, 2018

+ W.P.(C) 5358/2017, CM Nos. 22657/2017, 36665/2017 &
42012/2017

GRAPHISADS PVT LTD

..... Petitioner

Through: Mr. Kirti Uppal, Sr. Adv. with
Mr. Nitin Mittal, Mr. Siddharth Chopra
and Mr. Pranvir Sethi, Advs.

versus

SOUTH DELHI MUNICIPAL CORPORATION

..... Respondent

Through: Mr. Sanjay Poddar, Sr. Adv. with
Mr. Mukesh Gupta and Mr. Shivam
Goel, Advs.

+ W.P.(C) 5543/2017, CM Nos. 23316-23317/2017
M/S. GRAPHISADS PVT. LTD .

..... Petitioner

Through: Mr. Kirti Uppal, Sr. Adv. with
Mr. Nitin Mittal, Mr. Siddharth Chopra
and Mr. Pranvir Sethi, Advs.

versus

SOUTH DELHI MUNICIPAL CORPORATION

..... Respondent

Through: Mr. Sanjay Poddar, Sr. Adv. with
Mr. Mukesh Gupta and Mr. Shivam
Goel, Advs.

+ W.P.(C) 6292/2017, CM Nos. 26073-26074/2017
M/S. GRAPHISADAS PRIVATE LIMITED

..... Petitioner

Through: Mr. Kirti Uppal, Sr. Adv. with
Mr. Nitin Mittal, Mr. Siddharth Chopra
and Mr. Pranvir Sethi, Advs.

versus

SOUTH DELHI MUNICIPAL CORPORATION

..... Respondent

Through: Mr. Sanjay Poddar, Sr. Adv. with
Mr. Mukesh Gupta and Mr. Shivam
Goel, Advs.

+ CONT.CAS(C) 544/2017
M/S GRAPHISADS PVT LTD

..... Petitioner

Through: Mr. Kirti Uppal, Sr. Adv. with
Mr. Nitin Mittal, Mr. Siddharth Chopra
and Mr. Pranvir Sethi, Advs.

versus

SOUTH DELHI MUNICIPAL CORPORATION
& ORS

..... Respondents

Through: Mr. Sanjay Poddar, Sr. Adv. with
Mr. Mukesh Gupta and Mr. Shivam
Goel, Advs.

AND

CONT.CAS(C) 521/2017, CM Nos. 26540/2017, 12568/2017

SOUTH DELHI MUNICIPAL CORPORATION

..... Petitioner

Through: Mr. Sanjay Poddar, Sr. Adv. with
Mr. Mukesh Gupta and Mr. Shivam
Goel, Advs.

Versus

MUKESH GUPTA & ORS

..... Respondents

Through: Mr. Kirti Uppal, Sr. Adv. with
Mr. Nitin Mittal, Mr. Siddharth Chopra
and Mr. Pranvir Sethi, Advs.

CORAM:
HON'BLE MR JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

CM No. 26540/2017 in CONT.CAS(C) 521/2017

Exemption allowed subject to all just exceptions.

Application stands disposed of.

W.P.(C)Nos. 5358/2017, 5543/2017, 6292/2017, Cont.Cas(C) 544/2017 & Cont.Cas(C) 521/2017

1. By this order, I shall dispose of three writ petitions filed by the petitioner being W.P.(C)Nos. 5358/2017, 5543/2017, 6292/2017 and two contempt petitions being Cont.Cas(C) 544/2017 & Cont.Cas(C) 521/2017.

BRIEF FACTS:-

W.P.(C) 5358/2017

2. This writ petition has been filed with the following prayers:-

“WHEREFORE, it is most respectfully prayed that this Hon’ble Court may be pleased to:

(I) Issue writ of MANDAMUS and/or for any other writ, order or direction in the like nature-

(i) restraining the respondent from dismantling, removing and/or defacing the installations and/or display advertisements put up by the petitioner in furtherance of Concession Agreement dated 17.06.2010 at subject cluster i.e Cluster No.2 – (IGI Stadium & Jawaharlal Nehru Sports Complex) and Cluster No.3 – (R.K. Khanna Tennis Complex).

(ii) Commanding the respondent to pass speaking order on petitioner's letter dated 18.05.2017 (annexure P-4) for extending contract period in terms of Article 2.2 of Concession Agreement dated 17.06.2010.

(II) Award costs in favour of the petitioner and against the respondent; and

(III) Pass such other and further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

3. It is the case of the petitioner, that the respondent had undertaken the task to beautify Delhi and various sites identified as such, including the venues for Commonwealth Games 2010. Tenders were invited for installing and maintaining street furniture on identified roads/locations on cluster basis. The Petitioner's offer/bid was accepted for Clusters 2 and 3, i.e., IGI Stadium and Jawaharlal Nehru Sports Complex and R.K. Khanna Tennis Complex vide letter dated March 31, 2010. Upon fulfilling requisite compliances, the Petitioner was allotted the subject clusters vide letter dated May 12, 2010. Concession Agreement between the Petitioner and the Respondent was executed on June 17, 2010, for maintenance of street furniture on roads leading to and in vicinity of Commonwealth Games Venue vis-a-vis subject

clusters.

4. It is the case of the petitioner, that the tenure of the Agreement, as defined by Article 2.2 was initially for a period of seven years w.e.f. June 17, 2010, with a right to the petitioner to seek extension, upon terms mutually agreed upon. Notwithstanding the tenure and the right to seek extension, the respondent also had the right to call for fresh bidding, with right of first refusal to the Petitioner to match or exceed the fresh bid. It is the case of the petitioner that in furtherance of the aforesaid Agreement, the Petitioner has made huge investment in installing the street furniture as per specifications, while also maintaining public toilets, vending kiosks, police booths, benches, dustbins etc., and regularly paying the quarterly concession fee as per the Agreement. The Petitioner had also entered into various commercial contracts for display of advertisements on street furniture. That apart, vending kiosks have been sub-licensed, wherefrom people are earning their livelihood.

5. It is the Petitioner's case that upon successful performance of obligations under the contract, and for the huge investment incurred by the Petitioner in the installation and maintenance of street furniture, they were entitled to extension in terms of Article 2.2 of the contract. The Petitioner therefore sent letter dated May 18, 2017 requesting the Respondent to renew the Agreement for another period of seven years. The initial tenure of the Concession Agreement dated June 17, 2010 was to expire on June 17, 2017,

and therefore the respondent was required to take a decision on the Petitioner's request at the earliest. It is the petitioner's case that the respondent, however, allegedly, slept over the request, and refused to take any decision. The Petitioner sent a reminder vide letter dated June 02, 2017, however, the same was not responded to by the Respondent. The Respondent did not even call for fresh tenders in terms of Article 2.2 of the Concession Agreement. It was only on June 20, 2017, that certain officers of the Respondent arrived at the Lodhi Road Area and R.K. Puram Area installations and started defacing/removing the display advertisements. The said action, as informed by the officers present, was on orders of Shri P. S. Jha, Additional Deputy Commissioner (Advertising), of the Respondent.

6. It is the petitioner's case that the Concession Agreement dated June 17, 2010 was executed for beautification of the site(s) falling in the subject clusters by installation, maintenance and keep-up of street furniture and its utilization in terms of the Agreement. The said beautification, according to the Petitioner, was not period specific, but was in fact permanent in nature, for uplifting the face of the site in the subject cluster. The Petitioner has further stated that it has successfully completed the initial term of the Agreement, and therefore claim a right to renewal of Agreement.

W.P.(C) 5543/2017

7. The present petition has been filed with the following prayers:-

“WHEREOF, it is most respectfully prayed that this Hon’ble Court may be pleased to:

(I) Issue writ of MANDAMUS and/or for any other writ, order or direction in the like nature-

(i) Quashing, setting aside the order denying the renewal of concessionaire agreement dated 17th June, 2010 communicated vide ante dated letter no. D/AC/ADVT./2017-18/457 dated 22.06.2017 through e-mail dated 24.06.2017 and declaring the same to be arbitrary, malafide and to renew/extend the concessionaire agreement for further period as envisaged in the agreement.

And/or

Direct the Respondent to not to dismantle, remove and/or deface the installations and/or display advertisements put up by the Petitioner in furtherance of Concession Agreement dated 17.06.2010 at subject cluster i.e Cluster No.2 – (IGI Stadium & Jawaharlal Nehru Sports Complex) and Cluster No.3 – (R.K. Khanna Tennis Complex) till the respondent conduct a fresh bidding process and obtain the proposal in respect of the project and give to the Concessionaire a Right of First Refusal to match or exceed the bid of the identified preferred bidder.

(II) Award costs in favour of the petitioner and against the respondent; and

(III) Pass such other and further order(s) as this Hon’ble Court may deem fit and proper in the facts and circumstances of the case.”

8. This is the second petition. The facts as narrated above being common to this petition are not repeated for the sake of brevity. Suffice to state, it is the case of the petitioner, in this writ petition that it had filed W.P.(C) 5358/2017 on June 21, 2017, challenging the action of removal/defacing of street furniture and display ads put up by the Petitioner. The matter was heard

on the same day, and status quo orders were passed therein. The respondent failed to abide by the status quo orders passed, and further proceeded to take action against the installations put up by the Petitioner. The petitioner has therefore filed a separate Contempt Petition challenging such conduct of the Respondent. It is the case of the petitioner that upon finding their actions being assailed by the Petitioner (W.P.(C) 5358/2017), the respondent passed ante-dated orders dated June 21, 2017 and June 22, 2017, conveyed to the Petitioner on June 24, 2017. The order dated June 21, 2017 is shown to have declined the petitioner's request for renewal of registration, which was applied for in March 2017, on the ground of blacklisting of the Petitioner, and outstanding demand of ₹3 crores. The order dated June 22, 2017 is shown to have declined the Petitioner's request for renewal/extension of Concessionaire Agreement dated June 17, 2010 on the following grounds:

1. The petitioner was a blacklisted entity;
2. The petitioner had dues outstanding against it, to the tune Rs 3 Cr.;
3. The petitioner firm not being a registered advertiser with SDMC, as request for renewal of registration was declined on account of blacklisting and outstanding dues;
9. The petitioner duly responded to both the orders, refuting all allegations and also pointing to arbitration proceedings pending, with respect to

blacklisting of the Petitioner, under the contract for maintenance and operation of waterless urinals. Vide order dated May 17, 2017 the Ld. Arbitrator had directed the Respondent to consider revocation of the order of blacklisting, subject to furnishing of Bank Guarantee of Rs 40 lacs by the Petitioner. The Petitioner had already furnished said Bank Guarantee on May 23, 2017. The Respondent however failed to reconsider revocation of the order of blacklisting, in spite of the furnishing of the Bank Guarantee by the Petitioner. Thus, arose the cause for filing of Contempt Petition by the Petitioner under Section 27(5) of the Arbitration Act, 1996, for non-compliance of order dated May 17, 2017 passed by the Ld. Arbitrator.

10. The petitioner further stated that no such demand of ₹3 crores was ever communicated to them, rather an amount of ₹ 33,91,767/- has to be recovered by the Petitioner from the Respondent, for which a suit for recovery is still pending. The petitioner therefore alleges the action of denial of renewal/extension of the Concessionaire Agreement to be arbitrary, mischievous, absolutely unreasonable, and having been passed with ulterior motives, and therefore prays for the order dated June 22, 2017 to be quashed/set aside, and thereby directing the Respondent to renew/extend the term of the original Concessionaire Agreement.

W.P.(C) 6292/2017

11. This petition has been filed with the following prayers:-

“In the premises aforesaid, it is most respectfully prayed that Your Lordships may grant the following relief (s) to the Petitioner:-

Issue writ of CERTIORARI AND MANDAMUS and/or for any other writ, order or direction in the like nature-

(I) Quashing, setting aside the order conveyed vide letter no.AC (Advtt.)/2017/D-545 dated 11.07.2017 denying the revocation of Blacklisting read with Order conveyed vide letter no. AC(Advtt.)/SDMC/2015/D-498 dated 12th June, 2015 whereby the Petitioner was blacklisted and declaring the same to be arbitrary, malafide, illegal and to set aside, quash the same.

And

(II) Direct the Respondent to pay Rs.1,00,00,000.00 (Rupees One Crores Only) towards the compensation, damages for keeping away the Petitioner from the intended contracts and tarnishing the image and reputation of the Petitioner.

(III) Award costs in favour of the petitioner and against the respondent; and

(IV) Pass such other and further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case.”

12. It is the case of the petitioner that the respondent floated a tender for contract for operating and maintaining Waterless Public Urinals (WLUs), in lieu of OOH Advertisement Media Display in MCD Zones for a period of 5 years, which was finally awarded to the Petitioner, covering Narela, Shahdara

South and South Zones, for a total of 234 urinals at ₹ 5,68,000/- per month, vide letter dated May 28, 2010. The duly signed Contract was submitted vide letter dated July 29, 2010 for South, Shahdara (S) Narela Zone. The petitioner had been fulfilling its obligations under the Contract, when the respondent issued a SCN on February 22, 2011, without any averment as to any specific violation of the Contract on the part of the petitioner. The said SCN was duly replied to, stating the WLUs were being properly maintained and operated, and that no violation of the Contract had occurred. However, the respondent never reverted back, nor was any investigation/inspection ever conducted. Out of the 49 WLUs being operated by the petitioner, the SCN was issued with respect to 27 such units. The petitioner, in its response, further pointed out that due to construction and layout defects on part of the respondent itself, there was severe drainage problem in the said units, which was leading to complete blockage of drainage. The petitioner also pointed out several other problems it was facing while operating WLUs at other sites. Finding no resolution of the issues, the petitioner resorted to the dispute resolution mechanism under the Contract. Vide its letter dated May 16, 2011, the petitioner invoked Article 7.1(b) of the Contract, thereby seeking appointment of the Steering Committee, and for reference of the dispute to the said Steering Committee. In response, however, the respondent, vide order

dated May 26, 2011, cancelled the petitioner's Contract, without any speaking order.

13. Being aggrieved by the arbitrary cancellation of the Contract, and for completely bypassing the dispute resolution mechanism set forth in the Contract, the petitioner filed OMP 447/2011, wherein, vide order dated May 08, 2013, the parties were referred to arbitration, and the effect of order dated May 26, 2011 was stayed till such time the Ld. Arbitrator modified/vacated such stay under Section 17 of the Arbitration Act. Consequently, Shri Bharat Bhushan was appointed the sole arbitrator to decide issues arising under the Contract. During the pendency of arbitration proceedings, the respondent issued a SCN dated June 01, 2015 alleging poor sanitation in the WLUs being maintained by the petitioner and also under the garb of the stay granted in OMP 447/2011, the petitioner had stopped paying the monthly license fee, with dues amounting to ₹ 65,07,290/-. In fact, it is noted the SCN shows several other violations. The petitioner was therefore asked to show cause as to why it should not be blacklisted. The SCN was duly responded to by the petitioner on June 09, 2015, refuting all allegations. It is the case of the petitioner that the respondent, however, passed the order of blacklisting on June 12, 2015, without considering the Petitioner's reply. Thereafter, the respondent, vide letter dated June 23, 2015, directed the petitioner to

surrender all WLUs to the charge of the Respondent.

14. It is the case of the petitioner's that the order of blacklisting had been passed mechanically, and with a pre-determined mind. The petitioner further points to the respondent willingly defying the stay granted by the Court in OMP 447/2011. The petitioner's case is that it was never given a breakup of the amount so shown as outstanding against it, in the SCN dated June 01, 2015. Upon repeated representations, the outstanding amount was deposited by the petitioner, without prejudice to its own rights and contentions, and the respondent, vide order dated July 10, 2015 (conveyed vide letter dated July 13, 2015), further directed the petitioner to submit a bank guarantee of ₹ 40 lacs, following which further orders on the request for revocation of blacklisting would be passed. The respondent, thereafter, started demanding ₹1,96,11,611/- from the petitioner as dues under a different contract relating to Unipoles. The petitioner further received a SCN dated October 07, 2016 with regard to the other contract, which was also ultimately terminated.

15. Finding no other remedy, the petitioner filed an application under Section 17 of the Arbitration Act, 1996, before the Ld. Arbitrator Shri Bharat Bhushan, seeking stay of the order of blacklisting. The Ld. Arbitrator, vide order dated May 17, 2017, directed the petitioner to submit bank guarantee of ₹ 40 lacs, and the respondent to consider the request for revocation of order of

blacklisting. The petitioner submitted the said bank guarantee vide letter dated May 23, 2017, and after several reminders, and the filing of a contempt petition under Section 27(5) of the Arbitration Act, 1996, the respondent declined the petitioner's request for revocation of the blacklisting order. The denial was communicated vide letter dated July 11, 2017, with outstanding dues to the tune of ₹ 3 Crores (approx.) being the cause for such denial.

Case of the Respondent/SDMC

16. The case of the respondent in these petitions is that the petitioner was awarded various contracts from time to time, which included the following contracts:

- a. *Contract for 20 flag sign at Basant Lok;*
- b. *Contract for 2 unipoles at Basant Lok;*
- c. *Contract for 4 signage at Basant Lok;*
- d. *Contract for 2 unipole at Tilak Nagar Market;*
- e. *Contract for 2 signage at Janak Parlour to Raja Garden;*
- f. *Contract for 10 flat sign at Tilak Nagar Market;*
- g. *Contract for 14 flag sign at Tilak Nagar;*
- h. *Concessionaire agreement for operation, maintenance with advertisement rights in respect of waterless urinals in South Zone; and*
- i. *Concessionaire agreement for operation and maintenance of Street Furniture with advertisement rights in Cluster No.2 and 3 in Central and South Zones of answering respondent.*

17. The contracts from seriatum a to g are '*Advertising Contract*'; the contract at Sl. No. h is '*Waterless Urinal Contract*' or '*WLU*', and the contract at Sl. No.i is '*Street Furniture Contract*'. The Advertising Contract and WLU contracts were running simultaneously and the petitioner committed various breaches and also failed to clear the monthly licence fee

and thus, notices for rectification of the defect as well as for payment of dues in respect of both the sets of contract were issued to the petitioner.

Street Furniture Contract:-

18. It is the case of the respondent, in the year 2010, the respondent floated a tender for the street Furniture contract. On May 12, 2010, pursuant to the bidding process, the petitioner emerged successful in respect of Clusters No.2 and 3 at the quarterly licence fee of ₹8,53,050/- and ₹3,63,350/- respectively. On June 17, 2010, the parties executed a Concession Agreement, which was to operate for a period of 7 years, i.e., from June 17, 2010 to June 16, 2017. It is further averred, on May 18, 2017, the petitioner invoking Article 2.2 sent a request seeking extension of the contract till infinity. On June 21, 2017, the competent authority rejected the request of the petitioner owing to; (1) it being a blacklisted entity, (2) having outstanding dues of more than ₹3 Crores, and (3) it is not being a registered advertiser with the SDMC. In its case, the petitioner on the very same day filed the petition being W.P.(C) No. 5358/2017 and sought a direction from this court asking for passing of a speaking order on its request letter dated May 18, 2017 and this court, noticing that the request had been rejected, though the same had not been communicated, directed the maintenance of status quo. On June 22, 2017, the respondent issued a letter to the petitioner communicating the rejection of the request of the extension. It is the case of the respondent, that consequent

to the passing of the same, this petition (W.P.(C) No. 5358/2017) became infructuous as the relief therein stood satisfied; however, the petitioner malafidely continued the proceedings in order to reap the benefits of the interim order. It is submitted by Mr. Poddar, after the passing of the interim order, the petitioner again started running the site but failed to pay even the agreed licence fee nor maintained the project facilities. The respondent's case is, the petitioner filed independent writ petition bearing W.P.(C) 5543/2017 impugning the rejection order dated June 22, 2017 and seeking the extension of the contract and the right to first refusal. On August 4, 2017, pursuant to the request of the SDMC, this court allowed it to start the fresh process of tendering. On August 25, 2017, pursuant to the liberty granted by this court, the SDMC issued fresh tender notice in respect of two Clusters being Nos. 1-B and 2 (Old Nos. 2 and 3 respectively). On October 3, 2017, consequent to the bidding process, one M/s. Outdoor Communication Pvt. Ltd. emerged as the successful bidder with a bid of ₹15,96,600/- for Cluster No.2 (Old No.3), being more than 7 times the agreed fee of the petitioner and an Offer Letter was issued. The contract could not be awarded owing to the status quo order passed by this court and hence, the respondent also filed two applications bearing CM. 36665/2017 and 42012/2017 seeking the vacation of the interim order. On November 17, 2017, a letter was received from the

successful bidder by SDMC stating that it had invested a sum of more than ₹1 Crore without any clear status on its investment. On December 12, 2017, it was found that some persons were removing the Street Furniture at the behest of the petitioner, which as per Article 11 of the Agreement vest absolutely in the respondent, and a complaint was registered with the SHO, PS-Lodhi Colony. The respondent avers that the petitioner is neither maintaining the project facilities nor paying even the agreed licence fee.

Waterless Urinal Contract:-

19. The respondent's case is, in the year 2010, the respondent floated a Tender for the contract of Waterless Urinals. After bidding process, the same was awarded to the petitioner. On January 10, 2011, Concession Agreement was executed in respect of Waterless Urinals for a period starting from January 12, 2011 to January 11, 2016. Due to violation of terms of the contract by the petitioner, show cause notices were issued to the petitioner on April 4, 2011, April 6, 2011 and April 7, 2011. On May 26, 2011, the contract was cancelled by the competent authority on account of committing violation of the approved terms and conditions of the contract. An OMP 447/2011 was filed by the petitioner before this court. On June 2, 2011, the operation of letter dated May 26, 2011 was stayed by this court. On May 8, 2013, the OMP was disposed of directing the interim order to continue by this court until modification / vacation was directed by the Id. Arbitrator.

Armed with the interim order, the petitioner continued to run the contract and reap the benefit without maintaining the urinals and paying regular monthly licence fee, which was condition precedent for displaying any advertisement. On June 1, 2015, pursuant to inspections carried out, a Show Cause Notice was issued to the petitioner seeking reply as to why it should not be blacklisted owing to poor and average conditions of the waterless urinals and outstanding dues to the tune of ₹65,07,290/-. On June 9, 2015, reply to show cause notice was furnished by the petitioner. On June 12, 2015, petitioner was blacklisted in respect of the Waterless Urinals Contract owing to unsatisfactory conditions, dues of ₹65 lacs and irregularities like encroachment, additional coverage etc. On June 23, 2015, the petitioner was directed to hand over the possession of the Waterless Urinals and the petitioner voluntarily handed over the same. On July 13, 2015, pursuant to the representations made by the petitioner, SDMC asked it to first submit a bank guarantee of ₹40 lacs before any final decision could be taken by the competent authority. Petitioner failed to furnish the bank guarantee as per the letter of respondent and merely furnished a bank guarantee of ₹ 10 lacs and hence, the condition order lapsed as having not complied with. It is submitted by Mr. Poddar that even the bank guarantee of ₹ 10 lacs expired. It is its case, in the meanwhile, notices in respect of Advertising Contracts were

also issued asking the petitioner to clear the outstanding dues and also for initiation of blacklisting proceedings. On October 28, 2015, the petitioner filed his statement of claim before the Ld. Arbitrator. It is submitted by Mr. Poddar though the matter was referred for arbitration vide order dated May 8, 2013, but, with a view to enjoy the interim order, the petitioner dragged the litigation and filed the statement of Claim after more than 2 ½ years and also after surrendering the site. This shows that the petitioner was never serious about the adjudication of its claim, but was only interested in keeping the litigation pending.

Advertising Contracts:-

20. It is the case of the respondent, between 2009-2010 the advertising contracts were granted to the petitioner vide letters dated May 15, 2009, December 7, 2009, May 26, 2010 and May 31, 2010. From the year 2010 onwards, petitioner failed to clear its dues and various demand notices were issued to the petitioner. On October 22, 2013, consequent to the reconciliation of accounts, a sum of ₹2.56 Crores on account of monthly licence fee was found to be due against the petitioner and a demand notice was issued requiring the petitioner to clear the dues within 7 days. On October 30, 2013, the petitioner in its reply sought details of the outstanding amount. On November 11, 2013 while enclosing the statement of accounts, the petitioner was again asked to pay the said amount within 7 days. On

December 3, 2013, the petitioner failed to pay his dues, another demand notice was issued directing the clearance of dues to the tune of ₹2.56 Crores. As the petitioner neither cleared the dues nor furnished any reply a show cause notice was issued to the petitioner on December 16, 2013 to show cause as to why the contracts should not be cancelled. On December 27, 2013, petitioner again raised a false plea of non-receipt of statement of accounts. In order to put an end to such a false plea, another set of statement of accounts was furnished to the petitioner, which was received by its representative Mr. Deepak Saini under acknowledgement. It is stated by Mr. Poddar that along with the letter, the petitioner paid a meager amount of ₹15 lacs. On February 13, 2014, even after obtaining the statement of accounts, the petitioner failed to make the payment, thus, a final show cause notice was issued annexing statement of accounts once again for cancellation of contracts. On March 10, 2014, petitioner replied to the Final Show Cause Notice now vaguely stating that there are discrepancies in the statement of accounts and seeking reconciliation of accounts without furnishing its own calculation sheet or highlighting specifically the alleged discrepancies. On March 24, 2014 finding no payment from the petitioner, another notice was sent by e-mail again attaching the dues statement by SDMC. On July 2, 2014, the reply dated March 10, 2014 was found to be unsatisfactory,

however, another opportunity was granted to the petitioner to clear the dues. On November 18, 2014, the competent authority cancelled the contracts and further directed the petitioner to clear its dues. It is pertinent to mention herein that even this cancellation order was accepted by the petitioner. Only July 23, 2015, owing to non-clearance of dues, a final demand notice-cum-show cause notice was issued for blacklisting of the petitioner. The respondent's case is, petitioner malafidely and in an attempt to mislead this court has suppressed all these notices / reminders and has made a false averment in Para 4.19 in W.P.(C) 5543/2017 that none of the dues were ever communicated to it. The respondent's states, on July 30, 2015, petitioner replied to the show cause notice raising frivolous disputes. It is its case, by this time, the petitioner was already suffering a blacklisting order dated June 12, 2015. On March 21, 2016, in order to participate in the tender dated February 26, 2016, the petitioner sought No Dues Certificate from SDMC, which was rejected on account of outstanding amount of ₹1,96,11,611/-. As a result of this, the petitioner became ineligible to participate in any future tender. This shows that the SDMC never gave up its claim for the aforesaid outstanding dues. On June 23, 2016, petitioner discussed the matter with SDMC and agreed to withdraw its claim for remission of solar panel to the tune of ₹89,25,740/- out of the outstanding dues of ₹196,11,611/-. As an

afterthought, the petitioner filed Civil Suit bearing No. 139/2016 before the ADJ (Central District), Tis Hazari Court *inter alia* seeking quashing of the demand of the SDMC and further recovery of ₹33 lacs. On November 12, 2016, an application under Section 17 of the Arbitration Act was filed before the Ld. Arbitrator seeking stay of the blacklisting order dated June 12, 2015. On May 17, 2017, the application was disposed of by the Ld. Arbitrator observing that the SDMC may consider revocation of the blacklisting order as suggested earlier in its letter dated July 13, 2015 on the petitioner furnishing a bank guarantee of ₹40 lacs. The respondent's case before the learned Arbitrator, while relying on the judgment of this Court in the case of ***M/s Sai Consulting Engineers Pvt. Ltd. v. Rail Vikas Nigam Ltd.*** 198 (2013) DLT 507 that the learned Arbitrator is vested with the jurisdiction to decide the above application.

21. The respondent's averment is, the petitioner filed another application under Section 27 of the Arbitration Act alleging that though it has submitted the bank guarantee of ₹40 lacs, in terms of the directions dated May 17, 2017, but SDMC is not complying with the said direction. The petitioner also sought stay of the blacklisting order dated June 12, 2015. On July 11, 2017, SDMC declined to revoke the blacklisting order on the ground that the offer given in the letter dated July 13, 2015 does not stand inasmuch as the

petitioner owes more than ₹2 Crores in respect of other contracts as mentioned above. Thereafter, petitioner filed a petition being W.P.(C) 6292/2017 impugning the order dated July 11, 2017. On September 6, 2017, the learned Sole Arbitrator, noticing that the petitioner owes more than ₹3 Crores to the respondent as mentioned in the letter dated July 11, 2017 itself, dismissed the application of the petitioner seeking initiation of contempt and also refused to grant relief staying the blacklisting order. It is submitted by Mr. Poddar that the petitioner suppressed this order even during the course of arguments though the same is part of record.

22. Mr. Kirti Uppal, learned Senior Counsel appearing for the petitioner in his oral submissions stated that the petitioner had got three contracts from the respondent. The contract regarding Waterless Urinals was awarded to the petitioner in the year 2010. In the said contract, the petitioner had to maintain the waterless urinals and to generate the revenue from the said waterless urinals sites by way of advertising and to pay licence fees so agreed thereunder. He stated, contract regarding Street Furniture in Clusters 2 and 3 was awarded to the petitioner in the year 2010 and in the said contract, the petitioner had to install, erect the street furnitures such as Kiosks, MUPI, Dustbin, Toilets etc. and by advertising on the same or letting out the Kiosks with advertisement, the petitioner had to generate revenue for himself and for

making the payment of licence fees to the respondent. It is further his case, that, no permission was granted by the respondent to the petitioner to display the advertisements in the parking sites allotted by then MCD for which tripartite agreement was entered between the petitioner, MCD, and the parking site contractor. He stated, in the said contract, the petitioner had to pay pre-agreed licence fees of display to the respondents by generating revenue from advertisement displays of their client.

23. It is his case, that the initial dispute started between the petitioner and the respondents when the respondent terminated the contract of waterless urinals so awarded to the petitioner on May 26, 2011 against which the petitioner had filed an OMP No. 447/2011 wherein the petitioner was granted stay of operation of cancellation letter dated May 26, 2011 vide its order dated June 02, 2011. The said OMP was finally disposed of on May 08, 2013 with the direction that the respondent shall appoint the arbitrator in terms of their contract with the petitioner and till the interim order so granted by this Court is vacated / modified by the learned Arbitrator, the same shall continue to operate.

24. Mr. Uppal submitted that, the respondent on June 01, 2015 had issued a show cause notice to the petitioner seeking reply as to why it should not be blacklisted owing to poor and average conditions of the waterless urinals and

outstanding dues to the tune of ₹65,07,290/-. Mr. Uppal submitted that, the petitioner replied to the show cause notice on June 09, 2015 stating that nothing is due and even the waterless urinals are well maintained without any deficiency. Mr. Uppal submitted, that the respondent without considering the reply as submitted merely saying that the reply was unsatisfactory had passed the order of blacklisting against the petitioner on June 12, 2015 and whereafter the petitioner was forced to handover the possession of Waterless urinals which were handed over on June 23, 2015 by the petitioner.

25. It is submitted by Mr. Uppal, that it continued to make representations for consideration and revocation of order of blacklisting and consequent thereto, the respondent vide its letter dated July 13, 2015, informed that pursuant to the representation made by the petitioner, the competent authority acceded to the request of revocation of blacklisting of the petitioner and had only issued direction to the petitioner to submit bank guarantee of ₹40 lacs only till the accounts are reconciled by the respondent.

26. According to Mr. Uppal, there were no outstanding dues of ₹40 lacs payable by the petitioner to the respondent and the petitioner had furnished the further details of the payment so made by the petitioner vide its letter dated July 13, 2015 and even furnished the bank guarantee of ₹10 lacs to the respondent. He stated, the respondent failed to issue formal letter of

revocation of blacklisting in spite of repeated requests so made by the petitioner time and again which was already revoked vide letter dated July 13, 2015.

27. It is further argued that the respondent had filed an application under Section 17 of the Arbitration and Conciliation Act, 1996 with the learned Arbitrator so belatedly appointed by the respondent in terms of order dated May 08, 2013 wherein the petitioner prayed for stay of the order of blacklisting. The Ld. Arbitrator vide his order dated May 17, 2017 had allowed the application and had directed the respondent to consider the revocation of blacklisting of the petitioner on deposit of ₹40 lacs as Bank Guarantee. According to him, the petitioner immediately on May 23, 2017 had deposited the Bank Guarantee of ₹40 lacs with the respondent under acknowledgement and had requested to comply with the order dated May 23, 2017 passed by the Ld. Arbitrator. It is the case, that since in spite of deposit of Bank Guarantee of ₹40 lacs as per directions of learned Arbitrator, the respondent is not taking any decision in terms of order dated May 17, 2017 passed by the Ld. Arbitrator, the petitioner had filed a petition under Section 27 of the Arbitration and Conciliation Act, 1996 against the respondent for committing contempt of the order dated May 17, 2017. In pursuant to the

said contempt petition so filed by the petitioner, the respondent had issued letter dated July 11, 2017 which reads as under:

“In pursuance of the Order dated May 17, 2017 passed by the Learned Sole Arbitrator, Shri. Bharat Bhushan in the above cited arbitration proceedings, this department has considered and examined all the aspects and facts in the regards of revocation of blacklisting thoroughly. However, it is not found possible to revoke the blacklisting of M/s Graphisads Private Limited having regard to outstanding dues amounting to more than Rs.3.00 Cr. (approx.) including interest w.r.t other contracts to South Zone and West Zone under South Delhi Municipal Corporation which includes dues which are not the subject of pending arbitration proceedings. The outstanding dues are pending in the following contracts:

- (i) Two Unipole at Vasant Lok Complex, Vasant Vihar (South Zone).*
- (ii) 4 Signages at Basant Lok, Complex (Priya), South Zone.*
- (iii) 20 Flat signage at Basant Lok, Complex (Priya), South Zone.*
- (iv) 10 Flat signage at Tilak Nagar (West Zone).*
- (v) 2 signage at Janak Parlour to Raja Garden (West Zone).*
- (vi) Two Unipole at Tilak Nagar market (West Zone).*
- (vii) 14 Flat Signage at Tilak Nagar (West Zone).*

2. Earlier, on reconciliation of the accounts, you were asked to clear the amount of Rs.1,96,11,611,00 so that your request for revocation of blacklisting could be processed vide this Department's letter no. AC(ADvt.)/SDMC/2016/D-1603 dated March 21, 2016. In response, the vide your letter dated June 23, 2016, you submitted that you were ready to clear the amount of Rs.89,25,740.00 which was the solar remission amount, out of which you had already remitted Rs.15,72,069.00. It had also been requested that an arbitrator may be appointed to settle the issue of disputed

amount. But this request was not accepted by the competent authority.

3. On consideration of the Order dated May 17, 2017 and your request, you were informed that the competent authority would consider not revoking the blacklisting only on submission of Bank Guarantee of Rs.40 lakhs as you had already agreed to pay Rs.89,25,740.00 when dues was Rs.1,96,11,611.00.

4. Now, please note that the situation has changed after review and the finding that dues of more than Rs.3.00 Cr. (approx.) including interest remain pending. Kindly note that whatever may have been the original basis of blacklisting, once a firm has been blacklisted the blacklisting cannot be removed during such period as the firm continues to be in default of any dues.

5. This is issue with the approval of the Competent Authority”.

28. Mr. Uppal submission was the continuation of blacklisting against the petitioner is bad in law and as well as on facts.

(a) No show cause notice of the grounds so taken by the respondent in their letter dated July 11, 2017 for non-revocation of blacklisting was ever issued by the respondent.

(b) The said letter / order of the respondent is against the own guidelines for registration / renewal of advertiser in advertisement department of SDMC which provides as under:

(i) D. Blacklisting and cancellation of registration : the Advertiser, if found on five occasions involved in any kind of malpractices / violations of site including default in payment of licence fee shall be liable for cancellation of the site and for repetition of violation by the same advertiser at other sit / s, the advertiser shall be blacklisted with the approval of the competent authority. The decision of the competent authority shall be final and binding to all. In case of above his security

amount / earnest money deposit shall be forfeited and registration of Advertiser shall be cancelled.

The Five Violation had also been spelled out in the said guidelines, as under: -

<i>Violations</i>	<i>Penalty</i>
<i>1) First violation</i>	<i>10% of amount of Annual Licence fee of site.</i>
<i>2) Second violation</i>	<i>15% of amount of Annual Licence fee of site.</i>
<i>3) Third violation</i>	<i>20% of amount of Annual Licence fee of site.</i>
<i>4) Fourth violation</i>	<i>25% of amount of Annual Licence fee of site.</i>
<i>5) Fifth violation</i>	<i>Cancellation of NOC of respective site. Forfeiture of security of site & other deposits, if any, with SDMC for the site.</i>

Even the violation had been defined in the regulation as under:

- i. Any of the violation of guidelines of Registration / Renewal.*
- ii. Any of the violation of terms and conditions of NIT*
- iii. Any of the violation of contract agreement / affidavit & other declarations made by the advertiser.*
- iv. Any violation / deviation from the guidelines for the purpose of display of advertisement.*
- v. Non-compliance of defiance of the directions / orders of the competent authority.*
- vi. Violation of provisions of DMC Act & Delhi Municipal Corporation (Tax on advertisement other than the advertisement published in the newspapers) byelaws, 1996 framed under the DMC Act, 1957 as amended from time to time.*

- vii. *Any other violation which the competent authority may decide from time to time.*

In the impugned orders dated July 11, 2017 and June 12, 2015, the respondent failed to specify any violations as detailed above made by the petitioner and as such the impugned order dated July 11, 2017 and June 12, 2015 whereby the petitioner was proceeded to continue to be blacklisted is illegal, bad in law.

(c) *Even in none of the contract with the petitioner, the respondent had any power to blacklist the petitioner for violation of any of the terms of the contract and they had been only vested with the right to cancel / terminate the contract.*

(d) *The respondent wanted to continue the petitioner to be blacklisted till perpetuity without any end to it.*

(e) *As per the violation so defined above, the respondent had no right to blacklist the petitioner or continue the blacklisting of the petitioner merely on account of non-payment of the any of the dues if any.*

(f) *The respondent had concealed that the outstanding which had been made the subject matter of continuing the blacklisting of the petitioner is already in dispute and even sub-judice in civil suit for recovery filed by the petitioner which is pending in the Civil Court as Tis Hazari Courts, Delhi filed at Page 67-86 in the compilation filed by the respondent.*

(g) *The respondent even in the written statement filed by them (Page 87-110) of compilation) had made no such demand of any such dues as claimed in letter dated July 11, 2017.*

(h) *The respondent had passed the order dated June 12, 2015 read with order dated July 11, 2017 arbitrary with malafide intentions which is quite apparent.*

(i) *Even the petitioner had filed the report of local commissioner so appointed by this Court in the aforesaid OMP whereby all the waterless urinals were inspected and they are found to be well maintained and as such the allegations of the respondent in the order dated June 12, 2015 whereby the petitioner was blacklisted on the ground of non-maintenance of waterless urinals is found be baseless.*

29. It is further submitted by Mr. Uppal that the respondent had decided not to renew the concessionaire agreement dated June 17, 2010 with respect to Street Furniture vide letter dated June 22, 2017 only on the ground that the petitioner is blacklisted, is itself contrary to their office noting filed with compilation at pages 239 to 240. Mr. Uppal stated, by perusing the said office noting and the letter dated June 22, 2017, it can be seen that the entire proceedings had been manipulated by the respondent as the grounds so taken in letter dated June 22, 2017 are not contained in the office noting and vice versa. He would submit, even otherwise since the blacklisting is taken as one of the ground for not extending the concessionaire agreement so the entire fate of the said writ petition regarding concessionaire agreements of street furniture will rest on the decision of this Court regarding blacklisting of the petitioner.

30. He submitted, in case, this Court comes to a conclusion that the blacklisting of the petitioner is bad on the aforesaid counts or any other grounds on which this Court may arrive at, then the order dated June 22, 2017 whereby the extension of the concessionaire agreement was declined is required to be reconsidered by the respondent and the petition may be allowed. In the end, Mr. Uppal, in support of his contentions, had relied upon the following judgments:

1. ***113 (2004) Delhi Law Times 70 SPS Engineering Ltd. v. Indian Oil Corporation Ltd.***
2. ***128 (2006) Delhi Law Times 417 (DB) Indian Oil Corporation Ltd. v. SPS Engineering Ltd.***
3. ***W.P.(C) 8234/2015, Prabhatam Advertisement Pvt. Ltd. v. Municipal Corporation of Delhi (south Zone), New Delhi***
4. ***169 (2010) DLT 664, Prakash Atlanta JV & Ors. V. National Highways Authority of India & Ors.***
5. ***2003 (71) DRJ 376, Mekaster Trading Corporation v. Union of India & Ors.***
6. ***(2014) 14 SCC 731 Kulja Industries Limited Vs. Chief Gen. Manager, W.T. Proj. BSNL & Ors.***
7. ***(2014) 9 SCC 105, Gorkha Security Services v. Government of NCT of Delhi & Ors.***

31. On the other hand, Mr. Sanjay Poddar, learned Senior Counsel appearing for the respondent, submitted that the petitioner was awarded various contracts from time to time which included; (a) Contract for 20 flag sign at Basant Lok; (b) Contract for 2 unipoles at Basant Lok; (c) Contract for 4 signage at Basant Lok; (d) Contract for 2 unipole at Tilak Nagar Market; (e) Contract for 2 signage at Janak Parlour to Raja Garden; (f) Contract for 10 flag sing at Tilak Nagar Market; (g) Contract for 14 flag sing at Tilak Nagar; (h) Concessionaire agreement for operation, maintenance with advertisement rights in respect of waterless urinals in South Zone; and (i) Concessionaire agreement for operation and maintenance of street

furniture with advertisement rights in cluster Nos.2 and 3 in Central and South Zones of respondent. He would submit, the contracts from seriatim (a)-
-(g) are being collectively referred as 'Advertising Contract'; the contract at S1. No. (h) is being referred as 'Waterless Urinal Contract'; and the contract at S1. No.(i) is 'Street Furniture Contract'.

W.P.(C) 5358/2017:-

32. In so far as W.P.(C) 5358/2017 is concerned, Mr. Poddar, submitted that the writ petition has become infructuous as the same arose out of the contract in respect of Street Furniture, which was awarded on June 17, 2010 a period of 7 years, i.e. till June 16, 2017 and W.P.(C) 5358/2017 had been filed by the petitioner primarily seeking a mandamus to the respondent for passing a speaking order on the petitioners letter dated May 18, 2017 seeking the extension of Concessioning Agreement dated June 17, 2010 in terms of Article 2.2. Mr. Poddar would submit, the said prayer has already become infructuous inasmuch as vide order dated June 21, 2017 passed by the respondent and communicated to the petitioner vide Letter dated June 22, 2017, the request of renewal of licence period was declined. It is pertinent to mention herein that this Court in its order dated June 21, 2017 had observed as under:

“...Fact, thus, remains that even the reasons for rejection are not yet communicated to the petitioner. Of course, the

petitioner, when communicated the reasons for rejection of its representation for extension, may assail such rejection, as, it may advised, for assertion of any of right(s), if any, vesting in it.”

33. It is submitted by Mr. Poddar, as the life of the petition was till the time reasons for rejection were conveyed, which have been conveyed vide communication dated June 22, 2017 and this order has been impugned by the petitioner in an independent writ petition being W.P.(C) 5543/2017, the petition has become infructuous.

34. Mr. Poddar submitted, no purpose would be served in keeping the writ petition alive as the same having become infructuous on June 21, 2017, has been kept alive by the petitioner only owing to the interim order passed by this Court on June 21, 2017 and continued from time to time. In this regard, it is submitted by Mr. Poddar that as the main petition itself has become infructuous, the petition deserves to be dismissed. It is submitted by Mr. Poddar that no interlocutory order can survive after the original proceedings have come to an end and the main petition cannot be kept pending to keep the interim order alive. In this regard, he would rely upon the judgment of the Supreme Court in ***Shipping Corporation of India Ltd. v. Machado Brothers and Others***, (2004) 11 SCC 168.

35. It is the case of Mr. Poddar, that the petitioner has contended during the course of arguments that the Petition should be kept alive owing to the false averments made by the respondent in its counter affidavit regarding the

date of the rejection order being June 22, 2017 and not June 21, 2017 as represented before this Court on June 21, 2017. He stated that the said submission of the petitioner is mala fide, devoid of merit and factually incorrect. As stated in the counter affidavit, the competent authority had rejected the request on June 21, 2017 and the same was merely communicated on June 22, 2017 and thus, the contention is liable to be rejected.

W.P. (C) 5543/2017:

36. In so far as W.P.(C) 5543/2017 is concerned, it is his case, the petitioner filed the second writ petition impugning the letter dated June 22, 2017 wherein the petitioner sought; (1) quashing of letter dated June 22, 2017 and extension of the Agreement; and (2) conduct a fresh tendering process and grant Right of First Refusal to the petitioner.

37. Mr. Poddar submitted, that the petitioner has no right to enforce against the respondent as the second writ petition, being W.P. (C) 5543/2017, is primarily for seeking specific performance of Article 2.2 of the Concessioning Agreement dated June 17, 2010. In this regard, it is submitted by Mr. Poddar that the sole and absolute discretion to extend/renew the licence period vest in the respondent and that too on “*mutually agreed terms*”. He would submit, the Agreement does not stipulate any obligation

on the part of the respondent and in the absence thereof, there cannot be any direction to the respondent to perform the same as sought by the petitioner. Reliance is placed on judgment titled ***Gesture Hotels and Food Pvt. Ltd. v. New Delhi Municipal Council, 209 (2014) DLT 784*** (Paras 17-19 & 26-29); ***Gesture Hotels and Food Pvt. Ltd. v. New Delhi Municipal Council, 210 (2014) DLT 359*** (Paras 19-22); and ***Indian Hotels Co. Ltd. v. New Delhi Municipal Council, 234 (2016) DLT 409*** (Paras 44-47). He would submit, the petitioner does not have any right in respect of site in question after the expiry of the initial licence, which can be enforced in the present petition.

38. Mr. Poddar submitted, no injunction for specific performance can be granted to the petitioner as compensation is adequate relief. He submitted, as per Article 8.6, the parties have agreed that, in the event of early determination of the agreement by the respondent without consent of the petitioner or in the absence of any default by the petitioner, the petitioner will be entitled to Termination Payment as specified in Article 8.3; thus, even in cases of wrongful Termination Payment only is the remedy. He stated, this is in consonance with Section 64 of the Indian Easements Act, 1882, Section 41(e) read with Section 14(1) (a) of the Specific Relief Act, 1963 and the law laid down in the cases of ***Gesture Hotels and Food Pvt. Ltd. v. New Delhi Municipal Council, 2014 (209) DLT*** (Paras 38-40); and ***Gesture Hotels and***

Food Pvt. v. New Delhi Municipal Council, 210 (2014) DLT 359 (Paras 10-14).

39. On the issue of non-payment and suppression of facts, it is the case of learned Senior Counsel that the request of the petitioner was rejected vide Communication dated June 22, 2017 for the following reasons:

“1. As on date, your firm is a blacklisted entity and as a result, your contract cannot be extended.

2. You have dues outstanding against your name w.r.t. other contracts in South Zone and West Zone amounting to more than Rs.3.0 Cr. (approx.) including interest.

3. Also your firm is not registered with SDMC as on date as your application for renewal of registration was rejected by the Committee constituted for Registration and Renewal on account of outstanding dues and your firm being blacklisted entity. As the by-laws prescribe that only a registered advertiser can put up display advertisements within the jurisdiction of SDMC. The exact amount outstanding against you will be intimated to you in due course of time.”

(Emphasis Supplied)

40. It is his case, from the aforesaid, it is clear that the request for extension was declined owing to the petitioner; (1) a blacklisted entity; (2) having pending dues against it; and (3) not being a registered advertiser. As far as the first ground is concerned, he reiterates detailed submissions as made in respect of W.P. (C) 6292/2017, which are noted hereinafter. In response to the remaining grounds, the petitioner in Para 4.19 of the petitioner [W.P. (C) 5543/2017] has stated as under:

“4.19.....Further no demand of Rs.3.00 Crores as alleged by the respondent had been communicated to the Petitioner till date. As such the order denying the extention/renewal is arbitrary, malafide and mischievous and had been passed with ulterior motives against the Petitioner.”

41. He submitted, while making the above statement, the petitioner is not only guilty of suppression of material facts, but also *suggestion falsi* and thus, has rendered itself disentitled to a discretionary relief from this Court. He would submit, as narrated in Paras 24 to 34 of the counter affidavit, adequate and sufficient demand notices were issued to the petitioner from time to time and statement of accounts were also furnished. He stated, apart from this, the request of the petitioner seeking ‘No Dues Certificate’ enabling it to participate in the tender was also refused by SDMC vide letter dated March 21, 2016. It was submitted that as a result of this, the petitioner became ineligible to participate in any tender floated by the SDMC. He would submit, the letter is still operating as the same has neither been set-aside nor stayed by any competent court and the petitioner deliberately suppressed these documents from this Court and on the contrary, made a blatantly false statement that no demand was ever received by the petitioner. Reliance is placed on the decision of the Supreme Court in ***Rajmas Foundation and Anr. v. Union of India and Ors., (2010) 14 SCC 38*** (Paras 21-29).

42. He submitted, in view of the above, it is clear that the second ground for rejection of renewal as to outstanding dues stands satisfied. As far as the third ground is concerned, it is his case, admittedly, the registration of the petitioner stands cancelled, communicated to it vide Order dated June 21, 2017. As per Rule 15 of the Delhi Municipal Corporation Tax on Advertisements (Other than Advertisement Published in Newspapers) Bye-Laws, 1996, no person except licenced or registered advertisers or agency is allowed to undertake display of advertisements on behalf of others.

43. Learned Senior Counsel submitted, that, even the right of first refusal cannot be granted to the petitioner. It is submitted by Mr. Poddar that the petitioner has already in Para 45 of the Rejoinder in W.P. (C) 5543/2017 categorically stated that it is not ready to take the area, which reads as under:

“4.5...The Petitioner is still ready to take the area under the Concessaire Agreement enjoyed by them and not the area for which the bid of Rs. 16 lakhs had been taken by the Respondent.”

44. He would state, even otherwise, the petitioner would not have any right of first refusal as the respondent is bound to secure maximum consideration as the respondent transacts property in a fiduciary capacity for the general public. He states, Section 200(d) of the Delhi Municipal Corporation Act, 1957 enjoins the respondent to adopt measures which ensure the maximum revenue [Ref. ***Indian Hotels Co. Ltd. v. New Delhi Municipal Council***, 234

(2016) DLT409 (Paras 51-52); and *Asha Chitkara v. North Delhi Municipal Corporation*, 228 (2016) DLT 395 (Paras 14 N-O)]. He would submit, the grant of right of first refusal would obviously have an adverse impact on the bid amount as the bid of the highest bidder would be subject to a right of the petitioner herein [Ref. *Indian Hotels Co. Ltd. v. New Delhi Municipal Council*, 234 (2016) DLT 409 (paras 59)]. It is stated by Mr. Poddar that the decision in *Indian Hotels (Supra)* has been upheld by the Supreme Court in SLP (C) 33397/2016.

45. It is stated by Mr. Poddar that the case of the petitioner can at best be one of breach of contract, for which the relief can only be sought before the learned Arbitrator appointed under Article 12.2 of the Agreement and the present proceedings are not maintainable.

46. He submitted, the respondent had, in view of the liberty granted by this Court on August 4, 2017 had issued a Tender Notice dated August 30, 2017 and M/s Outdoor Communications Pvt. Ltd. has submitted the highest bid at ₹ 15,96,600/- per month in respect of the new Cluster No.2 (previously Cluster No.3) as opposed to ₹3,63,350/- per quarter agreed by the petitioner; even which admittedly is not being paid by the petitioner. He stated, the stand of the petitioner remains that the increase in licence fee is owing to the increase in area, however, even accounting for the same, the offered licence

fee is more than 7 times of the petitioner. He submitted, it is also an admitted fact that the petitioner is neither maintaining the facilities, which are now in a dilapidated condition, nor is paying even the agreed licence fee since the expiry of the original licence period on June 16, 2017.

47. It is stated by Mr. Poddar, that the plea of the petitioner to the effect that the respondent has extended the area of Cluster No.2, which is beyond the order of this Court is liable to be rejected as the Project Facilities falling in the area under the jurisdiction of the respondent are required to be put in such a manner to achieve maximum return. The respondent being custodian is obliged under law to put the resources to secure maximum yield, which is being done by the respondent as apparent from the bid received by it. The same is in no manner contrary to the Concessioning Agreement or in contempt of the order of this Court. It is stated by Mr. Poddar, that the petitioner has no right, much less a legal right which can be sought to be enforced before this Court, the existence of which is the foundation of a petition under Article 226 [Ref. *State of Orissa v. Ram Chandra Dev and Anr.*, AIR 1964 SC 685 (Para 8)].

W.P. (C) 6292/2017:

48. Insofar as W.P.(C) 6292/2017 is concerned, it is the submission of Mr. Poddar that the petitioner is precluded from challenging the order dated June

12, 2015 of blacklisting which was on account of non payment of dues and violation of terms in respect of WLU Contract. The petitioner initially sought revocation of the blacklisting order, which request was considered vide letter dated July 13, 2015 by respondent directing the petitioner to first furnish a bank guarantee of ₹40 lacs before any final decision is taken by the respondent. He would submit, the petitioner failed to submit the bank guarantee and the offer in the said letter lapsed. He stated, the petitioner also failed to pay the dues in respect of Advertising Contracts and various notices and Show Cause Notice were issued as to why the petitioner should not be blacklisted.

49. It is his case, that the petitioner after facing disability to participate in the tenders filed an application under Section 17 of the Arbitration and Conciliation Act on November 12, 2016 seeking the following relief:

“(A) That the order dated June 12, 2015 whereby the petitioner/claimant was blacklisted by the respondent-SDMC may kindly be stayed and also respondent-SDMC be restrained to not act in accordance with their said letter.

(B) The respondent-SDMC may be directed to remove the order of blacklisting so uploaded by them on their website, mcdonline.gov.in.”

50. The aforesaid application was disposed of by the Ld. Arbitrator vide order dated May 17, 2017. The learned Arbitrator accepted the contention of the petitioner that he is vested with the power to decide the application

seeking stay of the blacklisting order by relying on the judgment of this Court in *Sai Consulting Engineers Pvt. Ltd. v. Rail Vikas Nigam Ltd., 198 (2013) DLT 507*. The learned Arbitrator relying upon the letter dated July 13, 2015, instead of granting the relief as claimed by the petitioner in its application, only directed the respondent to consider the request of the petitioner for revocation of blacklisting order. Mr. Poddar submitted, the Ld. Arbitrator did not; (1) stay the blacklisting order or (2) set-aside the same or; (3) directed the respondent not to act upon the same and therefore, the blacklisting order dated June 12, 2015 continued to operate.

51. He further submitted, that, thereafter, the petitioner filed another application under Section 27 of the Arbitration and Conciliation Act alleging that though it had submitted the bank guarantee of ₹40 lacs in terms of the directions dated May 17, 2017, but respondent is not complying with the said direction. He would submit, the petitioner once again sought stay of the blacklisting order dated June 12, 2015. On July 11, 2017, the respondent declined to revoke the blacklisting order on the ground that the offer given in the letter dated July 13, 2015 does not stand inasmuch as the petitioner owes more than ₹2 Crores in respect of other contracts as mentioned above.

52. It is the submission of Mr. Poddar, that the learned Arbitrator in his order dated September 06, 2017, noticing that the petitioner owes more than

₹3 Crores to the respondent as mentioned in the letter dated July 11, 2017 itself, dismissed the application of the petitioner seeking initiation of contempt and also refused to grant relief staying the blacklisting order. He submitted that the petitioner suppressed this order even during the course of arguments though the same is part of record.

53. Mr. Poddar submitted the Order dated June 12, 2015 whereby the petitioner was blacklisted has become final and cannot be challenged in the present proceedings. He submitted that the petitioner having opted and availed an efficacious alternative remedy before the learned Arbitrator and having suffered an order in the said proceedings is not entitled to file the present writ petition seeking similar relief. He submitted that the petitioner having elected a remedy available to it in law is now precluded from proceeding under Article 226 of the Constitution; particularly in view of the stand taken by the petitioner that it is satisfied and not aggrieved with the order of the learned Arbitrator. He stated, this writ petition, which is a challenge to the order dated June 12, 2015 is liable to be dismissed. He placed reliance on the judgments of this Court in the cases *Sai Consulting (Supra)* (Paras 18,19,22 and 31) and *Prabhatam Advertisement Pvt. Ltd. v. Municipal Corporation Pvt. Ltd., MANU/DE/2674/2015* (Paras 5,6,7,8,9,11,15-18, 21 and 22.

54. On the issue of impugned order dated July 11, 2017, learned Senior Counsel for the respondent submitted, as far as the order dated July 11, 2017 is concerned, as submitted in Para 4 of the counter affidavit, the same is not an independent order, but was passed in view of the direction given by the Ld. Arbitrator whereby declining to revoke the blacklisting order dated June 12, 2015. He stated, since the order dated June 12, 2015 has become final, thus, no ground has been made out by the petitioner warranting any interference therein. He stated, in any case, even in the absence of the order dated July 11, 2017, the petitioner would remain blacklisted in view of the order dated June 12, 2015.

55. On the issue of revocation of blacklisting order dated June 12, 2015 on furnishing of bank guarantee in terms of letter dated July 13, 2017 and order of the learned Arbitrator dated May 17, 2017, it is the submission of Mr. Poddar that during the course of arguments, the petitioner had placed reliance on letter dated July 13, 2015 to submit that upon furnishing a bank guarantee of ₹ 40 lacs, the blacklisting order dated June 12, 2015 stood revoked. It is stated that the submission is completely misplaced and is premised on a partial and selective reading of the letter dated July 13, 2015. The relevant portion of the letter reads as under:

“Now, therefore keeping in view the above noted facts and circumstances competent authority vide its orders dated July 10, 2015 has considered your request for revocation of blacklisting and with a directin to have bank guarantee of Rs. 40 lakh for six months before taking further decision. Hence you are directed to submit a Bank Guarantee of Rs. 40 Lakh with validity of 6 months.”

(Emphasis Supplied)

56. Mr.Poddar submitted, on a bare perusal of the letter, it is seen that the petitioner was asked to furnish the requisite bank guarantee before any further decision is taken. Admittedly, no final decision was taken as the petitioner failed to furnish the bank guarantee. He stated, for this reason, the petitioner approached the learned Arbitrator by way of the aforesaid application under Section 17 of the Act. He stated, the letter cannot be construed as a conditional order inasmuch as the blacklisting order dated June 12, 2015 would automatically be revoked on the furnishing of the bank guarantee. He submitted that the argument of the petitioner is contrary to its own understanding inasmuch as in case the petitioner was under the impression that the blacklisting order stood revoked there was no need for it to file an application under Section 17 of the Arbitration and Conciliation Act seeking stay of the blacklisting.

57. It is the submission of the learned Senior Counsel that, even the learned Arbitrator in his order dated May 17, 2017 took note of the letter dated July 13, 2015 and directed that the respondent may consider the request

of revocation on the petitioner furnishing a bank guarantee of ₹40 lacs. The said order merely directed the respondent to consider the request and not that upon furnishing the bank guarantee, the blacklisting order dated June 12, 2015 would be revoked. He stated, on the contrary, the Ld. Arbitrator declined to grant the stay of the blacklisting as sought for in the Application under Section 17 of the Arbitration and Conciliation Act. It is submitted by Mr. Poddar that the blacklisting order dated June 12, 2015 was neither revoked by the respondent nor set-aside /stayed by the Ld. Arbitrator. He submitted, pursuant to the order dated May 17, 2017, the respondent considered the request of revocation of blacklisting and rejected the same on July 11, 2017. He states, the petitioner once again approached the Ld. Arbitrator by filing an application seeking initiation of contempt and stay of blacklisting, which request was once again declined by the Ld. Arbitrator on September 06, 2017. Accordingly, as on date, neither the Ld. Arbitrator has stayed/set-aside the blacklisting order dated June 12, 2015 nor has the same been revoked by the respondent and accordingly, the same operates against the petitioner. He states, thus, the contention of the petitioner is liable to be rejected by this Court.

58. Insofar as the issue of guidelines dated April 23, 2013 are concerned, Mr. Poddar submitted that the petitioner had during the course of arguments

relied upon said guidelines, more particularly Clause 17(D). He submitted, this objection of the petitioner, is liable to be rejected *inter alia* for the following reasons:

- (i) *The petitioner in Para 4.11 at Pg 21 of the Writ Petition vaguely stated that the order of blacklisting can be passed only on three consecutive defaults. However, during the course of hearing, the guidelines were placed before the Hon'ble Court, which do not support the said averment. Apart from this, no such plea was taken before the Ld. Arbitrator at the first instance.*
- (ii) *The above submissions were made while ignoring the provisions of Clause 2.B (Pg 223 of the Convenience Paperbook), which entitles the competent authority to blacklist any person who is a defaulter in making payments or is having outstanding dues of SDMC/EDMC/NDMC/erstwhile MCD. In any case, as submitted above, enough notices in respect of dues were issued to the petitioner before the blacklisting orders were passed. Apparently, for the said reason, the issue was not agitated before the Ld. Arbitrator.*

59. In the end, Mr. Poddar submitted that the petitions having been filed with a view to delay the payment of public dues and also causing loss to the public exchequer, need to be dismissed as the petitioner not only withheld the dues, but also kept the public utilities locked thereby depriving the public of its user. He stated, apart from this, the petitioner is preventing the successful bidder from taking over the facilities and in this way, the petitioner in order to secure private gain has caused huge public loss. He seeks dismissal of the petitions with heavy costs.

60. Having heard the learned counsel for the parties, three issues arise for consideration; they are (i) whether the W.P.(C) 5358/2017 has on the issuance

of order dated June 22, 2017 become infructuous; (ii) whether the letter dated June 12, 2015 of the SDMC blacklisting the petitioner and July 11, 2017 denying the revocation of blacklisting are malafide, illegal; (iii) whether the denial of renewal of the Concessional Agreement dated June 17, 2010 vide order dated June 22, 2017 (communicated through e mail dated June 24, 2017) by the respondent is justified.

61. Before I venture to answer the aforesaid three issues, suffice to state the aforesaid three issues are primarily related to Waterless Urinal Contract (Issue No.2) and Street Furniture Contract (Issue Nos.1 and 3).

Issue No.1

62. This issue arises from W.P.(C) No. 5358/2017. The prayer primarily is for a direction to the respondent to pass a speaking order on the petitioner's letter dated May 18, 2017 for extending the Contract period in terms of Article 2.2 of the Concessional Agreement dated June 17, 2010. There is no doubt that the request of the petitioner has been decided by the respondent vide letter dated June 22, 2017 wherein it has been stated as under:-

*“This is with reference to the request made by you vide the aforesaid letters w.r.t. the contract under reference.
In this connection, it is to inform you, your request cannot be acceded to on the following grounds:-*

1. As on date, your firm is a blacklisted entity and as a result, your contract cannot be extended.

2. You have dues outstanding against your name w.r.t. other

contracts in South Zone and West Zone amounting to more than Rs.3.0 Cr. (approx.) including interest.

3. Also, your firm is not registered with SDMC as on date as your application for renewal of registration was rejected by the Committee constituted for Registration and Renewal on account of outstanding dues and your firm being blacklisted entity. As the by-laws prescribe that only a registered advertiser can put up display of advertisements within the jurisdiction of SDMC. The exact amount outstanding against you will be intimated to you in due course of time.

You are, therefore, hereby advised to handover the sites including street furniture to the department at the earliest.”

63. It was argued by Mr. Poddar that in view of the letter dated June 22, 2017 based on an order of Competent Authority of June 21, 2017, the W.P.(C) NO. 5358/2017 has become infructuous and needs to be dismissed. According to him, the attempt of the petitioner is to keep this writ petition alive only because of interim order dated June 21, 2017, which continued from time to time. He also stated, as the main petition has become infructuous, no interlocutory order can survive. He relied upon the judgment of the Supreme Court in the case of *Shipping Corporation of India Ltd. (supra)*.

64. On the other hand, Mr. Uppal had contended that the writ petition should be kept alive owing to the false averments made by the respondent in its counter affidavit regarding the date of rejection order being of June 21, 2017 as represented in the Court on the said date. In other words, it is his

submission a false statement was made on June 21, 2017 that the representation had been rejected. According to him, the status quo order of June 21, 2017, when the representation was not rejected would enure to the benefit of the petitioners.

65. To answer this, it is necessary to see the order that was passed on June 21, 2017. In the said order, it was clearly stated by Mr. Gupta, learned counsel for SDMC that the representation of the petitioner came to be declined. In support of the said order, during arguments Mr. Poddar has referred to the relevant notings of the record (at pages 239 and 240 of the convenience file) to contend that in fact the Competent Authority has rejected the request of the petitioner for renewal. On a perusal of note sheet at page 240 of the convenience file, the proposal that was put to the Competent Authority, reads as under:-

“In view of the above, if agreed to- (1) we may intimate the applicant advertiser that his request cannot be acceded to unless and until the firm clears all out outstanding dues and (2) that since the firm is blacklisted, it has lost the right to claim grant of right of First Refused to match or exceed the offer of the identified preferred bidder. Draft letter placed opposite for kind perusal and approval before issue please.”

66. The ADG (Advertisement) has on June 21, 2017 approved the same. In fact, a note dated June 22, 2017 clearly suggest that the approval has been given by the Competent Authority. If that be so, the letter dated June 22, 2017 to the petitioner was only a communication of the respondent conveying

the decision taken on June 21, 2017. I agree with the submission of Mr. Poddar that in view of the request of the petitioner dated May 18, 2017 having been decided and conveyed to the petitioner on June 22, 2017, the said writ petition being W.P.(C) No. 5358/2017 has become infructuous. Accordingly, W.P.(C) No. 5358/2017 is dismissed as being infructuous.

Issue No.2

67. The case of the petitioner is that the Contract of WLU was awarded to the petitioner in the year 2010. The Contract was terminated on May 26, 2011 against which the petitioner filed OMP No. 447/2011 wherein the petitioner was granted stay of operation of cancellation letter dated May 26, 2011 by this Court on June 02, 2011. The said OMP was finally disposed of with a direction that the respondent shall appoint an Arbitrator in terms of the Contract and till the interim orders granted by this Court are vacated/modified by the learned Arbitrator, the same shall continue to operate. It is a matter of fact, on June 01, 2015 a show cause notice was issued to the petitioner seeking reply as to why it should not be blacklisted owing to poor and average conditions of the WLU and outstanding dues to the tune of ₹65,07,290/- to which a reply was given by the petitioner on June 09, 2015. On June 12, 2015, an order of blacklisting was passed against the petitioner. It is a conceded case of the petitioner that the possession of WLU was handed over

to the respondent June 23, 2015. Despite that the petitioner continued to make representations for consideration and revocation of order of blacklisting and consequent thereto the respondent vide its letter dated July 13, 2015 informed that pursuant to the representation made by the petitioner, the Competent Authority acceded to the request of revocation of blacklisting of the petitioner and had issued direction to the petitioner to submit a Bank Guarantee of ₹40 lacs till the accounts are reconciled by the respondent. Even though, Mr. Uppal during his submission had denied that an amount of ₹40 lacs are due to the respondent, he stated the petitioner had furnished the Bank Guarantee of ₹10 lacs to the respondent despite that the respondent had not honoured the letter dated July 13, 2015 by issuing any formal letter of revocation of blacklisting.

68. It is the case of the respondent that as the petitioner has not adhered to the letter dated July 13, 2015 and furnished the Bank Guarantee for ₹40 lacs, the letter dated July 13, 2015 is unimplementable. It is also noted that an application was filed by the petitioner under Section 17 of the Arbitration & Conciliation Act before the learned Arbitrator wherein they have prayed for the stay of the order of blacklisting dated June 12, 2015. The learned Arbitrator vide his order dated May 17, 2017 had allowed the application and had directed the respondent to consider the revocation of blacklisting of the

petitioner on deposit of ₹40 lacs as Bank Guarantee. It is also stated by Mr. Uppal that despite depositing ₹40 lacs, no decision was taken in terms of the order of the learned Arbitrator dated May 17, 2017. It is only after a contempt petition was filed before the learned Arbitrator, the respondent issued letter dated July 11, 2017 wherein it was stated that as dues to the tune of ₹3 crores approximately including interest remain pending, whatever may be the original basis of blacklisting, once a firm has been blacklisted, the blacklisting cannot be revoked till such period, the firm continues to be in default of any dues. Mr. Poddar had justified the blacklisting order dated June 12, 2015 so also the order dated July 11, 2017 whereby the request of the petitioner for revoking the blacklisting was rejected by stating that the petitioner had filed an application under Section 27 of the Arbitration & Conciliation Act alleging that though it had submitted the Bank Guarantee of ₹40 lacs in terms of the directions dated May 17, 2017 but the respondent has still not complied with the said direction. The learned Arbitrator in his order dated September 06, 2017 noticing that the petitioner owes more than ₹3 crores to the respondent as mentioned in the letter dated July 11, 2017, itself dismissed the application of the petitioner seeking initiation of contempt and also refused to grant relief staying the blacklisting order. The said order reads as under:-

“

ORDER
06.09.2017

The present pending Arbitral proceedings are with regard to the disputes arising out of the tender Bearing No. NIT No.1/WU/2010-15 whereby contract was awarded for maintain & operating Waterless Public Urinals in lieu of OOH Advertisement Media Display in MCD Zones for a period 5 years.

However, during the pendency of the aforesaid arbitral proceedings, the Claimant/petitioner had filed an Application dated 12.11.2016 U/s. 17 of the Arbitration & Conciliation Act, 1996 (hereinafter called 'the Act') praying therein for grant of interim directions against the blacklisting of the Claimant firm in respect of the Blacklisting orders passed by the Asstt. Commissioner of the South Delhi Municipal Corporation (in short called the 'SDMC') on 12.06.2015.

Besides other things, it was also averred by the Claimant in the said application that, prior to this order of revocation, the SDMC vide their letter dated 13.07.2015 had agreed to consider their request for revocation of Blacklisting on the condition of their submitting Bank Guarantee of Rs.40 lakhs with a validity period of six months. But, since the Claimant was unable to furnish the requisite Bank Guarantee, no orders for revocation of Blacklisting were passed by the SDMC. Now, before this Tribunal too, the Claimant in the said application dated 12.11.2016 while making his submissions for the revocation of the orders of Blacklisting had made a prayer for directing the SDMC to again consider his request for revocation of Blacklisting order. The said application of the Claimant was however disposed off by the undersigned vide order dated 17.05.2017.

The Claimant/petitioner by moving the present application dated 16.06.2017 U/s 27(5) of the 'Act' seeks the initiation of contempt proceedings against the respondents alleging therein the violation and disregard to the above order dated 17.05.2017 passed by this Tribunal.

The relevant portion of the order which according to the Claimant/petitioner has been flouted/disobeyed by the Respondents as contained in the said order dated 17.05.2107 at pages 6/7 is reproduced herebelow:-

....."Hence, having regard to the totality of the circumstances, I am of the view that the principles of natural justice too warrant grant of at least one more opportunity to the Claimant to comply with the conditions imposed by the SDMC vide its letter dated 13.07.2015, as this is not likely to cause any prejudice to the Respondent. Accordingly, it is ordered that the SDMC may consider the request of the Claimant for the revocation of blacklisting on his furnishing a Bank Guarantee of Rs.40 lakhs with validity of 6 months at least from a Scheduled Bank within a period of 15 days."

.....

Heard arguments of the Ld. Counsel for the parties.

It has been argued on behalf of the Petitioner that after the passing of the order dated 17.05.2017 by this Tribunal, the Claimant/petitioner on his part had submitted the Bank Guarantee of the requisite amount of Rs.40 lakhs with validity of six months and then had also approached the Respondent requesting for the issuance of the letter for revocation of Blacklisting and even sent the reminders to them, but, they failed to pass any orders, although they were supposed to pass such orders within a period of 15 days w.e.f 17.05.2017, as per the directions of the Tribunal. Hence, it has been argued that the Respondents had utterly disregarded the directions of this Tribunal by not passing orders on his request. Consequently, in the present application, the Claimant/petitioner has prayed as under:-

- (a) That the reference be made to the Hon'ble High Court of Delhi to initiating contempt proceedings against the Respondent/Contemnors immediately for defiance of the interim orders dated 17.05.2017 passed by this Hon'ble Tribunal with a request to punish the*

contemnors/respondent in accordance with law/contempt of Courts Act, as applicable.

- (b) *That in the totality of circumstances, during the pendency of the present application, this Hon'ble Tribunal may stay the order dated 12.06.2015 passed by the respondent No.1/SDMC whereby the Petitioner/Claimant was blacklisted.*

.....
.....

On the other hand, the Ld. Counsel for the Respondent has argued that the Respondent had of course complied with the order dated 17.05.2017 of the Hon'ble Tribunal by passing a detailed order dated 11.07.2017 on the prayer of the petitioner seeking revocation of the Blacklisting order in respect of the Claimant/Petitioner M/s Graphisads Pvt. Ltd but he has very fairly admitted there was some delay on their part in passing such order.

And for that matter, the Ld. Counsel tendered an unqualified apology on behalf of the Respondents stating that such delay was neither knowing nor intentional, but had occurred only because of the fact that being Govt. Deptt., they had to undergo various formalities before taking a final decision. Hence, he sincerely regretted for such delay on their part. It has further been argued by him that at present dues of more than Rs.3 crores (Rupees Three Crores) approx. including interest were pending against the petitioner in respect of 7 different contracts, the mention of which already been made in the order dated 11.07.2017 itself, hence, he has contended that under such facts and circumstances no good grounds existed which warranted the revocation of the Blacklisting of the firm. He has further informed that the said huge amount has not been paid by the Claimant even till date.

After having given my considered thought to the rival contentions, I am of the view, that there has of course been delay on the part of SDMC in considering and deciding the prayer of the Claimant/Petitioner regarding

the revocation of Blacklisting even after their submission of Bank Guarantee of Rs.40 lakhs as ordered by this Tribunal, but the fact can not be lost sight of that it has not been proved on record by the Claimant that the Respondent had any intention to disobey the orders of this Tribunal or that there was any malafide, willful or intentional default on their part and further that the Respondent have also tendered unqualified apology for delay on their part and that the delay according to them has been caused unintentionally by the Respondents, which is a Govt. Body where they had to undergo various procedures before arriving at the final decision.

Hence, finding no intentional or willful default on the part of the Respondents and also the fact that huge arrears to the tune of more than Rupees Three Crores are still stated to be pending, I am of the view that the prayers made by the Claimant/Petitioner i.e M/s Graphisads Pvt. Ltd. in their Application dated 16.06.2017 being devoid of any merits, are hereby dismissed. However, the observations made in this order shall have no bearing on the merits of the case.”

69. So, the plea of Mr. Poddar, that the learned Arbitrator by observing “huge arrears to the tune of ₹3 Crores are stated to be pending” had not interfered with the order dated July 11, 2017, as such the challenge with regard to the said order need to be rejected does not impress me for the simple reason, the Tribunal has in the last line made a clear observation that the said order shall not have any bearing on the merits of the case. In other words, the Ld. Arbitrator had not considered the merits of the order dated July 11, 2017. So, it need to be seen, that the order dated July 11, 2017, apart from June 12, 2015 are justified.

70. During the submission, Mr. Uppal had strongly relied on the contents of the letter dated July 13, 2015 by stating that upon furnishing of Bank Guarantee of ₹40 lacs, the blacklisting order dated June 12, 2015 stood revoked. The said argument is without any merit and I agree with the submission of Mr. Poddar that the letter dated July 13, 2015, which reads as under, clearly stipulates the direction to submit a Bank Guarantee of ₹40 lacs for a period of six months is a prerequisite to enable the respondent take a further decision in the matter.

*“M/s Graphisads Pvt. Ltd
AB-House No. 4/24A,
I Floor, Asaf Ali Road, New Delhi Gate
New Delhi-110002*

*Subject: Order of Revocation of blacklisting of M/s
Graphisads Pvt. Ltd. panel of MCD/SDMC*

Whereas M/s Graphisads Pvt. Ltd House No. 4/24A, I Floor, Asaf Ali Road, near Delhi Gate, New Delhi-110002 was blacklisted vide orders of competent authority dated 12/6/2015 and communicated to you vide order No. AC/(Advtt.)/SDMC/2015/D-498 dated 12/6./2015.

Whereas an amount of Rs.65,07,290/- was worked out to be outstanding against you and same was also communicated to you vide aforesaid orders.

Whereas you have further deposited two DDs dt. 29/6/2015 and 1/7/2015 amount of Rs.26,21,035/-.

Whereas you have produced G-8 towards deposit of an amount of Rs.29,61,376/-.

Whereas the G-8 receipts submitted by you require verification and some of them pertain to the period of erstwhile MCD also the process is likely to take some time.

Now, therefore, keeping in view the above noted facts and

circumstances competent authority vide its orders dated 10/7/2015 has considered your request for revocation of blacklisting and with a direction to have bank guarantee of Rs.40 lakh for six months before taking further decision. Hence you are directed to submit a Bank Guarantee of Rs.40 lakh with validity of 6 months.”

71. Surely, in the absence of any deposit of Bank Guarantee of ₹40 lacs, the respondent was within its right not to take a decision on the revocation of blacklisting. I also agree with the submission of Mr. Poddar, that had it been the impression of the petitioner on deposit of ₹40 lacs, blacklisting stands revoked , then there was no need for the petitioner to file an application under Section 17 of the Arbitration & Conciliation Act seeking stay of the blacklisting order. And even the learned Arbitrator in his order dated May 17, 2017 took note of the order dated July 13, 2015 and directed the respondent “to consider” the request of the petitioner for revocation of the blacklisting of the petitioner on furnishing a Bank Guarantee of ₹40 lacs.

72. Insofar as the plea of Mr. Uppal that no show cause notice on the grounds so taken by the respondent in their letter dated July 11, 2017 for non revocation of blacklisting was ever issued by the respondent is concerned, suffice to state the said order was passed by the respondent on the directions given by the learned Arbitrator on May 17, 2017 on an application filed by the petitioner itself for grant of interim directions against the blacklisting of the claimant/petitioner firm vide order dated June 12, 2015 and there is no

dispute that show cause notice dated June 01, 2015 was issued before the order dated June 12, 2015 was passed. It is noted from the order of the learned Arbitrator that the respondent had also taken a stand before the learned Arbitrator that the huge arrears to the tune of more than ₹1.96 crores of other works undertaken by the claimant are also pending against the claimant i.e the petitioner herein and it was also on this ground, which was the basis for the respondent to reject the request of revocation of the blacklisting of the petitioner.

73. The guidelines of April 23, 2013 relied upon by the petitioner also empowers the SDMC to debar from registration, renewal or blacklist any person, if he is a defaulter in making payments/having outstanding dues of SDMC. It is in tune with the stipulation that the respondent had refused to revoke the blacklisting of the petitioner.

74. Insofar as the argument of Mr. Uppal that the order/letter dated July 11, 2017 of the respondent for non revocation of the blacklisting is against the guidelines dated April 23, 2013 more specifically 17D is concerned, it is necessary to reproduce the said provisions hereunder:-

“17(D) Blacklisting and cancellation of registration: The Advertiser, if found on five occasions involved in any kind of malpractices/violations of site including default in payment of license fee shall be liable for cancellation of the site and for repetition of violation by the same advertiser at other site/s, the advertiser shall be blacklisted with the approval of the

competent authority. The decision of the Competent Authority shall be final and binding to all. In case of above his security amount/earnest money deposit shall be forfeited and registration of Advertiser shall be cancelled.”

75. The said plea is overlooking the provision of (B) of the guidelines. The same reads as under:-

“B. Competent authority may, without assigning any reason, debar from registration renewal or blacklist, any person as detailed from (I) to (VI) below:

I. Who is a dismissed employee of SDMC / EDMC / NDMC / erstwhile MCD,

II. Who has been black -listed / removed from the approved list of Advertisers by SDMC / EDMC / NDMC / erstwhile MCD,

III. Who is having business banned / suspended by SDMC / EDMC / NDMC / erstwhile MCD in the past,

IV. Who is convicted by a Court of Law,

V. Who has been declared insolvent,

VI. Who is a defaulter in making payments/is having outstanding dues of SDMC / EDMC / NDMC / erstwhile MCD.

76. The argument of Mr. Uppal by relying on 17(D) of the guidelines is that only on initial five violations of default in payment of license fee, shall entail cancellation of site and for repetition of violation by the same advertiser at other site(s) the advertiser can be blacklisted. His argument being, as five violations have not taken place, no blacklisting can be resorted to. I am unable to accept such a plea, for the following reasons:-

(1) The petitioner's case in the writ petition is, only on three violation blacklisting order can be passed.

(2) It is the case of the respondent in the counter affidavit filed in W.P.(C)

No. 6292/2018 that demand notices in respect of the various contracts were issued from 2010 itself. However, petitioner failed to clear the dues on time and the respondent Corporation repeatedly sent numerous reminders in respect of individual sites/contracts and ultimately it issued a demand of ₹2.56 crores vide letter dated October 22, 2013. The same was followed by further notices. In response to one notice on October 24, 2013, the petitioner paid an amount of ₹15 lacs. It is also the stand of the respondent from time to time, opportunities were granted to the petitioner both for payment as well as reconciliation of accounts. The respondent refers to a final demand notice dated July 23, 2015, asking petitioner the deposit of outstanding dues of ₹2,47,45,756/-. It was on, non-payment that the blacklisting order dated June 12, 2015 was issued. It is also stated on representation of the petitioner, the accounts were duly verified and upon reconciliation an amount of ₹1,96,11,611/- was found pending against the petitioner as on March 15, 2016. It is also stated during the pendency of the writ petition, it was found that an amount of ₹4,55,10,951/- is pending against the petitioner as on September 06/07, 2017. It is important to mention here, the petitioner in its letter dated June 23, 2016 has stated as under:-

“This refers to our discussions with Sh. P.S. Jha, (ADC. Advertisement Department) on 15.06.16 & 22.06.16 regarding above.

Your department has shown an outstanding of Rs.1,96,11,611/- including Solar remission amount of Rs.89,25,740/-. We have already submitted our objections to the said outstanding.

We are ready to clear the amount of Rs.89,25,740/- which is the Solar Remission amount, Out of which we have already remitted Rs.15,72,069/- vide P.O. No. 009517 dated 17.03.2016 drawn on Standard Chartered Bank.

You are requested to issue us formal letter certifying revocation of our blacklisting and appoint the arbitrator to settle the issue of disputed amount.

We assure you that we will abide by the decision of the arbitrator and pay the balance amount, if any.”

77. A reading of the above clearly shows that, demand notices are being issued since 2010. A perusal of the statements in tabular form (pages 111-125, convenience file) filed by the respondent shows the alleged defaults are more than five occasions. Further, there is no challenge by the petitioner to the demand notices of the respondent, so also to the letter dated March 21, 2016 of the respondent rejecting the request of the petitioner for issuance of “No dues Certificate” for participation in NIT. That apart, one of the grounds for blacklisting is, the petitioner has committed irregularities like encroachment, additional coverage, unauthorized advertisements etc. No arguments have been advanced, to contradict the said grounds.

78. Insofar as the judgments relied upon by Mr. Uppal are concerned, the same are on the propositions; (a) when the dispute is pending adjudication before Arbitrator, the same cannot be the basis for placing the party in

“Holiday List”; (b) Blacklisting without a show cause notice notifying the reasons for blacklisting and the period for which the contractor is proposed to be blacklisted and without giving opportunity of hearing and for an indefinite period is bad; (c) summary rejection of replies in a slip shod manner without giving any reason is in violation of principles of natural justice; (d) permanent debarment from future contracts for all times to come may sound too harsh; (e) excess amount received by a party already paid back, the period of blacklisting order to be determined by the Competent Authority. None of the judgments on the aforesaid propositions are applicable to the facts of this case, as I have already held, principles of natural justice have been followed. There is no challenge to the demand notices as referred above of the respondent by the petitioner and as such the demand stands. The action of blacklisting is as per guidelines referred to above.

79. On the plea of Mr. Uppal that, the blacklisting cannot be in perpetuity is concerned, suffice to state till such time the demand of the respondent for dues stands against the petitioner, the blacklisting is justified unless the same held to be bad through a process, initiated by the petitioner in accordance with law. I may state here, the pendency of the suit filed by the petitioner before the District Court for recovery and rendition of accounts/perpetual injunction would also have no bearing on the blacklisting of the petitioner as the said suit is only with regard to the contracts relatable to ‘a’ to ‘g’ and not ‘h’ above.

So, if the dues are payable for the contract 'h', the respondent would be justified in taking action of blacklisting against the petitioner. In fact, in the arbitration proceedings with regard to waterless urinals (h), the challenge is, to the cancellation of the contract on the ground of non-maintenance of the urinals, which prayer is different and distinct from a challenge to the recovery of dues in the said Contract. Even otherwise, it is not the case of the petitioner that there are no dues payable by it to the respondent under the contract (i) above i.e street furniture contract. The note dated June 19/21, 2017 (pae 239-240 of Convenience File) stipulates so, which I reproduce hereunder:-

“In view of the above, if agreed to- (1) we may intimate the applicant advertiser that his request cannot be acceded to unless and until the firm clears all out outstanding dues and (2) that since the firm is blacklisted, it has lost the right to claim grant of right of First Refused to match or exceed the offer of the identified preferred bidder. Draft letter placed opposite for kind perusal and approval before issue please.”

In view of the above, the order of blacklisting dated June 12, 2015 and refusal to revoke blacklisting vide order dated July 11, 2017 cannot be faulted. The issue No.2 is decided against the petitioner.

Issue No.3:-

80. Insofar as the issue No.3 is concerned, the blacklisting having been upheld, the same is a justifiable ground for the respondent not to renew the contract of street furniture dated June 17, 2010. In view of this conclusion, it

would not be relevant for this Court to go into the following judgments referred to by Mr. Poddar in support of his contention that the petitioner has no right of first refusal.

(i) Indian Hotels Co. Ltd. v. New Delhi Municipal Council, 234 (2016) DLT409 (Paras 51-52); and

(ii) Asha Chitkara v. North Delhi Municipal Corporation, 228 (2016) DLT 395.

81. That apart, there is no dispute that the petitioner firm has been blacklisted vide order dated June 21, 2017. I have not been shown any document, revealing a challenge to the same. In the absence of a registration, the plea of renewal cannot be accepted.

82. In view of my above discussion, the aforesaid three petitions are without any merit. The same are dismissed. No costs.

CONT.CAS(C) 544/2017

83. This contempt petition has been filed by the petitioner M/S Graphisads Pvt. Ltd alleging violation of order dated June 21, 2017. The relevant averments are in paras 4 to 6 of the petition. The relevant part of the order dated June 21, 2017 reads as under:-

“Adverting to the above-said term of the agreement, it is strenuously contended by Mr. Uppal, Ld. Sr. Counsel that, though, the period of seven years from the date of commencement of agreement has expired on 16.6.2017, the petitioner was vested with a right of First Refusal to match or exceed the bid of the

identified preferred bidder for the second time, in the event, there was no extension of the Concession period of further seven years. In that regard, Mr. Uppal, ld. Sr. Counsel has also drawn attention to the fact that in exercise of such right, the petitioner had made a representation for extension vide its communication dated 18.5.2017, followed by a reminder dated 2.6.2017, but, has not received any response, till now. During the course of hearing, Mr. Gupta, ld. Counsel for the respondent states that the said representation has come to be declined, as of today, in the morning only, but, it is yet to be communicated to the petitioner. He is however, oblivious of the reasons for rejection inasmuch as, he states that said instructions he has received only telephonically and no record has come to be made available to him, till now. Mr. Gupta, also states that no further bidding process has come to be undertaken. Fact, thus, remains that even the reasons for rejection are not yet communicated to the petitioner. Of course, the petitioner, when communicated the reasons for rejection of its representation for extension, may assail such rejection, as, it may advised, for assertion of any of right(s), if any, vesting in it.

Mr. Gupta, on instruction, also states that advertisement displays have already been removed in entirety. It is however, disputed on behalf of the petitioner.

Issue notice. Mr. Gupta accepts notice and seeks time to file reply. As prayed, reply be filed by 27th June, 2017 with advance copy to the other side. Rejoinder, if any, be filed within three days thereafter. Keeping in view the totality of the facts and circumstances, it is ordered that till the adjourned date, the parties shall maintain status quo.”

84. A perusal of the aforesaid order would show that it is the case of the respondents that the request of the petitioner for extension of the permission

with respect to the Concession Agreement has been rejected in the morning of June 21, 2017. It was also represented by the learned counsel for the respondents that the advertisement displays have already been removed in entirety. In fact, the petitioner also in W.P.(C) 5358/2017 has stated that on June 20, 2017, certain officers of the respondent arrived at Lodi Road area and R.K. Puram area installations and started defacing / removing the display advertisements.

85. I note in the contempt petition filed by the respondents herein against the petitioner here, photographs of June 20, 2017 and June 21, 2017 have been annexed, which does reveal that on June 21, 2017 when the status quo order was passed, there were no advertisement displays on the project facilities. Surely, the intent of passing the status quo order by the Court is, whatever the status quo which was prevailing on June 21, 2017 must continue. In fact, the averments in paras 4 to 6 of contempt petition No. 544/2017 relates to happenings on June 27, 2017, June 28, 2017 and July 04, 2017. The said allegations have to be seen in the context of a positive statement made by the SDMC in their contempt petition that when inspection took place on June 27, 2017, its Officers found that the respondents getting the display re-fixed in violation of order dated June 21, 2017 and thus stopped further reinstallation of the advertisements. So, it is clear there were no advertisements on display on June 21, 2017 when the status quo order was

passed.

86. Notice has not yet been issued in Cont.Cas(C) No. 544/2017, even though, there was a direction to file an affidavit, which has also not been filed by the respondents, be that as it may, since the SDMC has also filed a contempt petition being Cont.Cas(C) No. 521/2017 and noting the averments made therein, I am not inclined to continue the petition. I close Cont.Cas(C) No. 544/2017. Further, in view of the order passed in writ petitions being W.P.(C) No.5358/2017, W.P.(C) No. 5543/2017 & W.P.(C) No. 6292/2017, I close the Cont.Cas(C) No. 521/2017 as well.

Crl.M.A. 12568/2017 (under Section 340 Cr.PC) in CONT.CAS(C) 521/2017

Dismissed as infructuous.

JUNE 01, 2018/ak

V. KAMESWAR RAO, J