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

\+ **FAO(OS) (COMM) 48/2019**

SMS PARKING SOLUTIONS PRIVATE LIMITED..... Appellant

Through: Mr. Darpan Wadhwa, Senior Advocate with Mr. Sandeep D. Das, Ms. Mehak Khurana and Ms. Cauveri Birbal, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATION ..... Respondent

Through: Ms. Mini Pushkarna, Standing Counsel for North DMC with Ms. Swagata Bhuyan and Ms. Shiva Pandey, Advocates.

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE I.S.MEHTA

O R D E R

% 15.03.2019

CM APPL. 9678/2019 (for exemption)

1. Allowed, subject to all just exceptions.

FAO(OS) (COMM) 48/2019

2. This appeal is directed against an order dated 18^{th} December 2018 passed by the learned Single Judge dismissing OMP Comm. No. 514/2018 filed by the Appellant challenging an Award dated 11^{th} August 2018 by the sole Arbitrator adjudicating the disputes between the Respondents North DMC

arising out of a Concession Agreement (CA) dated 23rd July 2017.

3. In terms of the said CA, the Respondent awarded the Appellant the project of

(a) "development, design, financing, construction, operation/maintenance and transfer of a state-of-the-art parking facility for systematic and organized parking facility at Kamla Nagar in Delhi.

(b) demanding/levying, collecting, appropriating and retaining parking fees, rents, commercial development fees and user charges as applicable for the users of the service of the Appellant.

4. The Appellant constructed eight floors of basement parking with three floors on top as commercial space. The Appellant filed a property tax return for the years 2014-2017. However, it paid property tax only in respect of the ground, first and second floors. The Respondent issued a penalty notice dated 18th July, 2016 demanding property tax in respect of the floors that were used as parking area. The issue that arose was whether the Appellant was liable to pay property tax with regard to the parking area? The case of the Appellant was that it is liable to pay property tax only in respect of that part of the building that has been used for commercial purposes i.e. ground, first and second floor and not for the area used as parking.

5. The Appellant then invoked the arbitration clause. Pursuant to an order passed by this Court in Arbitration Petition 166/2017, the disputes were referred to the sole Arbitrator. In the impugned Award dated 11th August, 2018 the sole Arbitrator, on interpretation of the relevant clauses of the CA,

negatived the claim of the Appellant. The learned Arbitrator was of the view that the project itself envisaged building the parking structure with commercial areas and kiosks and the Appellant itself referred to sources of revenues from the parking fees as well as lease of commercial properties. Accordingly, the learned Arbitrator concluded that "charging of parking fees is commercial in nature." Further it was noticed that in the correspondence exchanged by the Appellant with the Respondent prior to when the agreement deed was executed, no issue was raised on what property tax was not being paid in respect of the parking area.

6. The learned Arbitrator noticed clause 2.1(b) of the agreement but noticed that it did not make any reference to parking area facilities. The learned Arbitrator was of the view that the Appellant was not absolved from paying property tax in respect of the parking area even if it found the parking fees to be insufficient to meet the expenses incurred by it for running the parking facility. Also, the mere fact that the parking charges were to be fixed with the consent of the Respondent did not mean that the parking area was not a part of the commercial project.

7. The learned Single Judge has referred to the decisions of Supreme Court in ***Associate Builders v. DDA (2015) 3 SCC 49*** and ***National Highway Authority of India v. ITD Cementation India Ltd. (2015) 14 SCC 21*** which hold that it is primarily for the Arbitrator to interpret the terms of the contract. It was held that while considering the challenge to an Award, the Court is not sitting in appeal and will not interfere "unless the Arbitrator construes the contract in such a way that no fair minded and unreasonable

person would".

8. Having heard Mr. Darpan Wadhwa, learned Senior Counsel for the Appellant, and having perused the Award as well as the order passed by the learned Single Judge, this Court is not persuaded that the interpretation placed by the learned Arbitrator on the clauses of the CA and in coming to the conclusion that the parking area is also a part of the commercial property and amenable to property tax is something that no fair minded and unreasonable person would arrive at. Consequently, the Court finds no reason to interfere with the impugned order.

9. The appeal is dismissed.

S. MURALIDHAR, J.

I.S. MEHTA, J.

MARCH 15, 2019
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