

\$~79

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

+ **W.P.(C) 4909/2019 & CM. No. 21844/2019**

M/S BRITE ADVERTISING AND MARKETING

..... Petitioner

Through: Mr. Ramesh Singh, Mr. Ranjan N.
and Mr. Anirudh Ahuja, Advs.

versus

SOUTH DELHI MUNICIPAL CORPORATION

..... Respondent

Through: Mr. Sanjay Poddar, Sr. Adv. with
Mr. Kunal Vajani, Mr. Paras Anand
and Mr. Jaibir Sethi, Advs. with Mr.
Deepak Gupta, Asst. Commissioner,
Advertisement Deptt./HQ (SDMC)

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

%

08.05.2019

1. This petition has been filed by the petitioner with the following prayers:

“In view of the aforementioned submissions and in the interest of justice, the petitioner most humbly seek that this Hon’ble Court may issue an appropriate writ;

a) Quashing the warrant of distress dated 30.04.2019 issued by the Respondent SDMC; and

b) Pass such other further order (s) which this Hon’ble Court deems fit and proper in the interest of justice.”

2. In substance, the challenge in this writ petition is to the warrant of Distress dated April 30, 2019 issued by respondent SDMC to the Bank of the petitioner whereby they have decided to recover ₹1,04,48,337/- as dues in respect of three unipole sites in Central Zone. The Unipole Sites were at the following:

1. Nizamuddin Nala, FTC Nizamuddin West, Central zone, New Delhi.
2. Nizamuddin Nala, FTC Rajdoot Hotel, Central zone, New Delhi.
3. DTTDC Market, Defence Coly, Central Zone, New Delhi.

3. It is the submission of Mr. Ramesh Singh, learned counsel for the petitioner that, respondent cannot claim the amount as depicted in the communication dated April 30, 2019, as the parties having re-conciled the accounts, the last one being on May 18, 2018, as per which the amount is much less and the petitioner has been requesting the respondent to adjust the security deposit of the contracts. In this regard, he has drawn my attention to clause 17 of the contract. He states, the same had not been done, and the SDMC has inflated the figure to arrive at ₹1,04,48,338/-. That apart, it is his submission that there is another contract (other than the above three)

wherein a security deposit of ₹6,79,069/- is lying with the respondent SDMC. He also states, had the above amounts been adjusted at the time when, the petitioner made the first request, the issue could have been settled much earlier and the respondent could not have claimed interest till April, 2019.

4. That apart, it is his submission that respondent could not have imposed a penalty of ₹8,90,397/- as has been done by them in terms of the calculation sheet produced by Mr. Poddar that too without any show-cause notice. Mr. Ramesh Singh also states that the petitioner is ready and willing to put quietus to the matter, if the respondent gives adjustment of the security deposit of the contracts of the above three Unipole sites and the penalty amount.

5. Mr. Sanjay Poddar, learned Sr. Counsel appearing for the respondent disputes the contentions of Mr. Ramesh Singh by stating that the petitioner is not entitled to any adjustment of security deposits in terms of the stipulations in the respective contracts. He justifies the forfeiture by drawing my attention to pages 75-76 of the paper book. According to him if, despite reconciliation, the petitioner has not paid the amount, the respondent is within its right to claim interest @ 2% per month in terms of

the stipulations in the contract. He has produced before me the summary sheet as prepared by SDMC justifying the claim of ₹1,04,48,338/-.

6. Noting the aforesaid submissions made by the learned counsel for the parties and the summary sheet placed before me, this court is of the view, in the peculiar facts, to put quietus to the dispute between the parties, it is directed that the respondent SDMC shall give adjustment of ₹4,34,997/- and ₹4,07,997/- from the amount of ₹1,04,48,338/-. That apart, as the penalty has been imposed by the respondent was without issuing show-cause notice, for the present, petitioner shall be entitled to deduction of penalty amount of ₹8,90,397/-, but that will not preclude the respondent / SDMC from initiating proceedings against the petitioner for imposing penalty after giving the petitioner show-cause notice and thereafter proceeding in accordance with law and if any penalty is imposed, the respondent shall invoke the bank guarantee furnished by the petitioner, for which purpose, I take on record the submission made by Mr. Singh on instructions from the representative of the petitioner that, till such time, the issue of penalty is decided, the petitioner shall keep the bank guarantee for an amount of ₹8,90,397/- alive. It goes without saying that the respondent shall be at liberty to deal with the bank guarantee as per the outcome of the proceedings with regard to

imposition of the penalty.

7. In view of above, it is directed that the petitioner shall pay the net amount of ₹87,14,987/- within four weeks from today as an outer limit. Mr. Singh states on instructions that the amount of ₹23 Lacs lying in bank account shall be released to the SDMC. The said statement is taken on record. The petitioner through its representative shall file an undertaking in this Court within two days by way of an affidavit on the following, by giving a copy of the same to the learned counsel for the respondent SDMC.

- (i) That the petitioner shall pay the net amount of ₹87,14,987/- to the SDMC within four weeks, as an outer limit;
- (ii) The petitioner shall keep the bank guarantee of ₹8,90,397/- alive, till such time the SDMC, decides the issue of penalty after giving the petitioner a show cause notice.

It is made clear that on the filing of the undertaking by the petitioner, the impugned Warrant of Distress shall stand withdrawn and this aspect shall be informed by the SDMC to the Bank, within one day of receiving copy of the affidavit from the counsel for the petitioner; pursuant thereto the Bank shall release the amount of ₹23 lacs to SDMC forthwith.

The petition is disposed of.

Dasti under the signature of the Court Master.

CM No. 21844/2019

Dismissed as infructuous.

V. KAMESWAR RAO, J

MAY 08, 2019/jg