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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **O.M.P.(I) (COMM.) 60/2021, I.A. 2366-2368/2021**

**FRIGORIFICO ALLANA PRIVATE
LIMITED**

..... Petitioner

Through: Mr. Neeraj Malhotra, Senior
Advocate with Mr. Mukesh Rana,
Ms. Mamta and Ms. Paulami Sen,
Advocates

versus

**EAST DELHI MUNICIPAL
CORPORATION**

..... Respondent

Through: Mrs. Biji Rajesh for Mr. Gaurang
Kanth, Advocates

+ **O.M.P.(I) (COMM.) 61/2021, I.A. 2375-2377/2021**

**FRIGORIFICO ALLANA PRIVATE
LIMITED**

..... Petitioner

Through: Mr. Neeraj Malhotra, Senior
Advocate with Mr. Mukesh Rana,
Ms. Mamta and Ms. Paulami Sen,
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versus

**EAST DELHI MUNICIPAL
CORPORATION**

..... Respondent

Through: Mrs. Biji Rajesh for Mr. Gaurang
Kanth, Advocates

**CORAM:
HON'BLE MR. JUSTICE TALWANT SINGH**

ORDER

16.02.2021

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The present matter has been taken up for hearing in physical Court.

Both these petitions have been taken up together for adjudication as the office order assailed in both these petitions is the same; which is office order dated 2nd February, 2021 by which the respondent, East Delhi Municipal Corporation (EDMC), directed for handing over/taking over of Ghazipur Slaughter House and other related facilities from the petitioner w.e.f. 18th February, 2021. The impugned office order is reproduced here under:

“No. 23/DVS/EDMC/2021

To,

The General Manager (North)
M/S Frigorifico Allana Pvt Ltd
A 15, Site-IV, Industrial Area, Sahibabad,
District: Ghaziabad (U.P) PIN 201010
Ph No: 0120-2895411, 2896159, Fax No. 0120-2895147

OFFICE ORDER

Sub:- Regarding handing over/taking over of Ghazipur Slaughter House, Carass ulitization cum rendering plant including live stock markets and other facilities to M/s Qureshi International DS-Max-Fresh N Frozen Consortium through Dr. Kuldip Singh, Dy. Dir (VS)/Incharge Ghazipur Slaughter House/Plant Manager on behalf of the Commissioner, EDMC

Sir,

The Ghazipur Slaughter House was leased out to M/S Frigorifico Allana Pvt. Ltd. (M/s FAPL) w.e.f. 04.08.2009 by erstwhile MCD through tender process for 10 years. The carcass utilization cum rendering plant was also leased out to M/s FAPL from 13.08.2010 for a period of 5 years initially and further extended from 13.08.2015 upto 03.08.2019 to be coterminous w.e.f. leasing out of Ghazipur Slaughter House (upto 03.08.2019). The first extension of Ghazipur Slaughter House and carass utilization cum

rendering plant given to M/s FAPL w.e.f. 04.08.2019 to 03.02.2020. The second extension was given to FAPL w.e.f. 04.02.2020 to 03.05.2020 and the third and last extension was given to M/s FAPL w.e.f. 04.05.2020 to 03.05.2022 or till finalization of tender whichever is earlier.

As you aware the tender was opened on 03.09.2020 and financial bids were opened on 17.12.2020 at 04:00 PM and tender was finalized. The EDMC have signed the lease agreement on 19.01.2021 between Dr. Kuldip Singh Dy. Director (VS)/Incharge Ghazipur Slaughter House/ Plant Manager on behalf of the Commissioner, EDMC and Ms. Yousuf Mujahed (leading member of consortium) Managing Director on behalf of new lessee M/s Qureshi International DS-Max-Fresh N Frozen Consortium. Therefore, your extension of lease agreement for operation and maintenance of Ghazipur Slaughter House and carcass utilization cum rendering plant and other facilities have been ended over on 19.01.2021. Since the fresh agreement between EDMC and new lessee has been signed.

As per article 10.2 (b) of lease agreement between M/s FAPL and erstwhile MCD dated 04.08.2009 the transfer date i.e., 20.01.2021 has been decided. So that M/s FAPL cannot legally operate the plant after 20.01.2021 (transfer date). Now the EDMC has the right to take the possession of the project and project facilities immediately from M/s FAPL after the transfer date i.e., 20.01.2021.

Article 10.2 (b) is as under:

“(b) The Divestment of all rights, title and interest in the project and project facilities shall be deemed to be complete on the transfer date but no later than 30 (thirty) days thereafter, by when all the requirements of clause (I) to (XII) above shall be fulfilled. The plant Manager shall on such date issues a compliance certificate, with a copy thereof endorsed to the MCD, which shall have the effect of consulting evidence of divestment by the Licensee of all of its rights, title and interest in the project and the vesting thereof in the MCD or its nominee, as the case may be pursuant thereto.”

1. Dr. Kuldip Singh, Dy. Dir (VS)/Incharge Ghazipur Slaughter House/Plant is requested to facilitate/provide two rooms to new lessee M/s Qureshi International DS-Max-Fresh N Frozen Consortium inside the premises/campus to be utilized by their officers and staff for preliminary working and planning as per norms and conveniences.
2. M/s FAPL will be bound to deposit all the dues including royalty of Ghazipur Slaughter House, carcass utilization cum rendering plant electricity bill of entire premises, lease rent etc. to the EDMC before 18.02.2021
3. The competent authority vide order dated 02.02.2021 has given the permission to the Department to take over the Ghazipur Slaughter House, Carcass utilization cum rendering plant including live stock markets and other facilities from M/s Frigorifico Aliana Pvt. Ltd. and handed over to M/s Qureshi International DS-Max-Fresh N Frozen Consortium for operation and maintenance of Ghazipur Slaughter House, Carcass utilization cum rendering plant including live stock markets and other facilities for 10 years through Dr. Kuldip Singh, Dy. Dir. (VS)/Incharge Ghazipur Slaughter House/Plant Manager on behalf of Commissioner, EDMC immediately as per article 10.2 (b) after the transfer date 20.01.2021. Therefore, you are humbly requested to hand over the above facilities accordingly.

The divestment process must be completed within the period of dated 20.01.2021 (transfer date) to 18.02.2021 (last date).

You are therefore required to vacate the premises on or before 18.02.2021.

Addl. Director (VS)''

In brief, the case of the petitioner is that it is dealing in meat industry catering to domestic and international market. The petitioner had entered into a License Agreement dated 4th August, 2009 and Lease Agreement dated 13th August, 2010, initially for a period of ten years and five years

respectively and the same were extended from time to time and the petitioner had made huge capital investments to carry on the work at the Slaughter House. The petitioner was astonished to receive the letter dated 2nd February, 2021 on 3rd February, 2021, which has been reproduced herein above. Learned senior Advocate appearing for the petitioner has submitted that the petitioner is entitled to four months' period before a formal transfer of assets in terms clause 10.2(vi) read with clause 10.2(b) of the License Agreement. The entire clause 10.2, which deals with handover of project site and project facilities are reproduced here under:

“10.2 Handover of project, project site and project facilities:

- (i) The licensee shall on the date of expiry of the term of agreement or on account of early termination thereof, transfer assign and deliver to the MCD or its nominated agency, free and clear of any Encumbrances, the vacant and peaceful possession of the project, project facilities and the site along with the buildings, machinery, equipments, facilities and structures constructed on, over, at or under it in normal operating conditions.
- (ii) Transfer all its rights, titles and interest in or over the tangible assets comprised in the project (including movable assets which the MCD agrees to take over) to the MCD or its nominated agency and execute such deeds and documents as may be necessary for the purpose and complete all legal or other formalities required in this regard.
- (iii) To the extent possible assign to the MCD or its nominated agency at the time of transfer all insurance policies.
- (iv) At its cost remove from the site all such moveable assets which are not taken over by or transferred/assigned to the MCD or its nominated

agency. In the event the Licensee fails to remove such objects within the stipulated time, the MCD or its nominated agency may remove and transport or cause removal and transportation of such objects, after giving the Licensee notice of its intention to do so to a suitable location for safe storage. The Licensee shall be able to bear the reasonable cost and the risk of such removal, transportation and storage.

- (v) All proceeds of insurance claims shall be handed over to the MCD or its nominated agency and the Licensee or persons claiming through or under it shall have no claim thereon or rights thereto.
- (vi) The MCD and the licensee shall at least three months prior to the expiry of the Licensee period or upon insurance of preliminary notice, as the case may be, promptly agree upon the modalities and take all necessary steps to complete the aforesaid process of transfer of assets on the transfer date. During this period, the designated key personnel of the MCD shall be associated with the operations of the project in order to facilitate smooth take over of the same by the MCD on the transfer date.
- (vii) It is clarified that only the assets of the Licensee shall be taken over and not the liabilities, including without limitation liabilities relating to labour and personnel related obligations of the Licensee and the persons claiming through or under the Licensee shall be taken over by the MCD or its nominated agency. All such labour and employees shall be its responsibility of the Licensee/such persons even after the expiry of the License period and they shall have no claim to any type of employment or compensation from MCD or its nominated agency.
- (viii) On the transfer date the project and the project assets shall be in fair condition, subject to normal wear and tear, having regard for the nature of the asset, the

construction and life of the facilities, constructions, structures etc.

- (ix) All contracts, agreements, arrangements etc entered into by the Licensee with its suppliers, service providers, shall also be liable to be terminated forthwith along with the termination of this agreement at the sole option and discretion of the MCD.
- (x) The Licensee shall, at its cost, transfer to the MCD all such applicable permits which the MCD may require and which can be legally transferred. Provided if the termination is on account of MCD event of default the cost of such transfer shall be borne/reimbursed by the MCD.
- (xi) The project and the project facilities shall be transferred to MCD or its nominated agency, as the case may be, for a sum of Rupee 1.00.
- (xii) Until the transfer date, all risks shall lie with the Licensee for loss of or damage to the whole or any part of the project and the project facilities unless the loss or damage is due to an act or omission of the MCD in contravention of its obligations under this Agreement on and from the transfer date all risks in relation to the project and the project assets shall be deemed to have been transferred to and lie with the grantor or its nominated agency.
- (xiii) (a) On the transfer date the MCD/Expert shall verify, in the presence of the Licensee or of a representative of the Licensee, compliance by the Licensee with the requirements of clause (i) to (xii) above. In the event the MCD/Expert notifies the Licensee of shortcomings, if any, in the Licensee's compliance with such requirements. The Licensee shall forthwith cure the same. Furthermore, MCD shall have the right to en-cash the PBG as submitted by the Licensee and retain the amount spent by the MCD for carrying out works/jobs/maintenance which have not been carried

out by the licensee and return the balance amount, if any.

(b) the Divestment of all rights, title and interest in the project and project facilities shall be deemed to be complete on the transfer date but no later than 30 (thirty) days thereafter, by when all the requirements of clause (i) to (xii) above shall be fulfilled. The Plant Manager shall on such date issue a compliance certificate, with a copy thereof endorsed to the MCD, which shall have the effect of constituting evidence of divestment by the Licensee of all of its rights, title and interest in the project and the vesting thereof in the MCD or its nominee, as the case may be, pursuant thereto.”

It has been further submitted that both the lease and license are co-terminus, which is evident from the extension letters issued from time to time and one such letter is dated 6th August, 2015. The same is reproduced here under:

“No: 1140/DVS/EDMC/2015

Sub: Extension of the lease agreement for carcass utilization cum rendering plant for another five years or co-terminus with the license agreement of Ghazipur Slaughter House.

East Delhi Municipal Corporation vide resolution No. 47 dated 27.07.2015 approved the extension of the lease agreement for carcass utilization cum rendering plant to M/s Frigorifico Aliana Ltd. for another five years or co-terminus with the license agreement of Ghazipur Slaughter House, whichever is earlier, with increase of lease rent from 10% to 15% on the previous years lease rent/royalty amount. Para 2.6 sub-section (i) of lease agreement dated 13.08.2010 for the carcass utilization cum rendering plant stands amended accordingly.

You are requested to submit your consent letter regarding the above changes to this office to enable us to notify the extension of the lease agreement.”

It has been also argued that in Lease Agreement, in clause 2.3, which deals with the eventuality of the work performance of the petitioner being not found satisfactory and clause No. 18, which deals with termination in case of violation of any of the terms of the agreement by the petitioner, both state that notice of a period of three months is to be given. The said clauses are reproduced here under:

“2.3 If the work performance of the lease is not found satisfactory at any time during the period of lease or any act of the lessee is against the interest of MCD then the lease agreement can be terminated by the MCD by giving three months notice in this regard.”

“18.0 Termination

In case of violation of any of the terms of this agreement by the lessee or in the event services offered by it are not found satisfactory, Municipal corporation of Delhi will be free to terminate the lease after giving three months notice to the lessee.”

It has been also argued on behalf of the petitioner that more than 1500 workers are working in the Slaughter House and in the related facilities and they cannot be terminated at the drop of the hat without any notice period and if the petitioner does so, there will be huge number of litigations which will be filed by the said workers against the petitioner. There are obligations on the petitioner under the contracts for supply of meat to different entities and the petitioner needs time to terminate the said

agreements; otherwise, it will incur huge liabilities as damages, etc. Even dismantling the machines and taking them to a warehouse is not an easy task and it will take a lot of time. The petitioner was kept in dark till the delivery of the impugned letter dated 2nd February, 2021. The said letter is contrary to the agreed terms and conditions of the contract and is in violation of the timelines already agreed. Learned senior Advocate for the petitioner further submits that vide its letter dated 3rd February, 2021, the petitioner had already raised its concerns before the respondent regarding the unreasonable time frame. The allotment process by which another contractor has been engaged is already under challenge in W.P.(C) 10583/2020, filed by the petitioner. Moreover, the letter dated 2nd February, 2021 has fixed the transfer date retrospectively from 20th January, 2021 and it is not possible to dismantle the huge machines and take them to some other place in the limited time till 18th February, 2021. Moreover, the petitioner was asked to allow access to the employees of the new contractor during this period, which is not possible till the handing over process is complete. The petitioner is constrained to challenge the said arbitrary and *mala fide* letter dated 2nd February, 2021 and it has strong *prima facie* case in its favour and it shall suffer irreparable damage and the employees will lose their livelihood if respondent is not refrained from acting upon the said letter. Under these circumstances, learned senior Advocate has submitted that four months' time as per clause 10.2 of the Agreement be given to the petitioner w.e.f. 2nd February, 2021. It has been also submitted that the MCD will not suffer any pecuniary damage as the license fees being paid by the present petitioner is much more than the license fees which has been promised to be paid by the new contractor.

Notice was issued. Mrs. Biji Rajesh, Advocate accepts notice on behalf of the respondent. She has submitted that the petitioner is well aware about the tendering process which was going on for a long time. In support of her contention, she has relied upon a letter dated 15th July, 2020, which is reproduced here under:

“To,
M/s Frigorifico Aliana Pvt. Ltd.
Ghazipur Slaughter House
Ghazipur, Delhi-110096.

The Hon’ble Mayor vide orders dated 13.07.2020 has given anticipatory approval regarding the extension of lease period of Ghazipur Slaughter House and the rendering plant for two years w.e.f. 04.05.2020. Further, it is ordered that tendering process should be completed within this period. As such the extension period is of two years or till the tender is finalized, whichever is earlier on the same terms and conditions mentioned in the agreement dated 04.08.2009 for Ghazipur Slaughter House and agreement dated 13.08.2010 for rendering plant followed by its renewal on 13.08.2015 executed between the erstwhile MCD and M/s FAPL.

Further, you would ensure that all the norms related to the social distancing to contain the spread of Covid-19 pandemic are complied with in compliance to various orders issued by the Govt. of India/Delhi Management Authority from time to time.

You are, therefore, requested to kindly make the Slaughter house, rendering plant and live stock markets operational with immediate effect.”

Learned counsel for the respondent further argues that the petitioner had advance notice on 15th July, 2020 itself that the contract was extended only till the tender is finalized or for a period of two years, whichever is earlier. She further submits that the petitioner is aware that on 17th

December 2020, the financial bid of the petitioner was rejected and thereafter, the petitioner was not in the race for selection in the tender floated by EDMC to run the Slaughter House and as such, the petitioner cannot say that it was kept in dark about the tendering process. She further submits that for the purposes of interpreting clause No. 10.2 of the License Agreement and the clauses given in the Lease Agreement regarding three months' notice, it is necessary to take note of the definitions given in the initial paragraphs of the License Agreement which are as under:

“Preliminary Notice shall mean the notice of intended termination by the party entitled to terminate this agreement to the other party setting out, inter alia, the underlying event of default.”

“Termination shall mean early termination of this agreement pursuant to termination notice or otherwise in accordance with the provisions of this agreement but shall not, unless the context otherwise requires, include expiry of this agreement due to efflux of time in the normal course.

‘Termination date’ shall mean the date specified in the termination notice as the date on which termination occurs/comes into effect.

‘Termination Notice’ shall mean the notice of termination by either party to the other party, in accordance with the applicable provisions of this agreement.

The stand of the respondent is that it is neither the case of termination nor a case where a preliminary notice is to be issued as mentioned in Clause 10.2 (iv) and as such Clause No. 10.2 of the License Agreement and the terms detailed in to Clause (i)-(xiii) are not applicable and the only clause which is applicable is Clause 10(b), wherein 30 days' time is to be given from the transfer date. The tender was finalized on 20th

January 2020 and the 30 days' period expires on 18th February 2020 and the notice dated 2nd February 2021 is based upon the said clause, which is fair and justified.

After hearing both the sides, my considered view is that the petitioner was well aware about the tendering process and in fact it had also participated in the said tendering process. It is evident that the petitioner has already filed writ petition being a W.P.(C) 10583/2020 in High Court of Delhi challenging the tendering process and the petitioner cannot plead ignorance about the tender being finalised as the last extension given to the petitioner vide order dated 15th July 2020 clearly stipulates that the extension was granted only till the new tender is finalised or for a period of two years, whichever is earlier. It is also evident that the financial bid submitted by the petitioner was opened on 17th December 2020 and it was rejected. From that date onwards, there was no occasion for the petitioner to feign any ignorance and to continue to operate the Slaughter House by pleading that no preliminary notice was served upon it. Neither any preliminary notice was envisaged in the last extension letter dated 15th July, 2020, nor any such preliminary notice or termination notice is required which is quite clear from the language of the last extension letter dated 15th July, 2020 that the extension is only till the tender is finalised. As per letter dated 2nd February, 2021 the tender was finalised on 19th January 2021 and as per Clause 10.2(b) of the Lease Agreement, the transfer date was fixed as 20th January, 2021. In my view, the EDMC ought to have intimated the transfer date to the petitioner on 20th January, 2021 itself or soon thereafter but the respondent failed to do so and the first intimation of the transfer date was sent to the petitioner vide letter dated 2nd February 2021, the letter

impugned herein which was received by the petitioner on 3rd February, 2021. The respondent cannot fix a transfer date retrospectively. The transfer date has to be the date on which the notice dated 2nd February, 2021 was served upon the respondent, i.e., 3rd February 2021. As per Clause 10(b), the divestment of all rights, title and interest in the Slaughter House and other facilities shall be deemed to be complete not later than 30 days from the transfer date, which ends on 4th March, 2021. Hence, the petitions filed by the petitioner under Section 9 of the Arbitration and Conciliation Act, 1996, are partly allowed and the date for completion of the divestment process is extended to 4th March, 2021. Rest of the prayers of the petitioner are rejected.

Both these petitions are accordingly disposed of.

TALWANT SINGH, J

FEBRUARY 16, 2021/pa

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