* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 24th February, 2021.

\+ **FAO(OS) (COMM) 34/2021**

FRIGORIFICO ALLANA PRIVATE LIMITED ..... Appellant

Through: Mr. Neeraj Malhotra, Sr. Adv. with Mr. Mukesh Rana, Adv.

Versus

EAST DELHI MUNICIPAL CORPORATION ..... Respondent

Through: Ms. Biji Rajesh, Adv. Mr. A.D.N. Rao, Adv. for M/s Qureshi International DS-Max-Fresh N Frozen Consortium.

AND

\+ **FAO(OS) (COMM) 35/2021**

FRIGORIFICO ALLANA PRIVATE LIMITED ..... Appellant

Through: Mr. Akhil Sibal, Sr. Adv. with Mr. Mukesh Rana, Adv.

Versus

EAST DELHI MUNICIPAL CORPORATION ..... Respondent

Through: Ms. Biji Rajesh, Adv. Mr. A.D.N. Rao, Adv. for M/s Qureshi International DS-Max-Fresh N Frozen Consortium.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
HON'BLE MR. JUSTICE AMIT BANSAL

RAJIV SAHAI ENDLAW, J.

CMs No.7613/2021 & 7614/2021 in FAO(OS)(COMM) 34/2021 & CMs No.7616/2021 & 7617/2021 in FAO(OS)(COMM) 35/2021 (all for exemption)

1. Allowed, subject to just exceptions and as per extant rules.

2. The applications are disposed of.

FAO(OS) (COMM) 34/2021 & CM No.7612/2021 (for ad-interim relief) & FAO(OS) (COMM) 35/2021 & CM No.7615/2021 (for ad-interim relief)

3. The appeals impugn the common order dated 16th February, 2021 of the Commercial Division of this Court in O.M.P.(I)(COMM) No.60/2021 and O.M.P.(I)(COMM) No.61/2021, both preferred by the appellant, under Section 9 of the Arbitration and Conciliation Act, 1996, with respect to arbitration clause in the License Agreement dated 4th August, 2009 and Lease Agreement dated 13th August, 2010 between the appellant and the respondent East Delhi Municipal Corporation (EDMC). The appellant, vide the said applications under Section 9 of the Arbitration Act sought interim measure of restraining the respondent EDMC from acting upon its letter/office order dated 2nd February, 2021 directing the appellant to vacate "the subject premises" by 18th February, 2021. Vide the impugned order, the Commercial Division has partly allowed the Section 9 applications by extending "the date for completion of the divestment process" till 4th March, 2021. It is the contention of the appellant that the appellant, in accordance with the Lease Agreement and License Agreement, is entitled to time of four

months for vacation and/or for completion of the divestment process and in these appeals seeks the said time of four months.

4. The counsel for the respondent EDMC appears on advance notice and considering the urgency expressed, we have heard the senior counsels for the appellant and the counsel for the respondent EDMC finally on these appeals.

5. We may at the outset observe that the scope of interference in appeals under Section 37, the context of Section 37(1)(c), has been held to be much restricted. As far as appeals under Section 37(1)(b), as the present appeals are, are concerned, since the order appealed against is an interim order, which is largely discretionary, the law laid down in ***Wander Ltd. Vs. Antox India (P) Ltd.*** 1990 (Supp.) SCC 727 relating to scope and power of Appellate Court in appeals against interim order, would apply and interference with the discretion exercised by the Court at the first instance would be permissible only when discretion is shown to have been exercised arbitrarily or capriciously or perversely or where the Court has ignored the settled principles of law regulating the grant or refusal of interim orders. Reference may be made to judgment dated 27th November, 2020 in FAO(OS)(COMM) No.136/2019 titled ***Sepco Electric Power Construction Corporation Vs. Power Mech Projects Limited***.

6. Under the License Agreement dated 4th August, 2009, the Ghazipur Slaughter House was licensed by the erstwhile Municipal Corporation of Delhi to the appellant, with effect from 4th August, 2009, for a period of ten years. The Carcass Utilization-cum-Rendering Plant was also leased out to the appellant, from 13th August, 2010, initially for a period of five years and

which was further extended from 13th August, 2015 upto 3rd August, 2019, to be co-terminus with the lease of the Ghazipur Slaughter House. The lease was extended from 4th August, 2019 to 3rd February, 2020 and thereafter from 4th February, 2020 to 3rd May, 2020 and yet again from 4th May, 2020 to 3rd May, 2022 or till finalisation of tender, whichever is earlier. Tenders were invited by the respondent EDMC and the appellant also made a bid. The financial bids were opened on 17th December, 2020 and tender was finalized and the respondent EDMC, on 19th January, 2021, signed a lease with respect to Ghazipur Slaughter House and Carcass Utilization-cum-Rendering Plant and other facilities, with Qureshi International DS-Max-Fresh N Frozen Consortium. The respondent EDMC, vide communication dated 2nd February, 2021, informed the appellant that the Lease Agreement entered into with the appellant, for operation and maintenance of Ghazipur Slaughter House and Carcass Utilization-cum-Rendering Plant and other facilities, had come to an end on 19th January, 2021 and called upon the appellant to transfer possession on 20th January, 2021 and to refrain from operating the Slaughter House and Plant after 20th January, 2021. Contending that the appellant, in terms of the Lease Agreement and the License Agreement was entitled to notice of four months, the applications under Section 9 of the Arbitration Act were filed, seeking interim measure of restraining the respondent EDMC from acting upon its letter dated 2nd February, 2021 and grant of minimum time of four months to the appellant to vacate the premises.

7. The Single Judge, vide the impugned order, on an interpretation of the terms of the Lease Agreement and the License Agreement, has found/observed/held, (i) that the appellant was well aware of the tender

process and in fact had also participated in the said tendering process; (ii) that the appellant has already filed writ petition being W.P.(C) No.10583/2020 in this Court, challenging the tendering process and the appellant cannot plead ignorance about the tender being finalized, as the last extension given to the appellant clearly stipulated that the extension was granted only till the new tender was finalized or for a period of two years, whichever was earlier; (iii) that the financial bid submitted by the appellant was opened on 17th December, 2020 and was rejected; (iv) that from that date onwards, there was no occasion for the appellant to feign any ignorance and to continue to operate the Slaughter House, by pleading that no preliminary notice was served upon it; (v) that neither any preliminary notice was envisaged in the last extension letter nor any such preliminary notice or termination notice was required, as is quite clear from the language of the last extension letter i.e. that the extension was only till the tender was finalized; (vi) that the tender was finalized on 19th January, 2021 and the transfer date fixed as 20th January, 2021; (vii) that though the respondent EDMC ought to have intimated the transfer date to the appellant on 20th January, 2021 itself or soon thereafter, but first intimation of the transfer date was sent to the appellant vide letter dated 2nd February 2021 and which was received by the appellant on 3rd February, 2021; (viii) that the respondent EDMC could not fix a transfer date retrospectively and the transfer date had to be the date on which notice dated 2nd February, 2021 was served upon the appellant i.e. 3rd February, 2021; and, (ix) that as per Clause 10.2(xiii)(b) of the License Agreement dated 4th August, 2009, the divestment of all rights, title and interest in the Slaughter House and other facilities was to be deemed to be completed not later than 30 days from the transfer date and which 30 days from 3rd February, 2021 ends on 4th March, 2021. Axiomatically, time till 4th March, 2021 was granted by the Commercial Division to the appellant, to vacate the Slaughter House and ancillary plants.

8. The senior counsels for the appellant have taken us through the various clauses of the Lease Agreement and the License Agreement, to contend that the same envisaged grant of four months' time to the appellant to remove itself from the Slaughter House and ancillary plants. It is contended that the respondent EDMC is thus liable to be restrained by interim measure from acting in violation of the terms and conditions of the Lease Agreement and the License Agreement.

9. We have however drawn attention of the senior counsels for the appellant to ***Indian Oil Corporation Ltd. Vs. Amritsar Gas Service*** (1991) 1 SCC 533, where the Supreme Court held that a plea of short notice did not entitle the lessee/licensee in that case to injunct taking over of possession and at best only entitled the lessee/licensee to damages for short notice. The said dicta has been consistently followed by the Supreme Court and by this Court in ***Hindustan Petroleum Corpn. Ltd. Vs. Sriman Narayan*** (2002) 5 SCC 760, ***Bharat Petroleum Corporation Limited Vs. Chembur Service Station*** (2011) 3 SCC 710, ***National Auto Impex Vs. Autocop (India) Pvt. Ltd.*** (2001) 93 DLT 74, ***Raj Electricals Regd. Vs. B.S.E.S Rajdhani Power Ltd.*** 2007 SCC OnLine Del 1480 (DB), ***Kumar Service Station Vs. Hindustan Petroleum Corporation Ltd.*** 2009 SCC OnLine Del 1521, ***Sannil Sethi Vs. Punjabi Bagh Club (Regd.)*** 2009 SCC OnLine Del 2810, ***MSM Discovery Private Limited Vs. Union of India*** 2010 SCC OnLine Del

4545, ***VF Service (UK) Limited Vs. Union of India*** 2011 SCC OnLine Del 4858, ***Moti Ram & Company Vs. Hindustan Petroleum Corporation Ltd.*** 2011 SCC OnLine Del 2863, ***Kashyap's Vs. Bata India Ltd.*** 2013 SCC OnLine Del 2424, ***Life Insurance Corporation of India Vs. RK Mahajan*** (2015) 225 DLT 484 (DB), ***Captain Guman Singh & Sons Vs. Indian Oil Corporation Ltd.*** 2016 SCC OnLine Del 983 and ***Shri Sai Nath Enterprises Vs. North Delhi Municipal Corporation*** 2016 SCC OnLine Del 814.

10. Faced therewith, the senior counsels for the appellant invoked equity. It is argued that the appellant has made valuable investments in the form of machinery etc. in the Slaughter House and ancillary plants and has also employed 1500 employees, livelihood of whose families depends upon the operation of the Slaughter House. It is contended that the appellant thus, in equity also is entitled to minimum four months' time to wind up its affairs and remove itself from the Slaughter House.

11. However, what really transpires from hearing the senior counsels for the appellant is that the appellant wants to delay handing over of possession and transfer of the Slaughter House to the lessee/licensee thereof, till the decision of the writ petition filed by the appellant impugning the tendering process. The appellant admittedly has no interim relief in its favour in the writ petition challenging the tendering process. The appellant, by filing these proceedings, is seeking to perpetuate its unauthorized occupation of the Slaughter House inspite of having failed in the tendering process. The same cannot be permitted.

12. Though argument of valuable investments is made but inspite of our repeated enquiry, the senior counsels for the appellant could not show any

pleading as to what has been installed and why the same cannot be removed immediately.

13. As far as the argument of the 1500 employees of the appellant being rendered unemployed is concerned, it would make no difference, whether the appellant terminates their services today or after four months. The liability, if any of the appellant therefor would remain the same and the appellant, at best, would be liable to pay salary in lieu of notice period.

14. We may in this context notice that the counsel for new lessee/licensee Qureshi International DS-Max-Fresh N Frozen Consortium also appears and complains that it has not been made a party, though is the affected party. It is argued that the lease in favour of the new lessee/licensee has commenced and the liability for the lease rent has commenced. It is also argued that the new lessee/licensee is willing to consider taking over employees of the appellant and also negotiating for acquiring any machinery and equipment brought by the appellant into the Slaughter House and if of any use to the new lessee/licensee. It is argued that the appellant has not even attempted to approach the new lessee/licensee in this regard.

15. The senior counsels for the appellant contend that if the appellant approaches the new lessee/licensee as aforesaid, the rights of the appellant in the writ petition challenging the tendering process would be prejudiced.

16. We are unable to agree. The appellant can always, without prejudice to its rights and contentions, negotiate with the new lessee/licensee, to mitigate its loss, even if any.

17. No other argument has been urged.

18. Be that as it may, we are unable to find any reason within the confines of law, for interfering with the order of the Commercial Division.

19. Dismissed.

RAJIV SAHAI ENDLAW, J.

AMIT BANSAL, J.

FEBRUARY 24, 2021
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