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

Date of decision: 20th April, 2020

\+ **W.P. (C) 2241/2020**

MEP INFRASTRUCTURE DEVELOPERS LTD. ..... Petitioner

Through: Mr. Rajiv Nayyar and Mr. Sachin Datta, Senior Advocates with Mr. Rajiv Shankar Dvivedi, Mr. Azeem Samuel and Mr. Kartik Nayyar, Advocates. (M: 9313061263)

versus

SOUTH DELHI MUNICIPAL CORPORATION AND OTHERS ..... Respondents

Through: Mr. Sanjay Jain, ASG with Mr. Harsh Peechara, Advocate. (M: 9717466788)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

CM APPLs.10332-33/2020

1. Exemptions are granted, subject to all just exceptions. Applications are disposed of.

CM APPL.10326/2020

2. This hearing has been held by way of a video-conference. The main writ petition was listed on 31st March 2020, by which time the lockdown due to COVID-19 had taken effect.

3. The present application has been moved *inter alia*, with the prayer that the national lock-down period ought to be taken into consideration while giving effect to the termination of the Toll Tax Collection Agreement

dated 28th September, 2017 (*hereinafter, "Agreement"*) and further that the NIT dated 6th April 2020 be quashed.

4. Mr. Nayyar, ld. Senior Counsel refers to the letter dated 4th April, 2020 which postpones the effective date of termination of the Agreement and prays that the fresh notice inviting tender should also accordingly be postponed.

5. Mr. Sanjay Jain, ld. ASG appearing for the Respondents submits that the order dated 2nd March, 2020 is clear to the effect that the Petitioner had to pay in terms of the earlier order dated 26th November, 2019. Ld. Counsel submits that since the Petitioner is in default, no relief is liable to be granted in favour of the Petitioner.

6. A perusal of the order dated 2nd March, 2020 makes it clear that in case of any default, the interim order would stand automatically vacated. On a specific query, Mr. Nayyar concedes that he is not seeking protection under the order dated 26th November, 2019 or the order dated 2nd March, 2020 and admits that there has been a default by his client. Mr. Nayyar, however, submits that a sum of Rs.64 crores has been credited to the South Delhi Municipal Corporation *(hereinafter, "SDMC")* after the SDMC encashed the Bank Guarantee. Mr Jain, however, draws the attention of this Court to paragraphs 18 to 20 of the application in which, according to him, the Petitioner admits that there has been a default. Mr. Jain submits that the Bank Guarantee amount does not cover all the arrears.

7. This Court has heard the counsel for the parties. The limited question, at this stage, is whether the date of termination needs to be extended or not.

8. A perusal of the letter dated 4th April, 2020 clearly shows that the

SDMC had extended the effective date of termination in view of the 21 day national lock down. The relevant portion of the said letter reads as under:

> *"**SUB: Postponement of effective date of termination earlier communicated vide Termination Notice dated 16.03.2030 under Clause 17 of the Toll Tax Collection Agreement (Agreement) dated 28.09.2017.***
> *Sir,*
> *In Continuation of earlier termination notice dated 16.03.2020, I am directed to inform you as under: -*
>
> 1. *On account of National Lock Down announced by the Government of India to contain the spread of COVID-19, it has been decided to postpone the effective date of termination of Toll Tax Collection Agreement dated 28.09.2017 from 14.04.2020 (As mentioned in earlier notice dated 16-03-2020) to 05.05.2020 by excluding the period of National Lockdown of 21 days.*
> 2. *The postponement of effective date of termination from 14.04.2020 to 05.05.2020 shall be without prejudice to the earlier demand notices and future demand notices that may be issued by the SDMC. Your contractual liability to pay the arrears of Toll Tax and the contractual amount to SDMC shall remain un-effected by the postponement of the effective date of termination.*
> 3. *The postponement as stated above shall be without pre-judice to the rights and contentions of the SDMC in the on-going litigation and shall not confer any right upon you.*
> 4. *The other contents of the earlier termination notice dated 16.03.2020 shall remain the same."*

A perusal of the above letter shows that despite the defaults of the Petitioner, the effective date of the termination was postponed by the SDMC itself, due to the national lock-down. Since the national lock down has now been extended for a further period, the effective date of termination would, by the rationale of the above letter, be required to be extended for the further period of lockdown. In any event, a perusal of the NIT dated 6th April, 2020 shows that the opening of the tender is to take place on 22nd April, 2020. It will take some time for the NIT to be finalised, owing to the lockdown. It is however made clear that this Court is not inclined to change the date for opening of Tender or any other further steps to be taken for award of the fresh tender.

9. While it is made clear that the SDMC would be permitted to go ahead with its NIT and finalize the tender, it is clarified that the effective date of termination shall stand postponed for a further period of 19 days. If the lock down is lifted with effect from 4th May, 2020, all the amounts which are collected upon lifting of the lockdown, by the Petitioner, by operating under the Toll Tax agreement shall be deposited with the SDMC. The effective date of termination is extended by a period of 19 days from 5th May, 2020 i.e., till 24th May, 2020. The SDMC shall, however, ensure that any new arrangement and award of tender in favour of any third party would not be effective till 24th May, 2020. The SDMC would be at liberty to award any fresh tender w.e.f. 25th May 2020. This extension of the effective date shall not create any equities in favour of the Petitioner and shall be without prejudice to the rights and contentions of the SDMC.

10. With these observations, the application is disposed of.

PRATHIBA M. SINGH
JUDGE

APRIL 20, 2020
dk/T