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

Date of decision: 19th April, 2021

+ **W.P.(C) 4855/2021 & CM APPL. 14966/2021 & 14967/2021**

M/S AYUSH SERVICES AND CONSULTANCY Petitioner

Through: Mr. Ashish Mohan, Advocate.

versus

DELHI METRO RAIL CORPORATION

LTD. (DMRC)

..... Respondent

Through: Mr. Pushkar Sood, Advocate.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through Video Conferencing.
2. The present petition has been preferred against the Delhi Metro Rail Corporation Limited (*hereinafter*, “DMRC”) in respect of license agreement dated 24th January, 2011 by which the Petitioner was awarded the license for installing display guide maps, including train timings, fare structure and other vital information. The said agreement was preceded by the letter of acceptance dated 11th May, 2020, which, according to the Petitioner, is an integral part of the contract.
3. The clause in the contract relating to the period of the license agreement, reads as under:

*“**Clause 14.** That the Agreement provided herein shall terminate at the end of the period agreed to herein i.e. ten years reckoned from the day, 90 days after the date of issuance of letter of acceptance by DMRC, except that the agreement may also be terminated earlier in accordance with the terms of this Deed.*

“DMRC, at its sole discretion may extend the duration of the agreement for another term of five years or any other period beyond the period agreed upon in the agreement, on terms and conditions mutually agreed between the parties by entering into a separate supplemental license agreement.”

For resolving various issues related to energy supply, the clauses identical to those included in the relevant POWER SUPPLY COMPANY agreement for such supplies would become part of this agreement.”

4. A dispute has arisen because the initial tenure period has elapsed and the Petitioner had sought extension of 5 years, which, according to it, ought to have been granted. However, the DMRC's case is that it was solely within its discretion to extend or not to extend the agreement by a further period of five years.

5. Mr. Ashish Mohan, Id. counsel appearing for the Petitioner, relies upon the acceptance letter, which provides that the initial term of the contract is for 10 years, which shall be extended for a further period of 5 years. He relies upon the various terms in the contract to also show that the only ground on which the contract would have to be terminated, would be on the basis of performance or lack of utility. It is submitted that the Petitioner, having successfully performed the contract, the contract would have to be renewed and the discretion is only insofar as any other further term for which the contract ought to be extended.

6. On behalf of the DMRC, Mr. Sood, Id. Counsel submits that the clause is clear that it is at the discretion of the DMRC as to whether the contract is to be extended or not. In any event, the DMCR has not found any utility for these guide maps, owing to the change in technology and some other arrangements, which are being discussed with the local

municipal bodies.

7. The Court has heard ld. counsels for the parties and perused the record. A perusal of the license agreement shows that there is a conciliation/arbitration clause in the agreement, which reads as under:

“16. Except where otherwise provided for in the agreement, all questions and disputes arising between the parties pertaining or relating to the agreement directly or indirectly connected with the agreement shall in the first place be referred to a sole conciliator appointed by MD/Director/GM/Chief Engineer of DMRC or any other nominee appointed by him as the case may be. There will be no objection if the sole conciliator so appointed is an official of DMRC of the rank of deputy and above. The conciliator shall make the settlement agreement after the parties reach agreement and shall give an authenticated copy thereof to each of the parties.

The settlement agreement shall be final and binding on the parties. The settlement agreement shall have the same status and effect as an arbitration award.

The views expressed, or suggestions made or the admissions made by either party in the course of conciliation proceedings shall not be introduced as evidence in any arbitration proceedings.

If the effort to resolve all or any of the disputed through conciliation fails, then such disputes shall be referred within 30 days to sole arbitrator where the total value of the claims does not exceed Rs.5.0 millions. Beyond the claim limit of Rs.5.0 millions, there shall be three arbitrators. For this purpose, the DMRC will make out a panel of officers with the requisites qualifications and professional experience relevant to the filed to which the contract relates. This

panel will be from serving or retired officials of government departments of public sector. In case of single arbitrator the panel will be of three officials, out of which M/S Ayush services & consultancy will choose one. In case three arbitrators are to be appointed, the DMRC will make out a panel of five. M/S Ayush services & consultancy and the DMRC will choose one arbitrator each and the two so chosen will choose the third arbitrator from the panel.

The venue of such arbitration proceeding shall be at Delhi/New Delhi as mutually agreed. The arbitration award shall state the reasons upon which it is based.

The arbitration proceedings shall be governed by the Indian arbitration and conciliation Act, 1996, as amended from time to time and award of the arbitral tribunal shall be binding on all the parties.

The cost of arbitration shall be borne by the respective parties. The cost shall inter alia include the fees of the arbitrator(s) as per the rates fixed by arbitrator from time to time. The court at Delhi/New Delhi shall have the exclusive jurisdiction to try all disputes between the parties.”

8. The initial term of the agreement of 10 years is ending tomorrow. The letters, which have been served upon the Petitioner, ask the Petitioner to hand over vacant and peaceful possession of the space/premises, however, there is no reason given as to why the extension of contract is not being accepted. The impugned letter dated 13th April 2021 reads as under:

“Subject: Completion of tenure

Reference: letter No.309/project/DMRC/Tri-Board/2020-21 dated 25.03.2021

Sir,

Apropos to the subject matter it is to inform your request for extension of contract period for another five years is not accepted by competent authority. Accordingly as per clause no.11.2 of license agreement you are hereby requested to vacate and handover the possession of space/premises within grace period of 07 days without causing any damage to the property of DMRC to concerned station staff. If you fails to vacate the property within grace period of 07 days, you shall be deemed to be an unauthorized occupant in the said premises and shall be liable to pay fee @ 20/- sqft per day for any period of occupation beyond that date along with the license fee due.

Also you are requested to submit vacation certificate duly signed by station manager/authorized representative to the office of GM/PB.”

9. On a combined reading of the conciliation/arbitration clause and the impugned letter, it is clear that there are no reasons given for not extending the contract. In any event, in terms of the license agreement itself, the Petitioner’s prayer for renewal would have to be referred for conciliation before a Conciliator to be appointed by the MD/Director/GM/Chief Engineer of the DMRC. Since there is also an arbitration clause, this Court is not inclined to entertain this writ petition.

10. In view of the overall facts and circumstances, the following directions are issued:

- a) The Petitioner’s present writ petition shall be considered as a representation challenging the impugned letter dated 13th April, 2021, as also a request for extension of the contract.

- b) The DMRC shall appoint a Conciliator within two days, who shall give a hearing/interaction with the Petitioner and shall try to resolve the dispute.
- c) If resolution is not possible, then the representation shall be decided by the DMRC within two days thereafter and a reasoned order shall be provided as to why the extension is not being acceded to.
- d) If conciliation fails and a reasoned order is provided, the Petitioner's remedies, in accordance with the Dispute Redressal Clause, are left open.
- e) The Petitioner is permitted to appear before the DMRC through video conferencing, if required.

11. It is made clear that this Court has not examined the merits of the dispute, as raised by the Petitioner, and the contentions of the parties. The petition is disposed of in the above terms. All pending applications are also disposed of.

**PRATHIBA M. SINGH
JUDGE**

APRIL 19, 2021/dk/T