

Dd 14-15 29.11.2024

MAT/2561/2023
With
IA NO: CAN/2/2024

M/S. NIZAM'S RESTAURANT
PRIVATE LIMITED AND ANR.
VS
KOLKATA MUNICIPAL
CORPORATIOIN AND ORS.
with
COT/16/2024

KOLKATA MUNICIPAL
CORPORATION AND ORS.
VS
M/S NIZAMS RESTAURANT
PVT. LTD. AND ANR.

Mr. Partha Sarathi Sengupta, Id. Sr. adv.
Mr. A. Banerjee,
Mr. R. N. Chakraborty,
Ms. Mohana Das, Advocates
... ... For the Appellants

Mr. Joydip Kar, Id. Sr. adv.
Mr. Biswajit Mukherjee,
Mr. Swapan Kr. Debnath,
Mr. Gurudas Mitra, Advocates
... ... For the KMC

1. Appeal is at the behest of licensee and is directed against the judgment and order dated December 21, 2023 passed by the learned single Judge in WPA 1930 of 2013.
2. Assessee approached the writ Court challenging the decision of the Kolkata Municipal Corporation Authorities in imposing claims with regard to the change in licence and on other grounds. Three demand letters were challenged in the writ petition.

3. A portion of the demand was reduced by the learned single Judge in the impugned judgment and order.
4. There is another appeal at the behest of the Kolkata Municipal Corporation Authorities directed against the same impugned judgment and order.
5. By consent of the parties, both the appeals are taken up for hearing as both the appeals emanate out of the same impugned judgment and order.
6. In course of hearing of the appeal, a chart computing the claims of the Kolkata Municipal Corporation as on October 31, 2024 is handed over to Court at the behest of Kolkata Municipal Corporation. The same be taken on record.
7. Learned senior advocate appearing for the licensee submits that, his client is agreeable to pay the principal amount as tabulated in column-'A' as well as Serial No. 8 in column-'B' and Serial No. 10 in column-'D'. He submits that, the amount that the licensee paid during the pendency of the writ petition and the appeal be adjusted first towards principal and, thereafter, any other head that the Court may be pleased to award. He submits that, the interest claimed in the chart is excessive and that, Court should consider the same. He also prays for instalments to pay the amount so quantified. He submits that, quantified amount be allowed to be paid in 10 equal monthly instalments commencing from January 15, 2025 and payable within 15 days of the next month.
8. Kolkata Municipal Corporation Authorities are represented.

9. The respective parties drew our attention to the chart containing the claim of Kolkata Municipal Corporation.
10. A sum of Rs.2,05,81,725/- forming the total of table 'A' of such chart plus a sum of Rs.18,15,548/- forming Serial No. 8 of table 'C' plus a sum of Rs.1,50,332/- forming Serial No. 10 of table 'D' are acknowledged to be due and payable by the licensee and, therefore, the licensee shall pay the same.
11. Interest and penalty claims are required to be decided. There are rival contentions of the parties with regard thereto.
12. Nature of transaction between the parties is commercial. We take into account that nationalized banks charge interest at rates around 12% per annum in respect of home loans.
13. We, therefore, taking judicial notice of such rate of interest, award such rate of interest on the sum found due and payable by the licensee to KMC.
14. For the purpose of commencement of the date for calculation of interest, we fix the date of application for mutation to be the date of commencement for the same.
15. Licensee from time to time deposited a sum of Rs. 1 crore 35 lakhs with the KMC Authorities. KMC Authorities will, therefore, adjust such amounts to the principal amount outstanding, viz., Rs.2,05,81,725/- +Rs.18,15,548/- +Rs.1,50,332/- aggregating to Rs.22,54,76,05/- and, therefore, charge simple interest awarded at the rate of 12% per annum on the reducing scale.
16. Learned senior advocate appearing for the KMC submits that in the event of default of payment of

any instalment, KMC Authorities be permitted to recover the entirety of the dues then outstanding in terms of the table handed over to Court which is a sum of Rs.5,31,18,725/-. Such request of KMC being reasonable is accepted. In the event of default of any instalment, the concession granted to the licensee in terms of this order will stand recalled. KMC Authorities will be at liberty to recover the sum of Rs. 5,31,18,725/-, less the sum received by it pursuant to our order, in accordance with law.

17. We clarify that this assessment of liability for the licensee is restricted till the period of October 31, 2024. For the subsequent period, parties are at liberty to take steps in accordance with law.
18. Payment in terms of this order will not absolve the licensee from paying all the rates, taxes and charges to the Corporation subsequent to October 31, 2024.
19. KMC Authorities will calculate the amount payable to the licensee within a period of fortnight from date.
20. On payment of the entirety of the amount in terms of this order, Kolkata Municipal Corporation will proceed with the application for mutation and mutate name of the licensee in its records.
21. *MAT/2561/2023 along with CAN 2 of 2024 and COT/16/2024 are **disposed of** accordingly.*

(Debangsu Basak, J.)

(Md. Shabbar Rashidi, J.)