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

+ **W.P.(C) 673/2022 & CM APPL. 1922/2022**

KANWAR SINGH YADAV

..... Petitioner

Through: Mr. Ashwini Kumar Mata, Senior Advocate with Mr. M. M. Singh & Mr. Karan Gaur, Advocates.

versus

DTTDC & ANR.

..... Respondents

Through: Mr. Vaibhav Kalra and Ms. Anisha Upadhyay, Advocates.
Mr. Santosh Kumar Tripathi, Standing Counsel for GNCTD with Mr. Arun Panwar, Mr. Rishabh Srivastava, Mr. Pradyumn Rao, Mr. Utkarsh Singh, Mr. Kartik Sharma, Ms. Nikita Vir and Ms. Prashansa Sharma, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

23.01.2024

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1. Petitioner has approached this Court with the following prayers:

“(a) Issue appropriate writ, order and/ or direction, directing the respondent to treat the award of license to operate the Food Court of Dilli Hatt Janakpuri by the respondent through their notice of award dated 14.02.2020 as invalid and illegal being void since the date of NIT with direction to refund/return the entire amounts extracted by the respondents from the petitioner on account of such award of licence and also

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on each and every account subsequent thereto with interest to the petitioner at the prevailing market rate.

(b) Or, in the alternative, direct the respondents to execute a fresh license agreement for operation of the awarded Food Court of Dilli Hatt Janakpuri, New Delhi with its effective operation date from the date of starting of the entire activities of the Dilli Hatt Janakpuri Premises after obtaining the Fire Safety Certificate of the entire Dilli Hatt Janakpuri Premises by restraining the respondents from charging any kind of amount on any account till the fresh effective date of operation of outlets in terms of fresh licence agreement and also to adjust the entire amounts extracted by them from the petitioner on various accounts unauthorizedly under compelling circumstances since the award of licence till date in the future tenure of license.

(c) Quash the letter dated 7.9.2021 I.e. Fire Safety Certificate (Annexure P-20) issued by respondent no. 2.

(d) Any further order or directions which this Hon 'ble Court deems fit and proper in the facts and circumstances of the case and in the interest of justice."

2. Respondent No.1 herein invited a tender for award of contract for operating an air conditioned food court in Dilli Hatt, Janakpuri. The Petitioner was a successful bidder. Performance Guarantee and license fee was paid by the Petitioner. Due to the onset of Covid-19, the Petitioner sought for a moratorium for starting operations of the food court. Moratorium up to 30.11.2020 was granted to the Petitioner. Disputes arose between the parties regarding payment of the license fee. The performance guarantee of the Petitioner was forfeited by the Respondents and further



demands have been raised against the Petitioner.

3. The Petitioner has approached this Court for a declaration that the tender and the award of work was itself defective on the ground that the Respondents had not complied with the fire safety norms which was necessary to operate the premises.

4. It is the contention of the Petitioner that in the absence of any fire safety certificate from the Delhi Fire Service for the entire Dilli Hatt, the food court could not function.

5. It transpires that the Petitioner has already surrendered the premises.

6. The Agreement provides for an alternate dispute resolution clause. Paragraph No.18.3 of the said Agreement reads as under:

“18.3 Arbitration

18.3.1. Any Dispute which is not resolved amicably by conciliation, as provided in Clause 18.2, shall be decided by reference to Arbitral Tribunal appointed in accordance with Clause 18.3.2. Arbitration shall be held in accordance with the provisions of Arbitration and Conciliation Act, 1996 .The venue of arbitration shall be Delhi, and the language of arbitration proceedings shall be English.

18.3.2. The Arbitral Tribunal shall consist of a panel of three arbitrators. Each Party shall appoint/nominate one arbitrator, and the third arbitrator shall be jointly appointed by the two arbitrators so appointed and in the event of disagreement between the two arbitrators or failure to nominate an Arbitrator by any party, the appointment shall be made in accordance with the Arbitration and Conciliation Act, 1996.

18.3.3. The arbitrators shall make a reasoned award



(the "Award"). Any Award made in any arbitration held pursuant to this Article 18 shall be final and binding on the Parties as from the date it is made, and the Operator and DTTDC agree and undertake to carry out such Award without delay.

18.3.4. The Operator and DTTDC agree that an Award may be enforced against the Operator and/or DTTDC, as the case may be, and their respective assets wherever situated.

18.3.5. This Agreement and the rights and obligations of the Parties shall remain in full force and effect, pending the Award in any arbitration proceedings hereunder.”

7. Learned Counsel for the Petitioner, in all his fairness, seeks permission to withdraw the present Writ Petition with liberty to the Petitioner to avail remedies in accordance with law and raise all contentions available to them including those contentions raised in the present Writ Petition.
8. Leave and liberty, as sought for, is granted.
9. It is made clear that this Court has not expressed any opinion on the claims and counter claims raised by the parties and all the issues between the parties are left open.
10. It is also made clear that as and when the Petitioner approaches the appropriate forum, the Petitioner would be entitled to the benefit of Section 14 of the Limitation Act and the period between filing of the present Writ Petition till its withdrawal shall be taken into account while deciding the period of limitation.
11. The Writ Petition is disposed of as withdrawn. Pending applications,



if any, also stand disposed of.

SUBRAMONIUM PRASAD, J

JANUARY 23, 2024

Rahul