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

\+ W.P.(C) 6270/2024, CM APPL. 26101/2024

DAKSHIN DILLI SWACHH INITIATIVES PVT LTD & ANR.

..... Petitioners

Through: Mr. Rajshekhar Rao, Sr. Adv. along with Ms. Anusha Nagarjan, Ms. Aakanksha Bhola, Ms. Vishakha Gupta and Mr. Yashraj Samant, Advs.

versus

MUNICIPAL CORPORATION OF DELHI ..... Respondent

Through: Mr. Tushar Sannu, SC for MCD alongwith Mr. Vinod Khati, JE.

CORAM:
HON'BLE MR. JUSTICE SACHIN DATTA

O R D E R

% 13.05.2024

1. The present petition has been filed by the petitioners seeking that the respondent/MCD be directed to pay the enhanced tipping fee in accordance with the formula contained in "Addendum IV" introduced by way of notice dated 05.10.2016 and which has been made applicable to other zones of Delhi except the Central Zone.

2. The petition has been filed in the background of a tripartite Concession Agreement executed between the petitioners and the respondent/MCD on 19.11.2015, pursuant to which a concession was granted to the petitioners for collection and transportation of different categories of waste in the Central Zone of the erstwhile SDMC for a period of 7 years, extendable by another year on the Respondent's discretion. Under the Concession Agreement, the petitioner no. 1 was to be compensated by way of tipping fee, which was to be adjusted yearly for

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inflation using WPI.

3. In March 2017, the Government of NCT of Delhi significantly increased minimum wages and introduced dearness allowance. As the petitioners' functions were 80% labour oriented, the petitioners requested the respondent that they be duly compensated for such unprecedented increase in wages, as the escalation under the concession agreement did not address the impact suffered.

4. It is pointed out that in the other zones of the SDMC for which similar concession agreements were executed, another formula for escalation of tipping fee was prescribed, which provided that tipping fee shall be adjusted in a manner reflective of the actual cost of labour and other components of cost involved ("Addendum IV" formula).

5. The petitioners' tenure as a Concessionaire came to an end on 18.11.2022. After the completion of 7 years, MCD further extended the contract for a period of one year that is upto 18.11.2023. *Vide* letter dated 08.09.2023, addressed by the MCD to the Chief Executive Officer of petitioner no.1, the MCD states as under:

> *"To,*
> *The Chief Executive Officer,*
> *M/s Dakshin Dilli Swachh Initiatives Limited*
> *217-A Ground Floor, Okhla Phase-III,*
> *New Delhi-110020*
>
> *Subject:- Collection and transportation of Municipal Solid Waste, Street Sweeping waste, Green waste and Construction of Demolition waste in Central Zone of MCD (Erstwhile SDMC). (Letter of intent no. EE (EMS/SZ2023-24 dated 21.09.2015).*
>
> *Sub Head:- Regarding consent of further extension of contract for one year beyond 18-11-2023.*
>
> *Above mentioned work was awarded to M/s DDSIL vide contract*

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agreement executed on 19-11-2015 for a period of seven year from the appointed dated inclusive of the implementation period, as per clause 2.6 of the concession agreement, so as per concession agreement the 2.8 of the agreement MCD further extended the contract for a period of one year i.e. upto 18-11-2023.

With regard to the appoint new Concessionaire for C&T operation for different kind of the waste from the area of Central Zone, tender has already been opened and the same is under the process of finalization, which may take some time. Till the operation stated by the new Concessionaire. MCD intends to continue the services under the existing contract with M/s DDSIL, for a further period of one year or till the start of operation by the new Concessionaire, whichever is earlier.

In view of the above, you are requested to submit your consent in this regard as early as possible, so that the matter can be processed for necessary approvals from the competent authority. "

6. In response thereto, the petitioner no.1 addressed a letter 19.09.2023. stating as under:

"This is with reference to your letter EE(EMS)/CNZ/MCD/2023-2023/320 dated 8th September, 2023, we would like to convey that Dakshin Dilli Swachh Initiative Pvt. Limited (DDSIPL) has already completed its 7 years terms on 18th November 2022 and will complete its one-year extension by 18th November 2023. Hence, we have complied with clause 2.8 of the concession agreement and its obligation will be null and void on 18th November 2023.

As we have conveyed you over various platforms and communications that DDSIPL is continuously making losses and extending the project further will result into additional financial burden to the Company. In financial year 2023, DDSIL has already incurred the loss of INR 13.53 Crore and estimated loss for FY-2023-24 in INR 13.21 Crore. It is not possible for us to extend the projects further bearing losses. Even to run the project further for additional period will need additional investment to maintain the vehicles in running conditions.

However, considering the delay in appointment of new concessionaire, we can consider your request to extend the project for sometimes (minimum 6 months) provided MCD should come up with a revised financial proposal (revised tipping fee structure) to compensate the loss and an additional investment required. "

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7. As can be seen from the above, the petitioners did not accept the proposal of the respondent/MCD made *vide* letter dated 08.09.2023 to continue to provide the services for a period of one year or till the start of operation of the new concession agreement. Instead, the petitioners indicated that it was willing to continue for a few months, provided that the MCD comes up with a revised financial proposal (revised tipping fee structure) for the petitioners.

8. It is submitted that the petitioners have made numerous representations to the respondent/MCD seeking that "Addendum IV" which has been applicable to the other zones of Delhi be also made applicable to the petitioners. However, the said proposal has not been met with a favourable response from the MCD and hence the present petition has been filed seeking that the respondent be directed to pay enhanced tipping fee in terms of the formula contained in Addendum IV.

9. Learned senior counsel for the petitioners submits that in case the respondent is unable to pay to the petitioners the enhanced tipping fee in line with "Addendum IV" made applicable to the other zones, the petitioners will not be able to continue with its services. It is submitted that omission to extend the benefits of "Addendum IV" to the petitioner, is not only causing financial loss to the petitioners, the same is also wholly arbitrary inasmuch as even for the purpose of the new tender that has been floated by the MCD for selecting a new Concessionaire, a formula similar to "Addendum IV" has been prescribed.

10. Needless to say, the concession agreement having come to an end on 18.11.2022, including the extended period till 18.11.2023, the petitioners cannot be compelled to indefinitely provide services to the respondent.

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11. Learned counsel for the respondent/MCD submits that the petitioners are obliged to continue to provide services at the terms and conditions mentioned in the original concession agreement till 18.11.2024. He further submits that the present petition is not maintainable in view of the arbitration clause in the concession agreement and that if the petitioner no. 1 has any grievance with regard to its payment entitlement, it is at liberty to invoke the arbitration mechanism prescribed in the agreement between the parties. He further submits that an inflation adjusted tipping fee is already being paid to the petitioners which adequately compensates the petitioners.

12. Be that as it may, after some hearing, learned counsel for the MCD submits that the respondent shall treat the present petition, seeking the applicability of formula mentioned in "Addendum IV" to the petitioners, as a representation and decide the same vide a speaking order within a period of 4 weeks from today, after affording an opportunity of hearing to the petitioners.

13. The present petition is disposed of in the above terms.

14. Learned senior counsel for the petitioners submits that if no consensus is arrived at as regards the applicability of "Addendum IV", the petitioners shall be constrained to demobilise and/or discontinue its services, considering that the contract between the parties has already expired. While taking note of the said submission, at the present stage, there is no occasion for this Court to express any opinion as to the legality or otherwise of any such step that may be taken by the petitioner.

SACHIN DATTA, J

MAY 13, 2024/at

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