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

\+ W.P.(C) 17017/2024 & CM APPL. 72129/2024

PLANET ADVERTISEMENT PVT LTD .....Petitioner

Through: Mr. Kunal Kalra, Mr. Yaman Yadav, Advocates

versus

DELHI METRO RAIL CORPORATION LTD AND ANR ORATION LTD THROUGH ITS CHAIRMAIN

.....Respondent

Through: None.

CORAM:
HON'BLE MR. JUSTICE SANJEEV NARULA

<u>O R D E R</u>

% **09.12.2024**

1. The Petitioner is aggrieved by the cancellation of the Letter of Acceptance dated 15th February, 2024 issued by the Delhi Metro Rail Corporation Limited,[1] Respondent No. 1, in respect of allotment of exclusive co-branding rights on the foot overbridge at Chattarpur Metro Station of Line-2 of the DMRC network.

2. A brief background leading to the fling of the present petition is as follows:

2.1. The DMRC floated a tender bearing No. 323M043713 for licensing of exclusive co-branding rights of Chhatarpur Metro Station of Line-2 of DMRC network. The Petitioner participated in the said tender and emerged

[1] "DMRC"

as the highest bidder and was issued a Letter of Acceptance dated 15th February, 2024.

2.2. Subsequently, Petitioner sent a communication dated 12th March, 2024 to DMRC highlighting some alleged flaws in the Letter of Acceptance. This was followed by another communication dated 06th May, 2024 sent to the Municipal Corporation of Delhi,[2] Respondent No. 2, seeking permission for the display of advertisement at the tendered location.

2.3. In the meantime, DMRC through their communication dated 25th June, 2024, requested the Deputy Commissioner/Advertisement, MCD to review their decision and to reconsider the approval of the inventory. The said communication reads as follows:

> *"Sub:- Regarding approval of inventory of advertisement sites under the jurisdiction of MCD for outdoor advertisement.*
>
> *Ref.: (i) DMRC's letter dated 08.05.2024 regarding inventory at Chhatarpur/Andheria Mor Foot Over Bridge.*
>
> *(ii) MCD's letter no. D/ AC (ADVT.)/2023-24/2777 dated 15.02.2024*
>
> *Dear Sir,*
> *With reference to the subject cited above, a letter has been sent vide ref (i), to MCD for approval of inventory.*
>
> *Vide ref. (ii), MCD has rejected the inventory with remarks 'Three structures have been installed and one unipole existed. Within 75m of unipole.*
>
> *However as per OAP 2017 under para 6.1 it is clearly stated that The distance criteria of 75 meter between existing unipoles of MCD and existing FOB advertisement will not apply in this case.*
>
> *You are requested to kindly review your decision and reconsider the inventory for approval. By collaborating in this manner, we aim to find viable solutions that benefit both departments particularly in terms of revenue generation."*

2.4. Since no response was forthcoming from MCD, on 08th July, 2024, the Petitioner issued a communication to DMRC contending that the Outdoor Advertising Policy, 2017 provides that the distance criteria of 75 meters between the existing Uni-poles of DMRC and the existing Foot Over Bridge advertisement, is not applicable. Additionally, the Petitioner acknowledged that DMRC was already pursuing the matter with MCD and also expressed their interest in executing the contract. To this effect, the said communication reads as under:

> *"We would like to bring to your notice that OAP -2017 policy states on Page No. 15 (under summary of Category) – it is clearly mentioned that the distance criteria of 75 meters between the existing uni-poles of MCD and existing FOB advertisement is not applicable. But MCD has denied permission to DMRC against the policy.*
>
> *We have been made to understand that DMRC is already pursuing the matter with MCD and letters have been issued by DMRC explaining their stand. It is requested to pursue the matter with MCD, since we are waiting for the permission from your side, so that LOA payments can be made and work can be executed as per tender. The approach of the MCD is to delay the matters of the permissions to DMRC on some pretext or the other. To hasten the permission process from MCD, regular reminders and a legal notice may help in this regard, since DMRC may also incur huge loss of revenue due to delay in permission from MCD.*
>
> ***We are very keen to execute the work but until the complete scope of work is not handed over to us, we would not be able to find suitable client for cobranding contract, as the FOB is the important part and only attraction of the said metro station.***
>
> ***In case the DMRC fails to obtain permission from MCD, the tender itself gets vitiated, and EMD with interest shall be refunded at the earliest****."*

[Emphasis Supplied]

2.5. Ultimately, DMRC issued the impugned communication dated 12th November, 2024 cancelling the Letter of Acceptance which reads as follows:

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[2] "MCD"

"Subject: Cancellation of Letter of Acceptance (LOA) for allotment of Exclusive Co- branding Rights at Chattarpur Metro stations.
Reference: LOA No. DMRC/PB/ All Lines/Tender/CB/323M043713/2024/63 dated:-15.02.2024
Dear Sir,
With reference to the subject matter captioned above Exclusive Co-branding Rights at ChattarPur Metro Station at Line- 2 were awarded to Mis Planet Advertising Pvt. Ltd vide LOA dated 15.02.2024 under the category C. Accordingly, two copies of LOA have been issued with the terms & conditions of the tender documents. However, the copy of the LOA received duly accepted on the condition that the permission will be obtained by DMRC from MCD to display advertisement on the FOB (Foot Over Bridge) of ChattarPur Metro station.

DMRC has issued several request letters to MCD regarding the approval of inventories, including the advertisement space at Chhatarpur Metro Station on the FOB. In this regard, DMRC made additional efforts. based on your verbal request, to conduct a joint survey on 07.08.2024 with PB Cell officials and MCD officials at Chhatarpur to facilitate the approval of the inventories.

Considering, the above facts that M/s Planet advertisement Pvt. ltd has not accepted the LOA unconditionally and not yet deposited the LOA payment till date i.e. even after eight months from issue of LOA and also approval of MCD is not received. Therefore, DMRC cancel the LOA for Co-Branding rights at Chhatarpur Metro Station and process the refund of Earnest Money Deposit (EMO)."

3. Counsel for Petitioner argues that MCD had not responded to the communications of DMRC. In such circumstances, DMRC, instead of following up with the MCD, has wrongly taken the impugned action. It is further urged that the since the Petitioner had emerged as the successful bidder in the tender, it was anticipated that they would be granted unencumbered rights to advertise on the Foot Over Bridge. However, MCD denied permission for the same without passing a speaking order and therefore, the said decision is arbitrary, unreasonable and inconsistent with the Outdoor Advertising Policy, 2017. Furthermore, it is contended that Petitioner had secured the tender for INR 1.21 crores and since the tender

was intended to last ten years, the impugned action has led to a potential loss of nearly INR 15 crores both for the Petitioner and the Government Exchequer.

4. The Court has considered the afore-noted contentions but remains unconvinced. In absence of the requisite approval from the MCD, the decision of DMRC is appropriate and, the Court cannot find any arbitrariness. Further, communication dated 08th July, 2024 makes it clear that the Petitioner had called upon DMRC to obtain permission from the MCD or the tender itself would get vitiated and in that case, they made a request for the EMD to be refunded at the earliest. The relevant extract reads as follows:

> *" xx ... xx ... xx ...*
>
> *In case the DMRC fails to obtain permission from MCD, the tender itself gets vitiated, and EMD with interest shall be refunded at the earliest."*

5. Hence, the Court is not inclined to entertain the present petition in absence of any violation of fundamental or any other right of the Petitioner.

6. As regards the Petitioner's claim for recovery of any alleged damages or potential damages, if any, the Petitioner shall be free to take recourse to appropriate civil proceedings, if so advised.

7. In view of the above, the present petition, along with pending application, is disposed of.

SANJEEV NARULA, J

DECEMBER 9, 2024/ab