OCD-14

ORDER SHEET

AP-COM/27/2025
IN THE HIGH COURT AT CALCUTTA
COMMERCIAL DIVISION
ORIGINAL SIDE

M/S. D.H. PATEL

VS

THE KOLKATA MUNICIPAL CORPORATION

BEFORE:
The Hon'ble JUSTICE SHAMPA SARKAR
Date: 22nd January, 2025.

Mr. Ratnanko Banerji,Sr. Adv.
Mr. Suddhasatva Banerjee, Adv.
Mr. Pushan Kar, Adv.
Mr. Sagnik Majumdar, Adv.
Ms. Sristi Burmon Roy, Adv.
Ms. Shreya Ghosh Dastidar,Adv.
Mr. Aurin Chakraborty, Adv.
...for the petitioner
Mr. Sourav Bhagat, Adv.
Mr. Samriddha Sen, Adv.
Mr. Jishnujit Roy, Adv.
...for the respondent

The Court:This is an application under Section 9 of the Arbitration and Conciliation Act, 1996, for stay of the operation of the letter dated January 11, 2025, issued by the Kolkata Municipal Corporation (KMC), and for further reliefs. A contract for implementation of a project of Bio Mining and Treatment of legacy waste, located at dumpsite in Dhapa, was entered into between the parties. The said contract contained an arbitration clause for settlement of dispute. The petitioner contends that the site was not free from encumbrances and the delay in execution of the work was due to the inability of KMC to hand over free site. Further,the Covid-19 pandemic and other issues intervened and the execution of the work was delayed. Accordingly, the petitioner requested for extension, and the request was being considered. It is further contended by Mr. Banerji, learned Senior Advocate that Rs.31 crores are due and payable on account of the work already executed. The impugned letter of termination, which is the subject matter of this application, was issued erroneously and the same should be stayed on the ground that the prior show cause notices do not indicate that the KMC had considered that the contract had alraedy terminated in July, 2024. When the considered opinion of KMC was that the contract did not subsist beyond July, 2024, the question of issuing notices on May 14, 2024 and August 2, 2024 would not arise. In the notice dated August 2, 2024, the authority categorically stated that if the petitioner could not rectify the defects in the work, the authority would reserve its right to deduct the money by imposing penalty and the authority could further resort to termination of the contract. Even on August 2, 2024, the authority was of the opinion that, the contract was subsisting. Suddenly, by letter dated January 11, 2025, the authority informed the petitioner that the contract had ipso facto terminated in July, 2024. Such conflicting stand of KMC, should persuade this Court to pass an order restraining KMC from giving effect to the letter dated January 11, 2025. The contract did not stand terminated. It is next submitted that without securing the amount of Rs. 31 crores, KMC should not be allowed to take further steps pursuant to the notice. Specific contention is that, KMC had failed to pay the outstanding of the petitioner and there has been no denial of the claim. Rather, KMC had indicated that the issue would be discussed. Last submission of Mr. Banerji is that the plant, machinery and other materials of the petitioner, which have been deployed at the site, should be released.

Mr. Sen, learned advocate for the KMC submits that the petitioner is at liberty to take back its plant, machinery and other articles, which are lying in the site. It is further submitted that the contract was not extended, as the administrative approval from the concerned department was not received. Urban Development and Municipal Affairs Department, Government of West Bengal, did not accede to any proposal for extension. Thus, the contract should be treated to have been terminated upon expiry of three years.

On the merit, Mr. Sen submits that the amount claimed by the petitioner is not admitted. There had been instances when the petitioner failed to comply with the terms and conditions of the agreement. KMC was required to ensure that the project was completed within the fixed period, in view of the directions of the National Green Tribunal, Special Bench. It is further contended that the issue with regard to the amount payable to the petitioner is yet not decided, as would be evident from the notice dated August 2, 2024. The petitioner did not give any satisfactory reply to the observations of KMC. The petitioner does not have a vested right for extension of the contract.

Having heard the learned advocates for the respective parties, this Court finds that the letter dated January 11, 2025 was issued to the petitioner, turning down the prayer for extension. The authority was of the view that the contract had lost its efficacy due to efflux of time. The contract period ended in July, 2024. Further prayer for extension was not accepted by the competent department of the Government. Hence, the said contract was treated as terminated from July, 2024. Thus, in my prima facie view, the contract should be treated as terminated as there has been no formal extension. The first show cause notice dated May 14, 2024 was issued during the subsistence of the contract. The second notice of August 2, 2024 indicates that several correspondences between the parties had taken place and the unsatisfactory performances of the petitioner was recorded in these correspondences. The notice dated May 14, 2024 deals with various non-compliances committed by the petitioner and the petitioner was asked to show cause within seven days with satisfactory explanation as to why corrective measures and rectifications of the works had not been taken. The last paragraph of the said notice records that if the petitioner failed to provide a satisfactory explanation or take remedial measurers, KMC would be constrained to take action as per law and the petitioner could be wholly responsible for such failure. The notice dated August 2, 2024, indicates that the notice of May 14, 2024 was issued in terms of clauses 1 and 2 of the termination clause of the agreement dated December 1, 2021. The issues were categorized in a tabular form and the remarks of KMC were appended to each of the issues. In the last paragraph of the said notice, the Chief Municipal Engineer (SWM), KMC asked the petitioner to respond, by submitting proper answers as to why the department should not deduct necessary penalties from the pending bills and proceed for termination of the said work. Thus, the show cause notices which were issued by the KMC were, in contemplation of termination. The notices record that if the petitioner either failed to rectify the defects or comply with the obligation under the contract, KMC would proceed for termination and also deduct penalties from the pending bills.

By the letter dated January 11, 2025 the KMC informed the petitioner that, KMC was not willing to further extend the period of contract as prayed for by the petitioner, as the administrative department did not grant approval. The authority was of the opinion that the contract ended in July, 2024. By efflux of time, the contract stood terminated. Stay of operation of the letter would amount to the court extending the contract beyond the contractual period, thereby, rewriting the terms of the contract. It is beyond the jurisdiction of the court to extend the contract. The second show cause notice contains indication that the authority would proceed to terminate the contract, if the petitioner either did not complete the work or rectify the defects. The notice was issued when several correspondences were going on and the petitioner had already applied for extension. The issue of extension was being considered. However, the administrative department did not approve the petitioner's prayer for the extension. The authority recorded that extension from July, 2024 could not be given and the contract stood terminated by efflux of time. The question of this court staying the operation of the letter dated January 11, 2025, does not arise as the contract stood terminated in July, 2024, as per the terms entered into between the parties. It is not the petitioner's case that the authority had extended the period by further letters and communications. Rather, by notice dated August 2, 2024, the authority reserved the right to proceed for termination and by the impugned letter, the factum of termination was communicated. The stand of KMC was that the contract ended in July 2024 and further extension was not approved. The contract should be treated as terminated.

With regard to the machineries, plants, materials, which are deployed and stored at the site, the petitioner is at liberty to remove the same and KMC shall cooperate. The removal will be made in the presence of the project officer of KMC or any person who had been supervising the project. The plant and machinery and materials belong to the petitioner shall be inventorised and thereafter removed. KMC cannot be prevented from taking further steps in completing the project, which has public importance and non-completion will lead to serious environmental hazard. There is also an order of the National Green Tribunal in this regard. With regard to the money payable to the petitioner, there is no admission as yet, as to the quantum payable and if at all. KMC has not quantified the amount or arrived at a calculation upon deciding whether any amount should be deducted from the petitioner or not.

Under such circumstances, and in the absence of proper calculation, it would not be appropriate to direct KMC to secure the money as claimed by the petitioner. Directions in this regard can be given by the appropriate forum, as per the dispute redressal clause. However, the court expects KMC to calculate the admitted amount payable to the petitioner, thereby crystallizing the petitioner's claim. This order should not come in the way of such exercise by KMC.

Under such circumstances, the application under Section 9 is disposed of. The petitioner is at liberty to take appropriate steps in accordance with law. The issues which have been raised, will have to be decided in terms of the dispute resolution mechanism agreed to by the parties.

(SHAMPA SARKAR, J.)

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