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

\+ O.M.P.(I) (COMM.) 14/2025 and I.A. 1016/2025

M/S MILESTONE SECURITY AND PLACEMENT SERVICES REGD THR ITS PROPRIETOR .....Petitioner

Through: Mr.Sandeep Sharma, Sr. Advocate with Ms.Indra Marla, Mr.Rohan, Mr.Abdul Vahid, Ms.Kanchan, Mr.Aman and Mr.Tushar, Advocates

versus

MUNICIPAL CORPORATION OF DELHI .....Respondent

Through: Mr.Tushar Sannu, Standing Counsel for MCD with Mr.Hardik Saxena and Mr.Harsh Yadav, Advocates

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

O R D E R

% **17.01.2025**

1. The present petition has been instituted under Section 9 of the Arbitration & Conciliation Act, 1996 ('A&C Act') thereby seeking directions against the respondent corporation from opening the technical bid on 24.01.2025 in the context of a Tender bearing number AC/RPC/MCD//2025/D-2615 dated 01.01.2025 in respect of a parking site at Asaf Ali Road (MLUG), City SP Zone, New Delhi. The petitioner further seeks directions to the respondent to issue a letter of extension of the license to the petitioner from 01.01.2025 to 31.12.2025 with respect to the aforesaid parking site.

2. The petitioner claims that in the year 2021, the respondent corporation had floated a tender for allotment of Surface Parking site on monthly license fees vide tender bearing number DC/RP CELL/NDMC/2021/D-302 Dated 20.07.2021. The petitioner's bid was accepted and the subject site was

allotted to the petitioner vide letter dated 31.12.2021. As per the terms of the contract, the allotment was to commence from 01.01.2022 for a period of three years. The said term has come to an end on 31.12.2024. Clause 32.2 of the terms and conditions of the contract provides for resolution of disputes under the A&C Act and the venue of such arbitration has been fixed at New Delhi.

3. The petitioner claims that the subject License Agreement was for the period of 4 years and the provision for extension of the license by a period of one year, after expiry of initial three years, was to be done on the same terms and conditions with the enhancement of 10% in the existing monthly license fees. The petitioner further claims that as it has satisfactorily completed the period of three years and is further willing to pay the enhanced license fees and three being no other condition, the subject site be allotted to him for a period of one more year.

4. The petitioner further claims that it has notified the respondent of his option for extension in terms of Clause 3 of the terms and conditions, however the respondent has arbitrarily declined the said request vide letter dated 06.01.2025. The petitioner contends that his request is primarily declined citing the possibility of receiving higher monthly license fees in the fresh tender floated by the respondent for the subject parking site.

5. During the course of submissions, learned Senior Counsel appearing for the petitioner also refers to various extension letters that have been issued in favour of the allottees of other parking sites to seek parity. Lastly, it is submitted that the petitioner is also ready and willing to augment the facility at the parking site in order to implement respondent's policy of FASTag and Digital Payment facilities within two months. In support of his

submissions, learned Senior Counsel for the petitioner has placed heavy reliance on the decision of Division Bench of this Court dated 02.04.2024 in SK Associates v. MCD, reported as **2024 SCC OnLine Del 2300**.

6. The respondent Corporation, on the other hand, refuted the aforesaid submissions and relied upon the Clause 3 in the terms and conditions to submit that the petitioner has no vested right to seek extension as the grant of extension was entirely the sole discretion of the respondent. It is further stated that the fresh tender having already been floated for the subject parking site, the bids have been received which would be opened on 24.01.2025, and had the petitioner been so desiring to continue, it could have participated in the fresh tender process by submitting its bid. The petitioner's request for extension is in fact declined as the auction of parking sites is a valuable public resource which would significantly increase the respondent's revenue in terms of the prevailing market rates and as a custodian of public resources, the respondent has a responsibility to prioritize actions that maximize the public benefits and, in this regard, reference was made to Section 200(d) of the Delhi Municipal Corporation Act, 1957 ("DMC Act).

7. The respondent, in turn, has placed reliance on the decision of Division Bench of this Court in 'M/s Gesture Hotels and Food Pvt. Limited v. The New Delhi Municipal Council, **2014 SCC OnLine Del. 1577**.

8. I have heard learned counsel for the parties and perused the record placed before me.

9. As noted above, the dispute in the present case has arisen in the context of parking site allotted to the petitioner at "MLUG Asif Ali Road, City SP Zone". The said allotment resulted into issuance of a License

accompanied by the terms and conditions. The factum of existence of an arbitration agreement and the New Delhi to be the seat of arbitration, is not disputed.

10. Admittedly, the allotment in favor of the petitioner was for a period of three years i.e. from 01.01.2022 till 31.12.2024. The petition is only confined to the petitioner's claiming extension by another year on payment of enhanced monthly license fees @ 10%. The respondent however, has not acceded to the request and declined the same.

11. For the issue raised herein, Clause 3 of the terms and conditions would need to be visited, which is extracted hereunder:

> *"..."**<u>3 Duration of License</u>**"*
> *The license of surface parking will be for duration of two years and in case of MLUG/Stack Parking(s) the duration would be three years respectively (with effect from the date of handing over the parking site to the licensee). However, the period of the contract may be further extended by Commissioner/Addl. Commissioner for another period of One year on the same terms and conditions with enhancement of 10% in the existing MLF. However, the extension cannot be claimed by the contractor as a right. The extension is sole discretion of North DMC.*
> *Satisfactory completion implies that there should not be any dues pending against the contractor... "*

12. A plain reading of the said clause would show that duration of the license agreement was for a period of three years and not four years as claimed by the petitioner. The language of the clause makes it evident that mere 'satisfactory completion' of the initial term of three years would not automatically entitle the contractor to an extension for another year. Rather, the extension of the license by a period of one year could not be claimed by

the petitioner as a matter of right but was the sole discretion vested in the respondent.

13. Pertinently, the petitioner has not challenged the terms of the tender/license. All that this Court is left to examine whether the exercise of discretion by the respondent is unreasonable, arbitrary or violative of Article 14 and 19 of the constitution of India.

14. The respondent's stand of floating a fresh tender and seeking to expect a higher auction price of the subject parking site flows from mandate of Section 200(d) of the DMC Act. The Same reads as under :-

> *200. Disposal of property. —With respect to the disposal of property belonging to the Corporation, the following provisions shall have effect, namely :—*
> *(d) the consideration for which any immovable property may be sold, leased or otherwise transferred shall not be less than the value at which such immovable property could be sold, leased or otherwise transferred in normal and fair competition.*

15. The expression 'normal and fair competition' occurring in aforesaid section would inherently mean that the process adopted by a public authority is fair and transparent. A public auction of public resource to get higher or maximum possible licensee fee is the obligation of any public authority. Such a mode adopted by a public authority has been approved by the courts subject to it being fair and transparent.

16. Gainful reference is made to the decision of Supreme Court in <u>Aggarwal & Modi Enterprises (P) Ltd. v. New Delhi Municipal Council</u>, reported as **(2007) 8 SCC 75** wherein, while interpreting Section 141(2) of the New Delhi Municipal Council Act, 1994, which is *pari materia* to the Section 200(d) of the DMC Act, it was held that:-

> *22. The mandate of Section 141(2) is that any immovable property belonging to NDMC is to be sold, leased, licensed or transferred on*

consideration which is not to be less than the value at which such immovable property could be sold, leased, or transferred in fair competition. The crucial expression is "normal and fair competition". In other words, NDMC is obligated to adopt the procedure by which it can get maximum possible return/consideration for such immovable property. The methodology which can be adopted for receiving maximum consideration in a normal and fair competition would be the public auction which is expected to be fair and transparent. Public auction not only ensures fair price and maximum return it also militates against any allegation of favouritism on the part of the Government authorities while giving grant for disposing of public property. The courts have accepted public auction as a transparent means of disposal of public property. (See State of U.P. v. Shiv Charan Sharma [1981 Supp SCC 85 : AIR 1981 SC 1722] , Ram & Shyam Co. v. State of Haryana [(1985) 3 SCC 267] , Sterling Computers Ltd. v. M & N Publications Ltd. [(1993) 1 SCC 445] , Mahesh Chandra v. Regional Manager, U.P. Financial Corpn. [(1993) 2 SCC 279] , Pachaiyappa's Trust v. Official Trustee of Madras [(1994) 1 SCC 475] , Chairman and MD SIPCOT v. Contromix (P) Ltd. [(1995) 4 SCC 595] , New India Public School v. HUDA [(1996) 5 SCC 510 : AIR 1996 SC 3458] , State of Kerala v. M. Bhaskaran Pillai [(1997) 5 SCC 432] and Haryana Financial Corpn. v. Jagdamba Oil Mills [(2002) 3 SCC 496] .)

23. Disposal of public property partakes the character of trust and there is distinct demarcated approach for disposal of public property in contradiction to the disposal of private property i.e. it should be for public purpose and in public interest. Invitation for participation in public auction ensures transparency and it would be free from bias or discrimination and beyond reproach.

17. A Division Bench of this Court in <u>M/s Gesture Hotels and Food Pvt. Limited (Supra)</u> wherein, while dealing with a similarly worded licensing clause as the present case, held that the entitlement of the NDMC in the matter of renewal is to be of absolute discretion of the corporation, whether for the right or wrong reasons.

18. Looking from another angle, Section 14(d) of the Specific Relief Act, 1963 ("SRA") states that a contract which is in its nature determinable cannot be specifically enforced. Assuming, the Petitioner could claim to be

entitled to an extension, upon fulfilment of stipulated conditions, even then by the very nature of the agreement, the same falls in the category of determinable contracts, which are prohibited under Section 14(d) SRA from being enforced. The License Agreement in question is a short-term contract, with no long-term expectations of returns from it to commensurate with the investments made by the Petitioner for its performance. No such plea is taken, nor is there any indication of any requirement of making irreparable investments for the performance of the contract, which will make the Contract non determinable prior to a four-year term.

Similarly, Section 41(e) of the Act prohibits grant of injunction, to prevent the breach of a contract, the performance of which would not be specifically enforced. As noted above, as per the terms of the License Agreement, the allotment was to commence from 01.01.2022 for a period of three years. The license was automatically terminated when the said period expired on 31.12.2024. Thus, it is evident that the License Agreement was determinable in nature and the petitioner is statutorily barred from seeking specific performance of the same. Section 9 of the A&C Act cannot be used to restore agreements which stand terminated. This position is conclusively stated by Supreme Court in Bharat Catering Corpn. v. Indian Railway Catering and Tourism Corpn. Ltd., reported as **2009 SCC OnLine Del 3434** where it was held that:**-**

> *17. Apart from merits, even otherwise, in our view, the scope and ambit of Section 9 do not envisage the restoration of a contract which has been terminated. The learned Single Judge, in our view, rightly held that if the petitioner is aggrieved by the letter of termination of the contract and is advised to challenge the validity thereof, the petitioner can always invoke the arbitration clause to claim damages, if any, suffered by the petitioner. It is not open to this Court to restore the contract under Section 9, which is meant only for the sole purpose of preserving and maintaining the*

property in dispute and cannot be used to enforce specific performance of a contract as such. A bare glance at the said Section will suffice to show that pending arbitration proceedings, the Court and the Arbitral Tribunal have been vested with the power to ensure that the subject matter of the arbitration is not alienated or frittered away…

19. Moreover, the reliance placed by the petitioner on the decision of the Division Bench of this Court in M/s. S.K. Associates (Supra) is entirely misplaced as the said case was based on an entirely different set of facts and circumstances. In that case, the contract awarded was for a period of three years which had been truncated by the MCD to two years. The Division Bench held that the refusal of Corporation to extend license of the petitioner therein was in violation of the terms of agreement because the contract was for three years and the extension for third year could only be refused if the licensee had failed to satisfactorily complete the first two years.

However, in the present case, the three-year period has admittedly been completed and the petitioner has been denied discretionary extension for the fourth year which does not appear to be whimsical, arbitrary or hit by Wednesbury unreasonableness. The considerations which would operate in this case are entirely different. Hence the aforesaid decision in M/s. S.K. Associates (Supra) is of no help to the petitioner.

20. Considering the above, the present petition being devoid of merits is dismissed alongwith pending application.

MANOJ KUMAR OHRI, J

JANUARY 17, 2025/*rd*