

(2016) 05 DEL CK 0152
In the Delhi High Court
Case No : FAO(OS) No. 46 of 2016

ITE India Private Limited

APPELLANT

Vs

Delhi Tourism and Transportation Development Corporation
Limited

RESPONDENT

Date of Decision : 23-05-2016

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 9

Citation : (2016) 3 ArbiLR 469 : (2016) 6 RAJ 402

Hon'ble Judges : Badar Durrez Ahmed and Sanjeev Sachdeva, JJ.

Bench : Division Bench

Advocate : Mr. Sandeep Sethi, Senior Advocate with Mr. Krishnendu Datta, Ms. Neeru Sharma & Ms. Sanjana Saddy, Advocates, for the Appellant; Mr. Rajiv Nayar, Senior Advocate with Mr. Gopal Sankaranarayanan, Mr. Saurabh Seth, Mr. Abhimanyu, Mr. Zeeshan Diwan & Mr. Va

Final Decision : Disposed Off

Judgement

Sanjeev Sachdeva, J.—The appellant impugns order dated 08.02.2016, whereby the petition under Section 9 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as "the Act") has been dismissed.

2. By an Agreement dated 08.08.2005, the appellant was awarded an operation contract of commercial outlets at Garden of Five Senses for a period of ten years. Possession of the site was handed over to the appellant on 23.08.2005. In terms of the agreement, contract fee was payable and the appellant was entitled to sub-Contract outlets to its sub-Contractors for which an NOC was issued though, it is contended, belatedly after four years.

3. On 14.05.2010, certain disputes arose between the parties leading to various rounds of litigation. An amicable resolution was sought, however, the same could not be resolved. The appellant filed an arbitration petition No. 439/2013 under Section 11 for appointment of an Arbitrator. Subsequently, the said petition was withdrawn with liberty to take recourse in accordance with the provisions of the

Agreement.

4. It is contended that the respondent failed to appoint its representative/nominee for the conciliation panel and subsequently, on 19.01.2015, a sole Arbitrator has been appointed with the intervention of the Court. Pending the said proceedings, amicable resolution of disputes was once again explored.

5. During the process of amicable resolution, it is contended, that the respondent, by letter dated 12.03.2015, demanded a sum of Rs. 47.17 lacs on account of licence fee/service tax and interest on delayed payment and an additional amount of Rs. 18.98 lacs on account of expenditure incurred by the respondent on legal cases. It is contended by the appellant that as a step towards settlement, the entire amount, as demanded, was paid by a letter dated 18.03.2015 and accordingly the Contract dated 08.08.2005 stood restored. A request was made to extend the initial tenure of the Contract by four years for which the appellant could not utilize the said space because of non-grant of the "No Objection Certificate" and for a further extension of five years.

6. As per the petitioner, to resolve the disputes, the respondent formed a Committee comprising of Senior Officers of the respondent to consider the following:-

"(1) To consider withdrawal of all pending litigation/cases before all forums and issue relating to payment of litigation cost by the operator.

(2) Issues raised by the Operator relating to non issuance of NOC, entry from Gate No.3, parking, security, sanitation, lighting, timings etc.

(3) Whether the Operator is entitled for further extension of time, as he was not" given clear period of license as mentioned in the agreement.

(4) Whether renewal of license for another period of 5 years be considered as required for by the Operator as per the agreement."

7. It is contended that after due deliberation, the Committee declined to extend the initial tenure by four years but recommended the extension of the Contract for a period of five years with new financials. The offer was unconditionally accepted by the appellant.

8. As part of its acceptance of the offer, the appellant withdrew W.P.(C) No. 4034/2013 and even intimated the sole Arbitrator that all disputes between the parties had been amicably resolved and that the parties had no claim against each other and no further proceedings were required. The appellant also paid the amounts demanded by the respondent, the receipt of which was duly acknowledged by the respondent. The respondent also authorised its officer for withdrawal of the arbitration proceedings by the appellant and further permitted the appellant to participate in all its tenders.

9. It is contended that a letter dated 10.06.2015 was also issued by the respondent stating that its earlier letter dated 13.10.2011 terminating the

operational contract is withdrawn and the operation contract, which was to expire on 08.08.2015, is extended for a period of five years with effect from 09.08.2015, subject to certain terms and conditions. The offer letter of 10.06.2015 was unconditionally accepted by the appellant by its letter of 12.06.2015. Payments, as demanded therein were made. On receipt of the advance payment, the respondent by its letter dated 12.06.2015 confirmed that the operational contract had been extended for a further period of five years from 09.08.2015. It is further contended that the letter of 12.06.2015, further stated that a fresh operational contract would be entered into. It is contended that the Chief Manager of the respondent was even authorised to sign the agreement on behalf of the respondent.

10. It is thus contended that a concluded and binding contract came into force between the parties and the unilateral withdrawal of the offer made by letter dated 10.06.2015, after it had been unconditionally accepted, is not permitted in law and is of no consequence.

11. The Appellant filed a petition under Section 9 of the Arbitration and Conciliation Act, 1996 seeking a direction against the respondent from acting contrary to the letters dated 10.06.2015 and 12.06.2015 and for restraining it from interfering with the occupation, use and working of the outlets and its sub-contractors.

12. The learned single judge by the impugned order dated 08.02.2016 has dismissed the petition holding that the contract was still unexecuted and unconcluded as per the requirement of letter dated 12.06.2015 and even assuming that the contract was concluded no injunction could be granted in view of section 41(e) of the Specific Relief Act, 1963 and if the termination was found to be unlawful, the only relief could be damages/compensation for the period of notice.

13. The appellant as noted above has assailed the impugned order contending that a concluded contract had come into force by the unconditional acceptance of the offer made by respondent and the same could be terminated only in terms of the contract between the parties. It is contended that the appellant is entitled to interim protection as there is a subsisting contract and the respondent was not seeking to terminate the contract but was contending that there was no contract between the parties, which was an incorrect position in law.

14. The contention of the respondent is that the respondent, by its letter dated 04.08.2015, withdrew its letters dated 10.06.2015 and 12.06.2015. It is contended that the initial contract had already been terminated and the parties were litigating in respect thereof. It is contended that the appellant was a mere licensee and the initial contract had ended on 08.08.2015 and thereafter, no renewal of contract had been agreed amongst the parties, thus, the appellant could not be permitted to continue to operate the said premises. It is contended that the respondent being a State Corporation wishes to auction the premises

directly to the end users to fetch the maximum revenue for the public exchequer. It is contended that the appellant had failed to comply with the terms of the letter dated 10.06.2015 and as such, there was no extension of contract. Further, it is contended that the General Manager of the respondent during processing of the file observed that the grant of extension was based on some presumptive increment and not based on an empirical data. It is further contended that the relief sought by the appellant could not be granted under the Specific Relief Act. Reference was made to Sections 40 & 41 of the Specific Relief Act.

15. The question that arises for consideration is whether a concluded contract had come into force and whether the respondent could withdraw the offer made for extension of the term of the contract after the same had been unconditionally accepted ?

16. To ascertain whether there is a concluded contract between the parties or not, we will need to examine as to how the case has been processed by the respondent, which would be clear from the note-sheet of the processing of the case of the appellant and the correspondence between the parties. A copy of the note-sheet has been obtained by the appellant under the Right to Information Act and has been produced before us.

17. It is not in dispute that the original contract was for a period of ten years, which was to expire on 08.08.2015. The contract dated 08.08.2015 defines the contract period as under:-

"Contract Period" means an initial period of 10 (ten) years beginning on COC (Commencement of Contract). However, the Corporation may extend that term by another (five) years on mutually agreed terms and conditions as detailed in Article 1.4."

18. Article 1.4 referred to in the above definition of 'contract period' reads as under:-

"1.4 Renewal of Contract-At the end of the stipulated Contract period of 10 years, DTTDC may further extend the Contract for tenure of 5 years based on mutually agreeable terms and conditions."

19. The note-sheet of the processing of the file for extension of the contract records as under:-

" The committee constituted vide office order no. FS/249/201011/DTTDC/PF-1, dated 31st March 2015 met at Dilli Haat. INA on 06.04.2015 and thereafter, at Garden of Five Senses on 11th April, 2015 to physically see the shops which have been licensed out to M/s ITE. On 11th April, the representative of M/s ITE was also called, and he was accordingly present during the meeting at Garden of Five Senses. Based on the terms of reference for the committee, discussions among the committee members and meeting" held with M/s ITE, the recommendations of the committee are as under :-

1. To consider withdrawal of all pending litigation/cases before all forums and issue relating to payment of litigation cost by the Operator.

Shri Mukesh Sharma of M/s ITE further informed that a payment of Rs. 47.17 lacs on account of contract fee, licence fee for additional area, interest on delayed payment and service tax has been deposited by them after receipt of letter no. F.No. GFS/249/2010-11/DTTDC/PF-1/718, dated 13.03.2015 from DTTDC. Shri J.K. Jain, Chief Manager {GFS} confirmed the receipt of the payment.

Shri Mukesh Sharma of M/s ITE further informed that they are willing to withdraw the case pending in Delhi High Court against DTTDC unconditionally provided DTTDC also agreed to withdraw any litigation pending before any forum and to revoke the termination of the operational contract by DTTDC and to further allow M/s ITE to participate in all the tenders to be floated by DTTDC and allow another extensions to M/s ITE as per provision of the contract. Shri Sharma further said that if the above submissions made by him were agreed to, he would, as a goodwill gesture volunteered to pay Rs. 18.98 lacs which DTTDC has incurred on contesting the case in the High Court.

The committee after, deliberating on the above proposal agreed to recommend the above to the competent authority.

Issues raised by the Operator relating to non-issuance of NOC, entry from third gate, parking, security, sanitation, lighting, timings, water connection etc.

The committee heard the views of Shri Mukesh Sharma regarding non-issuance of NOC, entry from gate No. 3, parking, security, sanitation, lighting, timings etc. The various letters written by M/s ITE to DTTDC on above issues were also shown to the committee members.

The committee is of the view that at present the Garden of Five Senses opens in the morning around 9.00 a.m. and closes at 6.00 p.m. in winters and 7.00 p.m. in summers for the visitors. The facilities at gate No. 3 are mostly in use after the sun set and by the guests visiting the restaurants: Therefore, the committee members were of the view that certain autonomy needs to be given to M/s ITE for optimum utilization of the facility created at Garden of Five Senses."

20. When the above recommendations of the Committee were placed before the Managing Director and Chief Executive Officer (MD & CEO), he placed the matter, on 27.04.2015, before the Financial Controller (FC) with the note "please examine". FC, on 01.05.2015, noted that all aspects and their implications have been thoroughly examined by the Committee, which included the "Finance Member". He opined that the recommendations of the Committee were reasonable and may be approved. Consequent thereto, the MD & CEO, on 05.05.2015 noted that the above recommendations prima facie appeared to be in order and may be acted upon in seriatim (first thing first). He further directed the Senior Chief Manager (Tourism) and Senior Chief Manager (GFS) to supervise.

21. On 26.05.2015, the Senior Chief Manager (Project) recorded as under:-

"A letter was sent to M/s ITE India Pvt. Ltd. dated 8th May, 2015 regarding amicable settlement of all pending issues of Garden of Five Senses (Flag A). One of the issues mentioned in the letter was the payment of Rs. 18.98 Lacs to DTTDC by M/s. ITE India Pvt. Ltd. on account of litigation charges incurred by DTTDC. A letter has been received from M/S ITE India Pvt. Ltd. dated 13.05.2015 agreeing to withdraw all the cases pending between M/s. ITE India Pvt. Ltd. and DTTDC in various forums. M/s. ITE India Pvt. Ltd. has also agreed to pay the amount of Rs. 18.98 lacs to DTTDC. However, M/s. ITE India Pvt. Ltd. has requested that they may be allowed to pay this amount in 4-5 instalments along with the advance rentals. They have enclosed a cheque of Rs. 4.50 lacs in favour of DTTDC as the first instalment of legal expenditure incurred by DTTDC. In the meantime, the case between ITE India Pvt. Ltd. v. DTTDC in High Court was taken up on 21.05.2015 and the case has been disposed of as per the settlement being worked out between OTTOC and M/s ITE India Pvt. Ltd. Placed at flag B is the status of the case as was mentioned on the website of Hon"ble High Court. A letter has also been received from M/s. ITE India Pvt. Ltd. for submitting a joint petition under arbitration proceedings to Justice Aruna Suresh who is the Arbitrator in Petition No. A86/2015 (Flag C) mentioning that no proceedings are required to be commenced in view of the settlement arrived between M/s ITE India Pvt. Ltd. and DTTDC. Since the case has been withdrawn by M/s ITE India Pvt. Ltd. from the Hon"ble High Court and a payment of Rs. 4.50 Lacs has been received from M/s ITE India Pvt. Ltd. as the first instalment of the litigation charges, the following is proposed:

1. An amount of Rs. 4.50 Lacs received from M/S ITE India Pvt. Ltd. may be encashed by DTTDC.
2. Shri J.K. Jain, Chief Manager (GFS) may be authorised to jointly sign the petition along with M/s ITE India Pvt. Ltd. for withdrawal of arbitration proceedings.
3. M/s ITE India Pvt. Ltd. be permitted to participate in all the tenders which DTTDC may float in future.

If approved a letter be sent to M/s ITE India Pvt. Ltd. incorporating above and mentioning that Corporation will consider extension of agreement for a period of five years. The draft is placed opposite.

(K.B. Sharma)

Sr. Chief Manager (Projects)"

22. Consequent to the noting of the Chief Manager, the appellant, on 29.05.2015, made a further payment of 18.98 lacs on account of litigation charges incurred by the respondent. The appellant requested for issuance of the extension letter expeditiously.

23. On 10.06.2015, the respondent issued an offer letter to the appellant. The same reads as under:-

"Sir,

I am to refer to your letter dated 29.05.2015 and acknowledge the receipt of the following payments:-

1. Cheque No. 306210, dated 20.06.2015 amounting to Rs. 4.50 lakhs
2. Cheque No. 306211, dated 30.06.2015 amounting to Rs. 3,58,200/-
3. Cheque No. 306212, dated 20.07.2015 amounting to Rs. 4.50 lakhs

I am to further inform the following:

1. Vide our letter No. GFS/249/2010-11/DTTDC/PF-1, dated 13.10.2011 vide which operational contract between DTIDC and M/s ITE India Pvt. Ltd. was terminated stands withdrawn.

2. The operational contract which would expire on 08.08.2015 is extended for a period of five years w.e.f. 09.08.2015 on the following terms and conditions :-

a. M/s ITE India Pvt. Ltd. would pay a licence fee of Rs. 50 lakhs per annum plus service tax or 22% of the revenue share, whichever is higher, w.e.f. 9th August 2015

b. To deposit an amount of Rs. 12.50 lakhs plus service tax as quarterly licence fee for the quarter 09th August 2015 to 08.11.2015 in advance as per the Clause 2.2 of the operational contract.

c. The licence fee would increase by 7% over the immediate previous year licence fee per annum every year.

d. You are further requested to furnish a bank guarantee of Rs. 50 lakhs in favour of DTTDC valid for a period of 13 months w.e.f. 9th August 2015. The amount of bank guarantee to increase by 7% every year as per para (c) above.

e. M/s ITE India Pvt. Ltd to submit audited balance sheet for every year w.e.f. 09.08.2015 to DTTDC.

All other terms & conditions of the operational contract entered between DTTDC including schedule of payment of licence fee would remain unchanged.

In case the above is agreeable to you, kindly send your acceptance at the earliest.

Yours faithfully,

(K.B. Sharma)

Sr. Chief Manager (Projects)"

24. By the letter dated 10.06.2015, the respondent informed the appellant that

the respondent's earlier letter dated 13.10.2011 terminating the operational contract was withdrawn and the operation contract, which was to expire on 08.08.2015, was extended for a period of five years with effect from 09.08.2015, subject to certain terms and conditions specified in the said letter and all other terms and conditions of the operation contract between the parties would remain unchanged. In case the appellant agreed, it was asked to send its acceptance.

25. On 12.06.2015, the appellant unconditionally accepted the offer letter of the respondent dated 10.06.2015, not only did the appellant unconditionally accept the offer letter, it acted upon the same and paid the amounts demanded by the respondent by it. The appellant on 12.06.2015 wrote as under:-

"Dear Sir,

We acknowledge with thanks the receipt of your Letter No. GFS/249/2010-11/DTTDC/PF-1/443 dated 10.06.2015.

At the outset, please allow us to thank you for extending the Operational Lease Contract for a further period of Five Years w.e.f. 9th August 2015 and hereby agree to the terms and conditions mentioned by DTTDC.

You will appreciate, that we have already made all payments upto 8th August 2015 and the next payment is now due on 9th August 2015, however we are enclosing herewith Cheque No. 306231, for Rs. 11,25,000/- (Rupees Eleven Lacs Twenty Five Thousand only) i.e. Rs. 12,50,000/- Less TDS drawn on Indian Overseas Bank, New Delhi towards the complete Lease Rental & License Fee including all charges for the period 9th August 2015 to 8th November 2015, as a gesture of goodwill in compliance with your letter under reply.

We take this opportunity to thank all the officials of DTTDC for extending co-operation in settling /resolving all the issues amicably and look forward to their continued support in making GFS the most preferred tourist destination.

Thanking You,

Yours Sincerely,

For ITE India Pvt Ltd.

Authorised Signatory"

26. On the same date, i.e. 12.06.2015, the Senior Manager (Projects) recorded the following note :-

"A letter was sent to M/s ITE India Pvt. Ltd. conveying the extension of operational contract by a period of five years w.e.f. 09.08.2015 incorporating the suggestions of the committee at para 253 on 81/n. The letter sent to M/s ITE India Pvt. Ltd. may be seen at 407-408/c (Flag "A"). A letter has been received from M/s ITE India Pvt. Ltd. agreeing to the terms & conditions as mentioned in our letter dated 10.06.2015. They have also enclosed a cheque of Rs. 11.25 lakhs dated 09.08.2015 i.e. license fee for the quarter 09th August, 2015 to 08th

November, 2015 less TDS. It is proposed that the cheque may be sent to Chief Manager (GFS) to get it en-cashed at the appropriate time.

If approved, a letter may be given to M/s ITE India Pvt. Ltd. acknowledging the receipt of cheque of Rs. 11.25 lakhs dated 09.08.2015 and extending the operational contract for a period of 5 years w.e.f. 09th August 2015 to 08th August 2020 as per draft placed opposite.

Legal Division may prepare revised operational contract which may be entered with M/s ITE India Pvt. Ltd. by DTTDC.

(K.B. Sharma)

Sr. Chief Manager (Projects)

27. A letter was also issued to the appellant confirming that the operational contract was extended by a period of five years w.e.f. 09th August, 2015 to 08th August, 2020. The letter records as under:

"Sir,

I am to refer to your letter dated 12.06.2015 and acknowledge the receipt of payment of Rs. 11.25 lakhs vide cheque No. 3066231 dated 09th August 2015. The operational contract between DTTDC and M/s ITE India Pvt. Ltd is extended for a period of five years w.e.f. 09th August 2015 to 08th August 2020. A fresh operational contract would be entered between M/s ITE India Pvt. Ltd. and DTTDC incorporating the terms & conditions as mentioned in the letter No. GFS/249/2010-11/DTTDC/PF-I/443, dated 10th June 2015.

Yours faithfully,

(K.B. Sharma)

Sr. Chief Manager (Projects)"

28. Further, the note sheet of 22.06.2015 records that the draft agreement had been prepared on the lines of the earlier agreement. Acknowledgement is noted in the note-sheet of the various amounts paid by the appellant. The noting of 26.06.2015 records that the Constituted Committee had recommended issuance of a letter to the appellant extending the operation of a contract for the period of five years with effect from 09.08.2015, as against extension of nine years sought by the appellant. Recommendation of the Committee and approval of the competent authority were referred to. It records that a letter was sent to the appellant extending the contract and requesting the appellant to deposit the licence fee. The note records that all conditions were agreed to by the appellant and a confirmation letter along with the cheques had been received.

29. On 10.07.2015, when the proposal for executing the draft agreement was being considered, the General Manager of the respondent recorded in the note sheet that the decision to grant extension was based on some presumptive increment on the existing Annual Concession Fee and appeared to have been

taken without going into the details of the Revenue, which the operator was receiving on account of various rents agreements with different sub-lessees. It also notes that the decision, which was not based on any empirical data, was likely to result into lesser revenue for the Corporation.

30. The MD and CEO directed the Financial Controller to examine the same. The Financial Controller records that the letter for extending the tenure for a period of five years had already been issued to the appellant, however, the appellant had failed to comply with the same.

31. The respondent issued the letter dated 04.08.2015, which reads as under:-

"Sir,

This has reference to DTTDC letter No. GFS/249/2010-11/DTTDC/PF-I/443, dated 10th June 2015 & GFS/249/2010-11/DTTDC/PF-I/464, dated 12th June, 2015. I am to inform you that both the letters stand withdrawn and operational contract between DTTDC and M/s ITE India Pvt. Ltd. is not extended beyond 08.08.2015. The post-dated cheque dated 09th August, 2015 of Rs. 11,25,000/- (Rs. 12,50,000 less TDS) in original for license fee for the period 09.08..2015 to 08.11.2015 is returned herewith along with this letter.

You are directed to deposit all payments as per operational contract along with payment of the additional area including service tax without fail by 07.08.2015.

You are further directed to hand over the possession of the premises to Shri J.K. Jain, Chief Manager (GFS) at 11.00 a.m. on 09th August 2015 as per Article 11 of the operational contract between DTTDC and M/s ITE, India Pvt. Ltd.

In case the project facility is not handed over to Shri J.K. Jain, Chief Manager (GFS) at 11.00 a.m. on 09th August 2015, DTTDC would be entitled to damages as per Clause 11.1.e of the article 11 of the operational contract.

(K.B. Sharma)

Sr. Chief Manager (Projects)"

32. The note of the General Manager is to the effect that the decision to grant extension was based on some presumptive increment on the existing Annual Concession Fee and appeared to have been taken without going into the details of the Revenue and was likely to result into lesser revenue for the Corporation. However, the Financial Controller recorded that the appellant had failed to comply with the letter of offer. The letter issued to the appellant on 04.08.2015 does not record any such reason but merely states that the letters dated 10.06.2015 and 12.06.2015 have been withdrawn.

33. Further, the Contract and the note-sheet clearly show that the original contract stipulated that the terms of the agreement would be ten years, which was extendable by a further period of five years on such terms and conditions, as may be agreed upon.

34. The parties had been litigating over certain disputes that had arisen between them. The parties were also amicably trying to resolve the said dispute. It is apparent that a settlement was arrived at between the parties on certain terms and conditions. The appellant, in terms of the Resolution of dispute, was required to pay to the respondent certain amounts besides litigation charges incurred by the respondent. The appellant paid the same. Not only did the appellant pay the same, the appellant even withdrew various proceedings. The respondent, on the other hand, made an offer on certain terms and conditions. The said offer was unconditionally accepted.

35. Consequent to the acceptance of the said offer and acting upon the same by the appellant, the respondent issued the letter confirming that the contract stood extending by a period of five years. The said letter was issued with the concurrence and approval of the MD/CEO. Consequent to issuance of the letter confirming that the contract stood extended, all that was required to be done was a mere signing of the agreement.

36. Contracts are concluded by offers being accepted, there is no legal requirement for a formal contract document to be executed for contracts to come into force. An offer when accepted becomes an agreement. In the present case, the offer made by the respondent was unconditionally accepted by the appellant. In our view, a concluded contract came into force between the appellant and the respondent whereby the term of the contract was extended by a further period of five years.

37. The respondent, by the letter of 04.08.2015, had sought to withdraw the letters dated 10.06.2015 and 12.06.2015. It is too late in the day to withdraw the offer letter, once the same has been unconditionally accepted and a concluded contract had come into force. Even the fact that a concluded contract has come into force was acknowledged by the respondent on 12.06.2015. Once an offer is accepted, the same cannot be withdrawn. In the present case, not only is the offer accepted, the acceptance of the offer is also acknowledged by the offerer, i.e. the respondent. The appellant has even acted upon the same to its detriment. The appellant has paid amounts as demanded and the amounts also included litigation expenses, incurred by the respondent. The appellant further withdrew the Writ Petition and also settled its arbitration claim.

38. The rationale of the learned single judge in the impugned order dated 08.02.2016 is that the contract was still un-executed and unconcluded as per the requirement of letter dated 12.06.2015 and if assuming the contract was concluded, no injunction could be granted in view of section 41(e) of the Specific Relief Act, 1963 and if termination was found to be unlawful, the only relief could be damages/compensation for the period of notice.

39. The rationale is fundamentally erroneous. The respondent is not seeking to terminate the concluded contract. The letter of 04.08.2015 is the only letter relied upon by the respondent. The letter merely seeks to withdraw the letter

dated 10.06.2015, i.e., the letter of offer and the letter dated 12.06.2015, i.e. the letter acknowledging the acceptance of the offer and confirming the extension of the contract. The letter of 04.08.2015 does not, in any manner, seek to terminate an already concluded contract of extension. An offer once accepted could not have been withdrawn. The 04.08.2015 letter cannot be thus held to be a valid letter insofar as it seeks to withdraw the offer and its acceptance. The stand of the respondent is that there is no concluded contract and thus they are not obliged to perform the obligations there-under. If the stand of the respondent was that there is a concluded contract and they have the right to terminate the same, the situation would have been different and the rationale of the learned single judge could have been made applicable but that is not the case.

40. Since there is a concluded contract, the respondent cannot, without terminating the same, contend that it would not perform its obligations.

41. Since the contract which stood extended by a period of five years, has not been terminated, the parties are bound by it. The appellant has thus shown a strong prima facie case for the grant of ad interim relief. Accordingly, the impugned order is set aside. The petition under Section 9 is disposed of with the direction to the respondent not to interfere in the rights flowing to the appellant under the Contract dated 08.08.2005, as extended for a further period of five years in accordance with the terms of the extension.

42. This order is without prejudice to the rights of the respondent to take appropriate action in accordance with law. The question of terminability of the contract is left open. The appeal is accordingly disposed of leaving the parties to bear their own costs.