
(2021) 02 DEL CK 0345

In the Delhi High Court

Case No : Civil Writ Petition No. 11220, 11221, 11222, 11224, 11225, 11227, 11228, 11229 Of 2020, 24, 28, 29, 30, 31 Of 2021, Civil Miscellaneous Application No. 35003-35004, 35005-35006, 35007-35008, 35009-35010, 35013-35014, 35015-35016, 35020-35021, 35022-35023,

Kake Finvest Pvt. Ltd

APPELLANT

Vs

Delhi Metro Rail Corporation Ltd

RESPONDENT

Date of Decision : 22-02-2021

Acts Referred:

Citation : (2021) 02 DEL CK 0345

Hon'ble Judges : Prathiba M. Singh, J

Bench : Single Bench

Advocate : Rakesh Tikku, Arun Batta, Indira Marla, Abdul Wahid, Vibha Mahajan

Final Decision : Disposed Of

Judgement

Charging of License Fee in Parking Contracts during Covid-19 Pandemic upto 31st December 2020,,,

Sr. No,Contract Type,Recommendation,

1,"Parking

Contracts",License Fee is proposed to be charged as under:-,

,,Period,Proposed License Fee

,,22.03.2020-11.09.2020,0%

,,,"Frome 12.09.2020, it shall be 25%(fixed)+remaining 75% linked to the

Average Total Journeys for the month as compared to the same month last

year (2019- 20 as Parking Contracts as under:-",

,,Average total journeys,"License fee for remaining

75%

„From 0% upto 25%,25%

„Above 25% upto 50%,50%

„Above 50% upto 75%,75%

„

„

„Above 75% upto 100%,100%

sole arbitrator who would be nominated by Director DMRC. The venue of such arbitration shall be at Delhi/New Delhi. The award of the,,

sole arbitrator shall be binding on all parties. The cost of Arbitration shall be borne by respective parties.,,,

13.2.2 Rules governing Arbitration Proceedings: The Arbitration Proceedings shall be governed by Indian Arbitration and Conciliation Act,,

1996, as amended from time to time including provisions in force at the time the references made. During the pendency of arbitration",,,

proceedings, the License shall continue to perform and make due payments to DMRC as per the License Agreement.",,

13.2.3 Jurisdiction of Courts: The Court at Delhi/New Delhi shall have the exclusive jurisdiction to try all disputes between the parties,,

arising out of this agreement.â??,,

12. Upon instructions from the DMRC, Id. counsel submits that the conciliator proposed by DMRC is Mr. Anirudh Jain, who is the Advisor, Property",,,

Development in the DMRC. Accordingly, in accordance with the conciliation clause, all the Petitioners are referred to the conciliator - Mr. Anirudh",,,

Jain, who shall hear the parking contractors and give his conciliation report. The report of the conciliator shall be binding on the parties, however, if the",,,

parking contractors are not happy with the decision of the conciliator, they are free to approach the Id. Sole arbitrator. The conciliation proceedings",,,

shall continue till 31st March, 2021.",,

13. Parties agree that a sole arbitrator may be appointed so that there is no delay in reference of disputes to arbitration if the conciliation process fails.,,,

The panel of DMRC has been emailed to the Court Master. However, considering the nature of disputes, this Court appoints Justice (Retd.) V.K. Jain",,,

(9650116555) to act as the Sole arbitrator to resolve the disputes, if the

Conciliation process fails.",,,

14. During the pendency of the conciliation proceedings and until further orders are passed, either by the conciliator or the Id. Arbitrator, from 12th",,,,

September, 2020, payment in terms of the scheme, as per the understanding which has been set out above, shall be made by the parking contractors to",,,,

the DMRC. The said payment shall be without prejudice to their rights and contentions, either in the conciliation proceedings or in the arbitration",,,,

proceedings.,,,,

15. Mr. Tiku, Id. Sr. counsel submits that the exit plan which has been given to shop owners i.e., without any forfeiture or penalty, ought to be",,,,

extended to parking contractors. Ms. Mahajan, Id. counsel submits that the terms of the contracts for shop owners and for parking contractors are",,,,

completely different. In view, thereof, the exit plan given to shop owners to exit from one type of contract, cannot be extend to parking contractors.",,,,

This Court agrees with Ms. Mahajan that the termination or exit clauses of one contract cannot be read into another set of contracts, at this stage. It",,,,

would be for the Id. Arbitrator to take a final view in the matter. However, if any of the Petitioners wish to invoke the termination clause and",,,,

discontinue the parking contract, they are permitted to give notice of termination in terms of the contract and the parties shall proceed in accordance",,,,

with the terms of the contract. If any parties wish to invoke arbitration after terminating the contract, they are permitted to file their claims before the",,,,

Id. Sole Arbitrator appointed by this Court.,,,,

16. The DMRC shall raise invoices for the period from 12th September, 2020 onwards strictly in terms of today's order. If the invoices already",,,,

raised are in conformity with this order, the same shall be intimated to the Petitioners by 5th of March 2021, so that payments can be made.",,,,

17. Upon receiving either the invoices or confirmation from DMRC, the contractors shall make payments for the period 12th September, 2020 to",,,,

December, 2020 by 15th March, 2021. Insofar as the payments for January, 2021 and February, 2021 are concerned, the same shall be cleared by",,,,

31st March, 2021. If the payments are not made, the DMRC is free to forfeit the security deposits or take any other steps, in terms of the contracts.",,,,

18. Upon the claims being filed before the Id. Arbitrator, he shall be free to monetarily quantify the claims and upon quantification, the fee of the Id.",,,,

Sole arbitrator shall be in terms of the Schedule to the Arbitration & Conciliation Act, 1996. If the conciliation process fails, parties to appear before",,,

the Id. Sole arbitrator on 15th April, 2021.",,,

19. The present petitions are disposed of in the above terms. All pending applications are also disposed of.,,,