(2022) 10 DEL CK 0192

In the Delhi High Court

Case No : Letter Patent Appeal No. 99 Of 2019, Civil Miscellaneous Application No. 2282, 2861 Of 2022

M/S Graphisads Private Limited APPELLANT

Vs

South Delhi Municial Corporation RESPONDENT

Date of Decision : 11-10-2022

Acts Referred:

Citation : (2022) 10 DEL CK 0192

Hon'ble Judges : Rajiv Shakdher, J;Tara Vitasta Ganju, J

Bench : Division Bench

Advocate : Nitin Mittal, Sanjay Poddar, Sakshi Popli, Pratish Goel, Sachin Bhatt, Kalyan Babu Singh

Final Decision : Disposed Of

Judgement

Rajiv Shakdher, J

1. This appeal is directed against the judgment of the learned Single Judge dated 01.06.2018.

2. Notice in this appeal was issued by a coordinate Bench of this Court on 13.08.2019, while delay in filing the appeal was condoned by the very same Bench on 06.11.2019.

3. Although opportunity was given to file a reply to the appeal, no reply has been filed on behalf of the respondent/South Delhi Municipal Corporation ("SDMC").

4. However, what is not in dispute, is that the appellant/Company was blacklisted on 12.06.2015.

5. Mr Sanjay Poddar, learned senior counsel, who appears on behalf of the respondent/SDMC, fairly concedes, that the blacklisting order does not have an end date.

6. According to us, this is contrary to the decision rendered by the Supreme

Court in Kulja Industries Ltd. v. Chief General Manager, Western Telecom Project Bharat Sanchar Nigam Ltd. and Ors., (2014) 14 SCC 731.

7. That being said, both Mr Poddar as well as Mr Nitin Mittal, who appears on behalf of the appellant/Company submit, that they are willing to move forward, and have the issue concerning outstanding dues payable by the appellant/ Company resolved.

7.1 This position has been taken by the counsel for the parties, as, even if, we were to set aside the blacklisting order, on the ground that it does not have an end date, we would have to remand the matter to the respondent/SDMC for a de novo exercise.

7.2 This, according to both Mr Poddar and Mr Mittal, will keep the dispute alive.

8. Therefore, it is in this light, that the respondent/SDMC has made the following offer, with regard to the dues payable by the appellant/Company concerning two contracts which are in issue i.e., Parking Media Contract and Street Furniture Cluster No.2 Contract.

8.1 According to the respondent/SDMC, the amounts due vis-à-vis the Parking Media Contract are as mentioned in the following table:

Table-A:

PARKING MEDIA

M/s Graphisads (P) Limited DUES ABSTRACT UP TO AUGUST 2022

Period of Contract

S. No.

Name Site of Locations

Principal

Interest (for the period upto the

period of

contract (A)

Interest (for the period upto August 2022) to be referred to Arbitration

(B)

Advt. Tax.

From

To

Total

Remarks

1

2 Unipole at Tilak Nagar

16,34,716

4,42,450

31,84,517

2.460

07.12.2009

06.12.2014

48,21,693

10% Increase from start of 4th Year & 5th

Year

2

2 Signage at Janak Parlour to Raja

Garden

18,15,194

5,72,542

37,84,168

1.980

15.05.2009

14.05.2014

56,01,342

10% Increase each year

3

10 Signage at

Tilak Nagar Mkt.

4,08,977

1,53,335

9,17,034

2.460

07.12.2009

31.03.2014

(Site Cancelled)

13,28,471

10% Increase each year

4

14 Flag

Signage at Tilak Nagar

-63.000

-

-

-

-

-

-63.000

Not Installed

w.e.f. Date of allotment

5

4 Signage at Basankt Lok, Complex (Priya) and 2 Signage are

Removed

10,15,779

2,34,680

20,11,242

2.460

15.05.2009

14.05.2014

30,29,481

10% Increase each year

6

2 Unipole at Vasant Lok Complex,

Vasant Vihar

65,13,639

17,10,385

1,29,22,869

1.968

07.12.2009

18.11.2014

(Site Cancelled)

1,94,38,476

10% Increase from start of 4th Year & 5th

Year

7

20 Flag

Signage at Basant Lok

-7,65,515

16.421

16.421

1.968

26.05.2010

18.11.2014

(Site Cancelled)

-7,47,126

10% Increase each year

Total

Amount

1,05,59,79

31,29,813

2,28,36,251

13.296

3,34,09,337

1

Principal Upto Contract

1,05,59,790

2

Interest upto Contract Period

2,28,36,251

3

Advertisement Tax

13.296

Total Upto Contract

3,34,09,337

1

Payment on Account vide G8 No.71081 dated

13.06.2018

50,00,000

2

Payment on Account vide G8 No.59483 dated

25.10.2021

1,41,130

Total Payment made after contract period

51,41,130

Dues against the firm upto August 2022

S.

No.

Dues Details Upto June

2022

Due

Paid on Account

Paid

Balance

1

MLF/Principal

1,05,59,790

50,00,000

1,41,130

54,18,660

2

Interest (A+B)

2,59,66,064

-

-

2,59,66,064

3

Advt. Tax

13.296

-

-

13.296

Total

3,65,39,150

50,00,000

1,41,130

3,13,98,020

9. Likewise, as per the respondent/SDMC, insofar as Street Furniture Cluster No.2 Contract is concerned, the amounts payable by the appellant/Company are mentioned in the following table:

Table-B:

Street Furniture Cluster No.2, IGI Stadium & Jawaharlal Nehru Sports Complex, & Cluster No.3 R.K. Khanna

Tennis Complex

DUES ABSTRACT UPTO AUGUST 2022 (10,83,450/-)

S. N

o.

Name Site of Locations

Contract Period

Principal at the time of

Completion of Contract

Interest (for the period upto

the period of contract)

Surcharge 5% as per terms &

conditions upto the

period of Contract

Advt. Tax

Principal as on

date

Interest for the period beyond the

completion of Contract to be

refered to Arbitrator

Surcharge for the period

beyond the completion of Contract to be

referred to

Arbitrator

Total

1.

Cluster No.2, IGI Stadium & Jawahalal Nehru Sports Complex & Cluster No.3 R.K. Khanna Tennis Complex

15.10.2010 to 28.08.2017 (contract terminated by the Department on 16.06.2017)

56,81,4 37

28,19,500

44,88,461

35,640

38,16,987

27,00,071

46,80,656

1,85,41,315

Total Amount

28,19,500

44,88,461

35,640

38,16,987

27,00,071

46,80,656

1,85,41,315

1

Principal as on 28.08.2017

i.e., Up to Contract Period

56,81,437

2

Interest as on 28.08.2017

i.e., Up to Contract

28,19,500

3

Surcharge @ 5% per

annum as on 28.08.2017 i.e., Up to Contract Period

44,88,461

4

Advertisement Tax

35.640

Total

1,30,25,038

1

Payment paid vide G8 No.

358 & 359 dated 25.09.2017

10,83,450

2

Payment paid vide G8 No.59484 dated

25.10.2021

7,81,000

TOTAL DUES AGAINST THE FIRM

Principal

38,16,987

Interest as on 28.08.2017 i.e., Up to

Contract Period

28,19,500

Surcharge @ 5% per annum as on

28.08.2017 i.e., Up to Contract Period

44,88,461

Interest after 28.08.2017

27,00,071

Surcharge @ 5% per annum after

28.08.2017

46,80,656

Advt. Tax

35.640

Total

1,85,41,315

10. It would be evident, that insofar as the details given in Table-A above are concerned, the respondent/SDMC has sought not only the payment of the principal amount, but also amounts towards interest and advertisement tax.

11. Mr Mittal, on instructions of Mr Mukesh Gupta, Director of the appellant/ Company, says that the appellant/Company would pay the principal amount,

which is pegged at Rs. 54,18,660/-, as also the advertisement tax, which is crystallized as Rs. 13,296/-.

11.1 Insofar as interest is concerned, Mr Mittal, once again on instructions, says that the appellant/Company is willing to pay interest at the rate of 8% (simple), instead of 24%, as calculated by the respondent/SDMC.

12. We are of the view, that given the fact that the dispute has remained unresolved for quite some time, and the appellant/Company has been impacted, as contended by them, on account of COVID-19, it seems both fair and just, that interest is charged at a reasonable rate, having regard to the fact that interest rates on deposits have fallen considerably.

12.1 Furthermore, as things stand today, interest rates on loans extended by banks are not as high as 24%, as claimed by the respondent/SDMC qua the appellant.

13. Accordingly, interest will be calculated at the rate of 8% per annum (simple).

14. As indicated above, the principal amount and the advertisement tax will be paid, as calculated by the respondent/SDMC, as shown in Table-A above.

15. As far as the other contract is concerned, it has four components, which are, broadly, indicated in the Table-B above.

15.1 The principal amount claimed by the respondent/SDMC is Rs. 38,16,987/-. Likewise, advertisement tax amounting to Rs. 35,640/- is also claimed by the respondent/SDMC.

15.2 Besides this, the respondent/SDMC has also claimed monies towards surcharge and interest.

16. Insofar as interest is concerned, for the very same reason as indicated hereinabove with regard to the Parking Media Contract, we are of the view that interest at the rate of 8% per annum (simple) should strike an equitable balance, with regard to the rights of both parties.

16.1 Therefore, the respondent/SDMC will calculate interest at the rate of 8% per annum (simple).

17. We may also note, that in this case as well, Mr Mittal, on instructions, has indicated to us, that the principal amount and advertisement tax, as shown in Table-B will be paid, along with interest, at the rate of 8% per annum (simple).

18. Insofar as payment of surcharge is concerned, it is the submission of Mr Mittal, that it has attributes of penalty.

18.1 Mr Poddar says, that the respondent/SDMC will revisit this issue.

19. Mr Poddar also submits, that if it is found that the surcharge has attributes of penalty, the same will be waived.

19.1 The statement made by Mr Poddar is taken on record.

20. In case the respondent/SDMC were to conclude, that the surcharge has not been demanded on account of non-payment of dues, and therefore is payable by the appellant/Company, parties agree, that they will take recourse to the arbitration mechanism set forth in the contract, for the purpose of surcharge.

21. Mr Mittal says, that the agreed amounts, as indicated hereinabove, both for the Parking Media Contract, as well as the Street Furniture Cluster No.2 Contract will be paid within the next six weeks.

21.1 The statement made by Mr Mittal is taken on record.

22. Immediately upon payment of the agreed amount, the respondent/SDMC will recall the blacklisting order.

23. Accordingly, the impugned order is set aside, given the agreement arrived at between the parties.

24. The appeal is disposed of in the aforesaid terms.

25. Needless to add, once the agreed amounts are paid, the blacklisting order dated 12.06.2015 will not come in the way of the appellant/Company being considered for award of contracts in future.

26. Pending applications shall stand closed.

