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* IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of decision: 11.10.2022

+ LPA 99/2019, CM APPLs.2282/2022 and 2861/2022

M/S GRAPHISADS PRIVATE LIMITEDAppellant
Through: Mr Nitin Mittal, Advocate.

versus

SOUTH DELHI MUNICIAL CORPORATIONRespondent
Through: Mr Sanjay Poddar, Sr. Advocate with
Ms Sakshi Popli, Standing Counsel
with Mr Pratish Goel, Mr Sachin
Bhatt and Mr Kalyan Babu Singh,
Advocates.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

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									
S N o .	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)	Period of Contract		Total		Remarks
					From	To			
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 4 th Year & 5 th 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 4 th Year & 5 th 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	
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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
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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 2022	Upto June	Due	Paid on Account	Paid
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 Locatio ns	Contract Period	Princip al at the time of Comple	Interest (for the period upto the period	Surcharge 5% as per terms & conditions	Advt. Tax	Princi pal as on date	Interest for the period beyond the completion	Surcharge for the period beyond the	Total

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			tion of Contract	of contract)	upto the period of Contract			of Contract to be referred to Arbitrator	completion of Contract to be referred to Arbitrator	
1	Cluster No.2, IGI Stadium & Jawaharlal 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)	56,81,437	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

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	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/-.

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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.

(RAJIV SHAKDHER)
JUDGE

(TARA VITASTA GANJU)
JUDGE

OCTOBER 11, 2022 / tr