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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 26.05.2025

HIMALAYAN FLORA AND AROMAS PVT LTD.....Appellant

Through: Mr. Anand Mishra, Ms. Vandita Nain,
Ms. Ayushi Rajput and Mr. Devansh
Pundir, Adv.

Versus

MUNICIPAL CORPORATION OF DELHIRespondent

Through: Mr. Tushar Sannu, SC, MCD with
Mr. Priyankar Tiwari, Mr. Shivam
Singh and Ms. Aqsa, Adv.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

DEVENDRA KUMAR UPADHYAYA, CJ. (ORAL)

CM APPL. 32828/2025 (exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

LPA 351/2025 & CM APPL. 32827/2025 (interim directions)

3. This Letters Patent Appeal seeks to take exception to common judgment and order dated 19.05.2025 passed by the learned Single Judge whereby the writ petition bearing W.P. (C) No. 5350/2025 preferred by the



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appellant has been dismissed.

4. The appellant by instituting the proceedings of the writ petition before the learned Single Judge had challenged an order dated 21.04.2025 issued by the respondent/ Municipal Corporation of Delhi (hereinafter referred to as 'MCD') rejecting the prayer for extension of the contract/allotment of the appellant for display of advertisements through unipoles, for a further period of two years.

5. The learned Single Judge after noticing the facts of the case as also the Clauses 7 and 15 of the earlier contract dated 01.12.2021 entered into between the appellant and the MCD came to the conclusion that in terms of the said clause, the appellant does not have an absolute right to seek extension of the term of the earlier contract and further that it is the discretion of the authority concerned of the respondent Corporation to grant or not to grant extension.

6. Noticing several judgments of Hon'ble Supreme Court laying down the scope of interference in such matters in a petition under Article 226 of the Constitution of India, it has been held that considering the scope of judicial scrutiny in such matters any interference in the petition would not be possible.

7. Learned counsel for the appellant has drawn our attention to Clause 7 and 15 of the earlier contract pursuant to which the appellant has executed the work, term of which is coming to an end on 10.06.2025. Clauses 7 and 15 of the earlier contract dated 01.12.2021 are extracted hereinbelow:



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7.	<i>Period of Concession</i>	<i>The contract period shall be for a period of 03 years and further extendable for another 02 years subject to satisfactory performance of the firm and as decided by the Commissioner, EDMC and 10% enhancement in awarded MLF from 4th year and also 10% increase on awarded MLF every year during the extended period, if extended by the Commissioner EDMC. After expiry of the contract period, either on account of completion of the concession period or pre-termination of the contract on any account whatsoever, the contractor shall hand over , possession of the unipole(s) with complete structures, fittings and fixtures to the Commissioner, EDMC or any other person authorized by him. At the time of handing over of possession to the EDMC, it shall be ensured that the unipoles(s) is/are in proper condition and that no damage is caused by removing the fixtures and fittings, except the advertisement boards.</i>
15	<i>Extension of Contract</i>	<i>The contract of each cluster will be awarded to the successful H-1 bidder, initially for 3 years only, extendable for 2 terms of one year each, subject to satisfactory performance of contract. However, the contractor may apply for the extension of contract, 3 months prior to completion of three year contract period. Any application made during the last 3 months of contract, will not be entertained by the department. The application for extension of contract does not entitles any right of extension of contract, the commissioner EDMC or any authorized officer by him shall be at liberty to grant or reject request for extension of contract</i>

8. It has been argued by learned counsel for the appellant that Clause 7 clearly stipulates that the contract period initially shall be three years which is extendable for another two years subject to satisfactory performance of the firm. It has thus been argued that the only consideration which ought to



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have weighed with the Commissioner while taking a decision on the prayer made by the petitioner seeking extension of the period of contract, was as to whether the performance of the appellant has been satisfactory or not.

9. He has further argued that though as a matter of right, the appellant does not have any absolute right seeking extension of the term of the contract, however, the earlier contract vested a right in the appellant to seek extension and consideration of such prayer in accordance with the terms of the contract which provided that the term of the contract shall be extended for a further period of two years, in case the performance of the appellant has been satisfactory.

10. Learned counsel for the appellant has also stated that in terms of Clause 15 of the earlier contract, the appellant had made an application within time seeking consideration of his case for extension of the period of contract, however the said application was not being decided. In this context, it has been stated that application was made by the appellant seeking extension of contract period on 06.01.2025 and thereafter several reminders were also given. However, since no decision was taken on the said application/ prayer, the appellant was constrained to file a writ petition before this Court, namely W.P.(C.) No. 3587/2025. The said writ petition was decided on 24.03.2025 directing the MCD to take a decision on the prayer made by the appellant seeking extension of the contract within three weeks, however, within the facts stipulated by the Court in its order dated 24.03.2025. The prayer was not decided by the Corporation which led the appellant to institute contempt proceedings.



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11. It is further the submission of learned counsel for the appellant that it was only once the advance copy of the contempt proceeding was served on the Corporation that the decision, which was impugned before the learned Single Judge dated 21.04.2025, was taken.

12. Learned counsel for the appellant thus submitted that the said conduct of the authorities of the Corporation in not taking prompt and timely decision on the prayer made by the appellant seeking extension of contract itself shows that they have not been acting in *bona fide* manner so far as grant of extension of the contract is concerned.

13. On behalf of the appellant, reliance has been placed on a Division Bench judgment of this Court in the case of *SK Associates v. MCD, 2024 SCC Online Del 2300* and it has been stated that the Division Bench construing somewhat similar term of contract in the said case has allowed the writ petition and quashed the notice issuing fresh tender and issued certain directions based on the earlier tender.

14. Mr. Tushar Sannu, learned Standing Counsel for the MCD, on the other hand has stated that Clauses 7 and 15 of the earlier contract does not vest any right in the appellant to seek extension and further that extension in the term of the earlier contract is dependent on the decision to be taken in this regard by the Commissioner of the Corporation. He has refuted the submission made by the learned counsel for the appellant based on his reliance on the judgment in the case of *SK Associates (supra)* stating that the extension clause in *SK Associates (supra)* was worded differently than the extension clause in the subject contract on the basis of which extension is



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being sought by the appellant.

15. It is also the submission on behalf of the MCD that the reasons given by the MCD in the order dated 21.04.2025 do not suffer from any illegality or irregularity and, therefore, the learned Single Judge has rightly not interfered with the same. He, therefore, submits that no interference in this intra Court appeal is warranted and is liable to be dismissed.

16. Having considered the respective submissions made by learned counsel for the parties, we are not convinced with the submissions made by learned counsel for the appellant.

17. If we carefully examine Clauses 7 and 15 of the contract, what we find is that the contract period initially was for a period of three years which was extendable for another two years. However, such extension was subject to not only satisfactory performance of the appellant but also subject to decision to be taken by the Commissioner. Clause 7 of the earlier contract is very clear which enables the contractor to seek extension and also enables the MCD to extend the term, however, in our opinion, satisfactory performance of the contractor is not the only or sole basis for conferment of any right of extension in that contract.

18. The appearance of the phrase “subject to satisfactory performance of the work and as decided by the Commissioner” assumes importance to arrive at the conclusion that it is not the satisfactory performance of the firm which is the sole basis for taking a decision as to whether the earlier term of the contractor was to be extended or not. Satisfactory performance of the firm is only one such consideration, however, the final decision is vested in



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the Commissioner on account of the appearance of the phrase “and as decided by the Commissioner”.

19. Clause 7 further stipulates that 10% enhancement in the awarded Monthly License Fee from fourth year and also 10% increase on awarded Monthly License Fee every year during the extended period will be chargeable, if extended by the Commissioner.

20. Accordingly, we have no doubt in our mind that satisfactory performance of the appellant was not the only consideration to have weighed to the Commissioner while taking a decision on the prayer made by the appellant seeking extension of time.

21. If we peruse the order dated 21.04.2025 which was impugned before the learned Single Judge in the proceedings of the writ petition, what we find is that after discussing the stipulations made in the earlier contract, the competent authority has also given a reason for re-tendering on account of strategic policy shift and market alignment.

22. In our opinion, any policy shift or possibility of more income are relevant considerations for the Commissioner of the respondent Corporation to arrive at a conclusion that in his discretion it was not appropriate to extend the term of the earlier contract. Even otherwise, the appellant does not have a fundamental right to do business with the public authority, including the MCD.

23. As regards the reliance placed by learned counsel for the appellant on the judgment in *SK Associates (supra)* is concerned, Clause 4 of the contract which has been considered in the judgment is worded differently. Clause 4



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of the term of the contract in the said case relates to duration of contract which is extracted hereinbelow:

““

4. Period : *The contract is for temporary allotment of the above parking site for 02 years from the date of handing over. After the expiry of two years, the monthly licence fee will be enhanced by 05% (five percent) for the next year, subject to the satisfactory completion of period of two years of contract. The parking site allowed operating beyond three years period (in any circumstances) then the contractor has to pay monthly license fee by enhancing 05% of last/current MLF as provided in clause No. 4 of the NIT No. D-98 dated 14.08.2020.”*

(Emphasis supplied)”

24. A comparison of Clause 4 of the terms of contract considered in ***SK Associates (supra)*** and Clause 7 and 15 of the contract in the instant case would reveal that they are differently worded and accordingly conveyed different meaning. In Clause 4 of the contract considered in ***SK Associates (supra)***, there is a clear stipulation that after expiry of two years, the Monthly License Fee will be enhanced by 5% for the next year, subject to the satisfactory completion of period of two years of contract, whereas in Clause 7 of the contract in the present case provides that after completion of initial period of three years, the contract is extendable subject not only to satisfactory performance of the firm but also “as decided by the Commissioner, EDMC”.

25. Thus, in our opinion, Clause 7, as noticed above, gives a larger discretion to the Commissioner of the MCD in the present case and, therefore, apart from satisfactory performance of the firm other relevant



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aspects could also have been taken into account by the Commissioner while taking a decision on the prayer made by the appellant seeking extension in the term of the contract. The judgment in *SK Associates (supra)* is thus clearly distinguishable.

26. So far as the scope of interference or judicial scrutiny under Article 226 of the Constitution of India is concerned, we are in complete agreement with the findings recorded in that regard by the learned Single Judge which are based on well known pronouncements of the Hon'ble Supreme Court.

27. For the reasons aforesaid, the instant Letters Patent Appeal is liable to be dismissed, which is hereby dismissed with a cost of Rs.50,000/- to be deposited by the appellant within a period of one month with the Delhi High Court Advocates Welfare Trust, [Account No.15530210002995, IFSC-UCBA0001553, UCO Bank].

28. We further direct that in case the cost is not deposited as directed hereinabove, the Registrar General of this Court shall take appropriate steps for recovery of the same, including, if required, by taking recourse to the process of recovery by way of arrears of land revenue.

DEVENDRA KUMAR UPADHYAYA, CJ

TUSHAR RAO GEDELA, J

MAY 26, 2025/ N.Khanna