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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 01.08.2025

Judgment pronounced on: 11.11.2025

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O.M.P. (COMM) 344/2017 & I.A. 10522/2017, I.A. 7982/2025

PARSVNATH DEVELOPERS LTD.

.....Petitioner

Through: Mr. Rajat Joneja and Ms. Himanshi
Madan, Advs.

versus

DELHI METRO RAIL CORPORATION LIMITED & ANR.

.....Respondents

Through: Dr. Hemant Gupta, Adv.

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

JUDGMENT

1. The present petition is filed under Section 34 of the Arbitration and Conciliation Act, 1996 ("**1996 Act**") seeking to challenge the Arbitral Award dated 07.06.2017 ("**Award**") passed in Arbitration proceedings titled as "*Parsvnath Developers Limited. v. Delhi Metro Rail Corporation*" wherein the Arbitral Tribunal ("**Tribunal**") disallowed the claims of the petitioner and allowed the counter claims of the Delhi Metro Rail Corporation ("**respondent**") to the tune of 70,27,684.69/- (55,01,109/- + 15,26,575.69/-). The respondent was further granted interest on 55,01,109/- from 01.02.2012 and further till realization at 6 percent per annum.



FACTUAL BACKGROUND

2. The petitioner, (Claimant in the Arbitral Proceedings) is a company incorporated under provisions of Companies Act, 1956 and is engaged in the business of development of land and construction of commercial and residential projects in India.
3. The respondent (respondent in the arbitration proceedings) is a company incorporated under Companies Act, 1956 established for planning, designing, developing, constructing, maintaining, operating and financing transport in the National Capital Territory of Delhi and other areas of National Capital Region.
4. The respondent invited bids for development of Station Box situated at Tis Hazari Metro Station in New Delhi (“*Property*”) on concession basis for construction, development, procurement, finance, manage and license the use of the built-up spaces and facilities. The petitioner submitted the bid for the same. The respondent accepted the bid of the petitioner and issued a Letter of Acceptance bearing No. DMRC/PD/C2/TEND/TIS/ACXX0105 dated 24.01.2005. The said acceptance was confirmed by the petitioner on 27.01.2005. Subsequently, the petitioner was allotted the said property on concession basis for a period of 12 years with 6 months of moratorium period from 16.03.2005 the day on which possession of the said property was given to the petitioner.
5. Subsequently, the parties entered into a Concession Agreement dated 25.02.2005. The said Concession Agreement contained an arbitration clause being Article No. 11.
6. *Vide* letter dated 06.05.2005 the respondent intimated the claimant



that the property handed over to the claimant on 16.03.2005 measured 1891.96 square meters as against 2006 square meters, as originally mentioned in the Agreement. As per Article No. 3.2 of the said Concession Agreement necessary changes were made.

7. Pursuant to this, Sub-License Agreement dated 20.02.2006 was executed between the petitioner and M/s Great Whole Sale Club Ltd. (renamed as M/s Spencer's Retail Limited and hereinafter referred as "**Spencer**") for a period of 12 years at a monthly rental fee of Rs. 13,40,006/- for the first three years subject to increment by 12% for the next three years and by 15% for the subsequent terms. However, prior to sub-licencing the space, Spencer required a Health Trade License ("**HTL**") and therefore, applied for issuance of HTL to Municipal Corporation of Delhi ("**MCD**").
8. On 09.06.2006 MCD issued a notice under Section 336 of the Delhi Municipal Corporation Act, 1957 to the respondent for erecting a building without sanction.
9. Upon Application by Spencer, MCD, *vide* letter dated 23.06.2006, sought No Objection Certificate ("**NOC**"), for any unauthorised construction, from the respondent within 7 days for processing the issuance of HTL to Spencer for sale of Kiryana, Confectionary, Bakery, Cold Drinks at Tis Hazari Metro Station.
10. The respondent, *vide* letter dated 27.06.2006 informed the petitioner about Spencer directly applying for trade licence which was against the terms of the said Concession Agreement and sought the exact nature of business to be carried out by Spencer. The petitioner, subsequently, *vide* letter dated 05.07.2006 informed the nature of



business to be carried out and requested the respondent to issue NOC to MCD in the favour of Spencer. Thereafter, the respondent *vide* letter dated 11.07.2006 replied to MCD and acquiesced to issue HTL to Spencer.

11. *Vide* letter dated 18.07.2006 a final reminder was sent to Spencer by the Deputy Health Officer of MCD to submit copies of sanction plans, completion certificate, land use of premises, electricity bill charges and water bill charges so as to process the issuance of HTL in favour of Spencer. Subsequently, *vide* letter dated 31.07.2006 MCD rejected Spencer's application seeking issuance of HTL due to non-submission of the sanction plans of the premises, copy of completion certificate, land use of the premises, copy of electricity charges and water supply bill as reiterated in reminders issued dated 06.07.2006 and 18.07.2006. Spencer was further informed to close its trade activities and upon failure to close trade activities, Spencer would be liable for prosecution.
12. Subsequently, *vide* email dated 23.11.2006 Spencer informed the petitioner about the difficulties being faced by them to obtain HTL and this was further communicated to the respondent *vide* letter dated 08.12.2006, by the petitioner. The petitioner requested the respondent to indicate non-requirement of approved sanction plans to the MCD. The respondent replied *vide* letter dated 11.12.2006, stating that the property made over to the petitioner is on concession basis and does not require any sanction plans, the petitioner was further informed that concept plan of the petitioner for Tis Hazari Station has already been approved by the respondent on 02.06.2005.



13. *Vide* letter dated 06.09.2007, Spencer terminated the sub-licensee Agreement dated 20.02.2006 as the required sanctions for the property could not be obtained. On 03.10.2007 the petitioner requested the MCD to reconsider its decision related to refusal to grant the HTL to Spencer. The MCD sought a report from the respondent regarding any illegal or unauthorised construction to process the HTL. The respondent, *vide* its letter dated 15.10.2007 informed MCD that no illegal construction has been done and the respondent has no objection to grant to HTL to Spencer. *Vide* letter dated 17.10.2007 MCD asked Spencer to resubmit its application for issuance of the HTL.
14. Through letter dated 29.02.2008, the petitioner requested the respondent to issue a standard letter with respect to each metro station specifying therein that the respondent had not raised any unauthorized constructions at stations and further specifying that the petitioner did not require any sanction of plans from local bodies so as to ensure that the issuance of HTL could be issued in favour of various sub-licensees of the petitioner in respect of each metro station. The respondent issued a general letter dated 12.03.2008 regarding the fact that the petitioner did not require any sanction plans from local bodies. The petitioner repeatedly reminded the respondent about the problems being faced by the petitioner in making the property usable.
15. The respondent issued a fresh invoice dated 29.09.2009 towards recurring payments for Rs. 58,28,081/-. The petitioner requested the respondent for waiving of the recurring payment as the space was lying vacant. However, the respondent subsequently informed that if the payments were not made, the respondent would terminate the said



Concession Agreement and the respondent also rejected the request for waiver. Thereafter, *vide* letter dated 25.03.2010 the respondent terminated the said Concession Agreement. The Bank Guarantees of the petitioner were also encashed.

16. The petitioner referred to Article No. 11.1 of the said Concession Agreement for amicable settlement of the dispute. Meeting was held between the senior officers under Article No. 11.1.2. Since there was no response from the respondent for over a year, the petitioner invoked Article No. 11.2.1 of the said Concession Agreement and *vide* letter dated 04.04.2011 requested for appointment of the Tribunal for adjudication of pending disputes.
17. The Tribunal entered the reference to adjudicate the disputes arising out of the said Concession Agreement on account of termination of Contract as averred by the petitioner and non-payment of dues as averred by the respondent. The Tribunal framed the following issues:-
 1. *Whether the claims raised by the claimant are misconceived, de-hors the contract and the claimant has no cause of action against the respondent?*
 2. *Whether the termination of the agreement by the respondent is not in accordance with the terms of the Concession agreement dated 25.2.2005 and invalid for the reasons particularly given in the statement of claim?*
 3. *If issue No.2 is decided in affirmative, is the claimant entitled to be put in possession of the property in question and claim amount of Rs 80,16,780/- in addition to seeking extension of moratorium period and concession period as*



alleged?

4. In the alternative, is the claimant entitled to refund of the proportionate amount of the upfront fee of Rs. 66,42,209 34 alongwith interest @ 1.25% p.m. from 14.9.2007 as alleged?

5 Whether the claimant is entitled to the refund of the amount of Rs.33,62,370/- being the amount of two bank guarantees alongwith interest as claimed?

6. Whether the claimant is entitled for refund of Recurring fee paid after 14.9.2007 alongwith interest as claimed?

7. Whether the claimant is entitled for refund of electricity charges paid after 14.9.2007 alongwith interest as alleged?

8. Whether the claimant is entitled to any amount for loss of business and opportunities? If so, to what amount?

9. Is the claimant entitled to any amount towards loss of reputation and goodwill? If so to what amount?

10. Whether the respondent, as per annexure C-45 to statement of claim is entitled to a consolidated amount of Rs.88,63,479/- as on 25.3.2010?

11. Whether the respondent is entitled to interest amounting to Rs.24,37,757/- upto 31.1.2012 under Article 3.6 of the agreement?

12. Whether the respondent is entitled to any interest on the amounts found payable under issues 10 & 11?

13. Relief.”

18. The Tribunal adjudicated the disputes between the parties and passed



an Arbitral Award dated 07.06.2017 rejecting the claims of the petitioner and allowing counter claims of the respondent to the tune of Rs. 70,27,684.69/- and interest at 6 percent from 01.02.2012 till realisation. The operative part of the said Award reads as under:-

“Issue No.13

Resultantly, the claim petition is dismissed.

By way of counter claim an award of Rs. 70,27,684.69 (Rs.55,01,109/- + Rs. 15,26,575.69/-) is passed in favour of the respondent and against the claimant Respondent is entitled on said Rs 55,01,109/- interest pendent-lite from 1.2.2012 and future till realization @ 6% p.a. In the facts and circumstances of case, the parties are left to bear their own costs as defined under Section 31 (8) of the Arbitration & Conciliation Act, 1996, of the proceedings. However, stamp duty payable on the said amount will be borne by the claimant.

Items mentioned in lists-'A' & 'B' are released in favour of the claimant. Respondent will remove the items except the bore-well from the site, of list-B and deliver them to the claimant within three weeks of the receipt of this award or pay its estimated market value after taking into consideration the applicable depreciation. Claimant's aforesaid applications are disposed of accordingly.

This award is made and pronounced at New Delhi on 07.06.2017”

19. Aggrieved by the said Arbitral Award, the petitioner filed a present



petition.

RIVAL SUBMISSIONS ON BEHALF OF THE PARTIES

On behalf of the Petitioner

20. Mr. Joneja, learned counsel for the petitioner, vociferously urges that the Award is in clear conflict with the basic notions of morality and justice, fundamental policy of Indian law and patently illegal on the face of it. The Tribunal has ignored vital evidence and Clauses of the said Concession Agreement while deciding the dispute between the parties.
21. He submits that the Award has been passed in complete ignorance of terms and conditions contained in Article No. 1.5.2 under the heading “Statutory Clearances” of the Request for proposal (“**RFP**”). In this regard he also relies on Article No. 4.3.7 of the said Concession Agreement.
22. It is emphasised that the existing by-laws, as prevailing at relevant time, required production of documents viz. sanction plans, completion certificate and land use of the premises for grant of HTL by the MCD which could have only been provided by the respondent; however, the Award failed to take into consideration that the respondent did not satisfy this pre-requisite which was important for grant of HTL.
23. He further submits that prior to application for HTL on 19.06.2006 by Spencer, MCD had issued notice dated 09.06.2006 to the respondent alleging construction without sanction and had also directed the respondent to stop further construction. The above notice was completely overlooked by the Tribunal in the Award.



24. Learned counsel submits that the Award has been passed in utter disregard to the order dated 30.03.2009 of Ministry of Housing and Urban Development (“*MoUD*”) (which mandated that NOC for property development will be issued to the respondent and the respondent will further issue the NOC to its developers, the prior regime required documents such as completion plans which was responsibility of the respondent). Prior to this order, the petitioner and/or Spencer were under a mandate to ply their trade in accordance with the requirements of local authorities like DDA, MCD etc. and the respondent was solely responsible for providing the necessary documents as were then required by the MCD for providing the HTL to Spencer.
25. He submits that the Award has nowhere dealt with the Order dated 15.06.2010 passed by the Lieutenant Governor of Delhi wherein it was decided for the first time that a Commercial Establishments within the footprints of Metro Station do not require any prior building approval from MCD. Therefore, till the decision dated 15.06.2010 was arrived at, the respondent was not exempted from applicability of the Municipal Act and Local by- laws.
26. He further submits that the Award has been passed merely on the premise that the letter dated 11.12.2006 was forwarded by the petitioner to the MCD after a lapse of almost nine months i.e. on 03.10.2007 and therefore the respondent cannot be held responsible for loss suffered by the petitioner on account of termination of the Sub-License Agreement between the petitioner and Spencer. The information and documents demanded by the MCD *vide* letters dated



23.06.2006 and 31.07.2006 could have solely been *provided* by the respondent, and hence, the finding of the Tribunal merely based on the letter dated 11.12.2006 issued by the respondent, is faulty.

27. Learned counsel submits that upon receipt of the petitioner's letter dated 03.10.2007, MCD again issued a stereotype letter to the respondent seeking same query i.e. the sanction plans and other documents.
28. He further submits that the respondent on 15.10.2007 for the first time since 19.06.2006, responded to the query of MCD stating that there is no unauthorized construction, and that the respondent has no objection if Spencer is granted HTL. The said information was being sought from the respondent since 23.06.2006 which the respondent was not responding despite requests from the petitioner.
29. It was only when the MCD on receiving a specific response from the respondent on 17.10.2007, asked the Sub-Licensee to re-submit the application for consideration. MCD had not in any manner dispensed with the requirement of sanction plans, completion certificate and the other required documents for the issuance of HTL. Since, the Sub-Licensee had already terminated the Agreement and vacated the premises, there was no question of re-submission of application.
30. It is pertinent to mention that the Tribunal passed the Award by placing reliance on Article No. 10.2 of the said Concession Agreement. The same is entirely misplaced as the said clause is to be read along with Article No. 3.3 of the Agreement which *provided* that the recurring payment would become payable after 6 months from handing over of possession, but if for any reason the petitioner is



unable to Sub-license or otherwise put to use the whole or any part of the project facility for any reason whatsoever except for force majeure reason or for reasons solely attributable to the respondent without any contributing factor on the part of the petitioner, same shall be dealt in accordance with Article 4.3.7.

31. Additionally, Article 4.3.7 of the said Concession Agreement provided that due date of first recurring payment and concession period would be extended for such "period of delay" which was occasioned due to force majeure and for reasons solely attributable to the respondent. The delay was solely attributable to the Respondent because the respondent failed to supply the documents for grant of HTL. Accordingly, the petitioner was right in claiming benefit of such delay in payment of recurring fee and deferment of the concession period.

On behalf of the Respondent

32. *Per Contra*, Mr. Gupta, learned Counsel for the respondent supports the Award and urges that the Award does not warrant any interference. He seeks to establish a chronology of events to show that rejection of application was not attributable to the respondent.
33. He submits that subsequent to Concession Agreement, a Sub Licence Agreement was executed between petitioner and Spencer. Thereafter a letter dated 23.05.2006 was sent by the petitioner to the respondent, requesting the latter to provide sanction plans from local statutory bodies, to which a reply dated 26.05.2006 was given by the respondent thereby informing the petitioner that there was no need of any sanction of plan from local statutory bodies.
34. He also submits the Spencer, applied for HTL to MCD *vide*



application dated 19.06.2006, to which MCD on 23.06.2006 sought information about any unauthorised construction and NOC for grant of HTL from the respondent. Thereafter, MCD again on 27.06.2006 sought documents from Spencer.

35. It is submitted that petitioner, *vide* letter dated 05.07.2006 urged the respondent to inform MCD that there was no unauthorized construction in the premises and to grant NOC for HTL. Thereafter, two reminders dated 06.07.2006 and 18.07.2006 were issued by MCD to submit the said documents. Meanwhile, the respondent on 11.07.2006 intimated that HTL may be issued to Spencer.
36. Learned counsel points out that the rejection of application for HTL was on account of non-submission of documents. On 23.11.2006, Spencer communicated its difficulty to the petitioner to procure HTL due to unavailability of documents. Upon receiving the said communication of said difficulty from the petitioner on 08.12.2006, the respondent issued a clarificatory letter dated 11.12.2006 indicating that the property does not require any sanction of any plan from local statutory body for the reasons as mentioned in the said letter, wherein relevant provisions of various Acts and memorandum was reproduced.
37. He points out that Sub-licence Agreement was terminated on the ground of rejection of Spencer's application for HTL by MCD on 31.07.2006. The petitioner *vide* letter dated 03.10.2007 sent a copy of respondent's letter dated 11.12.2006 and also requested MCD to reconsider the application of Spencer for the HTL. MCD wrote another letter dated 11.10.2007 inquiring if any unauthorized construction has been done by Spencer and whether the respondent



has any objection to issue of HTL.

38. The respondent upon request of the petitioner, answered the query sought to be answered by MCD *vide* letter dated 15.10.2007 that no illegal and unauthorized construction has been carried out in the premises and there is no objection to the grant of HTL to Spencer. MCD thereafter sent a letter to Spencer to submit formal application for the HTL so that the application may be processed further.
39. After establishing the aforesaid chain of events, the learned counsel vehemently argues that it clearly shows that it is the petitioner and Spencer who were not able to properly present their application with MCD. Had it not been default on their part, HTL could have been easily sought by Spencer. The petitioner cannot take advantage of its own inability to file a proper application and promptly send the required documents to the MCD.

ANALYSIS AND FINDINGS

40. I have heard the learned counsels of the parties and perused the material on record.
41. It is pertinent to highlight the scope of Section 34 of the 1996 Act. The Hon'ble Supreme Court and this Court in catena of judgements has discussed the scope of Section 34 of the 1996 Act. Not to multiply the authorities in that respect, it has time and again been reiterated that the challenge to an Arbitral Award is only to be seen through the limited and specific grounds provided under Section 34 of 1996 Act. The Arbitral Award can be set aside on the ground, *inter alia*, being in conflict with the public policy of India, patent illegality, violation of principles of natural justice. The said grounds have been dealt by the



Hon'ble Supreme Court in *Batliboi Environmental Engineers Ltd. v. Hindustan Petroleum Corpn. Ltd.*, (2024) 2 SCC 375.¹

42. With this background, I shall now proceed to consider the rival contentions of the parties.
43. The main issues that fell for consideration before the Tribunal were Issue No. 2 and Issue No. 3 wherein the Arbitrator had to determine whether the termination of the Concession Agreement dated 25.02.2005 by the respondent was in contravention of the terms of the Agreement and, therefore, invalid and if the said termination is held to be invalid, whether the petitioner is entitled to restoration of possession of the property, refund of Rs. 80,16,780/- and extension of the moratorium period as well as the concession period. The Issue Nos. 2 and 3 read as:-

“2. Whether the termination of the agreement by the respondent is not in accordance with the terms of the Concession agreement dated 25.2.2005 and invalid for the reasons particularly given in the statement of claim?”

3. If issue No.2 is decided in affirmative, is the claimant entitled to be put in possession of the property in question and claim amount of Rs 80,16,780/- in addition to seeking extension of moratorium period and concession period as alleged?”

44. The petitioner had paid an upfront fee of Rs. 85 Lakhs in pursuance of Concession Agreement and executed a bank guarantees to the tune of

¹*Batliboi Environmental Engineers Ltd. v. Hindustan Petroleum Corpn. Ltd.*, (2024) 2 SCC 375 (ref. paragraph Nos. 36-45)



Rs. 33,62,370/- in favour of the respondent. The amount of bank guarantee was to be periodically escalated in accordance with escalation in recurring payment. Corresponding to shortfall in the development area, upfront fee of Rs. 4.83 lakhs was to be returned to the petitioner or adjusted in the favour of petitioner. Therefore, the adjusted amount of Rs. 80,16,780 was paid by the petitioner as of upfront fee.

45. The petitioner prayed for interest on upfront fee of Rs. 80,16,780/- at 1.25 percent per month payable from 14.09.2007 till the petitioner is put back into possession or alternatively prayed for a refund of proportionate refund of upfront fee of Rs. 66,42,209/- for concession period not utilised by the petitioner.
46. The respondent has raised a counter claim of Rs. 1,13,00,936/- against the petitioner, out of which Rs. 88,63,479 was in furtherance of arrears of recurring payments and electricity charges which is reflected by the summary of account dated 28.03.2010.
47. The Tribunal awarded the sum of Rs. 55,01,109 towards counter-claims of the respondent after adjusting the amount of two bank guarantees which were encashed on 26.03.2010 by the respondent i.e. to the tune of Rs. 33,62,370/-. Further the Tribunal awarded the amount of Rs. 15,26,557.69/- i.e. interest on Rs. 55,01,109/- from 26.03.2010 to 31.01.2012 at the rate of 1.25 percent per month which was in conformity with Article 3.6 of the Concession Agreement.
48. The Tribunal held that in view of the letters exchanged between the parties, it could not be said that breach of Concession Agreement was solely attributable to the respondent. The relevant paragraphs are



reproduced as under:-

“...Above discussion would show that the claimant had sent the copy of respondent’s letter dated 11.12.2006 only with the letter dated 3.10.2007 after more than nine months of its issue after the Spencers had terminated the sub-license agreement on 6.9.2007. Whatever was required to be done for grant of trade license to Spencers was done by the respondent promptly by issuing letters dated 11.7.2006 11.12.2006 and 15.10.2007. If the claimant would have acted swiftly by forwarding the letter dated 11.12.2006 to MCD who was willing to reconsider its decision of rejection of application, as can be inferred from the letter dated 17.10.2007, there could not have been termination of sublicense agreement by the Spencer's

....

This plea of the claimant is based on Article 3.3 of the Concession agreement which says that the Recurring payment in Article 3.1 (ii) shall become payable from the first day after six months from the commencing date notwithstanding that the claimant has not been able to sub-license or otherwise put to use whole or any part of the property for any reason whatsoever except for Force majeure reasons as specified in Article 9 or for reasons solely attributable to the respondent without any contributory factor on the part of the claimant. Claimant denies liability for Recurring payments from 14.9.2007 till



25.3.2010 on ground of the property remaining vacant. Since the respondent is not in breach of the terms/conditions of Concession agreement, the claimant under said Article 33 cannot escape liability for Recurring payments on the said ground, Article 10.2 (b) of the agreement empowers the respondent to terminate the agreement. If at any time any payment, assessment, charge, lien, penalty or damage to be paid by the claimant to the respondent or any part thereof shall be in arrear and unpaid Therefore, termination of the agreement dated 25.2.2005 was validly made under Article 10.2 (b) by the respondent for non-payment of arrears of the Recurring payments etc. by the claimant. Both the issues No.2 & 3 are decided against the claimant...”

- 49.** Assailing this finding of the Tribunal, the petitioner contends that the Award is passed in complete disregard of Clause No. 1.5.2 of RFP that the by-laws, as prevalent at the relevant time. The same required production of documents such as sanction plans, completion certificate and land use of the premises for grant of HTL by the MCD which could have only been provided by the respondent.
- 50.** The petitioner further contends that the reliance of the Tribunal on Article No. 10.2 is misplaced as the said Article is to be read with Article No. 3.3 of the Concession Agreement which provided that the recurring payment would become payable after 6 months of possession being handed over, but if for any reason the petitioner is unable to sub license or otherwise put to use the whole or any part of the project facility for any reason whatsoever except for force majeure



reason or for reasons solely attributable to the respondent without any contributing factor on the part of the petitioner then same shall be dealt in accordance with Article No. 4.3.7.

- 51.** The petitioner also states that it is only on 30.03.2009 that the MoUD for the first time stated that NOC issued by the respondent should be honoured by all civic agencies. Prior to this there was a requirement for the petitioner and its sublicensee to ply their trade in accordance with requirement of local authorities. MCD continued to insist on providing sanction plans which the respondent was unable to *provide*. Consequently, the petitioner was never able to enjoy sub-licensed premises and was unable to generate any revenue.
- 52.** I am unable to agree. The Tribunal has expressly considered this argument while deciding the dispute and has categorically held that it cannot be said that the delay was solely attributable to the respondent. It is also pertinent to mention the several letter exchanges which were considered by the Tribunal in deciding the present contention:-
- i.** Rejection of Spencer's application for grant of HTL dated 31.07.2006 is reproduced as under:-



MUNICIPAL CORPORATION OF DELHI
PUBLIC HEALTH DEPARTMENT CIVIL LINE
ZONE 15, RAJPUR ROAD DELHI - 110054.

CO: LHO/CLZ/2006/1325

Dated 3/7/06

Shri Saurabh B. Chaddha (business head)
of Great Wholesale Club Limited
Via Hazari, Metro Railway station
Delhi.

Subject:- Rejection letter regarding grant of health trade licence.

Please refer to your application dt. 9.6.2006 for grant of license. In this regard you were asked to submit required documents as Copy of sanctioned Plan of the premises, copy of completion certificate, land use of the premises, copy of electricity charges bill and water charges bill, vide O.O.No. DHO/CLZ/2006/473 dt. 27.6.06 with its two subsequent reminders on dt. 6.7.06 and 18.7.2006, but you have failed to submit the required documents in the office of the undersigned.

Therefore, due to non-submission of required documents, your application may not be processed for grant of license applied for and merits to be rejected.

Your aforesaid application, is therefore, rejected by the undersigned. You are also asked to close down the trade activities at site, failing which further legal action under the provisions of 24C Act, 1957 may be initiated without further intimation.

By Health Officer
Civil Lines Zone, MCD

15, Rajpur Road Delhi.
DR. O. P. GANDHI
DEPUTY HEALTH OFFICER (M.C.D.)
CIVIL LINE Zone

- ii. In pursuance of the above rejection letter and upon indication by the petitioner regarding Spencer's difficulty, the respondent promptly issued a letter dated 11.12.2006 clarifying that no sanction from local authorities was required. The said letter is reproduced as below:-



दिल्ली मेट्रो रेल कॉर्पोरेशन लि०
DELHI METRO RAIL CORPORATION LTD.
(A JOINT VENTURE OF GOVERNMENT OF INDIA AND GOVT. OF DELHI)
N.B.C.C. Place, Bishma Pitamah Marg, Pragati Vihar, New Delhi-110003

DMRC/PD/C1/Ex/118/06

Dt 11.12.06

Mr. M.C. Jain,
Vice President (Corporate),
Parsvnath Developers Ltd.,
6th Floor, Arunachal Building,
19 Barakhamba Road,
New Delhi - 110 001.

Dear Sir,

Sub: Property Development at Tis Hazari Metro Station.

With reference to your letter No. PDL/DMRC/2005-06 dt 01.12.06, I have to advise you that DMRC is of the view that the above space in Tis Hazari station made over on concession basis to M/s Parsvnath does not require sanction of any plan, from local statutory bodies, on account of the following:

- Clause 11 of chapter IV, of the Indian Railways Act 1986 (which covers Delhi MRTS), permits construction of offices and other buildings, etc as the administration thinks proper.
- Clause 18, Chapter IV, of the Metro Railways Construction of Works Act 1978 (which covers Delhi MRTS), permits DMRC to construct any buildings etc as the metro administration thinks proper.
- Memorandum no. R-20013/46/89-DDVA dated 12/3/90 by GOI - MOUD, permits DMRC to construct 'operational' structures (such as MRTS stations) without prior approval of local bodies / state govts.
- Para 6, Chapter III of the Delhi Metro Railway Operation and Maintenance Act, 2002, empowers DMRC to acquire hold, dispose of all kinds of properties owned by it, and improve, develop, or alter any property or asset held by it.

Your concept plan for Tis Hazari station has been approved by DMRC on 02.06.2005.

Thanking you,

Yours faithfully,


(R.M. Raina)
Adv.PD

TRUE COPY



- It is also pertinent to note that the petitioner forwarded this letter dated 11.12.2006 to MCD only on 03.10.2007 after an inordinate delay of over nine months and after Spencer had already terminated the Sub-License Agreement on 06.09.2007. The said letter dated 03.10.2007 is reproduced as below:



Parsvnath Developers Limited

An ISO 9001:2000 & 14001:2004 & Ist NAREDCO-JCRA Rated Co.

PDL/MCD/TIS/SGWCL/2007-08/6372

3rd October, 2007

The Deputy Health Officer,
MCD Civil Lines Zone,
Rajpur Road,
Delhi

Sub: Grant of Health Trade Licence to Great Whole Sale Club Ltd., at Tis Hazari Metro Railway Station.

Sir,

With reference to the above-cited subject, we would like to inform you that we are the concessionaire of M/s. Delhi Metro Rail Corporation Ltd., (DMRC) for the space at Tis Hazari Metro Station. Agreement for the same was signed on 25/2/2005, wherein we are allowed to sub-lease the concession space. As per that, we have sub-leased the space to M/s. Great Whole Sale Club Ltd., This was already confirmed to Dy. Health Officer, MCD by DMRC vide their letter no. DMRC/PD/C6/TZ/PDL/Spencers/N70706 dated 11.07.2006; a copy of the same is attached as Annexure-1

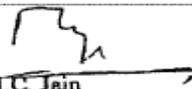
The Sub-lessee M/s. Great Whole Sale Club Ltd., had applied for health trade license vide their application No.333 in the prescribed performa dated 15th June, 2006, but the same has been rejected vide your letter NO.DHO/CLZ/2006/635 dated 31.07.2006.

In this regard, we would like to clarify that as per the DMRC, the space at Tis Hazari Metro Station given to us on concession basis to us does not require sanction of any plan, from local statutory bodies on account of the clarifications given to us vide DMRC's letter No.DMRC/PD/C1/Ext/116/06 dated 11.12.2006 alongwith the confirmation that our concept plan for Tis Hazari Station has been approved by DMRC on 02.06.2006. A copy of the letter is attached as Annexure-2

Keeping in view of the above facts, we request you to kindly reconsider their application that has been rejected by you on 31.07.2006.

Thanking you,

Yours faithfully,
For Parsvnath Developers Ltd.,


M.C. Jain
Vice President (Corporate)
Encl: as above.

TRUE COPY



Regd. & Corp. Office: 8th Floor, "Arunachal Building" 19, Barakhamba Road, New Delhi-110001. Ph: 23310188, 23350120, Fax: (011) - 23315
E-mail: mail@parsvnath.com, URL: http://www.parsvnath.com, parsmal@parsvnath.com

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53. On the basis of this letter dated 03.10.2007, the MCD issued another letter dated 17.10.2007 wherein they the MCD was willing to consider the application for grant of HTL a fresh. The said letter dated 17.10.2007 is reproduced below:-



MUNICIPAL CORPORATION OF DELHI
HEALTH DEPARTMENT: CIVIL LINE

NO:-DHO/CLZ/ 2007/ 1052

Dated 17/10/2007

Shri Saurabh B. Chadha
Business Head of Great whole sale club Limited.
1/5 Hazari, Metro Railway station, DMRC Delhi.

Subject:- For want of application for re-opening / re-examining the
case which was rejected earlier, on the request of M/S Parsv-
Nath Def. Ltd.

As desired by the Lessor, you are hereby asked to
submit your formal application on the subject in the office of the
undersigned, so that your case may be processed further.

Dy. Health Officer
Civil Lines Zone

9213/2-8352

12108/67580

TRUE COPY

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54. On perusal of the entire corresponding exchanges of the letters between the parties, it can be concluded that the finding of the Tribunal is plausible that there were delays on the part of the petitioner, as well. The same is a finding of fact and can be reasonably concluded from the documents and from the letter exchanged between the parties. Petitioner was not acting with due care and diligence. Additionally, the respondent had no documents, which were being requested by the petitioner and the sub-licensee and there was no requirement for the same.
55. It is also important to highlight Article 3.3 and Article 10.2 of the Concession Agreement which have been considered by the Tribunal while deciding the issue. The operative portions of the said articles read as under:-



“Article 3.3: The Recurring payments in Article 3.1(ii) shall become payable from the first day after six months from the Commencement Date notwithstanding that the Concessionaire has not been to sub licence or otherwise put to use whole or any part of the Project Facility for any reason whatsoever except for force majeure reasons as specified in Article 9 or for reasons solely attributable to DMRC without any contributory factor on part of the Concessionaire.

...

Article 4.3.7: Save as on account of Force Majeure reasons or reasons solely attributable to DMRC with no contributory factor of the Concessionaire, the Concessionaire shall have to Complete in all respects the development of the Station Box not later than twelve months of the Commencement Date and DMRC may thereafter be entitled to restrict the construction on the site. The liability of the Concessionaire to pay the consideration and other amounts to DMRC shall however commence from six months from the Commencement Date as slated in Article 3 and the Concession period shall be restricted to 12 years from the Commencement Date notwithstanding the time allowed for completion under this clause. For delay on account of Force Majeure reasons or reason attributable solely to DMRC with no contributory factor of the Concessionaire, the due date for the first recurring payment and Concession period shall be extended



accordingly by the period of delay but no financial claims shall be entertained by DMRC on this account.

...

Article 10.2:

Termination by DMRC

10.2. DMRC may terminate this Agreement due to any of the following events of default by the Concessionaire (hereinafter called the "Concessionaire Event of Default"):

....

(b) If at any time any payment, assessment, charge, lien, penalty or Damage herein specified to be paid by the Concessionaire to DMRC, or any part thereof, shall be in arrears and unpaid."

- 56.** The Tribunal carefully examined the said Articles of the Concession Agreement, correctly rejected the petitioner's plea founded on Article No. 3.3 of the Concession Agreement that delays were solely attributable to the respondent and that recurring charges could not be levied in view of the fact that the delay was solely attributable to the respondent. In the view of my analysis above, I am in agreement of the findings of the Tribunal that the delay is not solely attributable to the respondent. Hence, I am of the view that reliance cannot be placed on Article No. 3.3 of the Concession Agreement as the exchange of letter between the parties show that the delay was not solely attributable to the respondent.
- 57.** I am also of the view that the findings returned by the Tribunal while adjudicating Issue Nos. 2 and 3 are reasonable, plausible and calls for



no interference. The Tribunal has analysed and weighed all the documentary evidences and the communications exchanged between the parties, Spencer and MCD and has correctly arrived at the finding that the respondent was correct in terminating the contract on the ground of non-payment of arrears.

- 58.** The petitioner has not challenged the findings on Issue Nos. 1,6, 7 8 and 9 during the arguments. Additionally, Issue Nos. 1, 6, 7, 8 and 9 are dependent upon the findings of Issue Nos. 2 and 3. In view of my above findings on Issue Nos. 2 and 3, the challenges to Issues No. 1, 6, 7, 8 and 9 are also not maintainable.

CONCLUSION

- 59.** For the foregoing reasons, the present petition seeking setting aside of the Arbitral Award dated 28.07.2021 passed by the Tribunal, is hereby dismissed.
- 60.** Pending applications, if any, stand disposed of.

JASMEET SINGH, J

NOVEMBER 11, 2025/(MU)