

ITEM NO. 29 (L-17)

1 Name of the Subject:

Operation and maintenance of Five Star Hotel Premises at 1, Man Singh Road after the expiry of the extended period on 31.1.2015.

2. Name of the Department:

Estate-I Department

3. Brief History of the Subject:

- (A) A land measuring 3.78 Acres at 1, Man Singh Road alongwith structure was offered to NDMC by the Ministry of Works & Housing for constructing a hotel for making it available for the PATA Conference M/s. India Hotel Company Ltd. in short called (IHCL) approached the New Delhi Municipal Committee to collaborate in construction of the hotel. After executing the Collaboration Agreement, a licence deed was also executed between the New Delhi Municipal Committee and 'IHCL'. The licence was commenced w.e.f. 11.10.1978 for a period of 33 years up to 10.10.2011. The matter was placed before the Council in its meeting held on 7.10.2011, wherein, Council resolved as under vide Reso. No.02(L-03):

"(i) to accord sanction for extension of existing collaboration project and lease deed for one year upto 10.10.2012, subject to the condition that the Indian Hotel Corporation (IHC) shall agree to pay licence fee as per mutually agreed terms and conditions retrospectively w.e.f. 11.10.2011.

(ii) to accord sanction for further review and action in accordance with the decision of Ministry of Urban Development, the legal advice, the Committee's recommendations & Consultant's reports.

The Council also directed that the Deptt. should workout the timelines for completing the above exercise and the Council be informed of the progress.

It was also resolved by the Council that further action may be taken by the department in anticipation of confirmation of the minutes by the Council. "

Further the 'Council' vide Resolution No. 08(L-01) dated 25.7.2012 resolved as under:

"After considering the facts and circumstances of the case, it was resolved by the Council by majority, that the Council may charge from the Licensee, M/s IHC Ltd. License Fee @ of 17.25% of the Gross Turnover or Rs.21 Crores a year for the period from 11.10.2011 to 10.10.2012, whichever is higher. The Council further directed that the final report of the Consultant appointed to recommend further course of action be brought before the Council at the earliest.

It was also resolved by the Council that further action in the matter be taken by the department in anticipation of confirmation of the minutes by the Council"

Dir. Estate-I

The Council vide Resolution No.09 (E-03) dated 27.9.2012 further resolved as under:

"The 'Council' carefully considered all the facts placed before it in the Agenda Item, including the Annexures, and noted that IHC not only has a clean record in its dealing with the Council, but has also made regular payments of license fee to it till date and that there are no disputes between the Council and the Licensee (IHC Ltd.).

After discussing at length the pros and cons of the two options proposed in the Item the Council Resolved by majority, to opt for public auction, in a fair and transparent manner, of the N.D.M.C. property at 1, Man Singh Road, with first right of refusal to Indian Hotel Company. The recourse to public auction would serve to determine the market price of the license fee, that IHC would have to match if they wish to run a hotel at this property. This option, the Council noted would also safeguard its revenue interests.

The Council further resolved by majority to extend the period of license of IHC, on existing terms and conditions, for a further period of one year or till such time a new licensee is chosen through the bidding process, whichever is earlier.

That further action may be taken by the department in anticipation of confirmation of the Minutes by the Council."

(B) Thereafter, in the meeting dated 10.4.2013 Request for Proposal in short called 'RFP' was placed before the 'Council'. However, the 'Council' vide Reso. No.07 (L-05) dt. 10.4.2013 has decided to await for copy of the orders in the pending court cases and thereafter the matter would be discussed in the Spl. Meeting of the 'Council'.

Thereafter the 'MHA' vide letter dated 10.5.2013 communicated that "the first right to refusal in the said public auction has not been provided for in the lease deed. A provision of first right to refusal will result in lower bids in the public auction. Therefore, MHA is of the considered opinion that the first right of refusal should not be allowed to IHCL in the proposed auction and fresh lease should be granted by open public auction".

The matter was again placed before the 'Council' vide Reso. No.07(L-03) dated 27.6.2013 and it was resolved by majority to forward the matter seeking advice of Solicitor General of India through the Ministry of Home Affairs.

The 'MHA' vide letter dt. 6.8.2013 directed 'NDMC' to show cause as to why a direction be not issued to 'NDMC' to resort to public auction and find the best bidder before the end of October, 2013. This office memorandum has been issued by virtue of the power vested in the Central Government in terms of Section 395 of the NDMC Act, 1994.

As the 'Council' meeting was fixed for 4th September 2013 since the existing arrangement with M/s Indian Hotel Company Ltd. was up to 10th October 2013, as such it was considered necessary to have the matter expedited in the Ministry of Home Affairs by making a reference to Department of Legal Affairs, so that, opinion of Solicitor General could have been obtained by Ministry of Law & Justice at an early date. Accordingly, DO letters dated 29th August 2013 and 3rd September 2013 were sent by the Chairman, 'NDMC' to Jt. Secretary, 'MHA' to have the matter expedited.

A letter no. 14011/12/2013-Delhi-II dated 3rd September, 2013 was received from the Ministry of Home Affairs conveying that the Ministry has no objection in referring the matter to the Solicitor General of India by 'NDMC' themselves for legal opinion. However, 'MHA' consequently agreed to send the matter for the opinion of Ministry of Law, Deptt. of Legal Affairs and has sought brief note vide letter dt. 1.10.2013 for considered opinion of Solicitor General of India as referred to them by Deptt. of Legal Affairs. Since then the report of the Solicitor General of India was awaited in the matter.

The matter was placed before the Council in its meeting held on 7.10.2013 in which it was resolved as under vide Reso. No.18(L-03):-

"The existing arrangement as per Council's Resolution dated 27th September, 2012, is available upto 10.10.2013. Since the instructions of the Ministry of Home Affairs consequent upon the opinion of the Solicitor General of India, as required by this Council Meeting on 27.6.2013 had not been received, the Council resolved that the existing arrangement for payment of licence fee should continue till 31.3.2014 or till the Council takes a decision on receipt of such opinion, whichever is earlier."

The term of licence was again extended upto the period 31.7.2014 and 31.01.2015 vide Reso. No.04 (L-09) dated 21.3.2014 and Reso. No.15 (L-04) dated 24.07.2014 respectively.

- (C) Meanwhile, Ministry of Home Affairs, Govt. of India, while responding to the NDMC letter dated 19.12.2014 has directed by virtue of power vested in Central Govt. in terms of section 396 of the NDMC Act, 1994 to resort to public auction and find best bidder in respect of the property situated at 1, Mansingh Road, New Delhi.
- (D) A civil suit titled as the Indian Hotels Co. Ltd. vs. NDMC (CS(OS)/651/2013) is also pending before the Hon'ble Delhi High Court for adjudication.

4. Detailed proposal on the Subject:

The period of extended term of licence of Hotel Taj Mansingh, as submitted above, is going to expire on 31.1.2015 and directions have been received from the MHA only on 1st January 2015, to resort to public auction and find best bidder for the property located at 1, Mansingh Road, New Delhi, it may be pertinent to mention that the multiple stages and factors are involved, inter-departmental interaction/s, consultation/s and deliberation/s are expected; considerable time may be taken in finalization of 'RFP', technical as well as financial bids, in these circumstances, it may not be feasible to hold and finalise the public auction within the month of January, 2015 particularly in view of the size and stature of the premises wherever, Model Code of Conduct has already been imposed on 12th January 2015..

More so, exercise of auction process would involve global players and impeccable arrangements through reputed auctioneers as there is no in house expertise in 'NDMC' for the auction of such scale of properties in recent past.

M/s. Ernst & Young were earlier appointed as Transaction Advisor for operation and maintenance of Hotel Taj Mansingh. In order to comply with the direction of MHA, M/s. Ernst Young were contracted again to ascertain as to whether they could be again engaged for advising in the matter for auction of Taj Mansingh. However, M/s. Ernst & Young vide their letter dated 12.01.2015 have shown their inability to proceed with the auction process as their subject agreement is already over and they are not in a position to restart the engagement.

Hence it has become necessary to place the matter before the 'Council' and take instructions on the following issues;

- a) To float the advertisements for holding the 'Open Public Auction' at the earliest possible (taking the clearance from the Election Commission of India, if need be) towards the end of May 2015, which is a reasonable and realistic time frame
- b) The term of licence of M/s. IHCL is proposed to be further extended up to the period ending 30.06.2015 to continue with the existing arrangement for payment of licence fee or till the finalization of the bidding process whichever is earlier.

5. Financial implication of the proposed Subject:

They are regularly paying as per Council Resolution No.08 (L-01) dated 25.7.2012.

6. Implementation schedule with timeliness for each stage including internal processing:

The advertisements in the widely circulated daily newspapers about the public auction shall be made immediately after taking instructions from the Council in anticipation of the confirmation of the meeting. The auction is proposed to be held by the end of May 2015, followed by final decision by the mid of June 2015.

7. Comments of the Finance Department on the subject with diary number and date:

Finance Deptt. has given its comments vide Diary No.126/Finance dated 23/01/2015 that they have no objection to the Draft Agenda prepared by the

Department for placing the case before Council for consideration of the two proposals.

8. Comments of the Department on comments of Finance Department:

Necessary action as concurred in by the Finance Deptt. in the proposed Draft Agenda is being followed by the Estate Deptt.

9. Legal implication of the subject:

Legal opinion is received from the Law Deptt. and mentioned below in Para 11.

10. Details of previous Council Resolutions on the subject:

Resolution No.15(L-04) dated 24.07.2014.

11. Comments of the Law Deptt on the Subject:

The gist of the comments of the Law Deptt is as under;

"The finalization of said open public auction of high magnitude and scale are to be made in transparency and fairness and not to be made in hurry and haste. The NDMC is expected to adhere legal norms and observe required formalities permissible under Law in the larger interest of revenue and public, NDMC may now start the process for putting the property at 1-Mansingh Road, New Delhi by way of open public auction, however, in the interregnum, the term of licence of M/s. IHCL may be extended for a period of six months and to allow the present license to continue with existing licensee regarding payment of licence fee till the finalization of bidding process, whichever, is earlier."

12. Comments of the Department on the comments of the Law Deptt:

Necessary action on the advice of MHA and law Deptt has been initiated accordingly.

13. Certification by the Department that all Central Vigilance Commission (CVC) guidelines have been followed while processing the case.

N.A.

14. Recommendations:

The following proposals are placed before the Council for further directions in the matter duly concurred in by the Finance and Law Deptt.;

- a) To float the advertisements for holding the 'Open Public Auction' at the earliest possible (taking the clearance from the Election Commission of India, if need be) towards the end of May 2015, which is a reasonable and realistic time frame
- b) The term of licence of M/s. IHCL is proposed to be further extended up to the period ending 30.06.2015 to continue with the existing arrangement for payment of licence fee or till the finalization of the bidding process whichever is earlier.

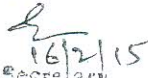
COUNCIL'S DECISION

The matter was deliberated upon in detail. The Council took into consideration the directions of the Ministry of Home Affairs, Govt. of India conveyed vide letter dated 19.12.2014, by virtue of powers vested in Central Government in terms of Section 396 of the NDMC Act, 1994, to resort to Public Auction and find best bidder in respect of the property situated at No.1, Man Singh Road, New Delhi.

2. As brought out in the agenda, the Council was also informed that multiple stages and factors which are involved in the process of Public Auction. The Model Code of Conduct is also in force.

3. The Council also took note of the fact that M/s Ernst & Young, who were appointed as Transaction Advisors for price discovery of the Hotel, vide their letter dated 12.01.2015, have shown their inability to proceed with their consultancy. Selection of another Consultant through open tendering process as before, would take time.

4. It was, therefore, resolved by the Council to ad-interim at this stage, extend the term of licence of M/s IHC Ltd. upto the period ending 31st March 2015, and to place the matter before the Council immediately after the Code of Conduct is lifted.


 16/2/15
 For Secretary
 New Delhi Municipal Council
 Palika Kendra, New Delhi