

ITEM NO. 01 (L-03)**1. Name of the subject.**

Disposal of Hotel Building at 1, Man Singh Road – Show Cause Notice dated 23rd July 2013 issued by the Central Government to NDMC under Section 395 of the NDMC Act, 1994.

2. Name of the Department : Estate – I Department.

The New Delhi Municipal Committee, as it was then, had constructed a hotel building at 1, Man Singh Road, after accepting the allotment of the plot of land from Ministry of Works and Housing. This hotel building was constructed under a collaboration agreement with Indian Hotels Company Ltd.(IHCL). Through a separate licence agreement, the NDMC agreed to give on licence the hotel building constructed by the NDMC to IHCL for a period of 33 years on the terms and conditions enumerated therein. The said 33 years period was over on 10th October 2011.

Chapter X of the NDMC Act, 1994 relates to Property and Contracts and Section 141 deals with disposal of immovable property. The Chairperson, NDMC had to decide disposal of this hotel building as per provisions of Section 141 of the NDMC Act, 1994. Sub-section (1) of Section 141 provides that the Chairperson may, with the sanction of the Council, lease, sell, let out on hire or otherwise transfer any immovable property belonging to the Council. As such, for both transfer of property or giving licence to this hotel building, the Chairperson sought sanction of the Council. Sub-section 3 of Section 141 provides that the sanction of the Council under this section may be given either generally for any class of cases or specifically for any particular case. Thus under section 141(1), the Council have to give sanction specially for this

hotel building. As per sub-section 2 of Section 141, the consideration for which any immovable property may be sold, leased or otherwise transferred shall not be less than the value at which such immovable property could be sold, leased or otherwise transferred in normal and fair competition.

Since the Council could not take a decision in the matter, the licence was extended by a year up to 10th October 2012 and the Council resolved as under:

- “(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.
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As decided by the Council, the Consultant was appointed and legal opinion from the Additional Solicitor General was obtained. In this regard, it may be pointed out that in the Council meeting held on 30.8.2000, the Council had taken a decision in respect of hotel buildings as under:

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3. *It has been observed that renewal in case of premises of hotels and the cinema complex is on mutually agreed term. The existing Estate Policy provides for determining terms and conditions as also licence fee on mutually agreed terms as approved by N.D.M.C. vide its resolution No. 6 dated 18.3.99. Clause 9 for special categories reads as under :-*

“Hotels / Cinemas and similar other projects may be governed as mutually agreed terms and conditions as entered into by the Council from time to time.”

- (i) *The above decision appears contradictory to section 141(2) of N.D.M.C. Act, which relates to the disposal of immovable property and puts an embargo on transfer of premises on non-competitive terms. The Section reads as under :-*

“141(2) – The consideration for which any immovable property may be sold, leased or otherwise transferred shall not be less than the value at which such immovable property could be sold, leased or otherwise transferred in normal and fair competition.”

- (ii) *Thus, it is obvious from the above Section that its use should be allowed on payment of license fees determined on competitive basis. In case Council goes by the existing policy as stated above, the existing licensee can always involve the Council in unending disputes as it has happened in case of Chanakya Cinema in which the licensee started litigation against N.D.M.C. soon after obtaining the licence. Same is the fate of premises licensed for hotel businesses where the licensees stress on irrational terms and drag the Council in various courts.*

6. In view of the above position, following proposal is laid before the Council for consideration and approval :-

(i) On the expiry of present term of licenses of hotels/cinemas and other similar commercial complexes, the licenses shall not be renewed. The fresh licence shall be as per provisions of Section-141(2) of the N.D.M.C. Act, 1994.“

After receipt of report from the Consultant and opinion from Additional Solicitor General, an agenda item was placed before the Council in its meeting held on 27.9.2012 wherein the Council 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 License (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.”

On the decision of the Council to put the hotel building for public auction to have best licence fee with first right of refusal to the IHCL, a RFP was placed before the Council for approval. The Council has not so far approved the RFP and on the report submitted by the department in its meeting of 27.6.2013 resolved that in view of the difference of view between the members representing the Ministry of Urban Development and Ministry of Home Affairs, the opinion of Solicitor General of India may be obtained. Council's resolution is reproduced here under:

“Council considered the report put up by the Estate-I Department with reference to Item No.7(L-05) placed in the Council Meeting held on 10.4.2013, regarding decision on RFP document for operation and maintenance of 5 star property at 1, Man Singh Road, New Delhi.

Secretary initially explained that some of our members have raised issue of recording of minutes. He further explained that as per practice being followed only decision arrived at in the meeting are recorded in the minutes. However, considering the importance and sensitivity of the case and varied views of Members of the Council, it was proposed to record the minutes of the item in detail, as one time exception.

With the permission of the Chair, Secretary briefed the Council about the developments that have taken place in the matter subsequent to the last meeting of the Council dated 10.4.2013, brief of which is enclosed as Annexure “I”.

While deliberating on the issue the Presiding Officer mentioned that though there was a clause under which continuation of the licence was possible, the issue could not be resolved resulting in the matter reaching present stage. It was further indicated that member from MOUD are inclined to obtain an opinion from the Solicitor General of India in the matter.

At this stage, the Council was informed that the Solicitor General and Additional Solicitor General enjoy the same level as per rules on the subject and, therefore, it would be better if we have an opinion from Attorney General, if at all required. Advisor(R&L) also expressed the same opinion that the Solicitor General and Additional Solicitor General enjoy the same level.

ShriSantosh D. Vaidya, Member was of the opinion that the decision of the bidding taken in the Council meeting dated 12.9.2012 should be implemented.

ShriDiptivilasa, Member contended that the differing views of the MHA &MoUD would be resolved only by a reference to a higher authority such as the Solicitor General of India.

In the background of the detailed briefing and deliberations on the subject, it was resolved by majority to forward the matter seeking advice of Solicitor General of India through the Ministry of Home Affairs.”

The MHA has advised the NDMC in the letter dated 10.5.2013 and 27.6.2013 as under:

Letter dated 10.5.2013

“Sub: Public auction of hotel situated at 1, Man Singh Road, New Delhi.

I am directed to say that the proposed public auction of Hotel at 1, Man Singh Road, New Delhi resolved by NDMC in its meeting dated 27-09-2012, has been considered by the competent authority in Ministry of Home Affairs.

2. It is observed that the said proposal to allow IHCL to have “the first right to refusal” in the said public auction has now been provided for in the lease deed. A provision of “First right of refusal” will result in lower bids in the public auction. Therefore, Ministry of Home Affairs 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.

3. This has the approval of Union Home Secretary.”

Letter dated 27.6.2013

“Sub: Public auction of hotel situated at 1, Man Singh Road, New Delhi.

I am directed to refer to NDMC’s letter no. D-43/Dir(GA/CS)/2013 dated the 18th June, 2013 on the subject cited above and to say that the first right of refusal will not fetch the correct market price. Either the competitors would bid excessively or may perhaps show no interest at all. Therefore, in the interest of transparency, it is better that NDMC may go for public auction wherein the IHC may participate as a bidder. It is also felt that courts will not

take objection to public auction, as it is a more transparent method and if NDMC, so feels, can file a revised reply quoting the directions of this Ministry.”

The MHA was accordingly informed that Council has decided to have the opinion of the Solicitor General of India through MHA and on receipt of the said letter dated 9.7.2013, the MHA has called upon the NDMC to show cause by 6.8.2013, 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. The said memorandum is reproduced as under:

“Whereas, the NDMC signed an agreement with the Indian Hotel Company(IHCL) in 1976 under which the license commenced from 11.10.1978 and expired in October 2011. The said license was extended twice by NDMC i.e. upto October,2013.

2. And whereas, this Ministry, with the approval of the Competent Authority, vide letter of even number dated 10.5.2013, advised NDMC to go in for Open Public Auction without first right of refusal to IHCL and vide letter of even number dated 27.6.2013, reiterated the same advice.

3. And whereas, in spite of this Ministry’s clear-cut advice, NDMC has referred this matter back to this Ministry vide its letter No. D-1156/SO/Estate dated 9.7.2013, suggesting to seek opinion of the Solicitor General of India through MHA.

4. Now, therefore, by virtue of the power vested in the Central Government in terms of Section 395 of the NDMC Act, 1994, NDMC is hereby called upon to show-cause by 06.8.2013 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.”

It may also be brought to the notice of the Council that Sh. Diptivilasa, Member(NDMC), Additional Secretary, Ministry of Urban Development, Govt. of India vide para 7 of his letter dated 27.5.2013 addressed to the Chairperson, NDMC has intimated as under:

“The above facts are also being brought to the notice of the L&DO which has allotted this plot of land to NDMC for the purpose of construction of hotel; and therefore, may be constrained to review the existing arrangements, which in the normal course would have led to finalization of lease agreement. I would request that L&DO may be consulted in regard to such consequential developments and possible amendments to such arrangements.”

In view of the letter from the Ministry of Urban Development referred to above and show cause notice issued by the Ministry of Home Affairs, the Council may give further guidelines to pursue further in the matter.

COUNCIL’S DECISION