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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ W.P.(C) 1695/2024 & CM APPLs. 6990/2024, 30824/2024

MISHRY HOLDING LIMITED .....Petitioner
Through: Mr. Arav Kapoor & Ms. Radhika Gupta, Advocates.

versus

MUNICIPAL CORPORATION OF DELHI & ANR. .....Respondents
Through: Mr. Tushar Sannu, SC for MCD. Ms. Mehak Nakra, ASC for GNCTD with Ms. Bhavya Nakra, Mr. Aditya Goyal & Mr. Gunjan Suyal, Advocates for GNCTD.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

O R D E R
% 03.12.2024

1. By way of this writ petition under Article 226 of the Constitution, the petitioner assails an assessment notice dated 07.08.2023 and consequential notices, including a *suo moto* assessment notice dated 16.08.2023, demand notice dated 29.08.2023, show cause notice dated 12.09.2023 and distress warrant dated 27.09.2023 issued by the Municipal Corporation of Delhi ["MCD"].

2. By an order dated 06.02.2024, while issuing notice, it was directed as follows:

> *"8. In the meantime, in view of the aforesaid circumstances as*

pointed out by the learned counsel for the petitioner, it is directed that subject to deposit of 50% of the assessed amount (i.e. 50% of 71,24,128/-) by the petitioner in the registry of this court within a period of 2 weeks from today, the respondent shall be restrained from taking any further action against the petitioner in furtherance of Assessment Notice No. TAX/MCD/SOUTH/2023/031980 dated 07.08.2023, Suo-Moto Assessment Notice No. TAX/SZ/2023-24/340 dated 16.08.2023, demand notice dated 29.08.2023 and Show Cause Notice No. MCD/A&C/SZIRKP/2022-23 dated 12.09.2023

9. Learned counsel for the respondent no.1 submits that the respondent shall withdraw the warrants of distress no. A&C/RKP/SZ/MCD/2023- 24/875 dated 27.09.2023 in light of the undertaking of learned counsel for the petitioner to deposit the aforesaid amount in this Court within a period of 2 weeks from today. It is directed accordingly.

10. List on 22.05.2024.

11. In the meantime, respondent shall also decide the representation of the petitioner dated 11.10.2023, and pass a speaking order after affording an opportunity of hearing to the petitioner. Let the same be done within a period of 6 weeks from today. In case, any documents are required by the respondent from the petitioner for the purpose of deciding the said representation, the petitioner shall provide the same to the respondent. The petitioner shall also be at liberty to make supplementary submissions before the concerned Officer of the respondent no.1."

3. Pursuant to these directions, the petitioner has deposited a sum of ₹35,62,064/- into Court.

4. In the meanwhile, a fresh assessment order has been issued on 16.04.2024, whereby MCD's demand has now been crystallised as ₹10,94,119/-.

5. Mr. Arav Kapoor, learned counsel for the petitioner, submits that the petitioner's challenge remains live, *inter alia* because this assessment order is also predicated upon the original notice dated 07.08.2023, which according to the petitioner was beyond limitation.

6. While reserving the challenge on these grounds for further adjudication in this writ petition, learned counsel seeks release of the

amount deposited in this Court, to the extent that it is in excess of the amount now assessed, as due against the petitioner.

7. On this aspect, Mr. Tushar Sannu, learned Standing Counsel for MCD, does not dispute that the assessment order has been revised, and the dues have been computed at ₹10,94,119/-.

8. In view of the above, the Registry is directed to release the amount of ₹24,67,945/-, being the excess amount deposited by the petitioner, to the petitioner, alongwith *pro rata* interest accrued thereupon.

9. As far as the balance amount ₹10,94,119/- is concerned, Mr. Sannu seeks directions that the same be released to MCD, subject to the result of the writ petition. MCD is directed to file an affidavit of undertaking signed by Assessor and Collector, MCD to the effect that, if the writ petitioner succeeds in the writ petition, the amount will be restituted, alongwith such interest as the Court may direct, within the period of two weeks thereafter. It will be specifically acknowledged in the undertaking that the deponent will be liable for contempt of Court, if the undertaking is not obeyed.

10. List on 28.03.2025.

PRATEEK JALAN, J

DECEMBER 3, 2024
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