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MINUTES OF THE ADJOURNED 156TH MEETING OF THE
EXECUTIVE COMMITTEE, B.M.R.D.A.

DATE : 18th June, 1994 (Saturday)

TIME : 12.00 Noon

PLACE : Chief Secretary's Committee Room,
5th Floor, Mantralaya.

MEMBERS PRESENT :

- Shri N. Raghunathan,
Chief Secretary to Government. - Chairman
- Shri Shirish B. Patel. - Member
- Shri D.T. Joseph,
Secretary (TPWSS) to Government,
Urban Development Department. - Member
- Shri Ajit Warty,
Secretary to Government,
Housing & Special Assistance
Department. - Member
- Shri B.B. Sharma,
Managing Director,
C.I.D.C.O. - Member
- Shri D. Mehta,
Metropolitan Commissioner. - Member

INVITEES :

- Shri Venkat Chary,
Principal Secretary (ULB) to Government,
Urban Development Department.
- Shri E.S. Baroi,
Addl. Municipal Commissioner,
Municipal Corporation of Greater Bombay.
- Shri K.N. Patel,
Legal Adviser, BMRDA.

Shri S.V. Asgaonkar, Secretary, Executive Committee, BMRDA.

At the outset, the Chairman informed the Committee that Shri Charles Correa has by his letter dated 6th June, 1994 tendered resignation of the Membership of the Executive Committee. The Chairman recalled that Shri Correa was a member of the Executive Committee since the inception of the BMRDA in 1975. The Chairman also referred to various valued contributions made by Shri Correa for development of the Bombay Metropolitan Region including New Bombay. Making reference to the National Commission on Urbanisation which was chaired by Shri Correa, the Chairman stated that it immensely contributed to the formulation of National Urban Development Policies some of which were implemented through Nehru Rojgar Yojana, 74th Amendment of the ^{Constitution} ~~Constitution~~ for further

strengthening the democratic decentralisation and Mega-city Programme. The Chairman then congratulated Shri Correa for the unique honour of receiving the 1994 Praemium Imperiale Award for architecture and wished him similar success in future endeavours.

Other members also associated themselves with the views expressed by the Chairman. The Committee then placed on record the valuable services rendered by Shri Correa as a Member of the Committee and requested the Chairman to convey the same to Shri Correa.

Confirmation of the minutes of the last (156th) Meeting of the Committee held on the 30th May, 1994.

The minutes were confirmed.

Action taken on the minutes of the last (156th) Meeting of the Committee held on the 30th May, 1994.

Two plots reserved for parking/commercial use in International Finance & Business Centre (IFBC) in Bandra-Kurla Complex -

The Committee considered the note and draft advertisement regarding development of two plots reserved as car park/commercial vide Annexures I & I-A circulated to the Committee. The Committee decided that in the draft advertisement it should be clearly stated that the car park to be provided should be of international standard with adequate space for entry and exit and proper arrangements for fire safety, ventilation, water proofing etc. The car park should also have toilet facilities. It was also decided that the allottee should be asked to provide parking spaces for 570 cars free of cost, to BMRDA. Subject to the above, the Committee approved the draft advertisement and desired that tenders should be invited in two separate sealed envelopes appropriately subscribed as Envelope-I (Technical-showing conceptual design and drawings for car park) and Envelope-II (Financial Proposal).

Plots reserved for Convention Centre/Hotel in IFBC :-

The Committee then considered the note and alternative draft advertisements in respect of development of Convention

Centre and Hotel plots in 'G' Block of Bandra-Kurla Complex which were circulated as Annexures II, II-A, II-B & II-C. After some discussion the Committee deferred consideration of the Item.

Subject to above, the Committee noted the action taken report.

ITEM NO. 5 : Disposal of two Commercial Plot. Nos.C-26 and C-27 in International Finance & Business Centre in 'G' Block of the Bandra-Kurla Complex, by inviting sealed tenders by public advertisement.

5.1. Resuming the discussion remaining inconclusive on the subject at the last meeting held on 30th May, 1994, the Metropolitan Commissioner recalled to the attention of the members of Executive Committee that the Authority had received seventeen tenders in respect of the plot of land No.C-26 and eleven tenders in respect of the plot of land No.C-27 as listed in the Statements 'A' & 'B' to the Item Note considered by the Committee at the last meeting. He added that the tenders, one submitted by Ebhishan Finance and Trading Private Limited, and registering the offered premium at Rs.80,70,89,821/- for the plot of land No.C-26 and the other submitted by Tacit Finance and Investment Private Ltd., and registering the offered premium at Rs.85,20,97,864/- for the plot of land No.C-27 were found to be ranking the highest.

5.2. He stated that he had called for certain documents from each of these two highest tenderers and his findings of the enquiry based on such documents are recorded in paragraph 10 of the Agenda Note as follows :

"(a) M/s. Ebhishan Finance & Trading Pvt. Ltd. which was incorporated under the Companies Act, 1956, as limited company, on 12.03.1992, have shown a loss for the year 1992-93 of Rs.55,325/- in their profit and loss account for the period ending 31.3.1993. In the Balance-Sheet they have shown their authorised share capital of Rs.50,000/- and issued subscribed capital of 200 rupees (20 equity shares of Rs.10/- each). They have informed that they are carrying out the activities such as finance trading, hire purchase and leasing and that the built-up area of 11,520.05 Sq. Mtrs. in respect of Plot No.C-26 will be allotted to the members of the proposed co-operative society who fall under the eligible categories as stipulated in the tender booklet.

(b) M/s. Tacit Finance & Investment Pvt. Ltd. which was incorporated limited company in July 1989, have shown a loss of Rs. 5,156/- for the year ending 31.03.1993. They have consistently shown loss for the year 1990-91 (Rs. 30,251/-), 1991-92 (Rs. 23,789/-) and 1992-93 (Rs. 59,196/-). In the balance sheet they have shown authorised share capital of Rs. 20 Lakhs and subscribed capital of Rs. 6,71,000/-. They have informed that the company is engaged in the business of finance and investment. They have further informed in their letter referred to above that the built-up area of 11,438.63 Sq.Mtrs. in respect of Plot No.G-27 shall be allotted to the share-holders of the Company who fall under the eligible category as stipulated in the tender booklet."

5.3 The Metropolitan Commissioner added that he had examined, in consultation with the Advocate General of the State of Maharashtra and Shri Suresh Shroff, the partner of the leading firm of Solicitors, Amerchand & Mangaldas & Hiralal Shroff & Co., the eligibility of the said tenderer companies and the validity of their respective tenders. He stated that both the Advocate General and Shri Suresh Shroff found the tenders of the said companies to be ineligible and invalid on the application of the condition of eligibility prescribed and represented by the Authority in the course of inviting tenders. He invited the attention of the Meeting to the condition of eligibility prescribed in the preface as also condition 11 of the Booklet published by the Authority, particularly to condition (ii) stipulating expressly that the tenderer should be Non-Banking Financial Company within the meaning of Non-Banking Financial Companies (Reserve Bank) Directions, 1977, and should be engaged in the business of leasing, hire purchase or any other form of lending activity.

5.4 The Metropolitan Commissioner concluded that each of the said Companies is neither a Non-Banking Financial Company as defined in the Directions of the Reserve Bank of India nor has it been engaged or carrying on the business of leasing, hire-purchase or other form of lending activity to qualify to be a Non-Banking Financial Company.

5.5 The Chairman of the Committee requested Shri K.N. Patel, Legal Adviser, present at the Meeting as the Special Invitee to express his opinion. Shri Patel made the following

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statement :-

- "A. The Authority is a body corporate constituted and established by an act of the State Legislature called the Bombay Metropolitan Region Development Authority Act, 1974, and is essentially a statutory body. By virtue of sub-section (2) of Section 3 of the said Act, the Authority is invested with the power and authority to acquire, hold and dispose of both moveable and immoveable property. To canalise such power, the Authority has, in exercise of its power under Section 50 of the said Act, framed a self-regulating code called the Bombay Metropolitan Region Development Authority (Disposal of Lands) Regulations, 1977. It is in pursuance to clause (ii) of Regulation 4 of the said Regulations that the Authority invited competitive tenders by public advertisement.
- B. The Authority is accordingly the instrumentality of the State within the meaning of Article 12 of the Constitution and owes a constitutional duty to ensure that its acts are consistent with the fundamental rights conferred by Chapter III of the Constitution, particularly the mandate of Article 14 to eschew the vice of arbitrariness.
- C. In *Ramana Shetty V International Airport Authority* AIR 1979 SC 1935, the Supreme Court evolved and enunciated the judicial dictum for obedience by the State and its instrumentality as the Authority, electing to prescribe the qualifications or conditions of eligibility in the course of inviting tenders or distributing its largess. The Supreme Court held as follows :
- "It is a well settled rule of administrative law that an executive authority must be rigorously held to the standards by which it professes its actions to be judged and it must scrupulously observe those standards on pain of invalidation of an act in violation of them. This rule was enunciated by Mr. Justice Frankfurter in *Vitarelli V. Seation* (1959) 359:3 L Ed. 2d 1012."
- D. This dictum was reaffirmed by the Supreme Court in *M/s. G.J. Fernandez V. State of Karnataka* AIR 1990 SC 958 para.12. The Authority is dutybound to ensure scrupulously compliance of each tender with the condition of eligibility prescribed by the Authority. It is in obedience to this judicial dictum that the Authority owes a duty to appraise and assess the eligibility of each of the said Companies on the basis of the information resting in its custody. The assessment is required to be close and not casual. It is the substance and not the form which should enter into appraisal.

E. The Authority prescribed inter alia a condition of eligibility as follows :-

"(ii) A Non-Banking Financial Company within the meaning of Non-Banking Financial Companies (Reserve Bank) Directions, 1977, and engaged in the business of leasing, hire-purchase or any other form of lending activity."

Structurally analysed, the condition projects twin stipulations for conjunctive and collective compliance. The tenderer should not only qualify to be a Non-Banking Financial Company as defined in the statutory Directions of the Reserve Bank of India but should also have been engaged in or should have been carrying on as its business the leasing or hire-purchase or any other form of lending activity.

F. A Non-Banking Financial Company is defined exhaustively in clause (1) of Directions 2 of the said Directions as meaning any hire-purchase finance, housing finance, investment or loan or mutual benefit financial company and an equipment leasing company.

G. A Non-Banking Financial Company has several species or classes and each is defined in Direction 2. A glance at these definitions discloses a pattern and a common denominator that to qualify to be one of the classes of the non-banking financial company, the company should be essentially a financial institution carrying on as its principal business the business specified in each definition. While the expression "financial institution" remains undefined in the Directions, its definition provided in clause (c) of Section 45-I of the Reserve Bank of India Act, 1934, is required to be called to aid on the thrust of clause (o) of Direction 2 which enjoins that an expression used but not defined in Directions and defined in the Reserve Bank of India Act, 1934 should have the same meaning as assigned in the said Act. The perusal of the definition of the expression "financial institution" establishes its sine qua non as a non-banking institution carrying on as its business, any of the enumerated activities. Succinctly stated, the overt and demonstrable engagement in one of such activities is an indispensable attribute.

H. The antecedents of each of the said Companies as disclosed by the Metropolitan Commissioner do not vindicate its claim to fulfil the condition of eligibility prescribed by the Authority. Incidentally, each Company has declared its intention to erect a building on the land and to sell its parts to its shareholders at market price for occupation

of its offices. To put it pointedly, each Company intends to be a builder or promoter under the Maharashtra Ownership Flats (Regulation of the Promotion of Construction, Sale, Management and Transfer) Act, 1963. There is nothing to show or suggest that the said Company intends to finance the sale of the immovable property. If so, the Company will per se disqualify itself to be a financial institution on the thrust of the negative or exclusionary part of its definition. An institution which carries on as its principal business the purchase, construction or sale of immovable property so however that no portion of the income of the institution is derived from financing such construction or sale ceases to be a financial institution. What is decisive is not the main object of the Company, but the acts executed in pursuance of such object.

- I. In conclusion, I hasten to add that it is the Authority who is competent to determine the eligibility of each of the said Companies and the validity of its tender, notwithstanding direction contained in clause (2) of Direction 2 that a question turning on whether a Company is a financial institution or not is required to be decided by the Reserve Bank of India. It is not permissible to the Authority to abdicate its discretion although the Authority is at liberty to solicit the guidance or the counsel of the Reserve Bank of India.
- J. Lastly, it falls for consideration whether the Authority owes a duty to extend to each Company a right of being heard - audi alterem partem, in defence before recording its decision as to its eligibility. In my opinion, the answer is negative as the Company has been extended opportunity to produce records in proof of its claim to be a Non-Banking Financial Company and engaged in the business of such company.
- K. It is firmly settled now by virtue of the authority of the Supreme Court in Food Corporation of India V. Kama Dhenu AIR 1993 SC 1604 that a public authority overlooking or discountenancing the highest tender is duty-bound to communicate its decision with reasons to the tenderer. The Authority will have to abide by the judicial dictum."

5.6 In view of the foregoing, the Committee recommended to the Authority to exclude from its consideration the Tender Form No.100 submitted by M/s. Bibhishan Finance & Trading Private Ltd. and Tender Form No.155 submitted by M/s. Tacit Finance & Investment Private Ltd. The Committee

