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* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ RFA 786/2016 & RFA 192/2016

NORTH DELHI MUNICIPAL CORPORATION ..... Appellant
EAST DELHI MUNICIPAL CORPORATION ..... Appellant

Through : Mr. Sunil Goel, Standing counsel for NorthDMC with Mr. Biswajeet Roy, Deputy Controller of Accounts (HQ) in RFA 786/2016
Ms. Anushruti, proxy counsel for Ms. Mini Pushkarna, Standing Counsel for EDMC with Ms. Vasundara Nayyar, Ms. Namrata, with Mr. P.D. Hariprasad, Deputy Controller of Accounts (HQ) in RFA 192/2016

versus

JYOTI BALA ..... Respondent
MAHENDER SINGH ..... Respondent

Through : Mr. Vishesh Wadhwa with Ms. Bandana Grover, Advocate in RFA 786/2016
Mr. Sunil Kumar Jha, Advocate in RFA 192/2016

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI

<u>O R D E R</u>

% **01.12.2016**

1. RFA No.192/2016 is treated as a lead matter in all connected appeals filed by the appellant/EDMC. Similarly, RFA No.786/2016 has been treated as a lead matter in all connected appeals filed by the appellant/NrDMC.

2. On 17.11.2016, with the consent of the parties, the following order was passed :

> *"6. After interacting with the counsels for the parties, a consensus has been arrived at and the following consent order is passed:-*
>
> *(i) The appellants shall file fresh compilations, complete in all respects in respect of the respondents and the other contractors, irrespective of whether they have filed any appeals/suits of recovery or not, so that there is a clarity about their priority in the wait list.*
>
> *(ii) The appellants undertake to strictly adhere to the timeline mentioned in the compilation , for releasing payments to the respondents.*
>
> *(iii) No payment shall be released out of turn by the appellants.*
>
> *(iv) The appellants shall ensure that the budget for release of amounts under the head of Non-Plan Expenditure is increased on a regular basis so that the release of payments can be expedited to the respondents and other contractors in the wait list, even prior to the dates of priority mentioned against their names.*
>
> *(v) The appellants shall upload the compilation on their websites for ease of access and update it regularly at the end of each month for the respondents and others to know what their status is in the wait list.*
>
> *(vi) Having regard to the fact that the appellants expect the respondents to stay their hands and not pursue their legal remedies for execution of the impugned judgments and decrees for a period mentioned hereinafter, it is agreed that interest shall be payable to the respondents*

on the principal amount after the expiry of three years and ninety days reckoned from the date the concerned Division had passed the bills of the respondents for payment. In other words, a cushion of 90 days is being provided to the Head Quarters of both the appellants for completing the administrative work of receiving and diarising the bills received from different Divisions and preparing a combined list for payment and it is agreed that for the said period, no interest shall be payable to the respondents.

(vii) It is further agreed that the appellants will not be liable to pay interest on the principal amounts payable to the respondents under the impugned judgments and decrees, for a period of three years reckoned from the date of expiry of 90 days mentioned above.

(viii) However, immediately on expiry of three years as noted above, if the amounts remain outstanding for any reason whatsoever, the appellants shall pay interest @ 9% per annum on the principal amount to the respondents, for the remaining period, till realization.

(ix) It is further agreed that the aforesaid arrangement of payment of interest by the appellants @ 9% per annum on the outstanding principal amount to the respondents shall continue only for a period of two years, reckoned from the end of the third year as mentioned in clause (vii) hereinabove.

(x) If the amounts remain payable by the appellants even thereafter, the respondents shall be entitled to seek legal recourse for execution of the impugned judgments and decrees and claim interest on the decretal amount from day one.

(xi) The respondents undertake that in view of the settlement arrived at with the appellants, as recorded

above, they shall not take any steps to file execution petitions in respect of the impugned judgments and decrees, subject matter of the present appeals, for the period mentioned hereinabove.

(xii) As for the already pending execution petitions, orders passed in these proceedings shall be placed on record so that they can be disposed of by the concerned courts on the basis of the consent order, with liberty granted to the respondents to file fresh execution petitions in case of default on the part of the appellants, as has been detailed above."

3. Pursuant to the aforesaid order, learned counsel for the appellant/NrDMC hands over an affidavit undertaking inter alia to abide by the terms of settlement recorded on 17.11.2016. Enclosed with the said affidavit is Annexure-A, which contains a compilation of the names of contractors, the work order numbers, the work order date, the date of passing the bill, the date of receipt of the demand at the Headquarter, the decretal amount, waitlist number assigned to the concerned respondent and the expected month/year when the said payment shall mature for being released.

4. Annexure-B filed with the affidavit of NrDMC is a copy of the letter dated 25.11.2016 addressed by the Executive Engineer, Karol Bagh Zone to the Headquarters stating *inter alia* that the verified demand is being sent on a first come first service basis, on the basis of seniority of the bill and allocation budget, but due to non-availability of budget, the said demand has not been forwarded. On similar lines are the letters enclosed as Annexures C & D.

5. Mr.Goel, learned counsel for the appellant/NrDMC seeks to explain that the budget has to be prepared and forwarded to the Department by the concerned agency for whom the work was got executed from the contractors and it is in this context that the aforesaid letters have been addressed by the concerned Executive Engineers to the Headquarter.

6. The aforesaid submission is found to be devoid of merits. The two issues are unrelated. The availability of funds with the concerned agency is purely a matter between the NrDMC and the agency in question but the said aspect not being a part of the terms and conditions of the contract awarded to the respondents, cannot bind them in any manner. Once the bills are passed, the appellant is under an obligation to release the payments to the contractors.

7. Counsels for the respondents state that the appellant/NrDMC ought to have given a specific date in the compilation for release of payments to the respondents mentioned in paras 4, 5 and 6 of the affidavit, which has not been done.

8. Counsel for the appellant/NrDMC clarifies, on instructions, that the date for release of payment to the respondent/contractors mentioned in paras 4, 5 & 6 may be treated as March, 2018.

9. In view of the submission made above, the affidavit of the appellant/NrDMC is accepted and taken on record.

10. Coming next to the appellant/EDMC, learned counsel for the appellant/EDMC hands over an affidavit prepared by EDMC pursuant to the consent order dated 17.11.2016. Enclosed with the said affidavit is Annexure-A which is almost on similar lines as has been prepared by

the NrDMC and filed in RFA No.786/2016. Annexure-B filed with the affidavit is a comprehensive list prepared in respect of all the contractors engaged by the EDMC. The affidavit of EDMC states that till the date of preparation of the affidavit, the details with respect to the bills mentioned against Sr.No.8, 30, 31, 36, 39, 58, 75 and 77 of Annexure-A could not be traced by the department. Counsel for the appellant/EDMC seeks one week's further time to trace the said details and file an additional affidavit with the missing details, containing all the relevant information. Ordered accordingly. Needful shall be done within two weeks with copies furnished to the counsels for the concerned respondents.

11. EDMC has stated in the affidavit that payments have already been released to the contractors till serial No.125 of Annexure-B, on 29.11.2016. Some of the counsels for the respondents dispute the same and deny having received any payments. If there is any dispute about non-receipt of payments, the aggrieved respondents shall first contact counsel for the appellant/EDMC and point out the error and in case of no resolution within two weeks from the date of intimation, they shall be at liberty to approach the Court for appropriate orders.

12. Wherever costs imposed in the earlier orders have not been tendered by the appellants/EDMC and NrDMC to the respondents, the latter shall be at liberty to approach the concerned counsels for the appellants and point out the same. On receipt of such written intimation, the appellants shall pay the costs to the respondents through counsel, within one week therefrom.

13. At this stage counsels for the appellants/NrDMC and EDMC jointly submit on instructions from their respective Departments that they are willing to release the security amounts to the respondents on the dates mentioned against their names as per the seniority assigned to them in the wait list and this will resolve the entire dispute between the parties and put an end to the suits pending before the courts below.

14. The said offer is however unacceptable to the counsels for the respondents who submit that they would rather pursue the pending suits for payments of the security amount with interest etc. as the time line mentioned by the appellants for release of the payments is too long.

15. It is therefore clarified that the consent orders passed in these appeals shall only govern the payments that are the subject matter of the impugned judgments and decrees and the suits that have been instituted by the respondents against the appellants for recovery of the security amount with interest, etc., and are pending adjudication in the trial court, shall continue.

16. At this stage, Mr. Sudhir Gupta, learned counsel appearing for the respondents in RFA 701/2016, RFA No.707/2016, RFA 788/2016, RFA 789/2016, RFA 791/2016 submits, on instructions from his clients, that they are ready and willing to settle the entire dispute with the appellant/NrDMC by accepting the timeline for release of payments, including the amount due towards security deposit, as mentioned in Annexure-A. The other side is in any case agreeable to the said suggestion.

17. Accordingly, the entire dispute, subject matter of the captioned appeals including the claim of refund of security deposit with interest etc. raised in the suits instituted by the said respondents out of which the appeals have arisen, stand full and finally settled in terms of the consent order passed on 17.11.2016. It is clarified that the appellant/NrDMC shall refund the security amounts to the said respondents, subject matter of the pending suits, contemporaneous to the release of the decretal amounts, as per the seniority assigned to them in the wait list on the same terms and conditions as recorded on 17.11.2016. In view of a comprehensive settlement having been arrived at between the appellant/NrDMC and the respondents in the appeals mentioned in para 16 above, the respondents in the said cases shall file copies of the orders passed in these proceedings in their respective suits and be at liberty to approach the trial court for seeking refund of the court fees under Section 16 of the Court Fees Act.

18. All the appeals are accordingly disposed of in terms of the consent order dated 17.11.2016 and the orders passed above, while leaving the parties to bear their own costs.

19. At this stage, counsel for the appellant/NrDMC and counsel for the appellants/EDMC state that as the parties have been able to arrive at an amicable resolution of their disputes, with the intervention of the court, and a consent order has been passed, the appellants are entitled to claim refund of the court fees affixed on the appeals.

20. The Registry is directed to issue certificates in favour of the appellants in each case, for refund of 50% of the court fees, in terms of Section 16-A of the Court Fees Act.

Files be consigned to the record room.

HIMA KOHLI, J

DECEMBER 01, 2016
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