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

+ LPA 185/2018 & CM APPL.13736-13737/2018

M/S R.K GOEL ABHEY KUMAR JAIN ..... Appellant  
Through Ms.Anusuya Salwan and  
Ms.Nikita Salwan, Advocates.

Versus

SOUTH DELHI MUNICIPAL CORPORATION ..... Respondent  
Through Ms.Mini Pushkarana, Standing  
Counsel for SDMC.

**CORAM:**

**HON'BLE MR. JUSTICE S. RAVINDRA BHAT**

**HON'BLE MR. JUSTICE A. K. CHAWLA**

**ORDER**

% **10.04.2018**

The Court has considered submissions of the parties. The petitioner is aggrieved by an order of the learned Single Judge, who rejected its plea of arbitrariness, in regard to the non-payment under the contract to the respondent-Corporation. The petitioner had also cited the past circumstance when it had suffered a unilateral blacklisting order; that order was set aside in the writ proceedings and the respondents were directed to grant opportunity of hearing to the petitioner which they did. That resulted in the impugned action.

The Court expressed the opinion that the petitioner ought not to have sought recourse to proceedings under Article 226 of the Constitution of India given the circumstance that the controversy involves adjudication of the disputed questions of fact which are

best left to the civil process. In these circumstances, learned counsel sought liberty to withdraw the appeal and approach the appropriate forum in accordance with law. Learned counsel, however, stated that the Court should clarify that any adverse observations made in the course of the impugned order should not be construed prejudicial to the merits of the case and also that the time spent in prosecuting the writ proceedings and the present appeal should be excluded for the purposes of limitation.

It is clarified that the findings against the petitioner in the order of the learned Single Judge shall not be treated as conclusive or in any manner prejudicial to it. In case the petitioner approaches the Civil Court or the appropriate forum in accordance with law, within four weeks from today, the adjudication of its disputes shall be strictly on the merits of the case; rights and contentions of the parties are reserved. Furthermore, the time spent between the filing of the writ petition and till date, shall be reckoned and be excluded for the purposes of limitation under Section 14 of the Limitation Act, 1962.

The appeal is dismissed as withdrawn in view of above.

**S. RAVINDRA BHAT, J**

**A. K. CHAWLA, J**

**APRIL 10, 2018/ndn**

*LPA 185/2018*

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