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

*Reserved on : 22<sup>nd</sup> January, 2018*  
*Date of decision : 22<sup>nd</sup> March, 2018*

+ **RFA 429/2017 & CM No.15923/2017 (ex-parte stay)**

**NORTH DELHI MUNICIPAL CORPORATION** .... Appellants  
& ANR.

Through : Ms. Renu Gupta, Advocate.

versus

**MUNISH ANAND** ..... Respondent

Through : Mr. Vinay Kumar, Advocate.

**CORAM:**

**JUSTICE PRATHIBA M. SINGH**

**JUDGMENT**

**Prathiba M. Singh, J.**

1. These are a batch of appeals which have arisen out of disputes between Contractors/Plaintiffs (*hereinafter*, 'Contractors') on the one hand and the North Delhi Municipal Corporation (*hereinafter*, 'NrDMC') and East Delhi Municipal Corporation (*hereinafter*, 'EDMC'), on the other. NrDMC and EDMC are collectively referred to as 'Corporations'. The facts in each appeal are different and hence separate judgements are being passed in each of the appeals.

2. Briefly, these are cases where various work orders were placed on Contractors by both the Corporations. The works were executed by the Contractors and thereafter, the Engineer-in-Charge has passed the final bills. Payments in respect thereof were not made. Suits for recovery were filed by the Contractors. The Trial Court decreed the suits in favour of the Contractors.

3. In the work orders, the Contractors seek either/all of the following

payments:

- a. Payment of the principal amount as passed in the final bill;
- b. Refund of security deposit;
- c. Interest on account of late payment of the principal amount, as also due to delay in refund of security deposit.

4. The Corporations rely on Clauses 7 and 9 of the General Conditions of Contract in respect of payment of principal amount and interest, read with the amendment of 19<sup>th</sup> May, 2006. In respect of the security deposit, the Corporations rely on Clauses 17 and 45 of the General Conditions of Contract for Municipal Corporation of Delhi Works (*hereinafter, 'General Conditions of Contract'*). In addition, the Corporations also rely upon Circular dated 10<sup>th</sup> June 2014 signed by the Chief Engineer, MCD which was issued in the nature of a clarification. The questions that have arisen in all these cases are -

- (i) Whether payment of the principal amount can be delayed in view of Clause 7 and Clause 9 of the General Conditions of Contract read with the amendments?
- (ii) Whether the refund of earnest money/security deposit can be delayed in view of Clauses 17 and 45 of the General Conditions of Contract?
- (iii) Whether interest is payable on delayed payments/refunds and if so, for which period?

5. Arguments have been addressed by Mr. Sunil Goel and Ms. Mini Pushkarna on behalf of the Corporations - NrDMC and EDMC, respectively. On behalf of the Contractors in some matters, Mr. Vinay Kumar has made submissions.

***Background of the case***

6. The Plaintiff/Contractor, Mr. Munish Anand (*hereinafter, 'Contractor'*) is the proprietor of M/s. Durga Builders engaged in civil construction work. Four work orders bearing no. 129, 181, 182 and 185 dated 27<sup>th</sup> November, 2012, 13<sup>th</sup> September, 2013, 13<sup>th</sup> September, 2013, and 13<sup>th</sup> September, 2013, respectively, were awarded to the Contractor by the Corporation. The Corporation contends that the work was completed in time and even the defect liability period had passed without any negative remark. Security deposit had also been made by the Contractor towards each of the work orders. The Contractor states that the final bills were submitted by it and the same were duly passed by the Engineer-in-Charge. The tabulated chart of dates of bills passed, principal amounts due and security liable to be refunded, as contained in the plaint, is set out herein below:

| <i>Sr. No.</i>                                                 | <i>Work Order No.</i> | <i>Amount of passed (first and final) bill in Rs.</i> | <i>Date of passing of bill</i> | <i>Amount of Security deposit in Rs.</i> |
|----------------------------------------------------------------|-----------------------|-------------------------------------------------------|--------------------------------|------------------------------------------|
| 1.                                                             | 129                   | 231593.00                                             | 21.03.2013                     | 19044.00                                 |
| 2.                                                             | 181                   | 302227.00                                             | 28.05.2014                     | 33387.00                                 |
| 3.                                                             | 182                   | 392637.00                                             | 25.02.2014                     | 54195.00                                 |
| 4.                                                             | 185                   | 370272.00                                             | 14.02.2014                     | 51020.00                                 |
|                                                                | <i>Total</i>          | 1296729.00                                            |                                | 157646.00                                |
| <b><i>Grand Total of passed bills and security amounts</i></b> |                       | <b>1296729 + 157646</b>                               |                                | <b>1454375.00</b>                        |

7. Copies of the final bills as passed are placed on record. The Contractor relies on the old clause 9 as contained in the General Conditions of Contract and demanded that the payment be made within 3 months/6

months period. Since payment was not made, the Contractor got issued notice dated 13<sup>th</sup> May, 2015 for release of the principal amount as also the security deposit. Since no reply was received, the Contractor filed a suit seeking the following amounts:

- i) Payment of principal amount of Rs.12,96,729/-;
- ii) Refund of security amount of Rs.1,57,646;
- iii) Interest on delayed payments.

8. What is relevant is that the entire table as extracted above is admitted by the Corporation with one correction alone i.e., that the amount of security ought to have been 19,041/- and not 19,044/-. The said paragraph of written statement is extracted below:

*“2. That the suit of the plaintiff is pre-mature and as such the same is liable to be dismissed. There is a specific condition in the Agreement entered into between the parties that the payment of bill was depend on availability of funds in particular heads of account from time to time in North DMC. The payment of bills shall be made strictly on queue basis i.e. first the past liabilities will be cleared and after that the release of payment for passed bills will be in order of the demand received at Head Quarter under particular head of account. Thus, it is submitted that the delay in making the payment do not attract any liability and the plaintiff is not entitled to any interest on account of delay in payment as per the amended rules incorporated vide circular dated 19.05.2006 in N.I.T./Tender conditions. The plaintiff, after going through & understanding the terms and conditions of the NIT as well as tender documents, had participated in the Tender and executed the work.*

*5. Para 5 of the plaint needs no reply, being matter of record. Anything contrary to the record, is denied. It is, however, submitted that the plaintiff has wrongly typed*

*the amount of security as Rs.19044/- at serial no.1 in the Table, instead of 19041/-."*

9. The Corporation, also relied upon the clauses 7 and 9 of the General Conditions of Contract along with the amendment dated 19<sup>th</sup> May, 2006. It further submitted that the security amount is liable to be refunded only upon submission of the labour clearance certificate from the labour officer as per clause 45 of the General Conditions of Contract.

10. In view of the admission of the Corporation, an application under Order XII Rule 6 came to be filed and a decree was sought. The said application was disposed of on 11<sup>th</sup> December, 2016 in the following terms:

*"14. Since the outstanding payment of amount of first and final bills totalling Rs.12,96,729/- stands admitted in unequivocal, unambiguous, unqualified terms by defendants in favour of plaintiff, so far that is concerned, the plaintiff is entitled for judgment on admissions. Plaintiff is held entitled for recovery of sum of Rs.12,96,729/- in his favour and against the defendants under Order XII Rule 6 of CPC. Decree sheet be prepared accordingly.*

*15. So far as the facets of security amount and component of interest, its period, rate or whether it is payable by defendants to plaintiff are concerned, they are the mixed questions of fact and law, requiring leading of evidence by the parties at the opportune time and shall be adjudicated after adducing of evidence by parties."*

11. Thus, the Trial Court decreed the suit qua the principal sum and directed that on the question of refund of security deposit and payment of interest would be decided after trial.

12. The suit thereafter proceeded for evidence and on 23<sup>rd</sup> February,

2016, the following issues were framed in the suit:

“ISSUES

*1) Whether the plaintiff is entitled for refund of earnest money/security deposit, as claimed, or not? Onus of proof on parties.*

*2) Whether the plaintiff is entitled for interest? If so, on what amount, at what rate and for which period:*

*3) Relief.”*

13. Evidence was led by the parties. PW-1, Mr. Munish Anand, the sole proprietor admitted in cross-examination as under:

*“I am aware of the circular dated 19.05.2006 of defendant Corporation. I participated in tender process which was online. I was aware of all terms and conditions of tender process. I had not submitted any bill for work done after completion of the work. I did not apply for labour clearance certificate before Labour Commissioner. I did not apply for refund of security before defendant Corporation. Voltd. it is so applied only after release of payment of work done.”*

14. Mr. Shafiq Ahmed, DW-1, Assistant Engineer of the Corporation deposed and relied on various clauses of the General Conditions of Contract, as also the amendment dated 19<sup>th</sup> May, 2006 and the circular dated 10<sup>th</sup> June, 2014. In his cross-examination, he deposed as under:

*“It is correct to suggest that plaintiff contractor had not submitted the bill after completion of works or work orders in question. It is correct to suggest that bills were passed by us for the work orders in question. It is correct to suggest that till final payment of the bills are not paid, security is not refunded. It is incorrect to suggest that the payment of the bills in question was to be done within three months of passing of the bills in question. We did not receive any*

*complaint from office of Labour Commissioner concerned with regard to works of work orders in question. It is incorrect to suggest that plaintiff is entitled for sums claimed including refund of security and interest on delayed payments. It is incorrect to suggest that I am deposing falsely.”*

15. In the meantime, RFA 353/2016, which was filed against order dated 11th February 2016 under Order XII Rule 6 was listed before this Court. On 1<sup>st</sup> December 2016, certain terms were recorded in respect of the Principal sum and interest thereon. It is however relevant to record that para 15 of said order clarified as under:

*“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. Considering the nature of the dispute, in the final judgment dated 10<sup>th</sup> January, 2017, the Trial Court notes the passing of order dated 1<sup>st</sup> December, 2016 and observed as under:

*“25. On 24.12.2016, order of dated 01.12.2016 in RFA No.353/2016 of Hon’ble Ms. Justice Hima Kohli was received. Perusal of said order reveals that RFA No.786/2016 had been treated as a lead matter in all connected appeals filed by appellant North DMC, therein and in terms thereof, the Hon’ble High Court has passed the consent order with respect to the principal amount payable and interest on principal amount to plaintiff in terms thereof and has left the aspect of security and interest thereon pending adjudication in this Court to be continued. Aforesaid*

*decision of Hon'ble High Court in RFA No.353/2016 is on appeal filed by North DMC before High Court of Delhi whereby the North DMC had filed appeal before High Court of Delhi, impugning decree and judgment of this Court of date 11.02.2016 and passed under Order XII Rule 6 of CPC, herein before elicited."*

17. Thus, only the issue of refund of security and interest was decided by the Trial Court. In view of the pleadings and evidence, the Trial Court decreed the suit vide judgment dated 10<sup>th</sup> January, 2017, in the following terms:

**"RELIEF**

27. *In view of my findings with respect to issues no.1 and 2, the suit of the plaintiff is decreed in terms that plaintiff is held entitled for recovery of **security sum of Rs. 1,57,643.00** as well as **interest** thereon 7.5% per annum w.e.f., 20.07.2015 till realization with costs from defendants. Decree sheet be prepared and file be consigned to record room."*

18. In the present appeal, therefore, only the question of refund of security and interest thereon was left for adjudication.

**19. Order No.1 - Order dated 1<sup>st</sup> December, 2016 passed in lead matter RFA 786/2016 and 192/2016 -**

These orders were passed in appeals preferred by the Nr.DMC and EDMC, respectively - In this order, a Learned Single Judge of this Court records that a consensus has been arrived between the Corporations and Contractors in the following terms:

*"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.”*

20. The said order further records in paragraph Nos.14 to17 as under:

*“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.”*

21. Order No.1 dated 1<sup>st</sup> December, 2016 was passed in lead matter RFA 786/2106 and RFA 192/2016 involving NrDMC and EDMC. By this order, the Learned Single Judge of this Court disposed of a bunch of NrDMC and EDMC matters based on a consensus arrived at between the parties. The Court refers to an earlier order dated 17<sup>th</sup> November, 2016 and disposes of all the appeals in the following terms -

- i) That the Corporation would prepare a complete list of contractors whose payments are due;
- ii) As and when funds become available, payments would be released to the Contractors on the basis of the priority in the waiting list. No out of turn payments would be released. The list of the Contractors would be uploaded on the website;
- iii) Interest would be payable after a period of three years and 90 days from the date when the bill is passed by the concerned division;
- iv) Interest would not run for a period of three years and 90 days as mentioned above;
- v) Upon the expiry of the said period, if amounts remain outstanding, the said interest @ 9 % p.a. on the principal amount for the remaining period shall be paid;
- vi) The said interest @ 9% p.a. shall be liable to be paid for a period of two years;
- vii) If after the period of two years, amounts remain outstanding, the Contractor shall be free to pursue their legal remedies and seek execution of the judgments and decrees passed in their favour and also claim interest on the decretal amount as per their respective entitlement from day one;
- viii) No execution shall be filed for the period agreed. In so far as security amount and interest is concerned, as per paragraph 15, the Contractors were at liberty to pursue their remedies, since suits for recovery were already pending;
- ix) In few of the appeals mentioned in paragraph 16 executed herein above, settlements was arrived at even qua refund of security

deposit and interest.

For the sake of convenience, the above mentioned order dated 1<sup>st</sup> December, 2016 is referred to as '**Order No.1**'. On the basis of this order, several appeals of the Corporation were disposed of.

22. In so far as security amount and interest is concerned, the suits that are pending adjudication in the Trial Court would continue. Only some Appellants, therein, agreed for a simple refund of security deposit without interest and the matter was closed qua the said Contractors. NrDMC and EDMC had attached Annexure-A along with the said order along with the details of the names of the Contractors, work orders, proper wait list of the Contractors with the expected month/year for payments.

#### **Proceedings before the Supreme Court.**

23. Order No.1 came to be assailed before the Supreme Court in ***Special Leave to Appeal (C) No. 9623/2017 Yashpal Gulati v. EDMC***. The Supreme Court recorded on 15<sup>th</sup> September, 2017 as under:

*"It is stated by the learned counsel for the East Delhi Municipal Corporation that two bills have already been paid to the petitioner and the third bill in respect of which payment is due will be cleared in the month of November, 2017.*

*The respondent- Corporation is directed to act accordingly.*

*List the matter in the first week of December, 2017."*

24. In many connected Special Leave Petitions (*hereinafter*, 'SLPs'), the Supreme Court vide order dated 15<sup>th</sup> September 2017 recorded as under:

*"Heard the learned counsel for the petitioner and perused the relevant material.*

*Delay condoned.*

*Issue Notice.*

*List the matter along with Special Leave Petitioner (Civil) No.9623 of 2017.*

***All amounts admitted to be due to the petitioner will be paid by the respondent- Corporation in the meantime.”***

25. On 5<sup>th</sup> January, 2018, in several appeals/SLPs arising out of Order No.1, the Supreme Court passed the following order:

*“Delay condoned.*

*In this group of cases some of the petitioners have been paid the principal amount and the earnest money whereas some of the petitioners have been paid only the principal amount. Some of the petitioners have not been paid even the principal amount. Such of the petitioners who have not been paid the principal amount/earnest money/security deposit be paid the amounts due under the aforesaid heads.*

*The present Special Leave Petitions have been filed against order(s) of the High Court which appears to be consent order(s). Disputes have been raised that the petitioners have not given their consent. We are not inclined to go into the said aspect of the matter. However, we leave it open for the petitioners to agitate the said question before the High Court, if they are so advised.*

*With the aforesaid observation, the present Special Leave Petitions as well as all pending applications therein shall stand disposed of”.*

26. The Supreme Court directed payments to be made to the Contractors who approached the Court by way of SLPs, ***“in the meantime”***, on the first hearing. By the order disposing of the SLPs, the payment of Principal amount, Earnest money and Security deposit were directed to be made. This in effect meant that the said Contractors were not to stand in the queue but

payments were released to them under Supreme Court orders. The Supreme Court did not adjudicate the matter on the question of interest or the question as to whether consent was given.

27. Thus, in effect, Order No.1 dated 1<sup>st</sup> December, 2016, to the extent that it gave sanctity to the queue system which was also subsequently followed by Learned Single Judges of this Court, appears to have been superseded by the Supreme Court insofar as the Queue system of payment is concerned. In any event, all the three issues on which consent had been initially recorded in order dated 1<sup>st</sup> December, 2016 i.e. payment of principal on queue basis, payment of interest only after three years and 90 days, as also security deposit, was open for re-agitation. Order No.1 was in effect modified in respect of the Contractors who approached the Supreme Court. On the issues of law raised in those appeals and writs, there was no decision on merits.

28. It is settled as far back as in 1989, when the Supreme Court in ***Municipal Corporation of Delhi v. Gurnam Kaur (1989) 1 SCC 101*** held that consent orders do not adjudicate upon the merits of the dispute and hence do not constitute binding precedents. Relevant extract of the judgment is as under:

*“10. It is axiomatic that when a direction or order is made by consent of the parties, the court does not adjudicate upon the rights of the parties nor does it lay down any principle. Quotability as ‘law’ applies to the principle of a case, its ratio decidendi. The only thing in a judge’s decision binding as an authority upon a subsequent judge is the principle upon which the case was decided. Statements which are not part*

*of the ratio decidendi are distinguished as obiter dicta and are not authoritative...”*

This position taken by the Supreme Court has been followed by a Single Judge of this Court in ***Yash Sehrawat v. Board of Control for Cricket in India 2014 (141) DRJ 518***.

29. There are two different sets of appeals in this batch. The first batch of appeals are those in which the order dated 1<sup>st</sup> December, 2016 was passed in respect of the same work orders. The second set of appeals arises out of different work orders, though sometimes the contractors are the same. To the extent the appeals relate to the same work order, the parties shall be bound by the 1<sup>st</sup> December, 2016 order. However, the said order cannot apply in the second set of cases as the transactions are completely separate and distinct. The appeals arise out of completely different suits. Consent terms of different proceedings and transactions cannot be imposed. Moreover, even insofar as the first set of appeals are concerned, Contractors have pressed for the relief of interest on Principal amounts. The question of consent was also left open by the Supreme Court for being re-agitated. Even in the first set of appeals where the issue of security deposit and interest thereon was left open by the order of 1<sup>st</sup> December 2016, Corporations argue that security deposit is not liable to be refunded until the final bill is passed – which can only happen as per the queue system, subject to availability of funds. This is not acceptable to Contractors who argue that refund of security deposit is not dependent on the passing of the final bill. Hence, the legal and factual issues in these appeals have to be adjudicated on their own merits. However, in the present case, only the question of refund of Security and interest thereon

remains to be adjudicated.

### ***Questions***

30. The questions, therefore, that arise in this appeal are:

- (i) Whether the refund of earnest money/security deposit can be delayed in view of Clauses 17 and 45 of the General Conditions of Contract?
- (ii) Whether interest is payable on delayed payments/refunds and if so, for which period?

### **Question No.1 - Refund of Security deposit**

31. In respect of each work order, the Contractors have to deposit 10% as the security deposit at the initial stage. Upon the payment of the final bill and after issuance of labour clearance certificate, the security deposit is liable to be refunded. There is no doubt that the security deposit is liable to be refunded after the submission of the documents, certificates from the Labour Officer. Clause 17 and Clause 45 relating to refund of security deposit reads as under:

#### ***“CLAUSE 17***

#### ***Contractor liable for damages, defects during maintenance period :***

*If the contractor or his working people or servants shall break, deface, injure or destroy any part of building in which they may be working, or any building, road, road kerb, fence, enclosure, water pipe, cables, drains, electric or telephone post or wires, trees, grass or grassland, or cultivated ground contiguous to the premises on which the work or any part is being executed, or if any damage shall happen*

*to the work while in progress, from any cause whatever or if any defect, shrinkage or other faults appears in the work within twelve months (six months in the case of work costing Rs.5.00 lacs and below except road work) after a certificate final or otherwise of its completion shall have been given by the Engineer-in-Charge as aforesaid arising out of defect or improper materials or workmanship the contract shall upon receipt of a notice in writing on that behalf make the same good at his own expense or in default the Engineer-in-Charge cause the same to be made good by other workmen and deduct the expense from any sums that may be due or at any time thereafter may become due to the contractor, or from his security deposit or the proceeds of sale thereof or of a sufficient portion thereof. The security deposit of the contractor shall not be refunded before the expiry of twelve months (six months in the case of work costing Rs.5.00 lacs except dense carpet works) after the issue of the certificate final or otherwise, of completion of work or till the final bill has been prepared and passed whichever is later. In case of dense carpet works the Security Deposit of the contractor shall not be refunded before the expiry of 5 & 7 years of maintenance from last day of the month in which a particular road is completed in case of binder of penetration 60/70 grade & CRMB 60 binders respectively.*

#### **CLAUSE 45**

##### ***Release of Security deposit after labour clearance :***

*Security Deposit of the work shall not be refunded till the contractor produces a clearance certificate from the Labour Officer. As soon as the work is virtually complete the contractor shall apply for the clearance certificate to the Labour Officer under intimate on to the Engineer-in-Charge. The Engineer-in-Charge on receipt of the said communication, shall*

*write to the Labour Officer to intimate if any complaint is pending against the contractor in respect of the work. If complaint is pending on record till after 3 months after completion of the work and/or no communication is received from the Labour Officer to this effect till six months after the date of completion it will be deemed to have received the clearance certificate and the security Deposit will be released if otherwise due.*”

32. Clauses 17 and 45 relating to security deposits have also been interpreted in the Circular dated 10<sup>th</sup> June 2014, as under:

*“**Clause 17:-** The security deposit shall not be refunded before expiry of one year from the date of completion of work.*

***Clause 45:-** Security deposit shall not be refunded till the contractor produces clearance certificate from the Labour Officer.”*

33. A perusal of all the aforementioned Clauses reveals that:

- a) For refund of security deposit, a clearance certificate is needed from the Labour Officer;
- b) Once the work is completed, the Contractor would apply for the clearance certificate under intimation to the Engineer-in-Charge;
- c) The Engineer-in-Charge has to communicate to the Labour Officer if there is any complaint in respect of the work executed;
- d) If after completion of the work, 3 months have elapsed and no communication is received, after date of completion, there is a deemed clearance certificate and the security deposit is liable to be released.

34. Thus, irrespective of the date of payment of the principal amount, the security deposit cannot be held back beyond a period of 6 months from the date when application is made to the Labour Officer for issuance of the clearance certificate. These Clauses do not brook any delay in so far as the refund of the security deposit is concerned. Moreover, there is no clarity whatsoever as to how the refund of Security deposit is subject to the queue system and availability of funds. The Clause itself does not contemplate any such condition. Thus, the security deposit is liable to be refunded upon the compliance of the conditions in Clauses 17 and 45 of the General Conditions of Contract. The Supreme Court also directed immediate payment of Security deposit in its order dated 5<sup>th</sup> January 2018.

35. Insofar as interest is concerned, the Security amount/Earnest money deposited would be refundable upon the fulfilment of the conditions contained in Clauses 17 and 45 of the General Conditions of Contract. Interest would be payable on delayed payments.

### ***Final decree on facts***

36. In the present appeal, after the passing of the 1<sup>st</sup> December, 2016 order, only the question of refund of security and interest thereon was left for adjudication. The Trial court has taken note of the order dated 1<sup>st</sup> December, 2016 and granted refund of the security deposit as also interest thereon. The security deposit is liable to be refunded but no *pendente lite* interest is liable to be paid as the Contractor had not filed for the labour clearance certificate before the labour officer. There was no compliance of Clauses 17 and 45 of the General Conditions of Contract. However, on the amount of security deposit, interest would be liable to be granted from the

date of passing of the decree by the trial court.

37. Based on the pleadings, evidence and the reasoning above, the suit of Contractor is liable to be decreed as under:

- i) Decree for a sum of Rs.1,57,643/- towards refund of security amount along with simple interest @ 8% p.a. from date of decree i.e., 10<sup>th</sup> January, 2017 till payment;
- ii) In so far as the principal amount and interest thereon is concerned, the parties are bound by order dated 1<sup>st</sup> December, 2016 as they related to the same transactions/work orders;

38. The Corporation is directed to make the payment within 8 weeks, failing which, 12% interest p.a. shall be payable upon expiry of the said period till the date of payment.

39. The impugned judgment/decreed is modified in the above terms. Decree sheet be drawn accordingly. Appeal stands disposed of along with all pending applications. No order as to costs.

40. By way of separate order passed today in these appeals, certain guidelines are issued. These guidelines shall be read alongwith the judgment pronounced today in all these appeals.

**PRATHIBA M. SINGH, J.**  
**JUDGE**

**MARCH 22, 2018/dk/Rahul**

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

**+ RFA Nos.160/2017, 167/2017, 171/2017, 208/2017, 136/2017, 56/2017, 58/2017, 50/2017, 53/2017, 166/2017, 573/2017, 571/2017, 570/2017, 397/2017, 42/2017, 43/2017, 419/2017, 420/2017, 421/2017, 422/2017, 425/2017, 427/2017, 429/2017, 430/2017, 431/2017, 432/2017, 434/2017, 436/2017, 437/2017, 438/2017, 439/2017, 440/2017, 443/2017, 444/2017, 445/2017, 447/2017, 558/2017, 563/2017, 574/2017, 410/2017, 418/2017, 1009/2016 & 560/2017**

**CORAM:**

**JUSTICE PRATHIBA M. SINGH**

**ORDER**

**%**

**22.03.2018**

These are a batch of appeals which have arisen out of disputes between Contractors/Plaintiffs (*hereinafter*, 'Contractors') on the one hand and the North Delhi Municipal Corporation (*hereinafter*, 'NrDMC') and East Delhi Municipal Corporation (*hereinafter*, 'EDMC'), on the other. NrDMC and EDMC are collectively referred to as '*Corporations*'. The facts in each appeal are different and hence separate judgements are being passed in each of the appeals.

The present guidelines are being issued in all the appeals. The Court has had the opportunity of perusing the trial court records in all these 43 appeals. A perusal of the records reveals the following:-

1. In most cases, the Contractors who are awarded the work orders do not submit the interim or final bills to the Engineer-in-Charge for approval;
2. The final measurement recordal is done by the Engineer-in-Charge;
3. The final bill is also prepared and passed by the Engineer-in-Charge on his own accord and the Contractor then accepts it;

4. The procedure for obtaining labour clearance certificate from the Labour Officer is not followed;
5. Once the bills are passed, Contractors are made to wait endlessly for their payments on the ground of non-availability of funds;
6. Even for refunds of Security Deposit and Earnest money deposits, the Contractor is made to wait till the final payment is made;
7. The measurement books and the photographs of work, actually carried out, are not produced in evidence.

The above process is contrary to the General Conditions of Contract. It is therefore, necessary and important that all the steps of the Contract are followed by the Contractors and the Corporations. The following guidelines are being passed:

1. Along with the work order, all the Clauses of the General Conditions of Contract should be attached;
2. On the award of the Work order, periodic inspections of the work being carried out should be done by the Engineer-in-Charge;
3. If possible, photographs of the works at different stages should be taken and maintained on the record;
4. Interim bills should be submitted by the Contractor – duly certifying the work which has been carried out;
5. Final bills should be submitted by the Contractor – duly certifying the work carried out along with photographs;
6. The Bill should be scrutinised by the Engineer-in-Charge, works should be recorded in the measurement book and thereafter, the bill should be passed;

7. Once the Bill is passed, the payment schedule of 6 months and 9 months should be adhered to. Delay in payments would result in Interest being levied;
8. For refunds of Security deposit and Earnest Money deposit, the Contractor should unscrupulously comply with the conditions in Clauses 17 and 45. For refunds to be made, payment of final bill need not be awaited. Once the conditions of Clauses 17 and 45 are complied with and the final bill is passed, refunds ought to be made;
9. In suits relating to recovery of Contractor's dues, all the evidence including the NIT, General Conditions of Contract, periodic inspection reports, Final bill as submitted, Final bill as passed, Measurements carried out, Photographs etc., should be produced and duly exhibited.
10. IT infrastructure ought to be created to maintain records of the work orders, inspection reports, final bills, photographs etc., digitally, as it is noticed that the trial court record does not contain all the relevant documents and in several cases, different versions of clauses are relied upon by both sides, bills are not properly understandable and there is no evidence of actual inspections or measurements having been taken. Maintenance of digital records will make it more transparent and easily accessible for the officials and for production in the Court in case of future litigation.

Adherence to the above shall ensure that the works are duly carried out as per the quality standards prescribed and there is proper record of work being done. Once the work is carried out payments ought not to be delayed,

inasmuch as delay in payments compromises on availability of quality civil work for the Corporations, who take care of basic amenities for citizens such as roads, pavements, civil works, sewerage lines etc.

These guidelines shall be read along with the judgments pronounced today in these appeals.

**PRATHIBA M. SINGH, J.**  
**Judge**

**MARCH 22, 2018/Rahul/dk**

