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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ W.P.(C) 6295/2019, CM No. 26906/2019
TRIVENI ENGINEERING AND INDUSTRIES LTD. Petitioner
Through: Mr. Anunaya Mehta and Mr. Akshay
Deep Singhal, Advs.

versus

DELHI JAL BOARD Respondent
Through: Mr. Sumeet Pushkarna, Standing
Counsel with Mr. Devanshu Lahiry
and Mr. Prateek Rai, Advs.

CORAM:

HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER

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29.05.2019

CM No. 26906/2019 (for exemption)

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

W.P.(C) 6295/2019

1. The present petition has been filed by the petitioner with the following prayers:

“Wherefore, it is most respectfully prayed that this Hon’ble Court may be pleased to:

(i) Pass an appropriate writ, order or direction directing the respondent to consider and decide the representations made by the petitioner to it in relation to the amounts withheld and retained by the respondent or not paid to the petitioner under the work order No.02(2009-10) dated 04.12.2009 by a reasoned and speaking order;

(ii) Pass such other and further orders in the facts

and circumstances of the case.”

2. It is the case of the petitioner that in terms of work order dated December 04, 2009 it was awarded the work of construction of a 23 MLD Sewerage Treatment Plant and other related associated / allied appurtenant works on design, build and operate (DBO) basis at Kapashera Village, Delhi for a total value of Rs.41,78,24,000/-. The work by the petitioner fell behind the time-line. In such circumstances vide letter dated September 21, 2010 the respondent imposed a penalty of 5% of the value of the works amount to Rs.2,08,91,200/- on the petitioner as compensation / penalty. The project was eventually commissioned in the year 2014.
3. That the delay in the execution of the work was on account of factors completely beyond the control of the petitioner. Accordingly, the petitioner had written letters between the years 2012-016 to the respondent for release of the withheld amount. However, the respondent maintained silence on the representations made by the petitioner. The petitioner addressed a letter dated November 17, 2017 whereby the petitioner re-asserted the points raised and claims made in the earlier letters.
4. It is the case of the petitioner that the respondent convened meetings to discuss the issues raised by the petitioner in its various letters. However, the issues raised by the petitioner were not resolved. A reference is made to a meeting held in the chamber of the Member (Dr) on January 08, 2019 wherein the issues raised by the petitioner were discussed. However, even after the passage of four months, the respondent has not notified any development on the issues and the same continues to be pending as it is, which has made the petitioner to file the present writ petition.
5. Mr. Sumeet Pushkarna, learned Standing Counsel appearing for the

respondent on advance notice has taken a preliminary objection on the maintainability of the writ petition on the ground that the same is hit by delay and laches. According to him, the work order is of the year 2009 as per the petitioner itself and the penalty was imposed in the year 2010. The project was commissioned in the year 2017, and one of the letters written by the petitioner was in the year 2017. Merely because a meeting was held on January 08, 2019, when an issue relatable to the payment was raised by the representative of the petitioner, it would not amount to acknowledgment of a claim by the respondent. For all purposes, the cause of action has accrued in the year 2010 when the penalty was imposed.

6. He would rely upon the judgment of the Supreme Court in the case of *State of Kerala vs. T.M. Chacko, (2000) 9 SCC 722* to contend that for treating a writing signed by a party as an acknowledgment, the person acknowledging must be conscious of his liability and a commitment should be made towards the liability. It need not be specific but if necessary, facts which constitute the liability are admitted and an acknowledgment may be inferred from such an admission. According to him, the minutes of the meeting does not specify any acknowledgment on the part of the respondent to pay the claim of the petitioner.

7. Mr. Anunaya Mehta, learned counsel for the petitioner contends otherwise, inasmuch as the cause of action has accrued to the petitioner on the strength of the minutes of the meeting dated January 08, 2019. According to him a perusal of which would reveal that the Committee has recommended for review of the penalty and had called upon the Executive Engineer to put up details of hindrances in tabulated form for arriving at the quantum of penalty, to be reviewed by the Competent Authority. In other

words, it is his case that the petition is maintainable.

8. Having heard the learned counsel for the parties, I agree with the submissions made by Mr. Sumeet Pushkarna that cause of action, if any, had accrued to the petitioner in the year 2010 when the penalty was imposed. Between the years 2012-2016 except making representations, the petitioner did not care to approach any judicial forum. One representation made in the year 2017 surely would not stop the period of limitation which started running in the year 2010.

9. Even the reliance placed by Mr. Anunaya Mehta on the minutes of the meeting, dated January 8, 2019, shall not be helpful to the petitioner for the simple reason, there is no acknowledgement of the claim that too by the Competent Authority. What was said is only to put up the facts for consideration of the Competent Authority. In the absence of any acknowledgment by the Competent Authority, it cannot be said that the minutes of meeting dated January 08, 2019, depicts acknowledgment. The judgment of *State of Kerala (supra)* is applicable to the facts.

10. The present petition is hit by delay laches as cause of action has accrued in the year 2010 and the justification that the petitioner was making representations is untenable. The present petition is dismissed as such.

V. KAMESWAR RAO, J

MAY 29, 2019/aky