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

\+ **CO.APP. 15/2019**

AHLCONS (INDIA) PVT. LTD. ..... Appellant

Through Mr. Rishi Kapoor with Mr.M.Joshi, Advocates

versus

VICTORIA HOSPITALITIES PVT. LTD. ..... Respondent

Through None

CORAM:
JUSTICE S.MURALIDHAR
JUSTICE TALWANT SINGH

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

% **17.07.2019**

<u>CM Appl. No. 31763/2019 (Exemption)</u>

1. Exemption allowed, subject to all just exceptions.

<u>CM Appl. No. 31761/2019 & 31762/2019 (delay)</u>

2. For the reason stated in the application, the delay of 30 and 35 days in filing and re-filing the appeal is condoned and the applications are disposed of.

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3. This is an appeal against an order 6th March 2019 passed by the learned Single Judge dismissing the Appellant's winding up petition against the Respondent on the ground of limitation.

4. The final bill for the work done by the Appellant was submitted to the Respondent on 23rd July 2011. This admittedly included the retention amount which as also sought to be recovered by the Appellant. The Respondent certified the final bill on 31st March 2012 for a total sum of

Rs.3,06,72,675/- withholding Rs.17,76,992/- on account of retention amount. The case of the Appellant is that the Respondent owes it Rs.47,22,587/-. A notice to recover the aforementioned sum was sent by the Appellant to the Respondent on 24th April 2015.

5. On the basis of above facts, the learned Company Judge came to the conclusion that the limitation for recovery of the above amount expired on 30th March 2015 itself. The plea of the Appellant that there were some payments made in 2017 in the statement of account and that, therefore, limitation should be calculated on the basis that there was a 'mutually open current account' between the parties, was not accepted by the learned Single Judge.

6. The plea of the learned counsel for the Appellant is two-fold. First, he argues that in terms of Clause 42 of the work order, the limitation for recovery of the retention amount would commence only on the expiry of 1 year from the date of completion of the works i.e. after the expiry of defect liability period, which according to him in the present case was the date of submission of the final bill i.e. 23rd July 2011. According to him, therefore, the limitation for recovery of the retention amount would commence only on 24th July 2012.

7. The Court is unable to agree with the above submission. If indeed the Appellant was not seeking to recover the retention money when it submitted its final bill, it should not have included that amount in the final bill. It could have easily split the amount into a separate bill to be submitted after

the expiry of the defect liability period of one year. Having not done so, the Appellant was put on notice by the Respondent on 31st March 2012 itself of the rejection of its plea for return of the retention money. The cause of action, therefore, arose on that date.

8. The second plea is that the learned Single Judge wrongly applied Article 18 of the Limitation Act to reject the claim of the Appellant whereas it is Article 1 that should have applied. Article 1 applies to "suit relating to accounts where the period of 3 years would begin to run from the close of the year in which the last item admitted approved is entered into account."

9. In the present case as rightly pointed out by the learned Single Judge, after the final bill was presented on 23rd July 2011, no other bills were submitted by the Appellant to the Respondent. On 31st March 2012 itself the Respondent made it clear that in relation to such final bill it was not going to pay the Appellant any sum beyond Rs. 3,06,72,657. In fact no payment on that score was made thereafter. Consequently, the resort to Article 1 of the Schedule to the Limitation Act, 1963 is of no avail to the Appellant.

10. There are no grounds made out for interference with the impugned order of the learned Single Judge. The appeal is dismissed.

S. MURALIDHAR, J.

TALWANT SINGH, J.

JULY 17, 2019/mw