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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 27.08.2021

CORAM

THE HONOURABLE MR. JUSTICE N. ANAND VENKATESH

W.P.No.17155 of 2021

M/s.Subaya Constructions Company Ltd.,
Represented by its Director,
Mrs.Dr.S.Chandara Gandihimathi
New No.21, (Old No.26), Sondarapandian Street,
Ashok Nagar,
Chennai - 600 083.

... Petitioner

Vs.

The Commissioner,
Salem city Municipal Corporation,
Salem - 636 001.

... Respondent

Prayer : Writ Petition filed under Article 226 of the Constitution of India for issuance of a Writ of Mandamus, directing the respondent herein to refund the balance retention Amount of Rs.57,42,070/- along with interest in favour of the petitioner within a time frame to be fixed by this Court.

For Petitioner : Mr.P.J.Rishikesh

For Respondent : Mr.S.Sathish
Standing Counsel

O R D E R

This writ petition has been filed for issue of writ of mandamus directing the respondent to refund the balance retention amount of Rs.57,42,070/- in favour of the petitioner within the time frame fixed by this Court.

2.The case of the petitioner is that they are engaged in the business of civil construction and they also undertake works for the State Government and its agencies. Pursuant to the tender invited by the respondent, the petitioner had submitted their bid and they were declared as the highest bidder and an agreement was also entered into between the petitioner and the respondent and the work order was issued in favour of the petitioner.



3.The further case of the petitioner is that the entire work was completed as per the contract during October, 2018 and the defect liability period of one year was also over on 31.12.2019. It is further stated that the petitioner's performance guarantee was also released as per the terms of contract. The only amount that remained to be released in favour of the petitioner was the retention money of 2.5% which amounts to Rs.57,42,070/-, as per Clause 48 of the contract.

4.The grievance of the petitioner is that in spite of the completion of the work and the defect liability period having expired and the performance guarantee amount also having been released in favour of the petitioner, there was no reason for the respondent Corporation to retain the retention amount. Therefore, the petitioner made several representations to the respondent Corporation seeking for the refund of the retention amount. Since it did not evoke any response, the present writ petition has been filed before this Court seeking for appropriate directions.

5.When the matter came up for hearing on 17.08.2021, this Court directed the learned Standing Counsel appearing on behalf of the respondent Corporation to take written instructions and report before this Court.

6.When the matter was taken up for hearing today, the learned Standing Counsel submitted the written instructions have been received from the respondent.

7.A careful reading of the written instructions given by the respondent shows that there is absolutely no dispute with regard to the facts of the case. The only reason that has been given by the respondent for not releasing the retention money is that the same has to be scrutinized by the Local Fund Audit and the Accounts General Audit and no objection must be received before releasing this amount in favour of the petitioner. It has been stated in the written instructions that immediately after getting the no objection from the concerned audit authorities, the retention money will be released in favour of the petitioner.

8.Taking into consideration the facts and circumstances of the case and the specific stand taken by the respondent, there shall be a direction to the respondent to follow up with the concerned audit authorities and get the No Objection Certificate, as expeditiously as possible. This will enable to respondent to refund the amount that is payable to the petitioner under the head "Retention Money". In any event, the entire process shall be completed, within a period of eight weeks from the date of receipt of copy of this order. The petitioner has also sought for the payment of interest towards



the delay in releasing the retention money and the same shall also be considered while making the payment to the petitioner.

9. This writ petition is disposed with the above direction.
No Costs.

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Sd/-
Assistant Registrar (CS VIII)

//True Copy//

Sub Assistant Registrar

ssr

To
The Commissioner,
Salem city Municipal Corporation,
Salem - 636 001.

+1CC to Mr.P.J.Rishikesh, Advocate, Sr.No.43508

W.P.No.17155 of 2021

KV (CO)
K.RK. (21.09.2021)