

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

+ **W.P.(C) 116/2021 & connected matters**

Reserved on : 25.11.2022

Date of Decision : 25.01.2023

IN THE MATTER OF:

W.P.(C) 116/2021

GARG CONSTRUCTION COMPANY

..... Petitioner

W.P.(C) 483/2021

MS BUILDERS

..... Petitioner

W.P.(C) 492/2021

BARAHI CONSTRUCTION

..... Petitioner

W.P.(C) 2140/2021

M/S KRISHNA CONSTRUCTION

..... Petitioner

W.P.(C) 2190/2021

M/S KALRA CONST. CO

..... Petitioner

W.P.(C) 2198/2021

M/S RAKESH BANSAL

..... Petitioner

W.P.(C) 2202/2021

M/S ANKUR GUPTA

..... Petitioner

W.P.(C) 2411/2021

M/S SHIVANSH CONSTRUCTION

..... Petitioner

W.P.(C) 2412/2021

M/S BANSAL CONSTRUCTION

..... Petitioner

W.P.(C) 2413/2021

M/S M K TRADERS

..... Petitioner

W.P.(C) 2704/2021

M/S GUPTA RADHEY SHYAM

..... Petitioner

W.P.(C) 116/2021 & other connected matters

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W.P.(C) 2705/2021
M/S S.V CONSTRUCTION CO. Petitioner

W.P.(C) 4859/2021
MS. MONIKA Petitioner

W.P.(C) 5444/2021 and CM APPLs.16870-71/2021
M/S DEVANSH CONSTRUCTION Petitioner

W.P.(C) 5445/2021 and CM APPLs.16872-73/2021
M/S A.A CONSTRUCTION Petitioner

W.P.(C) 5446/2021 and CM APPLs.16874-75/2021
M/S MUDIT CONSTRUCTION Petitioner

W.P.(C) 6952/2021
ANIL KUMAR BHARDWAJ Petitioner

W.P.(C) 7276/2021
ATUL GUPTA Petitioner

W.P.(C) 7280/2021
LALITA GARG Petitioner

W.P.(C) 8910/2021
M/S PREM BROS THROUGH ITS PROPRIETOR.
SHRI PREM SINGH BHARDWAJ Petitioner

W.P.(C) 9809/2021
M/S KHAN ENTERPRISES THROUGH ITS
PROPRIETOR. MR.ASLAM KHAN Petitioner

W.P.(C) 9814/2021
M/S J.S SETHI AND SONS THROUGH ITS
PROPRIETOR SHRI G.S SETHI Petitioner

W.P.(C) 9871/2021
M/S MAHESWARI CONST. CO. THROUGH
ITS PROPRIETOR. SHRI ANIL MAHESWARI Petitioner

W.P.(C) 9872/2021
M/S RAKESH GUPTA THROUGH ITS
PROPRIETOR SH. RAKESH GUPTA Petitioner

W.P.(C) 9873/2021
M/S ISLAMUDDIN THROUGH ITS
PROPRIETOR MR. ISLAMUDDIN Petitioner

W.P.(C) 9874/2021
MIS DEEPAK CONST. CO. THROUGH
ITS PROPRIETOR SHRI DEEPAK Petitioner

W.P.(C) 9876/2021
M/S SUNSHINE CONST. CO. THROUGH
ITS PROPRIETOR SHRI SUMIT KUMAR Petitioner

W.P.(C) 9885/2021
M/S RASHTRIY A CONST. CO. THROUGH
ITS PROPRIETOR SHRI RAJINDER KUMAR Petitioner

W.P.(C) 9887/2021 & CM APPL. 37508/2022, 37511/2022
M/S BALJEET SINGH SATENDER PARKASH
AND ASSOCIATES THROUGH ITS
PROPRIETOR SHRI BALJEET SINGH Petitioner

W.P.(C) 9889/2021
M/S ASHOK KUMAR GUPTA THROUGH
ITS PROPRIETOR. SHRI ASHOK KUMAR GUPTA Petitioner

W.P.(C) 9890/2021
M/S MOHD RASHID THROUGH ITS
PROPRIETOR MOHD. RASHID Petitioner

W.P.(C) 9891/2021
M/S SAJID KHAN THROUGH ITS PROPRIETOR
MR. MOHD. SAJID Petitioner

W.P.(C) 9907/2021
M/S VIKAS DANDONA CONST. CO. THROUGH
ITS PROPRIETOR SHRI VIKAS DANDONA Petitioner

W.P.(C) 116/2021 & other connected matters

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W.P.(C) 10501/2021
M/S M K GUPTA Petitioner

W.P.(C) 10503/2021
M/S ARPIT ELECTRIC CO Petitioner

W.P.(C) 10504/2021
M/S M. CHHIBBA AND CO Petitioner

W.P.(C) 10605/2021
M/S NARENDER SINGH DHANKAR Petitioner

W.P.(C) 10606/2021
M/S DHANKAR CONSTRUCTIONS Petitioner

W.P.(C) 10607/2021
M/S VIJENDER BHARDWAJ Petitioner

W.P.(C) 11285/2021
M/S VINOD COMPANY (THROUGH ITS
PROPRIETOR MR. VINOD KUMAR GUPTA) Petitioner

W.P.(C) 11286/2021
DEEPAK KUMAR Petitioner

W.P.(C) 11287/2021
M/S R.S. CONSTRUCTIONS (THROUGH ITS
PROPRIETOR MR. RAMESH YADAV) Petitioner

W.P.(C) 11314/2021
M/S SUMIT INFRA (THROUGH ITS PROPRIETOR
MR. SUMIT GUPTA) Petitioner

W.P.(C) 11438/2021
M/S MONU ENTERPRISES Petitioner

W.P.(C) 11440/2021
M/S SUDHIR CONSTRUCTION Petitioner

W.P.(C) 11449/2021
M/S KAY CONSTRUCTION CO Petitioner

W.P.(C) 116/2021 & other connected matters

W.P.(C) 11451/2021
M/S SAMEER ENTERPRISES Petitioner

W.P.(C) 11456/2021
M/S NA CONSTRUCTION Petitioner

W.P.(C) 11477/2021
M/S DEEPIKA ENTERPRISES Petitioner

W.P.(C) 11728/2021 & CM APPL. 36247/2021
M/S NARENDER CONSTRUCTION Petitioner

W.P.(C) 11731/2021
M/S AKASH CONSTRUCTION Petitioner

W.P.(C) 11771/2021
M/S PRATEEK CONST CO. Petitioner

W.P.(C) 12243/2021
M/S HARDIT SINGH KOCHHAR Petitioner

W.P.(C) 12244/2021
M/S KOCHHAR CONSTRUCTION Petitioner

W.P.(C) 12245/2021
M/S ANUBHAV GUPTA Petitioner

W.P.(C) 12248/2021
M/S KAYS BUILDCON Petitioner

W.P.(C) 12274/2021
M/S JAPNEET BUILDERS Petitioner

W.P.(C) 12246/2021
BHARAT CONST Petitioner

W.P.(C) 14959/2021
M/S LAMBA BROTHERS THROUGH ITS PROP Petitioner

W.P.(C) 14989/2021
M/S AGGARWAL ASSOCIATES Petitioner

W.P.(C) 116/2021 & other connected matters

W.P.(C) 15152/2021 M/S NEW LAMBA BROTHERS	 Petitioner
W.P.(C) 1336/2022 M/S LANDSCAPE CONST	 Petitioner
W.P.(C) 1361/2022 M/S MOHAN LAL AND CO	 Petitioner
W.P.(C) 1386/2022 M/S PREM PRAKASH GUPTA AND CO	 Petitioner
W.P.(C) 1387/2022 M/S DEEPAK CONST CO	 Petitioner
W.P.(C) 1456/2022 M/S PUNEET CONST CO	 Petitioner
W.P.(C) 1457/2022 M/S PUNEET ENTERPRISES	 Petitioner
W.P.(C) 2511/2022 M/S NEERAJ GUPTA	 Petitioner
W.P.(C) 2938/2022 ANURAG RANA	 Petitioner
W.P.(C) 3419/2022 M/S G.R. CONSTRUCTIONS	 Petitioner
W.P.(C) 4299/2022 PREM MEHTA	 Petitioner
W.P.(C) 4350/2022 SRK CONSTRUCTION COMPANY	 Petitioner
W.P.(C) 5032/2022 M/S R.K. TUSHIR CONSTRUCTION COMPANY	 Petitioner
W.P.(C) 5486/2022 M/S GAURAV MEHTA	 Petitioner
W.P.(C) 116/2021 & other connected matters	

W.P.(C) 6141/2022 M/S JATIN CONSTRUCTION	 Petitioner
W.P.(C) 6781/2022 M/S PRADEEP KUMAR	 Petitioner
W.P.(C) 6796/2022 M/S JAGDAMBA TRADING CO	 Petitioner
W.P.(C) 6842/2022 & CM APPL. 20835/2022 M/S VINOD KUMAR THROUGH ITS PROP. VINOD KUMAR	 Petitioner
W.P.(C) 7013/2022 and CM APPL. 21490/2022 M/S AMIT SEHRAWAT THROUGH ITS PROP. AMIT SEHRAWAT	 Petitioner
W.P.(C) 9747/2022 GUPTA ENGINEERING CO	 Petitioner
W.P.(C) 9924/2022 K K ENTERPRISES	 Petitioner
W.P.(C) 9966/2022 SHREE BUILDERS	 Petitioner
W.P.(C) 10590/2022 M/S RAJ KUMAR KESAR	 Petitioner
W.P.(C) 10597/2022 M/S SANJEEV BUILDERS	 Petitioner
W.P.(C) 10598/2022 M/S ASHOK KUMAR BAHIL	 Petitioner
W.P.(C) 10605/2022 M/S SHRI SHIV SHANKAR CONST CO. THROUGH ITS PROP. USHA ARYA	 Petitioner

W.P.(C) 10606/2022
M/S ARYA AND CO. THROUGH ITS PROP.
SATYA PAL SINGH ARYA Petitioner

W.P.(C) 12051/2022
M/S HARPREET ARORA THROUGH ITS PROP.
HARPREET ARORA Petitioner

W.P.(C) 12066/2022
M/S SARAB CONSTRUCTIONS THROUGH ITS
PROP. MITALI ARORA Petitioner

W.P.(C) 12070/2022
M/S ARORA CONSTRUCTIONS Petitioner

W.P.(C) 12108/2022
M/S TANYA CONSTRUCTIONS Petitioner

W.P.(C) 12111/2022 and CM APPL. 36196/2022
M/S KAPIL CONSTRUCTION Petitioner

W.P.(C) 12127/2022
KARTAR BUILDERS Petitioner

W.P.(C) 13020/2022
M/S AIPL AND PPMPL (JV) Petitioner

W.P.(C) 13136/2022 and CM APPL. 41992/2022
NITIN GUPTA Petitioner

W.P.(C) 13773/2022
VIKAS BANSAL Petitioner

W.P.(C) 12157/2022
M/S ANSH CONSTRUCTION Petitioner

Versus

NORTH DELHI MUNICIPAL
CORPORATION AND OTHERS Respondents
MUNICIPAL CORPORATION OF DELHI

W.P.(C) 116/2021 & other connected matters

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AND ANR

..... Respondents

GOVT. OF NCT OF DELHI AND ANR.

..... Respondents

Present : Mr. Sandeep Agarwal, Sr.
Advocate with Mr. Sandeepan
Pathak, Mr. Manish Kumar
Srivastava, Mr. Sagar Arora, Mr.
Mayank Goel, Mr. Tarun Diwan,
Ms. Pyari, Ms. Himanshi
Bhardwaj, Mr. Vasu Bhardwaj,
Mr. Robin Bhardwaj, Ms.
Vandana Bhanot, Mr. Khwaja
Siddiqui, Mr. Ashwani Kumar,
Mr. Ramneek Singh, Ms. Jyoti
Nambiar and Mr. V.P. Rana,
Advocates for the petitioners.

Mr. Kunal Vajani and
Mr. Siddhant Nath, Standing
Counsels for MCD with Mr.
Utkarsh Kulvi, Advocate, for the
respondents.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.

1. By way of the present batch of petitions filed under Article 226 of the Constitution of India, the petitioners have sought release of payments due and payable to them under the bills prepared and approved by respective Assistant Engineer(s) and counter-signed by Junior Engineer(s) of the erstwhile North Delhi Municipal Corporation, East Delhi Municipal Corporation and South Delhi Municipal Corporation (hereinafter, collectively referred to as '*Corporation*') against the works

executed by the petitioners. The petitioners have also claimed interest @ 24% per annum from the date of approval of the bills.

2. As the issue raised in all petitions is the same, they have been taken up for consideration together and are being disposed of accordingly vide a common judgment. With the consent of the parties, W.P.(C) 116/2021 is being treated as the lead case.

3. A perusal of the petitions would show that the petitioners claim themselves to be registered contractors engaged with the Corporation for carrying out development work in various municipal wards. They are aggrieved by the failure of the Corporation in making payments due towards them for execution of tender works, and reportedly in some cases, the bills have remained pending for reimbursement by the Corporation since the year 2014-15.

4. Learned counsels for the petitioners submitted that the Corporation has not released the due payments, ostensibly relying on Clauses 7 and 9 of the General Conditions of Contract. It was also submitted that despite repeated reminders, the Corporation has failed to take requisite action and the same has resulted in a situation where the petitioners have been forced to take loan from the market, on interest, for executing others' tenders.

To supplement the petitioners' contentions, a summary of outstanding dues/arrears has been placed on record depicting the principal amounts and interests claimed by them. The summary of claimed dues towards principal amounts is extracted below:-

Summary of Outstanding Dues/ Arrears					
S. No.	Writ Petition No.	Title of Writ Petition	Outstanding Principal Amount of Bills claimed in the Writ Petition (In Rupees) (A)	Amount received during pendency of Writ Petition, if any. [In Rupees] (B)	Principal Outstanding Amount [In Rupees] C= (A-B)
1	W.P. (C) 116/2021	Garg Construction Co. vs. NDMC	6,20,42,493	8,71,701	6,11,70,792
2	W.P. (C) 5486/2022	Gaurav Mehtan VS. NDMC	2,04,85,656	10,22,238	1,94,63,418
3	W.P. (C) 9924/2022	K K Enterprises VS. NDMC	21,27,856	NIL	21,27,856
4	W.P. (C) 9966/2022	Shree Builders VS. NDMC	51,58,050	9,13,927	42,44,123
5	W.P. (C) 2511/2022	Neeraj Gupta VS. NDMC	97,70,963	NIL	97,70,963
6	W.P. (C) 3419/2022	G. R. Constructions VS. NDMC	1,23,42,184	NIL	1,23,42,184
7	W.P. (C) 4299/2022	Prem Mehta VS. NDMC	59,49,751	6,99,167	52,50,584
8	W. P. (C) 4350/2022	SRK Construction VS. NDMC	24,73,490	NIL	24,73,490
9	W.P. (C) 5032/2022	R.K. Tushir Const. VS. NDMC	2,02,58,092	32,30,706	1,70,27,386
10	W. P. (C) 6141/2022	Jatin Const. VS. NDMC	1,75,27,385	19,71,669	1,55,55,716
11	W.P. (C) 9747/2022	Gupta Engineering Co VS. NDMC	27,94,916	NIL	27,94,916
12	W.P. (C) 483/2021	M S Builders VS. NDMC	1,68,19,438	17,39,039	1,50,80,399
13	W.P. (C) 492/2021	BarahiConsts.VS. NDMC	4,52,88,898	52,23,226	4,00,65,672
14	W.P. (C) 2140/2021	Krishna Builders VS. NDMC	1,37,95,533	7,25,429	1,30,70,104
15	W.P. (C) 2190/2021	Kalra Const. VS. NDMC	3,59,59,729	16,72,298	3,42,87,431
16	W.P (C) 2198/2021	Rakesh Bansal VS. NDMC	5,69,61,996	82,43,095	4,87,18,901
17	W.P. (C) 2202/2021	Ankur Gupta VS. NDMC	2,16,15,005	4,12,830	2,12,02,175
18	W.P. (C) 2411/2021	Shivansh Const. VS. NDMC	89,77,511	NIL	89,77,511
19	W.P. (C) 2412/2021	Bansal Const.VS. NDMC	3,38,61,518	1,01,89,671	2,36,71,847
20	W.P. (C) 2413/2021	M K traders VS. NDMC	4,87,70,044	10,04,471	4,77,65,573
21	W.P.(C) 2704/2021	Gupta Radhey Shyam VS. NDMC	1,56,86,985	10,21,898	1,46,65,087
22	W.P. (C) 2705/2021	S.V. Const VS. NDMC	21,24,475	NIL	21,24,475
23	W.P. (C) 5444/2021	Devansh Const. VS. NDMC	1,30,25,348	3,49,327	1,26,76,021
24	W.P. (C) 5445/2021	A.A Const VS. NDMC	6,17,89,958	18,01,193	5,99,88,765
25	W.P. (C) 5446/2021	Mudit Const VS. NDMC	4,90,43,552	42,13,777	4,48,29,775
26	W.P.(C) 4859/2021	Monika vs. NDMC	97,29,307	12,59,097	84,70,210
27	W.P.(C) 7280/2021	Lalita Garg vs. NDMC	12,61,503	NIL	12,61,503
28	W.P. (C) 7276/2021	Atul Gupta vs. NDMC	83,84,461	NIL	83,84,461
29	W.P. (C) 6952/2021	Anil Kumar Bhardwaj vs. NDMC	66,04,904	7,59,152	58,45,752

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30	W.P. (C) 13773/2022	Vikas Bansal Vs. MCD	2,78,10,366	NIL	2,78,10,366
31	W.P. (C) 13136/2022	Nitin Gupta Vs.MCD	5,17,17,971	3,43,030	5,13,74,941
32	W.P. (C) 9889/2021	Ashok Kumar Vs. NDMC	31,03,651	NIL	31,03,651
33	W.P. (C) 9887/2021	Baljeet Singh Satender Parkash Vs. NDMC	21,87,597	NIL	21,87,597
34	W.P.(C) 9874/2021	Deepak Const. Co. Vs. NDMC	45,67,684	8,00,000	37,67,684
35	W.P.(C) 9814/2021	J.S. Sethi & Sons Vs. NDMC	25,10,482	4,68,196	20,42,286
36	W.P.(C) 9873/2021	Islamuddin Vs. NDMC	53,66,439	4,83,187	44,71,157
37	W.P.(C) 9809/2021	Khan Enterprises Vs. NDMC	60,45,632	4,78,000	55,67,632
38	W.P.(C) 9871/2021	MaheswariConst.Co. Vs. NDMC	28,49,200	6,92,467	21,56,733
39	W.P.(C) 9890/2021	Mohd Rashid Vs. NDMC	22,07,597	NIL	22,07,597
40	W.P.(C) 8910/2021	Prem Bros. Vs. NDMC	27,02,289	7,44,198	19,58,091
41	W.P.(C) 9885/2021	RashtriyaConst Co. Vs. NDMC	21,03,217	NIL	21,03,217
42	W.P.(C) 9891/2021	Sajid Khan Vs. NDMC	3,11,76,155	14,53,526	2,97,22,629
43	W.P.(C) 9876/2021	Sunshine Const. Co. Vs. NDMC	9,98,973	NIL	9,98,973
44	W.P.(C) 9907/2021	Vikas DandonaConst Co. Vs. NDMC	16,14,599	NIL	16,14,599
45	W.P. (C) 14989/2021	Aggarwal Associates Vs. NDMC	31,23,684	NIL	31,23,684
46	W.P. (C) 11731/2021	Akash Construction Vs. NDMC	27,16,063	NIL	27,16,063
47	W.P.(C) 7013/2022	Amit Sehrawat Vs. NDMC	74,62,962	NIL	74,62,962
48	W.P.(C) 12245/2021	Anubhav Gupta Vs. NDMC	25,23,285	4,06,870	20,31,494
49	W.P.(C) 10503/2021	Arpit Electric Co. Vs. NDMC	1,24,56,620	8,22,048	1,14,68,350
50	W.P.(C) 10606/2022	Arya & Co. Vs. NDMC	31,06,000	NIL	31,06,000
51	W.P.(C) 10598/2022	Ashok Kumar Bahl Vs. NDMC	10,95,479	NIL	10,95,479
52	W.P.(C) 12246/2021	Bharat ConstCo.Vs. NDMC	50,96,903	NIL	50,96,903
53	W.P.(C) 1387/2022	Deepak ConstCo.Vs. NDMC	83,47,243	NIL	83,47,243
54	W.P.(C) 11286/2021	Deepak Kumar Vs. NDMC	24,15,798	NIL	24,15,798
55	W.P.(C) 11477/2021	Deepika Enterprises Vs. NDMC	9,30,723	NIL	9,30,723
56	W.P.(C) 10606/2021	Dhankar Construction Vs. NDMC	25,23,058	14,83,511	10,39,547
57	W.P.(C) 12243/2021	Hardit Singh Kochar Vs. NDMC	48,89,962	1,64,980	47,24,982
58	W.P.(C) 6796/2021	Jagdamba Trading Co. Vs. NDMC	37,50,060	NIL	37,50,060
59	W.P.(C) 12274/2021	Japneet Builders Vs. NDMC	8,56,460	8,56,460	NIL
60	W.P.(C) 11449/2021	Kay Const. Co Vs. NDMC	47,71,405	83,928	46,87,477
61	W.P.(C) 12249/2021	Kays Buildcon Vs. NDMC	14,87,951	NIL	14,87,951
62	W.P.(C) 12244/2021	Kochhar Const Vs. NDMC	9,69,253	2,49,895	7,19,358
63	W.P.(C) 14959/2021	Lamba Brothers Vs. NDMC	87,27,811	NIL	87,27,811
64	W.P.(C) 1336/2022	Landscape Const Vs. NDMC	13,03,311	NIL	13,03,311
65	W.P.(C) 10501/2021	M K Gupta Vs. NDMC	25,55,824	11,96,995	13,58,829
66	W.P.(C) 10504/2021	M. Chhiba& Co. Vs. NDMC	2,50,42,447	8,51,524	2,41,90,923
67	W.P.(C) 1361/2022	Mohan Lal & Co. Vs. NDMC	59,43,128	NIL	59,43,128

68	W.P. (C) 11438/2021	Monu Enterprises Vs. NDMC	10,59,646	2,76,396	7,83,251
69	W.P.(C) 11456/2021	N A Construction Vs. NDMC	11,03,593	NIL	11,03,593
70	W.P.(C) 10605/2021	Narender Singh Dhankar Vs. NDMC	54,95,834	NIL	54,95,834
71	W.P.(C) 11728/2021	Narender Construction Vs. NDMC	2,10,62,339	NIL	2,10,62,339
72	W.P.(C) 15152/2021	New Lamba Brothers Vs. NDMC	15,61,612	NIL	15,61,612
73	W.P.(C) 6781/2022	Pradeep Kumar Vs. NDMC	35,05,524	35,05,524	NIL
74	W.P.(C) 11771/2021	Prateek Const Co. Vs. NDMC	87,75,708	NIL	87,75,708
75	W.P.(C) 1386/2022	Prem Prakash Gupta & Co. Vs. NDMC	35,80,033	19,88,666	15,91,367
76	W.P.(C) 1456/2022	Puneet const Co. Vs. NDMC	6,53,211	NIL	6,53,211
77	W.P.(C) 1457/2022	Puneet Enterprises Vs. NDMC	21,32,766	NIL	21,32,766
78	W.P.(C) 10590 /2022	Raj Kumar Kesar Vs. NDMC	53,46,709	4,58,950	48,87,759
79	W.P.(C) 9872/2021	Rakesh Gupta Vs. NDMC	3,66,44,566	8,14,609	3,58,29,957
80	W.P.(C) 11451/2021	Sameer Enterprises Vs. NDMC	63,75,693	NIL	63,75,693
81	W.P.(C) 10597/2022	Sanjeev Builders Vs. NDMC	57,27,812	4,83,280	52,44,532
82	W.P.(C) 10605/2022	Shri Shiv Shankar Const Co. Vs. NDMC	9,49,519	NIL	9,49,519
83	W.P.(C) 11440/2021	Sudhir Construction Vs. NDMC	17,66,524	NIL	17,66,524
84	W.P.(C) 10607/2021	Vijender Bhardwaj Vs. NDMC	38,85,249	NIL	38,85,249
85	W.P.(C) 6842/2022	Vinod Kumar Vs. NDMC	2,05,31,732	5,29,877	2,00,01,855
86	W.P.(C) 12157/2022	Ansh Construction Vs. NDMC	24,43,777	4,85,905	19,57,872
87	W.P. (C) 12070/2022	Arora Construction Vs. NDMC	23,06,739	NIL	23,06,739
88	W.P. (C) 12051/2022	Harpreet Arora Vs. NDMC	15,97,586	NIL	15,97,586
89	W.P.(C) 12111/2022	Kapil Constructions Vs. NDMC	22,63,055	NIL	22,63,055
90	W.P.(C) 12127/2022	Kartar Builders Vs. NDMC	51,91,10	NIL	51,91,10
91	W.P.(C) 12066/2022	Sarab Constructions Vs. NDMC	6,39,167	NIL	6,39,167
92	W.P.(C) 12108/2022	Tanya Constructions Vs. NDMC	33,24,104	NIL	33,24,104
93	W.P.(C) 13020/2022	AIPL & PMPPL (JV) v. MCD and Ors.	1,18,79,663	NIL	1,18,79,663
94	W.P. (C) 11314/2021	Sumit Infra. vs. NDMC	75,46,829	NIL	75,46,829
95	W.P. (C) 11287/2021	R.S. Constructions v NDMC	22,59,288	NIL	22,59,288
96	W.P. (C) 11285/2021	Vinod & Company v NDMC	1,21,26,435	NIL	1,21,26,435
97	W.P.(C) 2938/2022	Anurag Rana v. Govt. of NCT of Delhi	1,19,38,998	4,91,789	1,14,47,209

5. Though the Corporation had at the first instance filed a Counter-Affidavit contesting the petitions, subsequently, *Ms. Shilpa Shinde*, Additional Commissioner (Engineering), MCD appeared before this Court on 09.09.2022 and stated that the Corporation has taken a decision to release the payments towards principal amounts. In this regard, a copy

of policy dated 13.10.2022 approved by the Commissioner, MCD has been placed on record alongwith an affidavit of the aforementioned officer regarding mode and manner of disbursement.

6. Mr. Kunal Vajani, learned Standing Counsel for the Corporation, submitted that though a decision has been taken by the Corporation to make payments due towards principal amounts, the same would be released to the petitioners in a phased manner in terms of the policy dated 13.10.2022. It was further submitted that a sum of Rs.30 crores has been allocated to be released to the contractors on a monthly basis in the ratio of 38:38:24 i.e. on the basis of geographical spread and staff strength of the erstwhile North Delhi Municipal Corporation, South Delhi Municipal Corporation and East Delhi Municipal Corporation. Learned Standing Counsel also drew attention of the Court to policy dated 13.10.2022 placed on record to submit that payments would be released as per seniority of bills according to cut out date of each erstwhile Corporation, subject to the following three conditions:-

- (i) The contractor shall certify that they have not received the payment earlier, either in part or in full, with respect to the claim raised by them against the Corporation,
- (ii) The contractor shall submit an undertaking that if any payment is erroneously made, it would be returned to the Corporation on first demand, and
- (iii) An affidavit to the above effect will be rendered to the Corporation before disbursement of payment under this policy.

7. Learned counsels for the petitioners contended that the Corporation, by way of above policy, has in-principle agreed to release payments towards the principal amounts, but its decision to release the

payments as per seniority of the bills, that too in the manner stipulated in policy dated 13.10.2022, would result in further delay of about four to five years. The policy was challenged on various other grounds, including *inter-alia* that being an administrative decision, the same is *ultra vires* the DMC Act.

8. Before proceeding further, it is noted that a similar issue of release of payments against bills prepared, verified and approved by the respondent/Corporation in respect of contractors engaged with it for tender works came up before this Court in North Delhi Municipal Corporation and Anr. v. Sanjeev Kumar reported as **2018 SCC OnLine Del 8053**, wherein a Co-ordinate Bench of this Court observed as under:-

“81. The General Conditions of Contract i.e., clauses 7 and 9 which are admittedly part of the work orders issued by both the NrDMC and the EDMC are being tested in these batch of cases. A contract which stipulates that the consideration would be paid in an unforeseen time in the future based on certain factors which are indeterminable, would in effect be a contract without consideration. Even if the contract is held to be a valid contract, then the concept of ‘reasonableness’ has to be read into the same. Section 46 of the Contract Act and the explanation thereto is clear that “what is a reasonable time is a question of fact in each case.” A Corporation which gets works executed cannot therefore include terms in the contract which are per se unconscionable and unreasonable as –

- a) There is no fixed time period as to when the funds would be available;*
- b) There is also no fixed mechanism to determine as to when and in what manner the head of account is to be determined and as to how the Contractor would acquire knowledge of these two facts;*

c) There is also no certainty as to how many persons are in the queue prior to the Contractor and for what amounts;

d) There is enormous ambiguity in the receipt under the particular heads of accounts.

82. These clauses in effect say that the Contractor is left with no remedy if the Corporation does not pay for the work that has been executed. Such a Clause would be illegal and contrary to law. Such clauses, even in commercial contracts, would be contrary to Section 25 read with Section 46 of the Contract Act.

83. The clauses do not specify an outer time limit for payment. The expression reasonable time has to be 'a time'. The concept of time itself is ensconced with specificity and precision. Clause 9 is the opposite of being precise. It is as vague and ambiguous as it could be because it depends on factors which are totally extraneous to the contract, namely –

- Allotment of funds to the Corporation by the Government;*
- Allotment of funds in a particular head;*
- Allotment of funds for payments who are in queue prior to the contractor;*

xxx

85. By applying the above said principles, in respect of final bills raised by Contractors for works executed, that have been approved by the Engineer-in-Charge, the Clauses have to be read in the following manner:

a) Reasonable time for making of payments of final bills in respect of work orders up to Rs.5 lakhs shall be 6 months and work orders exceeding Rs.5 lakhs shall be 9 months from the date when the bill is passed by the Engineer-in-Charge.

b) The queue basis can be applicable for the payments to be made in chronology. However, the outer limit of 6 months and 9 months cannot be exceeded, while applying the queue system.

c) The payments are held to become due and payable immediately upon the expiry of 6 months and 9 months and any non-payment would attract payment of interest for the delayed periods.

d) A conjoint reading of Clauses 7 & 9 along with the amendment dated 19th May, 2006, clearly shows that for the payment of bills, the contractors have to follow the queue basis and as and when the amount is available under the particular head of account, the amount would be payable. The amendment does not, however, have a condition that no interest is payable for delayed payment. Such a condition exists only in Clause 7. Clause 9, therefore, when read with the amendment has to mean that the Corporation itself considers 6 months and 9 months to be the reasonable periods for which the payments of the final bills can be held back. Obviously, therefore, if payments are made, whether on a queue basis or otherwise, beyond the period of 6 months and 9 months, interest is payable.

e) To the extent that queue basis is applied only for clearing of payments which do not extend beyond the period of 6 months and 9 months period, it is reasonable. However, if the queue basis is applied in order to make Contractors wait for indefinite periods for receiving payments, then the same would be unreasonable and would have to therefore be read down.

f) 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.”

9. Although learned counsels on both sides have cited a catena of decisions, the same need not be gone into in view of the decision taken by Corporation to release the payments which are due to the petitioners towards principal amounts.

10. On a reading of the policy dated 13.10.2022, however, it is evident that the same is in teeth of the decision of this Court in Sanjeev Kumar (Supra), which was passed in facts and circumstances akin to the present case. It is worthwhile to note that in the captioned case, applicability of queue system to payments due beyond 6/9 months, bereft of an upper time limit, was found to be unreasonable. Further, it was opined that reasonable time for making of payments of final bills in respect of work orders with tendered value up to Rs.5 lakhs shall be 6 months and work orders with tendered value exceeding Rs.5 lakhs shall be 9 months from the date when the bill was passed by the Engineer-in-Charge. In the present case, most of the bills date back to the year 2015 and reasonable time for making payment has passed long back.

11. It is apparent that by bringing out the policy dated 13.10.2022 in the present case, the Corporation, has aggravated the agony of the petitioners and other similarly situated persons, as the release of payments has been made dependent on the availability of funds with the Corporation, among other extraneous factors mentioned in the policy. Further, not only the amount allocated for disbursement is miniscule, but also the ratio specified with regard to manner of disbursement bears no rationale. The ratio specified by the Corporation is arbitrary and unreasonable. This Court is also persuaded to take note of the fact that the policy dated 13.10.2022 fails to specify as to how many contractors are awaiting their payments from the Corporation. Insofar as the

Corporation's decision to release payments in a phased manner is concerned, it is reiterated that the brunt of shortage/non-availability of funds with the Corporation shall not be borne by a contractor who has duly executed tendered works and whose bills have been approved.

12. Moreover, the summary of outstanding dues/arrears of principal amounts placed on record by the petitioners has not been disputed by the Corporation, the relevant bills having been prepared and approved by officials of the Corporation itself.

13. Accordingly, the present petitions are allowed and the Corporation is directed to release payments due towards principal amounts to the petitioners, against verified and approved bills, within a period of eight weeks from the date of passing of this judgment. So far as the petitioners' prayer for interest on delayed payments is concerned, they may pursue their remedy by initiating appropriate proceedings in accordance with law.

14. It is clarified that the present petitions are entertained and disposed of in the peculiar facts and circumstances, where the Corporation has taken a conscious decision to release the payments.

15. Pending applications stand disposed of.

(MANOJ KUMAR OHRI)
JUDGE

JANUARY 25, 2023

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