

\* **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

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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

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

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

# Neutral Citation Number : 2023/DHC/000587

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

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

*ga*