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

+ **CO.APP.27/2014 & CM No.7996/2014**

Date of decision: 20.02.2015

POOJA KAPOOR & ANR. Appellants
Through: Mr.Kunal Tandon, Advocate.

versus

ARN INFRASTRUCTURE INDIA LTD. Respondent
Through: Mr.Arjun Singh Bhati, Advocate.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

SANJIV KHANNA, J. (ORAL)

1. The present appeal is directed against the order dated 3.4.2013 passed by the Company Judge in Company Petition No.387/2012, which reads as under:-

- “1. Learned counsel for the Respondent hands over to learned counsel for the Petitioners three account payee post dated cheques bearing Nos. 000205, 000204 and 000203 dated 30th April, 30th May and 30th June 2013 for Rs. 10 lakhs, Rs. 10 lakhs and Rs. 12,35,520 respectively. The said payments are accepted by learned counsel for the Petitioners without prejudice to the rights and contentions of the Petitioners.
2. In view of the fact that payments totalling Rs. 60 lakhs were made on the previous date and further payments as noted above have been made today, there does not appear to be any justification to further entertain this winding up petition.
3. It is clarified that any further claims that the Petitioners may have against the Respondent can be pursued by the Petitioners in accordance with law in other appropriate

proceedings. However, in the event any of the above cheques are dishonoured, the Petitioners are at liberty to revive this petition.

4. The petition is disposed of in the above terms.”

2. After passing of the said order the appellants herein had filed an application for review of the order dated 3.4.2013, which was dismissed vide order dated 27.3.2014. This order dated 22.3.2014 is also made subject matter of challenge.

3. The contention of the appellants is that they had deposited an amount of Rs.92,35,520/- in terms of Memorandum of Understanding dated 18.1.2010 for four units bearing Nos.G-86, 87, 90 and 91 admeasuring about 1736 square feet in Globus Galleria, ARN Global Business Park, Greater Noida. The appellants claim that the respondent company had accepted the booking and had assured return of 12.63% i.e. Rs.87,494/- after deduction of TDS per month upto the date the possession of the units was handed over.

4. As per the appellants there was default in payment of assured return and project did not take off and accordingly they repudiated the Memorandum of Understanding. They had asked for refund of the principal amount as well as the unpaid assured return. It is the case of the appellant that assured return was paid initially, but there were defaults thereafter. Reference is made to notice dated 11.7.2012 under Section 434 of the Companies Act, 1956.

5. It appears that during the pendency of the company petition certain payments were made by the respondent. Learned counsel for the respondent states that a total amount of Rs.1,17,92,300/- stands paid to the appellants. Learned counsel for the appellants states that he is not aware of the total

amount, but confirms that the principal amount of Rs.92,35,520/- stands paid. The claim of the appellants, it is apparent is now premised on the claim of the assured return.

6. During the course of hearing our attention was drawn and it is accepted that the respondent herein i.e. ARN Infrastructure India Ltd had not filed their reply to the company petition. The proceeding it is apparent were focussed on the repayment of the principal amount. Learned counsel for the respondent states that the claim for assured return is a disputed claim and is not an admitted amount. He, however, submits that an order of remand may be passed and this issue between the appellants and the respondent thereafter can be examined and decided by the Company Court.

7. Learned counsel for the appellants also does not have any objection. Keeping in view the aforesaid facts, we accept the suggestion given by learned counsel for the respondent.

8. Learned counsel for the appellants has submitted that the order of remand should not delay the proceedings. Learned counsel for the respondent submits that the company would file their reply to the winding up petition within a period of three weeks. Rejoinder, if any, will be filed within a period of three weeks thereafter.

9. List the matter before the Company Judge on 17.4.2015.

10. The appeal and the pending application is accordingly disposed of.

SANJIV KHANNA, J

ASHUTOSH KUMAR, J

FEBRUARY 20, 2015/k