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

+ O.M.P.(I) (COMM.) 55/2016

MR ANSHUL KAUL Petitioner
Through: Mr. Rajat Navet, Adv.

versus

M/S UNITECH LTD Respondent
Through: Mr. Abhimanyu Bhandari and
Ms. Aanchal Mullick, Advs.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER
% **11.05.2016**

IA 5873/2016

1. The present application has been filed by the respondent / applicant under Order IX Rule 13 of Code of Civil Procedure, 1908 for setting aside the order dated 16th March, 2016 in view of order dated 25th April, 2016 of the Division Bench of this Court in FAO(OS) (COMM.) 22/2016.
2. It is the submission of the learned counsel for the respondent / applicant that vide order dated 16th March, 2016 the respondent was directed to pay the monthly EMIs in the sum of Rs.1,18,504/- per month to the ICICI Bank till the disputes are resolved between the petitioner and the respondent through the process of arbitration.
3. According to Mr. Abhimanyu Bhandari, learned counsel for the respondent the petition was premised on the ground that the petitioner having exercised the buy-back option, the petitioner is entitled to the benefit.

According to him, the said aspect may not be a correct, inasmuch as the buy-back option was required to be exercised between 31st March, 2014 to 30th April, 2014. However, the petitioner had exercised the buy-back option only on 13th May, 2014, which is beyond the stipulated period.

4. On the other hand, Mr. Rajat Navet, learned counsel for the petitioner/applicant concedes to this position. He also concedes to the position that the buy-back option has not been exercised within the stipulated time and the order dated 16th March, 2016 needs to be set aside. He states that this Court may first set aside the order dated 16th March, 2016, so as to enable the petitioner, withdraw the present petition.

5. Having heard learned counsel for the parties and in view of the fact the petitioner / non-applicant had not exercised the buy-back option between 31st March, 2014 and 30th April, 2014, petitioner would not be entitled to the benefit of buy-back and the order dated 16th March, 2016 needs to be set aside. It is ordered accordingly.

6. Since the petitioner seeks to withdraw the instant petition, the same is dismissed as withdrawn.

V. KAMESWAR RAO, J

MAY 11, 2016

jg