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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO(OS) (COMM) 26/2016, CM Nos.16722-16726/2016**
KAKADE CONSTRUCTION COMPANY PVT LTD & ANR

..... Appellants

Through : Mr. Rajiv Nayar, Senior Advocate
with Mr.Ajit Warriar, Mr.Ameya
Gokhle, Mr.Dushyant Manocha,
Advocates.

versus

VIRTUOUS RETAIL LIMITED & ANR Respondents

Through : Mr. Sanjeev Puri, Senior Advocate
with Mr.Hardeep Sachdeva,
Mr.Kamal Shankar, Advocates.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MR. JUSTICE I.S.MEHTA

ORDER

% **05.05.2016**

Caveat No379/2016

Since the caveator is represented and has been heard, the caveat stands discharged.

FAO(OS) (COMM) 26/2016, CM Nos.16722-16726/2016

1. The appellants have assailed the order dated 29th April, 2016, whereby, the learned Single Judge has rejected the IA No. 2868/2016 filed in OMP No. 399/2013 by the appellants. By this application moved under Section 151 CPC, the appellants had prayed for stay of the order dated 18th December, 2014, which had been passed in terms of an undertaking given on behalf of the appellants on 23rd November, 2014.

2. Right at the outset, it is submitted by Mr.Rajiv Nayar, learned Senior Counsel appearing on behalf of appellants on instructions that the appellants do not dispute liability and that they are willing to pay the amount in terms of the arbitral award dated 14th May, 2012 read with the undertaking dated

23rd November, 2014. It is submitted that the appellants have certain issues with regard to valuation or buying of the concerned shares on the fair prices on which, the transfers of the shares would be effected.

3. It is further submitted by Mr. Rajiv Nayar, learned Senior Counsel before us that there is no dispute that an amount of Rs.30,00,00,000/- (Rupees Thirty Crores) have been paid out of total amount of Rs.70,00,00,000/- (Rupees Seventy Crores), which was the subject matter of the Arbitral Award dated 14th May, 2012. Mr. Nayar submits that so far as the remaining amount of Rs.40,00,00,000/- (Rupees Forty Crores) is concerned, the appellants proposes to deposit the same in the following manner:

- (i) an amount of Rs.10,00,00,000/- (Rupees Ten Crores) shall be deposited before the learned Single Judge in OMP No. 399/2013 on or before 31st July, 2016.
- (ii) the appellants shall simultaneously secure the balance amount of Rs.30,00,00,000/- (Rupees Thirty Crores) by way of a Bank Guarantee. Thereafter, they shall periodically deposit this amount by instalments and seek consequential reductions of the bank guarantee amounts.

In view of above submissions, learned Senior Counsel for the appellant prays to withdraw this appeal, and seek modification of the impugned order dated 29th April, 2016 by way of an appropriate application.

4. We are also informed by Mr. Rajiv Nayar, learned Senior Counsel for

the appellants that the appellants do not press their objection with regard to the legality and validity of the undertaking dated 23rd November, 2014 for the purposes of the deposit of the decretal amount. It shall be open for the appellants to place this submission before the contempt court, which is seized of the contempt proceedings, and if the court deems fit, it may consider this aspect of the matter as well as the offer made by the appellant to deposit the balance amounts as noted above.

5. Mr. Sanjeev Puri, learned Senior Counsel appearing for the respondents submits that as per the Arbitral Award, the appellant is liable to pay interest as well and as such, after the deposits, a balance amount of Rs.56.8crores as on 31st March, 2016 is due from the appellants.

6. In view of above, this appeal and the application are dismissed as withdrawn with liberty to the appellant to place the request noted by us in para 5 of this order before the learned Single Judge.

A copy of this order be given *dasti* to learned counsels for the parties under the signatures of the Court Master.

GITA MITTAL, J

I.S.MEHTA, J

MAY 05, 2016

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