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

+ O.M.P.(I) (COMM.) 306/2016

AJAY KUMAR

..... Petitioner

Through: Mr. Vijay Kajaria, Advocate

versus

LTC COMMERCIAL COMPANY PRIVATE LIMITED. Respondent

Through: Mr. Sanjeev Narula & Ms. Garima
Goel, Advocate

CORAM: JUSTICE S.MURALIDHAR

ORDER

% **27.01.2017**

IA No. 15362/2016

1. This is an application filed by the Respondent seeking modification and clarification in the order dated 27th October, 2016, which is a consent order. In particular, a clarification has been sought with regard to a direction issued in paragraphs (iii) and (iv) of the said order, which read as under:-

(iii) Any excess amount that is available with the Respondent after such adjustment will be placed in a fixed deposit with the scheduled bank and a copy of the fixed deposit receipt will be furnished to the Petitioner and also filed in this Court not later than four weeks after the conclusion of the public auction sale.

(iv) to the extent that the Petitioner has succeeded in the arbitral proceedings the Respondent will furnish a bank guarantee for the said amount together with interest as of date to be issued by a scheduled bank in favour of the Petitioner and the said bank guarantee shall be kept renewed during the pendency of the arbitral proceedings under

Section 34 of the Act, i.e. OMP (COMM) 302 of 2016, 305 of 2016 and OMP (COMM) 308 of 2016.”

2. The learned counsel for the Respondent points out that the Respondent has, after the auction of the ‘*channa*’ stored in the warehouse has adjusted the warehousing charges and deposited in Court a sum of Rs. 61,01,406/-. The said amount has been kept in a fixed deposit and the copy of the Fixed Deposit Receipt has been handed over to the counsel for the Petitioner. It is pointed out by the learned counsel for the applicant/Respondent that this Court should clarify that the applicant should furnish a Bank Guarantee (BG) for the differential amount that is the decretal amount in terms of the Award minus the amount that has been deposited in Court.

3. Learned counsel for the non-applicant-Petitioner objects to the same.

4. Having heard learned counsel, the Court is of the view that purpose of the above direction was issued to ensure that entire liability on account of the Award is able to be met in the event that the Respondent's challenge to the Award fails. Since the balance amount of the auction sale proceeds is already in Court in the form of cash (which is now kept in a fixed deposit), it will meet the ends of justice to direct that the differential amount is asked to be secured by the Respondent by a BG.

5. Accordingly, the order dated 27th October, 2016 is modified by directing that the Respondent will furnish a BG for the differential amount i.e. the;

decretal amount together with up-to-date interest minus the amount already deposited in the Court. This order will now be complied with within four weeks. The BG will be kept renewed during the pendency of OMP (COMM) 302 of 2016, 305 of 2016 & OMP (COMM) 308 of 2016.

6. The application stands disposed of.

S.MURALIDHAR, J

JANUARY 27, 2017/P