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IN THE HIGH COURT OF DELHI AT NEW DELHI

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O.M.P. 377/2015

LASER SCANNING SYSTEMS PVT. LTD. & ORS. Petitioners
Through: Ms. Gargi Srivastava, Advocate.

versus

TECNOLOGY DEVELOPMENT BOARD Respondent
Through: Mr. Neeraj Jain, Advocate.

CORAM: JUSTICE S. MURALIDHAR

ORDER

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25.10.2016

1. The challenge in this petition under Section 34 of the Arbitration and Conciliation Act, 1996 ('Act') is to an Award dated 10th July 2014 passed by the sole Arbitrator in the disputes between the parties arising out of the loan agreement dated 29th May 2007 and two supplementary loan agreements dated 12th August 2007 and 29th September 2010 entered into between the parties in terms of which the Petitioners had obtained a loan of Rs.1.40 crores from the Respondent for utilisation in the proposed project of Development & Commercialisation of Systems and sub-systems based upon Laser Technologies to develop, manufacture and sell high performance 'Laser Scan Heads' based on patented technology for industrial, medical and scientific markets. This project was to take place at the production unit at Pardeshipura, Indore, Madhya Pradesh.

2. Admittedly, there was a default in the repayment of the loan leading to the

Respondent invoking the arbitration clause in the agreements and issuing a legal notice dated 29th May 2013 to the Petitioner and seeking reference of the disputes to arbitration.

3. Admittedly, in the arbitral proceedings the Petitioners were initially represented by their counsel. The Chairman and Managing Director of Petitioner No.1 also appeared along with a counsel in the arbitral proceedings. In the petition it is stated that Petitioner No.2 thereafter went to the United States and there met with an accident. It is stated that on account of the accident he was unable to communicate with his counsel.

4. As far as the arbitration proceedings are concerned, the counsel for the Petitioners stopped appearing and sought discharge and this was accepted by the arbitral tribunal ('AT') on 7th March 2014. The arbitral proceedings thereafter proceeded *ex parte* and the final Award was passed on 10th July 2014.

5. One of the grounds urged in the present petition is that since Petitioner No.2 is still bed ridden, he requires one more opportunity of contesting the arbitration proceedings and an opportunity to amicably settle the matter with the Respondent.

6. The Court finds that throughout the proceedings in the arbitration not even a letter was sent to the Arbitrator expressing a desire to continue to participate in the arbitration proceedings. The contention that Petitioner No.2 could not even instruct learned counsel to make submissions to that effect before the learned Arbitrator is unable to be accepted by the Court. It

does appear that the Petitioners lost interest in pursuing the matter before the learned Arbitrator.

7. It is then contended that there are some payments which have been made by the Petitioners and have not been accounted for by the learned Arbitrator. Learned counsel for the Respondent on the other hand states that in terms of the loan agreement, any payment that has been made by the Petitioners is to be adjusted first towards interest.

8. In any event, the Court is of the view that at the stage of enforcement of the arbitral Award, the Court which is then seized of the matter would take into account such a submission made by the Petitioners and require the Respondent to produce the relevant accounts to show that the payments made by the Petitioners thus far have been adjusted. This, however, is not a sufficient ground for interference with the impugned Award.

9. Consequently, the Court finds no ground having been made out for interference with the Award under Section 34 of the Act. The petition is dismissed.

S. MURALIDHAR, J

OCTOBER 25, 2016

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