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

+ **FAO (OS) (COMM) 95/2016**

M/S P.E.C. LIMITED

..... Appellant

Through

Mr. Rajesh Kumar and

Mr. Gaurav Kr. Singh, Advocates.

versus

M/S KANDLA ENERGY AND CHEMICALS LTD & ANR.

..... Respondents

Through

**Mr. Akhil Sibal, Mr. Yashvardhan
and Ms. Riya, Advocates for
respondent No. 2.**

CORAM:

HON'BLE MS. JUSTICE INDIRA BANERJEE

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

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03.02.2017

CM No. 1056/2017 (for further directions)

This application has been taken out in an appeal being FAO(OS) (COMM) No. 95/2016, which was disposed of by this Court by a judgement and order dated 27.10.2016; the operative part whereof is set out herein below:-

“29.Under Section 152 (d) charges due to the person in custody of the cargo, which would include outstanding, storage charges such as rent, may be appropriated from the sale proceedings after clearing the expenses of the sale, freight and other charges of the carrier and the duty payable in respect of the goods. The owner would be entitled to goods, only after all the appropriations as aforesaid are made. The learned Single Judge very rightly held that the petitioners stepped into the shoe of the owner as pledgee. It has no higher rights.

30.The learned Single Bench has rightly vacated the earlier interim orders and permitted the respondent No.2- Adani Ports to sell the cargo. The order under appeal does not call for interference. Needless to mention that Adani Ports shall also consider the offer of tenderers who have submitted their bids pursuant to the tender notice issued by the appellant in terms of the orders of this Court, or any other offers the appellant may procure. The appeal is disposed of accordingly”

The appellant has by way of this application sought the following orders:-

- “(a) Direct the Respondent No. 2 to consider the offer of the Applicant/Appellant to re-export the cargo.*
- (b) Direct the Respondent No. 2 not to sale/auction or dispose of the Cargo in issue without considering the suggestion, offer etc., of the Applicant/Appellant with regard to the Cargo in issue as the substantial financial interest of the Applicant/Appellant is involved in the cargo in issue.*
- (c) Direct the Respondent No. 2 to keep the Applicant/Appellant duly informed and consider their reasonable objections (if any) about the steps being taken by the Respondent No. 2 with regard the Cargo in issue.”*

First of all, it is doubtful whether such an application can be made in an appeal, which has already been disposed of by a final judgment and order.

Mr. Sibal submits that in any case, the goods have been auctioned on 29.11.2016, pursuant to a public notice issued on 23.11.2016 in the newspapers and the consideration has fully been received.

This application is, therefore, infructuous and the same is dismissed.

INDIRA BANERJEE, J

ASHUTOSH KUMAR, J

FEBRUARY 03, 2017

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