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IN THE HIGH COURT OF DELHI AT NEW DELHI

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O.M.P.(I) 544/2015

INTEC CAPITAL LIMITED

..... Petitioner

Through: Ms Deboshree Saha, Advocate

versus

SHIVAM PRINTOGRAPHICS PVT LTD & ORS Respondent

Through: Mr Joydeep Mazumdar and Mr Rohit
Dutta, Advocate

CORAM: JUSTICE S.MURALIDHAR

ORDER

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01.03.2017

IA 13268/2016 (by the Respondent, for recall of the order dated 8th August, 2016)

1. This is an application made by the Respondent / Applicant seeking recall of the order dated 8th August, 2016 passed in IA. No.9462/2016, which had been filed by the Petitioner.

2. The facts in brief are that the Petitioner - Intec Capital Limited - had filed OMP No. 544/2015 under Section 9 of the Arbitration & Conciliation Act, 1996 ('Act') seeking interim reliefs against the Respondent pending the reference of the disputes between them to arbitration.

3. In the said petition on 20th January, 2016, following order was passed by this Court:

“I have been informed by the parties that the award has been passed. Full amount has been paid by the respondents. The present petition has become infructuous. The same is dismissed.”

4. Thereafter the Petitioner filed IA No.9462/2016 in which, it was prayed that the court should clarify that the order dated 20th January, 2016 should not come in the way of adjudication of Case No. ARBTN/08/2016 filed by the Petitioner under Section 34 of the Act challenging the said Award dated 21st December, 2015. The case of the Petitioner was that although it had received the Award amount from the Respondent, nevertheless it was entitled to challenge the Award to the extent that its claims were not allowed.

5. When the above application came up for hearing on 8th August, 2016, following order was passed by this Court:

“LA. No.9462/2016 (u/s 151 CPC, by petitioner) The abovementioned application has been filed by the petitioner for clarification of the order dated 20th January, 2016. Learned counsel for the petitioner submits that the petitioner has filed the objections under Section 34 of the Arbitration and Conciliation Act, 1996 challenging the impugned Award. It is clarified that as and when the said objections are listed, the same will be considered on merits. Learned counsel for the petitioner is satisfied with the same.

The application is accordingly disposed of. “

6. The above order was passed in the absence of learned counsel for the Respondent. Meanwhile, Case No. ARBTN/08/2016 filed by the Petitioner in the District Court at Saket under Section 34 of the Act is pending. In these circumstances the present application has been filed by the Respondent seeking recall of the order dated 8th August 2016.

7. Learned counsel for the Respondent refers to the correspondence exchanged between the parties which according to him revealed that acting on the

assurance of the Petitioner, the Respondent deposited the entire awarded amount, without any knowledge of the Petitioner's intention of challenging the Award.

8. In the considered view of the Court, the order dated 8th August, 2016 cannot be construed as deciding the issue of maintainability of the petition filed by the Petitioner under Section 34 of the Act. Whether the Petitioner's said objections are maintainable in law and on merits is for the Court before which it is pending to decide. It is open to the Respondent to urge its pleas in opposition thereto before the said Court. The objections will be decided independent of the order dated 8th August 2016.

9. No further clarification is required in the matter.

10. The application is disposed of.

S.MURALIDHAR, J

MARCH 01, 2017

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