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

+ FAO(OS) 123/2017

% Date of decision : 17th July, 2017

M/S BHARAT SANCHAR NIGAM LTD Appellant
Through : Mr. L.B. Rai and Mr. Mohit
Kr. Sharma, Advs.

versus

M/S EXNXT SOFTWARE PVT LTD Respondent
Through : Mr. Sameer Jain and
Mr. Mark Wright, Advs.

**CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE C.HARI SHANKAR**

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

CM No.15040/2017 (condonation)

1. For the reasons stated, delay in filing the appeal is condoned.
2. The application is disposed of.

CM No.15039/2017 (exemption)

3. Allowed, subject to just exceptions.
4. The application is disposed of.

FAO(OS) 123/2017 & CM No.15038/2017 (stay)

5. The appellant assails the order dated 1st February, 2017 passed in IA No. 8236/2016 in OMP 1154/2014, which was filed by the respondent herein for release of the sum of ₹15 lakhs

deposited by the appellant herein with the Registry of this court pursuant to orders passed by the learned Single Judge.

6. The appellant herein during the pendency of the matter had invoked the previous bank guarantee which had been submitted by the respondent. In regard thereto, OMP 1154/2014 was filed by the respondent seeking an interim order against the encroachment. By an order dated 10th October, 2014, the learned Single Judge had directed the appellant to deposit the amount thereof with the Registry and directed withdrawal of the money to the party who was successful in the arbitration proceedings.

7. It is an admitted position that an Arbitral Award dated 15th March, 2016 with regard to disputes between the parties had awarded an amount of ₹2.8 crores in favour of the respondent herein. This Award was the subject matter of challenge by the appellant by way of OMP 1154/2014.

The arbitration proceedings thus had culminated in the Award dated 15th March, 2016 in favour of the respondent.

8. Noting this position, the learned Single Judge by the order dated 1st February, 2017 directed release of the amount deposited by the appellant to the respondent.

9. We are informed by learned counsel for the respondent that the amount stands released by the Registry to it.

10. Furthermore, the main objections filed by the appellant and to the extent pressed by it have been reserved for orders. The learned Single Judge has noted as follows :

“5. xxx The aforesaid petition was heard and the orders have been reserved. However, it is relevant to note that in that petition although arguments have been advanced to assail the award of claims in favour of EXNXT, no arguments have been advanced to assail the rejection of the counter claims. Thus, even if BSNL succeeds in its challenge in that petition, the order rejecting their counter claims and consequently, direction for release of the amount encashed by BSNL by invoking the bank guarantee would necessarily stand. Consequently, there is no reason to withhold the sum deposited by BSNL in this court. Accordingly, the present application is allowed and the Registry is directed to release the amount of `15 lacs deposited by BSNL along with accrued interest to EXNXT.”

11. For all these reasons, we are not inclined to interfere with the order dated 1st February, 2017 directing the release of the amount to the respondent.

This appeal and the application are, therefore, dismissed.

Needless to say, in case the learned Single Judge accepts the objections filed by the appellant, appropriate orders could be passed directing restitution in favour of the appellant.

ACTING CHIEF JUSTICE

JULY 17, 2017/kr

C.HARI SHANKAR, J