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

+ **FAO(OS) 364/2016**

M/S SCHIFFIES INDIA LIMITED & ANR Appellants

Through Mr Sachin Datta, Sr. Adv. with Mr
Jayant Kumar, Adv.

versus

M/S S E INVESTMENTS LTD & ORS Respondents

Through Mr P. Nagesh, Adv. with Ms Shuchi
Segwar, Adv.

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

% **16.01.2017**

CM 46251/2016

Allowed subject to all just exceptions.

FAO(OS) 364/2016

We have heard the learned counsel for the appellant. We have also heard the learned counsel for the respondents who appears on advance notice.

Having heard the learned counsel for the parties, it appears that on 29.04.2016 when the initial order was passed, there was discussion with regard to a direction to the appellant to deposit a sum of Rs.46,19,164/- but, there was, in point of fact, no direction for such deposit by the Court.

In the order dated 23.08.2016, the Court noted that the appellant had to deposit a sum of Rs.46,19,164/- which had been presumably directed by the order dated 29.04.2016 but, as we have pointed out above, there was no such direction given on 29.04.2016 and the learned counsel for the appellant was only required to seek instructions with regard to the deposit. To confound the matters, the order

dated 08.09.2016 proceeded on the ground that the presumed direction for deposit of the said sum had not been complied with and one more 'opportunity' was given to the appellant to deposit the same within six weeks subject to costs of Rs.50,000/-.

We finally come to the impugned order dated 24.10.2016 which proceeded on the footing that as the final opportunity was also not availed of, the earlier orders being mandatory, the petition was liable to be dismissed and it was ordered accordingly.

We find that the entire matter has proceeded on the assumption that a direction was given on 29.04.2016 requiring the appellant/petitioner to make the deposit of Rs.46,19,164/-. There was no such direction in the said order.

Consequently, we are of the view that the petition under Section 34 of the Arbitration and Conciliation Act, 1996 ought to be restored. The restoration of the petition would entail that the appellant would have to satisfy the learned single Judge as to whether there was an admission as claimed by the respondents in the petition as supplied to the respondents. The learned single Judge would also consider the effect of the same and pass orders accordingly.

By restoring the OMP No.1589/2014, we are relegating the parties to the same position as obtaining immediately upon the passing of the order dated 29.04.2016. The learned single Judge shall proceed with the matter from that stage onwards.

The appeal is disposed of accordingly.

BADAR DURREZ AHMED, J

ASHUTOSH KUMAR, J

JANUARY 16, 2017/ab