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

\+ EFA(OS) 35/2016

PHAFAG AG ..... Appellant

Represented by: Mr.Jayant Mehta & Ms.Ashmi Mohan, Advocates.

versus

MOREPEN LABORATORIES & ORS ..... Respondents

Represented by: Mr.Pramod Singh, Advocate for respondent No.1.
Mr.Rahul Chaudhary, Sr Standing counsel for Income Tax Department.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

% **19.01.2017**

CM No.47559/2016

1. For the reasons stated in the application, the delay of 22 days in filing the appeal stands condoned.

2. The application stands disposed of.

EFA(OS) 35/2016

1. In execution of a foreign award in favour of the appellant and respondent No.2, an execution petition came to be filed by the appellant. The award has to be satisfied by respondent No.1. As per the award, 50% of the sum awarded is to the benefit of the appellant and remaining 50% to the

benefit of the respondent No.2.

2. The judgment debtor/respondent No.1 deposited a sum of ₹3,84,84,131/- in this Court. The said amount was kept in a deposit bearing interest. Vide an order passed on January 15, 2016 in the execution proceedings, the judgment debtor agreed to pay further sum of ₹55,15,869/-, half of which had to be paid to the appellant and the remaining half to respondent No.2. Later on, this amount of ₹55,15,869/- was also deposited in this Court because the appellant and respondent No.2 are foreign entities and procedural compliances have to be made before the remittances are effected.

3. The problem in the appeal concerning the impugned order October 18, 2016 relates to the appellant’s inability to take the benefit of the amounts deposited in this Court.

4. Section 195 of the Income Tax Act, 1961 and the Income Tax Rules 1962 require Form No.15CA and Form No.15CB to be furnished to the income tax authorities by the remitter. Tax on the remittance has to be deposited with the income tax authorities by the remitter.

5. The view taken by the learned Single Judge is that since the amounts have been deposited by the judgment debtor, the judgment debtor would not be any longer be a remitter of the funds, with further direction that regulatory compliances have to be made makes the impugned order self contradictory.

6. Who completes the regulatory compliances? Obviously it has to be the remitter. The logical conclusion of the view taken by the learned Single Judge, that the judgment debtor would no longer be the remitter of the funds

would mean that the Delhi High Court would be the remitter of the funds. This would be absurd. The Delhi High Court is not answerable to the income tax authorities, should query arises concerning the remittance and the tax deposited.

7. Under the circumstances, we set aside the impugned order dated October 18, 2016. We hold that respondent No.1 is the remitter and has to fill up and furnish to the income tax authorities the requisites forms referred to above. Upon these procedural compliances being made the amount of tax to be deposited, would be paid over by the Registry of this Court to the income tax authorities. Thereafter, the bank in which the money is lying in deposit would make the necessary remittance. We note at this stage that appellant concedes that ₹50,00,000/- have to be retained as per a judicial order passed in some other case. Therefore, we clarify that whereas tax would be paid on the entire amount, remittance would be minus ₹50,00,000/-.

8. Execution Petition No.332/2012 is restored with a direction that it would be listed before the Registrar General on February 14, 2017, who would ensure that needful is done.

9. The appeal stands disposed of.

10. No costs.

PRADEEP NANDRAJOG, J

YOGESH KHANNA, J

JANUARY 19, 2017
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