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

Date of Decision: 4.7.2018

+ O.M.P.(I) (COMM.) 88/2018 & I.A. No.5671/2018, 6081/2018

SRS INVESTMENTS BENGAL TIGER LTD Petitioner

Through: Mr. Tajas Karia with Mr. Surjendu Sankar Das, Ms. Amee Rana, Ms. Avlokita Rajvi and Ms. Aishwarya Narayanan, Advs.

versus

RAHUL TODI & ORS. Respondent

Through: Mr. Ratnanko Banerjee, Sr. Adv. with Mr. Aniket Bhattacharyya, Adv. for R-1 & 5.

Mr. Pradeep Aggarwal with Mr. Karan Khanna and Mr. Arjun Aggarwal, Advs. for R-2 to 5.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SHAKDHER

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RAJIV SHAKDHER, J. (ORAL)

1. After arguments were advanced by the counsel for the parties, what has emerged is that the petitioner before this Court has also filed an Execution Petition (Arbitration Execution Case No.352/2018) before the 16th Additional Judge, Alipore ("Alipore Court").

1.1 A copy of the order dated 28.6.2018 passed by the Alipore Court has been placed before me. A perusal of the same shows that certain interim directions had been issued by the said Court at the behest of the petitioner herein.

2. Furthermore, the record shows that on 26.2.2018, this Court, while

issuing notice in the captioned petition also passed the interim directions. For the sake of convenience, para 4 of the order dated 26.2.2018 is extracted hereafter:

“...4. In the meanwhile, the respondents are restrained from transferring, selling, encumbering or in any manner alienating any of their immovable assets till the next date of hearing. The respondents shall also file an affidavit making a complete disclosure of all their assets, moveable and immoveable, as well as the encumbrances, if any...”

3. Mr. Ratnanko Banerjee, learned Senior Counsel, who, appears for respondent No.1 & 6 and Mr. Pradeep Aggarwal, who, appears for respondent No.2 to 5, submit that since the petitioner herein has taken out proceedings under Section 36 of the Arbitration and Conciliation Act, 1996 (in short “1996 Act”), the captioned petition has been rendered infructuous.

4. On the other hand, Mr. Karia, who, appears for the petitioner has taken a contrary stand. It is his contention that since the instant proceeding under Section 9 of the 1996 Act was instituted prior to the proceedings, initiated under Section 36 of the very same Act, both can continue to operate simultaneously there being no impediment in law *qua* the same.

5. Having regard to submissions put forth by the counsel for both sides, the best course in my view would be that the captioned petition is closed with the following directions in order to avoid any further conflict between orders issued by this Court and the Alipore Court:

- (i) The order dated 26.2.2018 passed by this Court shall continue to operate till such time the executing court i.e., the Alipore Court vacates or varies the directions contained in the order. Liberty in that behalf is given to the Alipore Court, *albeit*, after

hearing the concerned parties.

- (ii) Accordingly, respondents will have liberty to approach the executing court for vacating or varying the order dated 28.6.2018. This, of course, would be without prejudice to the rights and contentions of the petitioner.
- (iii) The respondents will, in the meanwhile, file an affidavit in terms of para 4 of the order dated 26.2.2018. Needful will be done within two weeks from the date of receipt of a copy of this order.
- (iv) The aforesaid directions, however, will not come in the way of petitioner approaching executing court for obtaining relief in terms of remaining prayers adverted to in the captioned petition.

- 6. As indicated above, no further directions are called for.
- 7. Consequently, pending applications shall also stand closed.
- 8. The Registry will scan and upload the copy of the order dated 28.6.2018 passed in Arbitration Execution Case No.352/2018, by the Alipore Court, for the purpose of good order and record.

RAJIV SHAKDHER, J

JULY 04, 2018/pmc