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

+ EFA(OS) 5/2018

BRAWN LABORATORIES LTD Appellant
Through: Mr. Kirti Uppal, Senior Advocate
with Ms. Garima Gupta, Advocate

versus

FITTYDENT INTERNATIONAL GMBH Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE CHANDER SHEKHAR

ORDER
% **25.04.2018**

CM No.16414/2018

Allowed, subject to all just exceptions.

The application is disposed of.

EFA(OS) No.5/2018

Impugned order dated 5.4.2018 passed by the learned Single Judge in Ex. P. No.274/2011 and EA(OS) Nos.111-112/2016 directs the appellant/judgment debtor to deposit the decretal amount as per the currency conversion rate prevailing on 11.5.2010 within a period of four weeks.

The second aspect noticed in the impugned order relates to the remission of money abroad to the decree holder, who is a non-resident. Impugned order clarifies that remission would take place

only if permitted and in accordance with law.

Direction to deposit of the decretal amount does not, in our opinion, require interference. The appellant and respondent/decreed holder, as per grounds of appeal, had entered into an exclusive distribution and sale contract on 9.2.1994 pertaining to transfer of foreign technology and know-how. Disputes arose and were referred to arbitration, resulting in international award dated 24.3.2000. The appellant had challenged the award in Suit No.2447/2000, which challenge was rejected, except that rate of interest was reduced from 8% simple interest to 2% simple interest, upto the date of the actual payment vide judgment dated 11.5.2010. The award, with the aforesaid modification, has attained finality.

The respondent had filed the execution petition in the year 2011. Decree has not been executed.

The appellant does not dispute his liability and obligation to pay under the executable award.

In the aforesaid circumstances, including delay occasioned for whatsoever reason, direction to deposit the amount, which the appellant has no ground to dispute, is justified, appropriate and proper. Appellant is, in fact, primarily resisting transfer/remission of the award amount.

Reliance placed by the learned Senior Counsel for the appellant on the order dated 20.11.2015, passed by the Coordinate Bench in EFA(OS) No.43/2015 is misconceived and, in fact, supports the respondent. The observations made in the said appeal do not, in any manner, conflict with the impugned order.

During the course of hearing, learned counsel for the appellant has submitted that the appellant is ready to offer immovable property or an FDR. We are not inclined to accept this prayer, for this is an old matter, and once the award has attained finality, the amount should be deposited in the Court. The question of exchange rate etc. has been left open and has to be decided. Impugned order also clarifies that all contentions of the parties were reserved. Question of remission would be examined by the learned Single Judge.

Deposit, once made, can be kept in an FDR, to abide by further order of the Court.

The appeal is accordingly dismissed, with no order as to costs.

SANJIV KHANNA, J

CHANDER SHEKHAR, J

APRIL 25, 2018

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