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

+ EX.P. 94/2015 & EX.APPL.(OS) No.247/2015

M/S. MAPLETREE PROPERTY PVT. LTD. Decree Holder
Through Mr.D.Ashok Rajagoplan, Adv.

versus

LUDHIANA IMPROVEMENT TRUST & ORS.

..... Judgement Debtors
Through Mr.D.Satinder S.Gulati and
Mr.S.S.Narula, Advs. for JD No.1.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% **23.01.2018**

This Execution Petition was filed by the Decree Holder (in short DH) seeking enforcement of the Interim Arbitral Award dated 29.11.2014 passed by the Arbitral Tribunal while adjudicating the disputes that had arisen between the DH on one hand and the Judgment Debtor (in short JD) along with Consortium Led by Today Homes & Infrastructure Pvt. Ltd. on the other.

In the interim Arbitral Award it was directed as under:

“30. The application is allowed. It is directed as under:

(a) The Claimants are held entitled to the recovery of Rs. 15,55,20,000 from the Respondents with simple interest calculated @12.5% per annum from the date of payment till the date of realization. (In the event of the Claimants being held entitled to the payment of compound interest or any amount of interest, the interest recovered by the Claimants by virtue of this interim award shall be available for adjustment from

out of the monies held recoverable to the Claimant under the final award.)

(b) 70% of the above amount with interest shall be paid by the Respondent No.1 to the Claimants and 30% of the amount with interest shall be paid by the Respondent No. 5 to the Claimants.

(c) The above payment shall be available for adjustment inter se the Respondents against the amount awarded by the final award.

(d) Such payment by the Respondents would not in any manner prejudice or prevent the adjudication of disputes and all other issues arising for adjudication between the Respondents inter se.

(e) The Claimant shall affix the required stamp duty on this award before enforcing the same.”

In view of the above, JD was to pay 30% of Rs.15,55,20,000/- to the DH along with simple interest @ 12.5% p.a. from the date of payment till the date of realization.

During the pendency of the present Execution Petition, the JD have paid a sum of 6.50 crores to the DH vide Demand Draft dated 01.02.2017. Another event, which is the passing of the Final Award dated 01.07.2017, has also occurred during the pendency of the present Execution Petition. The Final Award directs as under:

“12.1. The Claimants are held entitled to recovery of Rs. 55,22,91,777/- from Respondent Nos.1. The claim is dismissed so far as Respondent No. 5 is concerned.

12.2 The awarded amount shall carry simple interest calculated @ 18% per annum with effect from 01.07.2017 till realization.

12.3 The Claimant is also entitled to an amount of Rs. 33,33,000 from Respondent No. 1 by way of costs in these

proceedings, and also to the amount of Stamp duty paid on the award.

12.4 The Claimant shall affix the requisite stamp duty on the Award before seeking its enforcement.

12.5 The awarded amount is being directed to be recovered from Respondent No.1 to the Claimant. It is clarified that so far as determination of liability between Respondent No.1 (or Respondents Nos.1 to 4) and Respondent No. 5 is concerned, that is not a subject matter of these proceedings and has not been adjudicated upon by this award.”

(emphasis supplied.)

In view of the above direction passed by the Arbitral Tribunal, the claim against the JD under the Interim Arbitral Award would not survive.

The learned counsel for the DH submits that the JD is guilty of taking undue advantage of the situation created by first challenging the Award dated 10.11.2016 that was passed between the JD and the Consortium Led by Today Homes & Infrastructure Pvt. Ltd., while at the same time taking advantage of the said Award by escaping from its liability under the Final Award dated 01.07.2017 passed by the present Arbitral Tribunal.

In my view, it is not for me to go into this issue in the present Execution Petition. The executing court cannot go behind of the decree of which execution is sought. The decree having merged into the Final Award which absolved the JD of all its liability, the correctness of the same is not for the Court to adjudicate. I may only further record the submission of the JD that with the above recorded payment, it may have paid the entire Awarded under the Interim Arbitral Award in question. However, I am of the opinion that I need not go into this issue as in my opinion, the Interim

Arbitral Award is no longer enforceable.

In view of the above, the present Execution Petition and pending applications are dismissed with no order as to costs.

NAVIN CHAWLA, J

JANUARY 23, 2018/Arya