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IN THE HIGH COURT OF DELHI AT NEW DELHI

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FAO(OS) 108/2017

M/S SHANTI PACKAGING INDUSTRIES & ORS

..... Appellant

Through: Mr. Vishal Arun, Mr. Gautam Misra,
Mr. Ashjit Sengupta, Ms. Divyadyuti
Banerjee, Advocates

versus

MAGMA FINCORP LIMITED

..... Respondent

Through: Mr. Nishant Maidasani, Advocate for
respondent No. 2 – Asset
reconstruction Company.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE A. K. CHAWLA

ORDER

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19.07.2018

C.M. APPL. No. 28274-28275/2018 (Impleadment)

By this application, the appellant had sought impleadment of Asset Reconstruction Company (India) Limited instead of Magma Fincorp Limited for a complete adjudication of the proceedings.

Mr.Nishant, Advocate appears and submits that he has instructions to appear on behalf of Asset Reconstruction Company (India) Limited and he will be filing his vakalatnama during the course of the day.

In the facts and circumstances of the case, the applications are allowed and Asset Reconstruction Company (India) Limited is impleaded as second respondent to the present proceedings.

The applications are disposed of in the aforesaid terms.

FAO (OS) No. 108/2017

The appellant's grievance is that its petition under Section 34 of the Arbitration and Conciliation Act was rejected on the ground that it does not adhere to a previous order. The previous order (dated 18.07.2016) had recorded an offer by the respondent (Magma Fincorp Ltd.). That order reads as follows:

“Learned counsel for the respondent states that without prejudice, the respondent is ready to settle the disputes if the petitioner will pay the principal agreed due amount along with interest @ 9.5% p.a. Learned counsel for the petitioners seek one week time to take instruction from the petitioners.

List on 3rd August, 2016.”

On the subsequent date of hearing, it was represented to the learned Single Judge on behalf of the petitioner that the offer recorded on 18.07.2016 was acceptable and that it would file an undertaking to that effect. Similar impression is discernable in the order of 01.12.2016. In these circumstances, when the matter was taken up on 19.12.2016, the appellant's counsel expressed inability to comply with the previous order stating that the offer was not acceptable. The learned Single Judge has however, in the given facts of the case merely dismissed the petition under Section 34 of the Arbitration and Conciliation Act, without adjudicating the merits of the petition.

After notice was issued to the respondent in the appeal, it has since transpired that the original claimant/respondent, in this case (Magma Fincorp Limited) assigned all its rights, title and interests,

including the claims in the present proceedings to M/s. Asset Reconstruction Company (India) Pvt. Limited.

The Court has considered the submissions of the parties. There is no doubt that the appellant at least on two occasions stated that the offer given by the respondent – Magma Fincorp Limited was acceptable, however, it did not act upon it and intimated its inability to do so to the Court. This should have resulted in the Court proceedings to adjudicate and decide the merits of Section 34 petition. Instead, the learned Single Judge dismissed it. Given that the award impugned under Section 34 was an ex-parte award, the remedy under Section 34 was a substantive one to the extent it permitted the appellant to urge any vitiating factor if any that could upset. Having regard to these facts, this Court is of the view that the impugned order cannot be sustained. It is accordingly set aside.

The parties are directed to remain present before the learned Single Judge on 30.07.2018 for fresh consideration of OMP No.1133/2013 and its disposal on the merit.

With aforesaid directions, the present appeal filed by the Appellant is allowed in the aforesaid terms.

Order *Dasti*.

S. RAVINDRA BHAT, J

A. K. CHAWLA, J

JULY 19, 2018

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