

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

EFA No. 03 of 2019 (O&M)

Date of Decision: 01.03.2019

S.R. Construction and others

....Appellants

VERSUS

M/s Vishal Nirmiti Private Limited and another

.....Respondents

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Harkesh Manuja, Advocate
for the appellants.

Mr. Sumeet Mahajan, Sr. Advocate with
Mr. Rohit Khanna, Advocate
for the respondents.

SURINDER GUPTA, J.

During the execution of award dated 30.03.2015 passed by Mr. Krishan Kumar Mutreja, Sole Arbitrator, appellants filed objections for recalling warrants of attachment/possession of property lying on the land of objector as detailed in para 2 of the objections. Award dated 30.03.2015 was passed as per settlement agreement dated 27.03.2014 (Annexure P-1) between Vishal Nirmiti Private Limited (later referred to as 'VNPL') and DSC Limited (a company duly incorporated under the Companies Act, 1956). Para 4 of the settlement reads as follows:-

“4. The parties further agree that the entire sale consideration/proceeds received by VNPL in the auction or private sale of the Equipments shall be deposited in an Escrow Account. It is mutually agreed between the parties that the utilization of the said sale consideration/proceeds deposited in the Escrow Account

shall strictly be released in the order stated herein below:-

- (i) A sum of ₹4,50,00,000/- (Rupees four crores fifty lacs only) shall be released in favour of M/s Srei Equipment Finance Limited;*
- (ii) a sum of ₹2,50,00,000/- (Rupees two crores fifty lacs only) in favour of M/s Kotak Mahindra Bank;*
- (iii) A sum of ₹5,10,00,000/- (Rupees five crores ten lacs only) shall be released in favour of VNPL towards the discharging of its liabilities against DSC;*
- (iv) entire balance amount shall be released in favour of DSC.”*

2. Concluding para of the award reads as follows:-

“In the light of the above said findings given in issue no. (II) & (III) it is held that the claimant is entitled to the relief sought in para (a) & (b) of the statement of claim. Accordingly, the respondent is directed to handover the physical and peaceful possession of the equipment detailed in Annexure A of the Settlement Agreement dated 27.03.2014 within fifteen (15) days from the passing of the present award. The respondent is directed to execute all kinds of documents either presented by the claimant or otherwise for finalization of transfer of title and registration upon the equipment. Both parties are also directed to specifically perform all their obligations stipulated under the Settlement Agreement. In the facts and circumstances

of the present the parties shall bear their own costs.
Therefore, the issue no. (IV) is partly allowed in favour of the claimant and against the respondent.”

3. Learned counsel for the appellants has argued that in the settlement between DSC Limited and VNPL, attempt has been made to debar the claim of appellants, which they have against it. In case the entire immovable property of DSC Limited is allowed to be auctioned through VNPL, claimants may lose their claim against appellants.

4. Admittedly, appellants have no settled claim against DSC Limited. Even if they have right to recover any amount against DSC Limited, the legal remedy is available to them. Till date neither they have filed any suit nor resorted to any arbitration proceedings. As per settlement, amount of sale of the immovable property of DSC Limited after satisfying the claim as mentioned in para 4 (I) (II) and (III) will be deposited with DSC Limited.

5. Learned counsel for appellants has argued that payments of ₹4,50,00,000/- to M/s Srei Equipment Finance Limited and ₹2,50,00,000/- to M/s Kotak Mahindra Bank will effect the interest of the appellants. Arbitrator was not competent to pass any award *qua* their claim as they were not parties before him.

6. Above argument of learned counsel for appellants has no merit as the executing Court had to execute the award which was never challenged by the appellants.

7. With the observation that appellants may avail legal remedy for recovery of any amount from M/s DSC Limited, I find that objections filed by appellants are misconceived and have been rightly dismissed by the

executing Court. The order passed by the executing Court suffers from no legal or factual infirmity.

8. This appeal has no merit and the same is dismissed.

March 01, 2019
jk

(SURINDER GUPTA)
JUDGE

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>