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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ O.M.P.(I) (COMM.) 317/2019
G.S.DEVELOPERS & CONTRACTORS PVT.
LTD. Petitioner
Through: Mr.Kunal Sachdeva, Adv.
versus

ALPHA CORP DEVELOPMENT PRIVATE LIMITED
& ANR. Respondents
Through: Mr. Rajshekhar Rao, Mr. Ayush
Agrawal, Mr. Vikrant Singh Bloria,
Mr. Samith, Mr. Anand and
Mr. Chaitanya, Advs.

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO

ORDER
% **30.09.2019**

This petition has been filed by the petitioner with the following prayers:

“In view of the aforesaid submissions, the Petitioner most respectfully prays that this Hon'ble Court be graciously pleased to:

A. Grant Ex-parte ad-interim direction on the respondent (Claimant) to maintain status quo with regard to the escrow account (opened vide order dated 15.02.2016) in terms of Sec. 36 of the Act. and / or

B. Grant Ex-parte ad-interim stay over realisation of amount of Rs. 16.70 Crores (along with the interest accruing thereon from 2016), as lying in escrow account opened pursuant to the order dated 15.02.2016 passed by Ld. Sole Arbitrator, till 19.12.2019, and/or

C. Pass any other order(s) as this Hon'ble Court deems fit.”

On the last date of hearing, an objection was taken by Mr. Rajshekhar Rao, learned counsel appearing for the respondent on the maintainability of the petition in view of the judgments passed by this court as under:

1. Nussli Switzerland Ltd. v. Organizing Committee Commonwealth Games, 2014 SCC OnLine Del 4834

2. Singhania Horizons v. HRC Engineers Estate Pvt. Limited and Anr. (2016) 1 High Court Cases (Del) 594

On this submission of Mr. Rao, Mr. Dayan Krishnan, learned Sr. Counsel appearing for the petitioner had taken an adjournment to look into the same. Today an adjournment is being sought on the ground Mr. Mohit Chaudhary, who was to appear in the matter, is not available. I am unable to agree with this submission made by the learned counsel for the petitioner.

It is a conceded position that amount of which stay is prayed for, i.e., Rs.16.70 Crores has been awarded in favour of the respondent herein. If that be so in terms of the judgment of this court in *Nussli Switzerland (supra)*, a petition under Section 9 of the Arbitration and Conciliation Act, 1996 shall not be maintainable at the behest of a party whose claims have been rejected or one claim that is awarded is subsumed in the larger amount awarded in favour of the respondent. Paras 34 and 35 of the Judgment reads as under:

“34. A party like the Organizing Committee which has its claims rejected, except a part, but which subsumes into the larger amount awarded in favour of the opposite party, even if succeeds in the objections to the award would at best have the award set aside for the reason the Arbitration and Conciliation Act, 1996 as distinct from the power of the Court under the Arbitration Act, 1940, does not empower the Court to modify an award. If a

claim which has been rejected by an Arbitral Tribunal is found to be faulty, the Court seized of the objections under Section 34 of the Arbitration and Conciliation Act, 1996 has to set aside the award and leave the matter at that. It would be open to the party concerned to commence fresh proceedings (including arbitration) and for this view one may for purposes of convenience refer to sub- Section (4) of Section 43 of the Arbitration and Conciliation Act, 1996. It reads: -

“43.Limitations-

(1) xxxxx

(2) xxxxx

(3) xxxxx

(4) Where the Court orders that an arbitral award be set aside, the period between the commencement of the arbitration and the date of the order of the Court shall be excluded in computing the time prescribed by the Limitation Act, 1963, for the commencement of the proceedings (including arbitration) with respect to the dispute so submitted.”

35. In view of the opinion expressed by us with reference to Section 9 of the Arbitration and Conciliation Act, 1996, the application filed by the respondent seeking an interim measure post award was not maintainable and thus we do not decide the second issue concerning the prima-facie merits of the claim.”

The aforesaid position has been reiterated by this court in the case of ***Singhania Horizons (supra)***.

Noting the aforesaid position of law, I do not see any reason to continue with this petition.

The petition is dismissed.

V. KAMESWAR RAO, J

SEPTEMBER 30, 2019/jg