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

\+ **<u>FAO(OS) (COMM) 176/2019 & C.M.Applns.33403-04/2019</u>**

HAMILTON HEIGHTS PVT LTD ..... Appellant

Through: Mohd. Shariq and Mr. Aman Rastogi, Advocates

Versus

M/S KRISHNA BUILDESTATES PVT LTD ..... Respondent

Through: Ms. Sumedha Dang and Mr. Nilesh Deep, Advocates

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE ASHA MENON

<u>O R D E R</u>

% **26.07.2019**

1. The appellant is aggrieved by an order dated 24.05.2019, passed by the learned Single Judge on an application filed by the respondent for release of the amount deposited by it in OMP (COMM) No.496/2018, in terms of the order dated 13.02.2019. Vide order dated 13.02.2019, the stay application filed by the appellant/petitioner praying *inter alia* for staying the operation of the Arbitral Award dated 30.06.2018, assailed in a petition under Section 34 of the Arbitration and Conciliation Act was disposed of with a consent order that the appellant will deposit 50% of the awarded amount in the Court and will furnish a bank guarantee to the satisfaction of the Joint Registrar of this Court for the balance 50% of the awarded amount within four weeks.

2. It is submitted by learned counsel for the appellant that in compliance of the aforesaid order dated 13.02.2019, the appellant had deposited 50% of the awarded amount in the Court. As regards the balance 50%, for which a bank guarantee was required to be furnished, it is submitted that subsequently, the appellant had moved an application for modification of this part of the order and vide order dated 15.04.2019, the balance 50% was directed to be secured by depositing the title deeds of flat(s) worth the said amount in Court. Compliances have yet to be made by the appellant by depositing the title deeds.

3. In the meantime, the respondent filed an application (I.A.7683/2019) for release of 50% of the awarded amount, deposited by the appellant in Court.

4. By the impugned order dated 24.05.2019, the captioned application moved by the respondent has been allowed and Registry has been directed to release a sum of Rs.1,54,90,880/- alongwith the accrued interest in favour of the respondent, subject to it filing an unconditional bank guarantee obtained from a Scheduled/Nationalized Bank of an equivalent amount in favour of the Registrar General. Further, to secure the interest of the appellant, the respondent has been directed to offer an undertaking of its Directors to the effect that in the event of the appellant succeeds in the Section 34 petition, the money released to the respondent will be re-deposited in the Registry with interest at the rate awarded by the learned Arbitrator i.e.12% *per annum*.

5. Aggrieved by the aforesaid order, the present appeal has been filed. Learned counsel for the appellant states that the respondent has already

initiated insolvency proceedings against the appellant that are pending before the National Company Law Tribunal (for short 'NCLT') and despite the appellant filing the Section 34 petition, assailing the Arbitral Award, the respondent has been actively pursuing the said matter.

6. The aforesaid submission is however refuted by learned counsel for the respondent, who appears on an advance notice, and hands over copies of a set of orders passed by the NCLT on a petition filed by the respondent against the appellant bearing no. (IB)-1544/ND/2018) to dispute the plea that the respondent has been vigorously pursuing the matter as claimed by the other side. She particularly refers to the order dated 08.01.2019, passed by the NCLT wherein the statement of the appellant has been recorded to the effect that they have moved the High Court against the arbitral Award and need time to file a reply to the application filed by the respondent.

7. Learned counsel for the respondent states that the next date fixed before the NCLT is 09.08.2019 and her client shall not be pressing the said application if, at least, 50% of the awarded amount, as deposited by the appellant is released in favour of her client. Copies of the orders passed by the NCLT, are handed over by learned counsel for the respondent and taken on record.

8. We are of the opinion that the apprehension expressed by learned counsel for the appellant about being adequately secured, has been sufficiently assuaged by the impugned order. The learned Single Judge has taken suitable measures to secure the interest of the appellant while directing release of 50% of the awarded amount deposited by it in the Registry. There is a specific direction to the respondent to file a bank guarantee from a

Scheduled Nationalized Bank and an affidavit of its Director in terms of the impugned order for release of the amounts as directed.

9. The present appeal is accordingly dismissed *in limine* as meritless alongwith the pending applications.

HIMA KOHLI, J

ASHA MENON, J

JULY 26, 2019/s/rr