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

+ EFA(OS) (COMM) 17/2019

MOHAN INFRACON PVT LTDAppellant

Through: Mr. Vijay K. Singh, Ms. Vijaya Singh
and Ms. Kanishka Prasad, Advocates

versus

NATIONAL SPOT EXCHANGE LTD & ORSRespondents

Through: Mr. Sudhanshu Batra, Senior
Advocate with Mr. Ranjan Kumar Pandey, Mr.
Sandeep Bisht, Mr. Anuj Tiwari, Mr. Shikhar
Shrivastava, Mr. Vishwanathan Iyer and Mr.
Aditya Mishra, Advocates for respondent No.1

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MS. JUSTICE ASHA MENON

ORDER

% **24.10.2019**

C.M.Appln.46976/2019 (Exemption)

Allowed subject to all just exceptions.

EFA(OS) (COMM) 17/2019 & C.M. APPL.46975/2019 (stay)

1. The appellant (respondent No.7) is aggrieved by an interim order dated 27.09.2019, passed by the learned Single Judge in OMP (ENF.)(COMM.) 13/2019, whereunder it has been directed not to dispose of,

alienate and encumber either directly or indirectly or otherwise part with the possession of any assets to the tune of the award amount except in the ordinary course of business. The next date fixed in the captioned OMP is 21.11.2019.

2. At the outset, Mr. Sudhanshu Batra, learned Senior Advocate appearing for the respondent No.1/NSEL states that the present appeal is not maintainable in terms of Section 37 of the Arbitration and Conciliation Act, 1996 or for that matter, Section 10 of the Delhi High Court Act and the respondent No. 1 reserves its right in this regard. He draws our attention to an application moved by the respondent No.1/NSEL (I.A. No.617/2019) that had been mentioned and got listed before the learned Single Judge in the morning of 27.09.2019, the date on which the impugned order was passed, to state that permission was sought to list the captioned application for hearing on the same date, which was duly allowed and that the copies of the said application were also furnished to the non-applicants/appellants, a day in advance.

3. It is the submission of learned Senior Advocate appearing for the respondent No.1/NSEL that the appellant herein has not given unencumbered security in respect of 90% share in the premises known as 7 Civil Road, Civil Lines, Delhi admeasuring 14,000 square yards, owned by the appellant, as detailed in Clause 2.3.1 of the Settlement Agreement dated 30.10.2013, which has compelled the respondent No.1/NSEL to file the captioned application for injuncting the appellant and other judgment debtors from creating any third party rights in their personal properties. He

states that the title deeds of the captioned property was handed over by the appellant to the respondent No.1/Decree Holder and it had in turn, deposited the same with the designated court under the Maharashtra Protection of Interest of Depositors (in Financial Establishments) Act, 1999 (for short the 'MPID Act'). The auction proceedings in respect of the said property are stated to be on-going. In the meantime, the respondent No.1/Decree Holder was apprised of the fact that a third party had instituted a civil suit bearing CS(OS) 1175/2018, in the Tis Hazari Courts, Delhi in respect of the subject property claiming title/possession in respect thereof, which has been returned under Order VII Rule 11 CPC, for want of jurisdiction vide order dated 06.04.2019, while reserving the right of the plaintiff therein to approach the designated court under the MPID Act.

4. Mr. Vijay Kumar Singh, learned counsel appearing for the appellant disputes the submission made by the other side that I.A.No.617/2019, was taken up for consideration by the learned Single Judge on 27.09.2019. He states that if that was so, then the said application ought to have been mentioned in the order dated 27.09.2019, which has mentioned several other pending applications. He also disputes the submission made by the other side that the appellant has encumbered the captioned parcel of land, as alleged. However, he states that instead of pressing the present appeal, he may be permitted to withdraw the same while reserving the right of his client to file a reply to I.A. No.617/2019, pending before the learned Single Judge.

5. Reply to I.A.No.617/2019 shall be filed by the appellant on or before

08.11.2019. Rejoinder thereto may be filed by the respondent No.1/Decree Holder on or before 20.11.2019, the date fixed before the learned Single Judge.

6. The present appeal is disposed of alongwith the pending application.

HIMA KOHLI, J

ASHA MENON, J

OCTOBER 24, 2019

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