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

Date of Decision: 18th December, 2020

+ **EX.F.A. 11/2020 & CM APPLs.32092-94/2020**

M/S NEW ERA PROJECTS

..... Appellant

Through: Mr. Rakesh Malhotra and Mr. Bharat
Malhotra, Advocates. (M:
9810239071).

versus

M/S SENBO ENGINEERING LIMITED & ORS. Respondents

Through: Ms. Vibha Mahajan Seth, Advocate
for R-3/ DMRC. (M:9810702410)
Mr. Rajiv Bakshi, Advocate for
Venus Buildtech/R-4.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done by video conferencing.
2. The present appeal has been filed challenging the impugned order dated 6th March, 2020, by which the Executing Court has directed the release of a sum of Rs.40,00,000/-, which had been withheld by this Court in CS(OS) 2425/2010, in favour of Respondent No.4 – M/s Venus Buildtech India Pvt. Ltd. (*hereinafter as 'Venus'*) which is also a decree holder against M/s Senbo Engineering Limited (*hereinafter as 'Senbo'*).
3. The brief background of this case is that the Appellant herein had filed a suit being CS(OS) 58648/2016 for recovery of an amount of Rs.25,84,745/- against the Respondents, which was decreed in its favour, vide order dated 31st May, 2017. Thereafter, the Appellant filed an Execution Petition being Ex.P.671/2017. Similar suits for recovery and

execution petitions were also filed by other Decree Holders against the Respondents. Venus/Respondent No.4 was one such Decree Holder in suit bearing CS(OS) 2425/2010, in whose benefit this Court had directed DMRC to withhold a sum of Rs.40,00,000/- from being paid to Senbo, vide its order dated 7th March, 2014. In the Execution petition no. 686/2017, Venus moved an application seeking release of the amount which was ordered to be withheld. The said application was allowed by the Executing Court by the impugned order dated 6th March, 2020.

4. The grievance of the Appellant is that it is also a decree holder and is entitled to more than Rs.25,00,000/- from Senbo. Ld. counsel for the Appellant accordingly prays that the amount of Rs.40,00,000/- which had been secured vide orders of this Court dated 7th March, 2014 and 22nd July, 2014 in CS(OS) 2425/2010 titled *Venus Build Tech India Pvt. Ltd. v. M/s Senbo Eng. Ltd. & Anr.* should be equally distributed amongst the decree holders and should not be exclusively released in favour of Respondent No.4/Venus. The order dated 7th March, 2014 is set out below:

“

IA No.16170/2010 (of the plaintiff u/O 39 R-1 and 2 CPC)

6. The plaintiff has filed this application seeking a direction to the defendant No.2 Delhi Metro Rail Corporation (DMRC) not to release payment in favour of the defendant No.1.

7. The counsel for the plaintiff has drawn attention to letter dated 05.04.2010 at page No.193 of part-III file where the defendant has informed the plaintiff that the plaintiff's outstanding dues amounting to Rs.39,35,037/- pertaining to DMRC project BC2 will be cleared subject to verification and receipt of payment of the defendant No.1's final bills from DMRC

for BC2 project.

8. The counsel for the plaintiff thus contends that the defendant No.1 has admitted liability to the plaintiff and the plaintiff is entitled to protect the said monies as once the defendant No.1 withdraws all its dues from the defendant No.2 DMRC, it will not be possible for the plaintiff to recover monies from the defendant No.1.

9. The counsel for the defendant No.1 states that the said admission was subject to verification and receipt of the monies from the defendant No.2 DMRC. On enquiry whether verification was done, he states that verification is still going on. On further enquiry, he states that the final bills of the defendant No.1 with the DMRC for BC2 project are still pending and monies are still due from the defendant No.2 DMRC.

10. In these circumstances, this application is disposed of by directing the defendant No.2 DMRC to, from out of the monies due to the defendant No.1, withhold a sum of Rs.40,00,000/- and to keep the same in a maximum interest bearing deposit subject to further directions in this suit.

11. The defendant No.1 is also restrained from out of the dues recoverable from the defendant No.2 DMRC, not to withdraw monies to the extent of Rs.40,00,000/-.

12. Since none appears for the defendant No.2 DMRC today, the plaintiff as well as the defendant No.1 to forthwith communicate this order to the defendant No.2 DMRC.

13. The application is disposed of.”

5. The order dated 22nd July, 2014 is set out here below:

“1. It is noticed that on 07.03.2014 when defendant no.1 was represented, the following operative directions were issued in paragraphs 10 to 12 of the order passed on that date in IA No.16170/2010.

“10. In these circumstances, this application is disposed of by directing the defendant No.2 DMRC to, from out of the monies due to the defendant No.1, withhold a sum of Rs.40,00,000/- and to keep the same in a maximum interest bearing deposit subject to further directions in this suit.

11. The defendant No.1 is also restrained from out of the dues recoverable from the defendant No.2 DMRC, not to withdraw monies to the extent of Rs.40,00,000/-.

12. Since none appears for the defendant no.2 DMRC today, the plaintiff as well as the defendant No.1 to forthwith communicate this order to the defendant No.2 DMRC.”

2. The learned counsel for defendant no.2 says that prior to the said order being passed, defendant no.1 had already been released monies pursuant to a final bill submitted by defendant no.1 in connection with BC-2 contract, in which, defendant no.2 was directed to withhold a sum of Rs.40 Lakhs.

3. The learned counsel for defendant no.2 says that since other contracts were entered into with defendant no.1 and a sum of Rs.5 Crores (approximately) is due and payable to defendant no.1, if suitable directions are issued by this court, the directed amount will be withheld.

4. Accordingly, till the next date of hearing, out of the sum owed to defendant no.1, a sum of Rs.40 Lakhs will be withheld.

I.A. No.8318/2012 (for leave to defend by D-1)

5. Pleadings are complete.

6. List on 28.11.2014.”

6. In terms of the above-mentioned orders, the Respondent No.4 had

taken action against Senbo in an Order XXXVII suit for securing its interest. Therefore, the Delhi Metro Rail Corporation (*hereinafter as 'DMRC'*) had been directed to retain a sum of Rs.40,00,000/- and not pay the same to Senbo. The Appellant, however, raises a grievance that the amount was retained *qua* its contract namely Contract No. BC-23 and not BC-2 of Venus and therefore it is also entitled to a share of the retained amount.

7. The Executing Court has, however, held in view of the above-mentioned orders that since the amount was secured on an application by Respondent No.4 and now Senbo has gone into insolvency proceedings, a share of the said amount is not liable to be released to the Appellant.

8. After perusing the above two orders and after hearing Id. counsels for the parties, it is clear that the amount recoverable by Respondent No.4 - Venus is more than Rs.77,00,000/- and in view of the above-mentioned orders, it was able to secure a sum of Rs.40,00,000/-, which was retained with the DMRC. Venus has been vigilant enough to secure the said amount of Rs.40,00,000/- through the DMRC and hence the Appellant, who is also a decree holder, cannot claim any part of the said amount as the said amount is secured for the benefit of Respondent No.4 and not for the Appellant.

9. Be that as it may, insofar as the Appellant is concerned, it is the submission of Mr. Rakesh Malhotra, Id. counsel that there is an arbitration proceeding between DMRC and Senbo, where certain amounts are yet to be released by DMRC to Senbo. Ms. Vibha Mahajan Seth, Id. counsel who appears for DMRC submits that she can take instructions as to details of any further amounts that may be due to Senbo and as to the status of the arbitration proceedings.

10. Accordingly, Ms. Seth, Id. counsel shall communicate the status of

11. With these observations, the present appeal, along with all pending applications, is disposed of.