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

\+ OMP (ENF.) (COMM.) 54/2019 & EX.A.(OS) 588/2019 (by JD for directions)

SUNWAY CONSTRUCTION SDN BHD ..... Decree Holder

Through: Dr.Amit George with Mr.Rayadurgam Bharat, Mr.Piyo Harold, Mr.Rishabh Dheer & Mr.Amol Acharya, Advs.

versus

NATIONAL HIGHWAYS AUTHORITY OF INDIA, ... Judgement Debtor

Through: Dr.Maurya Vijay Chandra, Adv. for NHAI.
Mr.Agni Sen for Mr.Zoheb Hossain, Sr. Standing counsel for Income Tax Department.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI

O R D E R

% **04.03.2020**

1. The present execution petition seeks enforcement of the arbitral award dated 03.10.2011 which has, admittedly, attained finality as on date.

2. Learned counsel for the decree holder (DH) submits that the DH has received a major portion of the awarded amount, barring a sum of Rs.1,44,57,740/- which had been erroneously deducted by the judgment debtor (JD) towards payment of TDS on the awarded

amount and deposited with the Income Tax Department. He further submits that a Division Bench of this Court, on 05.08.2019, had passed an order in EFA(OS) (COMM.) 12/2019, directing the JD to deposit a further sum of Rs.1,44,57,740/- with the Registrar General of this Court; this direction had been made after the Division Bench had opined that the tax deduction on the awarded amount and deposit of the same had been unilaterally made by the JD, after presuming that TDS was payable on thereon, and therefore, the same could not be treated as a payment towards the satisfaction of the award. He thus prays that the aforesaid amount deposited by the JD be released in favour of the DH.

3. On 18.02.2020, learned counsel for the JD, while not opposing the release of the aforesaid amount in favour of the DH, had prayed that in view of subsequent events compelling the JD to deposit the TDS amount with the Registrar General of this Court, the Income Tax Department be directed to either refund the amount of Rs. 1,44,57,740/- deposited by the JD or adjust the same against its future TDS/TCS liabilities. He had further prayed that any claims on tax payable on the awarded amount subsequently, be claimed by the Income Tax Department directly from the DH. Learned counsel for the Income Tax Department was granted time to get instructions as to how this amount could be adjusted from the dues of the JD in the future.

4. Today, Mr.Agni Sen, learned counsel appearing on behalf of Income Tax Department submits that the Income Tax Department does not, in principle, object to adjustment of the said amount from

the dues payable by the JD in future. He hands over a copy of the communication dated 02.03.2020 from the Department and submits that while raising a claim for the aforesaid adjustment in the future, the JD would be required to file a correction statement in Form 26B and this amount, once treated as balance amount, could be used by the JD to set off any amounts payable in its future TDS/TCS statements.

5. In view of the fair stand taken by the Income Tax Department, the execution petition is disposed of as satisfied by directing the Registrar General to release the amount of Rs.1,44,57,740/- along with accrued interest thereon in favour of the DH. It is directed that the JD would be entitled to claim adjustment of the aforesaid sum of Rs.1,44,57,740/-, which it had deposited as TDS, from the Income Tax Department. While doing so, the JD will be required to comply with the formalities as set out in the communication dated 02.03.2020, which has been handed over by the learned counsel for the Income Tax Department. The Income Tax Department will, within a period of six weeks, issue the necessary challan depicting the adjustment. It is made clear that the Income Tax Department will be free to claim the requisite income tax, if any payable on the awarded amount, directly from the DH.

6. The petition is disposed of along with the pending application in the aforesaid terms.

REKHA PALLI, J

MARCH 04, 2020

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