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

+ **OMP (ENF.) (COMM.) 53/2018**

BGS SGS SOMA JV

..... Decree Holder

Through: Mr.Arvind K. Nigam, Sr. Adv. with
Mr.Arunabh Chowdhury, Mr.Vaibhav
tomar, Mr.Abhishek Roy, Ms.Shruti
Choudhry & Mr.Dechen Wangdi
Lachungpa, Advs.

versus

NHPC LIMITED

..... Judgement Debtor

Through: Ms.Maninder Acharya, ASG with
Mr.Viplav Acharya, Mr.Tarkeshwar
Nath & Mr.Mahavir Prasad, Advs.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

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03.02.2020

EX.APPL.(OS)534/2019 (by J.D. for direction)

1. The learned Additional Solicitor General, on instructions, submits that in view of the recent decision of the Supreme Court in *Hindustan Construction Company vs. UOI & Ors.*, (2019) SCC online 1520 (SC), she does not press the present application.

2. The application is dismissed as not pressed.

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3. The present petition under Section 36 of the Arbitration and Conciliation Act, 1996 ('the Act') seeks enforcement of the award

dated 26.08.2016 along with the rectification award dated 04.10.2016 passed by the three-member Arbitral Tribunal.

4. On 31.05.2018, when the present petition was taken up for consideration, the judgment debtor was directed to pay the awarded amount alongwith interest to the decree holder within a period of eight weeks, which was reiterated by this Court from time to time. Finally, on 14.12.2018, after considering the judgment debtor's plea that it had taken steps to assail the award by way of a petition under Section 34 of the Act, this Court had directed the decree holder to file an undertaking in the form of an affidavit to the effect that in case the judgment debtor's proposed petition under Section 34 were to succeed, the decree holder would return the awarded amount to the judgment debtor alongwith interest at the rate of 9% per annum upon the Court making directions to that effect. Though this undertaking was initially directed to be filed on or before 15.01.2019, the said affidavit was admittedly filed by the decree holder only on 28.08.2019, pursuant to extensions of time granted by this Court.

5. The judgment debtor subsequently moved an interim application being Ex.Appl.(OS) No.534/2019 opposing the maintainability of the enforcement petition on account of Section 87 of the Act whereafter this Court, on 16.12.2019, granted liberty to the judgment debtor to make the requisite deposits with the Registrar General of this Court. The present position is that the awarded amount, along with interest accrued thereon till 03.01.2020, has been deposited by the judgment debtor before this Court on 06.01.2020. Learned Senior counsel for the decree holder submits that in the light

of the dismissal of the interim application filed by the judgment debtor and the fact that the affidavit of undertaking required from the decree holder stands filed in accordance with the directions of this Court, the amount deposited by the judgment debtor ought to be released in favour of the decree holder without any further delay.

6. On the other hand, Ms.Maninder Acharya, learned ASG submits that since the deposit had been directed to be made before this Court, the same ought not to be released in favour of the decree holder without requiring it to furnish reasonable security in lieu thereof, to the satisfaction of this Court. She further submits that the judgment debtor has reliably learnt of proceedings pending before the National Company Law Tribunal, Mumbai Bench against one of the entities forming a part of the decree holder's joint venture, viz. M/s. Soma Enterprises Ltd. She submits that in these circumstances, it would not be appropriate to release the amount in favour of the decree holder without requiring it to furnish any security.

7. In response, Mr. Nigam, learned Senior counsel for the decree holder submits that since proceedings initiated against M/s.Soma Enterprises Ltd. have been stayed by the Supreme Court, the judgment debtor's contention in this regard does not survive and there is no reason to withhold release of the deposited amount in favour of the decree holder in accordance with the orders passed by this Court.

8. Having considered the submissions of the learned Senior Counsel for the parties, I find that the proceedings against M/s. Soma Enterprises Ltd. came to be admitted by the NCLT in February, 2019 itself, whereafter this Court has continued to issue repeated directions

for release of the deposited amount in favour of the decree holder. In these circumstances, irrespective of the pendency of the proceedings against M/s. Soma Enterprises Ltd. before the NCLT, I am of the view that in the light of the previous orders passed by this Court and the decision of the Supreme Court in *Hindustan Construction Company (supra)*, there is no reason to withhold the release of the amount deposited by the judgment debtor, in favour of the decree holder. The release would, however, remain subject to the undertakings already furnished by the decree holder and its Vice President, who shall continue to remain bound by the same. The Registry is, accordingly, directed to release the amount deposited by the judgment debtor on 06.01.2020 along with accrued interest thereon, in favour of the decree holder within three weeks.

9. As and when the judgment debtor files its Section 34 petition impugning the award dated 26.08.2016, the decree holder is directed to file a self-attested copy of its undertaking in the present petition in those proceedings as well. It is made clear that the direction for release of the amount made in this order would not preclude the judgment debtor from seeking directions to the decree holder to furnish appropriate security in its proposed Section 34 petition. Needless to say, when the Section 34 petition proposed to be filed by the judgment debtor or any accompanying application is listed before the Court for consideration, the same will be considered on its own merits.

10. Accordingly, the petition is disposed of with liberty to the decree holder to prefer an application for revival in case it has any

grievance regarding the computation based on which the judgment debtor has deposited the amount.

REKHA PALLI, J

FEBRUARY 03, 2020

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