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

+ EFA(OS)(COMM) 1/2021

UNION OF INDIA

..... Appellant

Through: Mr. Chetan Sharma, ASG with Mr. Ajay Digpaul, Mr. Amit Gupta, Mr. Vinay Yadav, Mr. Akshay Gadeock, Mr. Sahaj Garg, Mr. R. Venkat Prabhat and Mr. Kamal R. Digpaul, Advs.

Versus

ATLANTA LTD. & ANR.

..... Respondents

Through: Mr. Chirag M. Shroff, Adv. for R-1.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

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21.01.2021

[VIA VIDEO CONFERENCING]

CM No.2129/2021 (for exemption)

1. Allowed, subject to just exceptions and as per extant rules.
2. The application is disposed of.

EFA(OS)(COMM) No.1/2021 & CM No.2128/2021 (for stay)

3. The appeal impugns the order dated 3rd December, 2020 of the Single Judge, in OMP(ENF.) (COMM.) No.10/2020 and EA No.644/2020 filed by the respondent No.1 seeking enforcement/execution of an arbitral award having force of a decree, in favour of the respondent No.1 and jointly and severally against the appellant Union of India (UOI) and respondent No.2 Government of Rajasthan. Vide the impugned order, the Single Judge has (a) rejected the contention of the appellant UOI that the execution/enforcement petition in this court, without obtaining any Transfer Certificate from the courts at Rajasthan where the respondent no.1 had first

applied for execution, is not maintainable; and, (b) granted four weeks' time to the appellant UOI to deposit Rs.30,83,32,410/- with the Registrar General of this Court and has further observed that failing which, attachment orders, as sought by the respondent No.1, shall be issued.

4. The counsel for the respondent No.1 appears on advance notice.

5. The Additional Solicitor General (ASG) has contended that the Single Judge has relied upon *Sundaram Finance Ltd. Vs. Abdul Samad* (2018) 3 SCC 622, which has noticed the conflict of opinion between different High Courts qua application of Section 42 of the Arbitration and Conciliation Act, 1996.

6. We have at this stage interrupted the ASG and enquired, whether not the view of this Court in *Daelim Industrial Co. Ltd. v. Numaligarh Refinery Ltd.* (2009) 159 DLT 579 has been approved by the Supreme Court in *Sundaram Finance Ltd.* supra and in accordance with which, the enforcement petition in this Court is maintainable without obtaining any Transfer Certificate.

7. The ASG, after again going through *Sundaram Finance Ltd.* supra, confirms that the view taken by this Court in *Daelim Industrial Co. Ltd.* supra has been approved. The said view has since also been consistently followed in other dicta of this Court. Reference may be made to *Religare Finvest Ltd. Vs. Ranjit Singh Chouhan* MANU/DE/2330/2012, *The State Trading Corporation of India Ltd. Vs. Global Steel Holdings Ltd.* AIR 2015 Del 100, *ICI-SOMA JV Vs. Simplex Infrastructures Ltd.* MANU/DE/2773/2016, *Mukesh Sharma Vs. Roger Shashoua* 231 (2016) DLT 14 and *Dr. S.C. Jain Vs. Sahny Securities Pvt. Ltd.* 2018 SCC OnLine Del 13202.

8. The ASG has then contended that the appeal preferred before the Rajasthan High Court against the dismissal of the petition under Section 34 of the Arbitration Act is listed next on 12th February, 2021 and the attachment orders be ordered to be deferred till a date after 12th February, 2021.

9. The counsel for the respondent No.1 contends that though the appellant UOI along with the State of Rajasthan had preferred the petition under Section 34 of the Arbitration Act with respect to the subject arbitral award and which petition has been dismissed but the appeal referred to by the ASG has been preferred only by the State of Rajasthan and no appeal even has been preferred by the appellant UOI and the appellant UOI cannot thus seek stay of execution on the basis of the said appeal. It is contended that the arbitral award, for recovery of money, though jointly and severally against the appellant UOI and State of Rajasthan, at least against the appellant UOI, has become final, with the appellant UOI having not preferred any appeal against the dismissal of the petition under Section 34 of the Arbitration Act.

10. Though the ASG has also contended that the respondent No.1 cannot prefer execution, both before the Courts at Rajasthan as well as this Court, but the Single Judge in the impugned order has recorded the statement of the counsel for the respondent No.1 that the Execution Petition preferred against the appellant UOI before the Rajasthan High Court was being withdrawn and the counsel for the respondent No.1 today also states that an application in that regard has already been filed.

11. In our view, the respondent No.1 is entitled to seek execution, simultaneously against more than one judgment debtors, even in different

Courts as long as the decretal amount is not recovered twice over. Reference if any required, can be made to *Prem Lata Agarwal Vs. Laxman Prasad Gupta* (1970) 3 SCC 440, *State Bank of India Vs. M/s. Indexport Registered* (1992) 3 SCC 159, *Shyam Singh Vs. Collector, District Hamir Pur* 1993 Supp. (1) SCC 693 and *Cholamandalam Investment & Finance Co. Ltd. Vs. CEC Limited* 1995 SCC OnLine Del 240.

12. Before the Single Judge, the Execution Petition is stated to be listed next on 29th January, 2021 and the ASG expresses apprehension that on non-deposit of the amount, warrants of attachment will be issued against the appellant UOI on the said date.

13. In the facts and circumstances of the case, the only order which we deem proper is, to request the Single Judge to adjourn OMP(ENF.) (COMM.) No.10/2020, which is stated to be listed next on 29th January, 2021, without passing any attachment orders, to a date after 12th February, 2021 and if after 12th February, 2021, there is no stay of execution of the decretal amount against the appellant UOI, the Single Judge shall be entitled to proceed with the execution in accordance with law.

14. The appeal is disposed of.

15. We clarify that we have not gone into the aspect of maintainability of this appeal.

RAJIV SAHAI ENDLAW, J.

SANJEEV NARULA, J.

JANUARY 21, 2021

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