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

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Date of Decision: July 26, 2021

+ CM (M) 455/2021

M/S TDI INFRATECH LTD. Petitioner

Through: Ms. Kanika Agnihotri and Mr.
Amer Vaid, Advocates

versus

RAJESH ARORA Respondent

Through: Mr. Nikhil Jain & Mr. Navneet
Kumar, Advocates.

CORAM:

HON'BLE MS. JUSTICE ASHA MENON

ORDER

[VIA VIDEO CONFERENCING]

CM (M) 455/2021, CM APPL.21494/2021 (by the petitioner u/S 151 CPC for interim relief)

1. Vide orders dated 14th June, 2021, the National Consumer Disputes Redressal Commission ('NCDRC'), disposed of an application bearing No. IA/3503/2021 moved by the present petitioner, seeking the stay of the order of the State Consumer Disputes Redressal Commission ('SCDRC'), Chandigarh.

2. This application had been filed by the petitioner in an appeal it had preferred against the decision of the SCDRC, Chandigarh dated 24th February, 2021, whereby, the petitioner was directed to refund an amount of Rs.32,84,560/- and Rs.46,456/- (Maintenance Charges) to the respondent along with interest @ 12% per annum alongwith Rs.50,000/- as compensation/cost of litigation.

3. Ms. Kanika Agnihotri, learned counsel for the petitioner submitted that the stay had been sought on account of the financial distress that the petitioner was undergoing due to the Covid-19 pandemic. The NCDRC not only overlooked this aspect but also failed to note that since 2012, the petitioner had been offering the possession of the plot to the respondent. As such, the direction for refund and that too, at such a high rate of interest was required to be modified. Yet by the impugned orders, the NCDRC directed that the full decretal amount be deposited.

4. Relying on the judgment of the Supreme Court in ***Export Credit Guarantee Corporation Ltd. v. M/s Bharat Enterprises*** (CA Nos.3678-3679 of 2020), learned counsel has submitted that in a similar situation, the Hon'ble Supreme Court had held that a deposit of 50% of the decretal amount would satisfy the requirement of the second proviso to Section 51 of the Consumer Protection Act, 2019. Reliance has also been placed on the orders dated 25th May, 2021 of the Coordinate Bench of this Court in ***Omaxe Buildhome Pvt Ltd v. Mr. Ibrat Faizan*** (CM(M) 374/2021) wherein in similar circumstances, stay was granted subject to the deposit of 50% of the decretal amount. Learned counsel submitted that before the introduction of the Consumer Protection Act, 2019, under the old act i.e., the Consumer Protection Act, 1986, 50% or Rs. 35,000 was required to

be deposited whichever was lower, in compliance of which the petitioner had deposited Rs. 35,000/-. However, thereafter, the NCDRC had exercised its discretion while staying the impugned judgment of the SCDRC by directing deposit of the full decretal amount. The learned counsel submitted that following the judgment of the Supreme Court and the Coordinate Bench of this Court, the petitioner may be permitted to deposit 50% of the decretal amount.

5. Mr. Nikhil Jain, learned counsel for the respondent has emailed his short notes along with the judgments relied upon by him to oppose the application. He has also submitted that the petitioner has been misleading this Court by claiming that the appeal had been filed under Section 51 of the Act of 2019, whereas it was actually filed before the NCDRC under Section 19 of the Act of 1986. It was submitted that on this short ground of misleading the Court, this petition ought to be dismissed.

6. The further contention of the learned counsel for the respondent is that the impugned order was not one directing the deposit preceding the filing of the appeal under Section 19 of the Act of 1986, but was an order passed by the NCDRC after hearing both sides, as the respondent was a Caveator before the NCDRC. The passing of such an order was well within the powers of the NCDRC. Moreover, the NCDRC had in its judgment dated 12th October, 2020 titled *M/s Sahyog Homes Limited & 6 Ors. v. Gautam Suresh Kumar and other connected matters* held that Section 51 of the Act of 2019 was not applicable to complaints filed prior to the amendment. It was also submitted that in any case the impugned orders were not under Section 19 or Section 51, but on the application moved by the petitioner seeking stay of the judgment of the SCDRC.

7. Learned counsel for the respondent also relied upon the decision of the Supreme Court in *New India Assurance Co. Ltd. v. Roopa Devi and Ors.* (CA No. 3641/2020) to submit that in a similar situation, the Supreme Court while dealing with a MACT matter, had observed that a pre-requisite for entertaining the appeal, such as a pre-deposit, could not affect the power of the High Court to put a more stringent condition as a part of the orders for admission or notice. Therefore, the NCDRC was fully justified in directing a full deposit of the decretal amount.

8. With regard to the submissions made on behalf of the petitioner that it had been ready to handover the possession since 2012, the learned counsel for the respondent submitted that this plea had been rejected by the SCDRC as only an eye-wash as the completion certificate had not been obtained.

9. The learned counsel for the petitioner has herself clarified that it was never intended to argue that the present case was covered under Section 51 of the Act of 2019, but that on parity of reasoning, the benefit of the Supreme Court decision, as also the decision of this Court, be given to the petitioner in view of the strained financial circumstances that existed today.

10. There is no confusion that with the introduction of the Act of 2019, whereby Section 51 came into effect from 20th July, 2020, an appeal can be entertained by the NCDRC only if the appellant deposits 50% of the amount awarded by the SCDRC. However, under Section 19 of the Act of 1986, this amount was either 50% of the awarded amount or Rs.35,000/- whichever was less. No doubt, the NCDRC would have discretion to impose further stringent conditions, if found necessary, at the time of

disposing of the stay application. But while so imposing more stringent conditions, it is natural to expect the NCDRC to disclose the reasons why it was doing so as a condition precedent to grant of stay of the judgment of the SCDRC. However, a perusal of the impugned order would show that no reason has been given for directing that the entire decretal amount with up-to-date interest be deposited with the SCDRC for grant of the interim relief.

11. It is the considered view of this Court, that the interest of justice would be met by following the view taken by the Supreme Court in *Export Credit Guarantee Corporation Ltd(supra)*. In that case, though 50 per cent of the decretal amount had been deposited under Section 51 of the new Act, when the appeal had been filed, but the NCDRC while disposing of the stay application, had directed the deposit of the entire decretal amount with the SCDRC, subject to which execution was stayed. This order was modified by the Supreme Court agreeing with the submission of the learned counsel for the appellant that the statutory intent did not require the NCDRC to direct the deposit of the entire decretal amount or to stipulate that without such deposit, there would be no interim relief. The fact situation is similar to the present one, even if, this is a case under the old Act, since, the impugned order is post the pre-deposit for filing the appeal and at the time of grant of stay. The contention of the learned counsel for the respondent cannot be therefore accepted that this judgment cannot be followed in the present case.

12. The impugned order is set aside. On the deposit of 50 per cent of the decretal amount, within eight weeks with the SCDRC, Chandigarh,

the judgment of the SCDRC dated 24th February, 2021 and execution, if any, shall remain stayed till the disposal of the appeal by the NCDRC.

13. The petition is, accordingly allowed. The pending application also stands disposed of.

14. The order be uploaded on the website forthwith.

(ASHA MENON)
JUDGE

JULY 26, 2021
ak/ck

