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

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Date of decision: 13.09.2021

+ OMP (ENF.) (COMM.) 82/2019 & EX.APPL.(OS) 901/2021

KLA CONST TECHNOLOGIES PVT. LTD. Decree Holder

Through Dr.Amit George, Adv. with
Mr.Kartickay Mathur, Mr.K.K.
Shukla & Mr.Shanker Kashyap,
Advs.

versus

THE EMBASSY OF ISLAMIC
REPUBLIC OF AFGHANISTAN

..... Judgement Debtor

Through Mr.Raghavendra M. Bajaj, Mr.Ejaz
Maqbool, Ms.Garima Bajaj, Mr.Saif
Zia, Mr.Agnish Aditya & Mr.Nikhil
Bamal, Advs.

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (oral)

1. Present execution petition has been filed under Section 36 of the Arbitration and Conciliation Act read with Order XXI Rule 11(2) of the CPC, 1908 on behalf of decree holder seeking enforcement of the arbitral award dated 26.11.2018.

2. Decree holder – Ashok Kumar, Authorised Representative of KLA Const. Technologies Private Limited company and judgment debtor – The

Embassy of Islamic Republic of Afghanistan had entered into a contract for the rehabilitation of building of the judgment debtor/Afghan Embassy in Delhi for a total contract of Rs.3,02,17,066.83 exclusive of taxes.

3. Pertinently, during execution of work, certain disputes arose between the parties, for resolution of which decree holder invoked the arbitration clause in view of the terms and conditions of the work contract, however, judgment debtor did not respond, therefore, decree holder approached the Hon'ble Supreme Court of India by filing a petition under Section 11 of the Arbitration and Conciliation Act, 1996 being ARB.P. (Civil) No. 14/2014.

4. Vide order dated 05.01.2015, THE Hon'ble Supreme Court appointed Shri H.S. Dogra, Director General (Retd.) CPWD sole arbitrator. Accordingly, decree holder filed its claim of Rs.2,00,47,192.82 along with *pendent lite* and future interest before the Arbitrator. Again the judgment debtor did not join the arbitration proceedings and were accordingly proceeded *ex parte* vide order dated 13.11.2017. The learned Arbitrator partially allowed the claims of the decree holder by passing an award dated 26.11.2018.

5. During the course of hearing today, learned counsel for the decree holder submits that an out of court settlement has been arrived at between

the decree holder and judgment debtor and the terms of settlement are recorded in the Settlement Agreement dated 11.09.2021 and the present suit can be decreed in terms thereof. The aforesaid submissions of learned counsel for the decree holder, is affirmed by the counsel appearing for judgment debtor.

6. Though the aforesaid Settlement Agreement dated 11.09.2021, which is stated to have been filed today vide diary number 755400/2021 in the Registry, is not on record, however, a hard copy thereof has been produced before this Court.

7. The terms of settlement have been enumerated in Para-1.1 to Para-2.5 of the Settlement Agreement. According to the settlement, judgment debtor toward full and final settlement of all claims and outstanding dues toward the decree holder under the contract and arbitral award, has issued three cheques total amounting to Rs.68,00,000/- drawn on Kotak Mahindra Bank, D-10, Nos.1 & 2, Local Shopping Centre, Vasant Vihar, New Delhi, details whereof have been given in Clause 1.1(i) to (iii) of the Settlement Agreement. Judgment debtor has also agreed to issue an appreciation letter in favour of decree holder towards successful and satisfactory execution of the settlement

8. In the light of clause 1.2 and 1.3 of the Settlement Agreement dated 11.09.2021, the parties have agreed that the Second Party from their Bank Account Nos.3111478010, 3111478027 and 3111478041 in Kotak Mahindra Bank, Branch D Block, New Delhi-110057 will issue cheques from the aforementioned account and will jointly approach this court to recall its order dated 23.08.2021.

9. In the afore-mentioned agreement, Second Party also agrees to issue an appreciation letter in favour of first party attesting to the successful and satisfactory execution of the settlement.

10. Today, learned counsel for the judgment debtor submits that the judgment debtor shall remain bound by the terms of aforesaid Settlement Agreement dated 11.09.2021 and the post dated cheques shall be honoured.

11. In view of the aforesaid undertaking furnished on behalf of judgment debtor, learned counsel for decree holder submits that the present petition be decreed in terms of Settlement Agreement dated 11.09.2021 and the interim order dated 23.08.2021 with respect to maintaining of minimum balance of Rupees One crore and Eighty Lacs in the account Nos. 3111478010, 3111478027 and 3111478041 of judgment debtor at Kotak Mahindra Bank, Branch D Block, Vasant Vihar New Delhi, be recalled.

12. In the light of aforesaid submission of learned counsel for decree holder and the Settlement Agreement dated 11.09.2021, order dated 23.08.2021 is recalled and the present suit is decreed in terms mentioned in Settlement Agreement dated 11.09.2021. Needless to say, parties shall remain bound by the terms mentioned in the aforesaid Settlement Agreement.

13. Decree sheet be accordingly drawn in terms of Settlement Agreement dated 11.09.2021, which shall form part of the decree.

14. The petition is disposed of.

(SURESH KUMAR KAIT)
JUDGE

SEPTEMBER 13, 2021
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