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

% **Date of decision: 22nd September, 2021.**

\+ **CM(M) 641/2021**

TRANS ASIAN INDUSTRIES EXPOSITIONS PVT. LTD. ... **Petitioner**

Through: Mr. Lakshay Dhamija, Advocate.

Versus

G.S. BERAR AND CO. PVT. LTD. & ANR. ..... **Respondents**

Through: Mr. Saurabh Anand Prakash, Advocate.

\+ **CM(M) 642/2021**

TRANS ASIAN INDUSTRIES EXPOSITIONS PVT. LTD. ..... **Petitioner**

Through: Mr. Lakshay Dhamija, Advocate.

Versus

SONI DAVE ..... **Respondent**

Through: Mr. Saurabh Anand Prakash, Advocate.

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J. (Oral)

CM No. 33164/2021 in CM(M) 641/2021(for exemption)
CM No. 33166/2021 in CM(M) 642/2021(for exemption)

1. Allowed, subject to all just exceptions.

2. The applications are disposed of.

CM(M) 641/2021 & CM No. 33163/2021(for stay)
CM(M) 642/2021 & CM No. 33165/2021(for stay), CM No. 33167/2021(for condonation of delay of 752 days in filing petition)

3. The present petitions under Article 227 of the Constitution of India impugn the orders dated 1st August, 2019 passed by Additional District Judge (ADJ)-04, South District, Saket Courts, New Delhi in Execution Petition No.3081/2016 titled ***M/s. G.S. Berar and Co. Pvt. Ltd and Anr Vs. Trans Asian Industries Exposition Pvt. Ltd*** and Execution Petition No.3082/2016 titled ***Soni Dave Vs. Trans Asian Industries Exposition Pvt. Ltd*** whereby the petitioner/judgment debtor (JD) was directed to pay a sum of Rs.5,60,000/- in CM(M) 641/2021 and Rs.1,80,000/- in CM(M) 642/2021 to the respondents/decree holders within 15 days failing which the petitioner was directed to pay a penalty of Rs.10,000/- per week till the time the payment is made to the respondents/decree holders.

4. The counsel for the petitioner contends that (i) the penalty imposed in terms of the said orders was exorbitant; (ii) there was a dispute between the petitioner and the Income Tax Department because of which the Income Tax Department wrongly recovered the amount from the petitioner by attaching its bank accounts and made wrongful adjustments of the amount deposited by the petitioner towards Tax Deducted at Source (TDS) recovered from various parties including the respondents and therefore, the petitioner could not issue the TDS certificates to the respondents; and (iii) the petitioner has filed a writ petition against the arbitrary action of the Income Tax Department which is pending adjudication before the Jammu and Kashmir High Court.

5. The counsel appearing on behalf of the respondents on advance notice vehemently opposes the present petitions. He contends that the proceedings against the Income Tax Department were filed before the Jammu and Kashmir High Court in 2015. Therefore, there was no occasion for the petitioner to deduct tax from the payments made to the respondents in 2017. In any event, the counsel submits that the respondents have nothing to do with the dispute between the petitioner and the Income Tax Department and therefore, either the amount of tax deducted should have been paid to the respondents or the necessary certificate evidencing deposit of tax with Income Tax Department should have been furnished to the respondents.

6. Before I proceed to decide the matter on merits, it may be relevant to refer to the conduct of the petitioner and the timing of the present petitions. The impugned orders were passed as far back as on 1st August, 2019, however, the petitioner has chosen to challenge the same only now i.e. 21st September, 2021. The reason that the said orders have been impugned only now appears to be in view of the order passed by this court on 1st September, 2021 in CM(M) 576/2021 and CM(M)577/2021 preferred by the petitioner. While disposing of the said petitions on 1st September, 2021, following directions were made:

> *"13. Accordingly, both petitions are disposed of with the following directions:*
>
> *(i) The principal amount of TDS due in both the petitions i.e. Rs.5,60,000/- and Rs.l,80,000/- respectively would be paid by the petitioner to the respondents on or before 4th September, 2021.*
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> ***(ii) The penalty amount of Rs.10,70,000/- imposed separately in both the petitions would be paid to the respondents on or before***

22nd September, 2021.

(iii) Out of the amount of Rs.36,87,264/-, subject matter of CM(M) 577/2021, a sum of Rs.22,00,000/- as calculated above, would be paid to the respondents on or before 15th October, 2021.

(iv) The petitioner is given an opportunity of one week to file his objections only in respect of Rs.36,87,264/- directed to be paid by the Executing Court and which objections will be considered by the Executing Court in calculating the amount due from the petitioner to the respondents.

(v) If any default is made in the payment of any of the amounts as directed above on the due dates, the respondents would have the liberty to press for issuance of arrest warrants against the petitioner in terms of the application filed."

7. It was only because of the timeline of 22nd September, 2021 fixed by the order aforesaid that the present petitions have been filed and got listed before the Court on 22nd September, 2021. After the aforesaid order dated 1st September, 2021 was passed, applications were filed by the petitioner on 6th September, 2021 in CM(M) 576/2021 and CM(M) 577/2021 seeking extension of the time for making payments in terms of paragraph 13(i) of the aforesaid order. At the hearing of the said applications, it was put to the counsel for the petitioner that the extension as prayed would be granted subject to the directors of the petitioner filing an affidavit to the effect that not only the first instalment but all future payments directed to be made in terms of the order dated 1st September, 2021 would be made by the petitioner as per the timeline fixed therein. Upon taking instructions, the counsel for the petitioner withdrew the said applications. The said applications were dismissed by the order dated 6th September, 2021 with costs of Rs.10,000/-, with the following observations:

"4. The Court is surprised with this kind of instruction being given by the petitioner to its advocate. It creates a doubt whether petitioner intends to honour its commitments in terms of order dated 1st September, 2021. Be that as it may, the counsel for the respondent would have remedies in law, in case the payments in terms of the order dated 1st September, 2021 are not made."

8. I am informed by the counsel for the respondents that the amount of TDS directed to be paid by the order dated 1st September, 2021 was only paid by the petitioner on 11th September, 2021 and further, the cost imposed on the petitioner by the order dated 6th September, 2021 has also not been paid till date.

9. It is clear from the above that the attempt of the petitioner throughout has been to delay execution proceedings by filing various petitions/applications on frivolous grounds. It has rightly been contended by the counsel for the respondents that the respondents are not concerned with the dispute between the petitioner and the Income Tax Department. If the TDS had been deducted by the petitioner from the payments made to the respondents, the petitioner is bound to furnish TDS certificates to the respondents. In the event the petitioner is unable to furnish TDS certificates, it would have to pay the said amounts to the petitioner. Nothing has been furnished by the petitioner to show that the amount deducted by it towards TDS has been deposited with the Income Tax Department.

10. The petitioner has unjustifiably failed to make the payment of Rs.5,60,000/- and Rs.1,80,000/- to the respondents respectively, and it was only after the abovesaid order was passed by this Court on 1st September, 2021 that the said amounts have been paid to the respondents. The petitioner was well aware of the penalty imposed by the Executing Court by the

impugned orders and despite the same, contested the same unsuccessfully for over two years. If the petitioner felt that the penalty being imposed was excessive, the petitioner should have challenged the impugned orders immediately. The reason why the said penalty has magnified into a sum of Rs.10,70,000/- is only because the petitioner did not pay the amounts of TDS that were required to be paid. Therefore, at this stage, the petitioner cannot avoid the payment of the penalty imposed by the impugned orders.

11. Counsel for the respondents fairly submits that in the event the petitioner furnishes proof of deposit of TDS amounts of Rs.5,60,000/- and Rs.1,80,000/- to the credit of the respondents, and/or TDS certificates in the name of the respondents, the aforesaid amounts shall be refunded back by the respondents to the petitioner.

12. There is no merit in the present petitions.

Dismissed.

AMIT BANSAL, J

SEPTEMBER 22, 2021
Sakshi R.