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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 23rd September, 2021
+ **C.R.P. 68/2021 & CM APPLs. 33366-68/2021**
TECHNO AIRCON INDUSTRIES PVT LTD Petitioner
Through: Ms. Ananya Bhattacharya, Advocate.
versus
ABB LIMITED Respondent
Through: Mr. Nikhilesh Krishnan, Advocate
with Ms. Riya Basu, Advocate.
CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done through video conferencing.
2. The present petition has been filed challenging the impugned order dated 25th March, 2021 whereby the Executing Court in Ex No. 576/19 has directed the Petitioner/Judgment Debtor (*hereinafter "Judgment Debtor"*) to file an affidavit of income and assets in terms of the judgment of the Hon'ble High Court of Delhi in *M/s. Bhandari Engineers & Builders Pvt. Ltd. vs. M/s. Maharia Raj Joint Venture & Ors [Ex P. 275/2012 & Ex. Appl. (OS) 193/2020, decided on 5th August, 2020]*.
3. The brief background of this case is that vide order dated 8th February, 2013 in *Arb.P. 502/2012*, a Id. Single Judge of this Court, had appointed a sole arbitrator to adjudicate the disputes and differences between the parties, arising out of the contract dated 11th September, 2008. The said order was passed in the presence of Id. Counsels for both the parties.
4. The Judgment Debtor, thereafter, is stated to have realized that there was a jurisdiction clause in the contract, which vested exclusive jurisdiction

in the Hon'ble High Court of Karnataka at Bangalore. It is her plea that she raised this issue of jurisdiction before the Id. Arbitrator. However, the Id. Arbitrator vide order dated 20th November, 2013, stated that this issue can only be entertained by the Hon'ble High Court. Pursuant to this, when objection was raised before the Hon'ble High Court of Delhi in **Arb.A. 4/2014**, the Court vide order dated 24th January, 2014, dismissed the same, by permitting the Judgment Debtor to assail the award under Section 34 of the Arbitration and Conciliation Act, 1996 (*hereinafter "Act"*) after the award was passed.

5. In the meantime, the Id. Arbitrator has proceeded in the matter and has passed the award dated 28th February, 2019 by which a sum of Rs. 92,29,230/- has been awarded in favour of the Respondent/Decree Holder/claimant (*hereinafter "Decree Holder"*) along with interest @ 9% and with costs of Rs.3,75,000/-. The operative portion of the award reads as under:-

"20. Net result of my above finding is that the claimant is held entitled to recover from the respondent Rs.92,29,230/- on account of its withheld raw material with interest @ 9% with effect from 01.11.2011 till payment and cost Rs.3,75,000/-. Award is accordingly made in favour of the claimant and against the respondent on this 28th day of February 2019 at New Delhi."

6. The position on record is that the Judgment Debtor has challenged the said award in a Section 34 petition being **O.M.P. (COMM) 266/2021** before the Hon'ble High Court of Delhi, which is pending adjudication. An application for stay of the award had also been filed, however, the same is stated to have been withdrawn. The Decree Holder had also filed execution

proceedings in the meantime. In the said executing proceedings, the impugned order dated 25th March, 2021 has been passed. The operative portion of the order reads:

“6. Thus, considering the totality of the facts and circumstances, the execution being of the award passed by the learned Arbitrator, the pendency of petition under Section 34 of the Arbitration Act before learned ADJ challenging the said award, and more so there being no stay on the said petition till date, the present objection application under Section 47 CPC is not maintainable at all. The same stands dismissed as being not maintainable.

7. JD is directed to file the affidavit of income and assets in terms of the judgment titled as "M/s. Bhandari Engineers & Builders Pvt. Ltd. vs. Mis. Maharia Raj Joint Venture & Ors. " within four weeks from today.”

7. The submission of Ms. Bhattacharya, Id. Counsel for the Judgment Debtor, is that the objection as to jurisdiction has not been decided on merits by any Court and hence, she has a very strong case on merits even in the Section 34 petition. She further submits that the execution petition is restricted to one property in Crowne Plaza, New Delhi and the moveable assets in the said address. The Executing Court's order should therefore be restricted to this property, and not direct the filing of the affidavit in terms of the judgment in *M/s. Bhandari Engineers & Builders Pvt. Ltd. (supra)*.

8. Mr. Nikhilesh Krishnan, Id. Counsel for the Decree Holder, on the other hand, submits that even under the Civil Procedure Code, 1908 (*hereinafter* “CPC”), the Executing Court can direct the filing of the affidavit and since there is no stay of the award, the Decree Holder is entitled to execute the award in accordance with law. Moreover, the issue of

jurisdiction is to be only decided in the petition under Section 34.

9. It is a matter of which judicial notice needs to be taken that the judgment in *M/s. Bhandari Engineers & Builders Pvt. Ltd. (supra)* has been set aside by the Id. Division Bench of the Hon'ble Delhi High Court in *Delhi Chemicals and Pharmaceutical Works Pvt. Ltd. v. Himgiri Realtors Pvt. Ltd. [EFA (OS) (Comm) No. 4/2021 decided on 5th July, 2021]*. Thus, the filing of the affidavit of income and assets in terms of the judgment of the Ld. Single Judge cannot be sustained and is, therefore, set aside. In so far as the execution proceedings are concerned, Id. Counsel for the Decree Holder submits that he would like to pray for directions before the Executing Court that an affidavit in terms of Order XXI CPC be filed by the Judgment Debtor. Ms. Bhattacharya, Id. Counsel for the Judgment Debtor, also wishes to file objections before the Executing Court.

10. The Executing Court shall consider the submissions and the objections, if any, filed by the Judgment Debtor and proceed afresh in accordance with law, without being influenced by the observations made in the impugned order.

11. With these observations, the present petition with all pending applications is disposed of. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as the certified copy of the order for the purpose of ensuring compliance. No physical copy of orders shall be insisted by any authority/entity or litigant.

PRATHIBA M. SINGH
JUDGE

SEPTEMBER 23, 2021/MR/MS