

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

% **Date of decision: 26th October, 2021.**

+ **CM(M) 770/2021**

SHREE VARDHMAN INFRAHOME PVT LTD Petitioner

Through: Mr. Jayant Mehta, Senior Advocate
with Mr. Shalabh Singhal.

Versus

AKASH GUPTA & ORS. Respondent

Through: Mr. Sahil Sethi & Ms. Nikita Sharma,
Advocates.

CORAM:

**HON'BLE MR. JUSTICE AMIT BANSAL
[VIA VIDEO CONFERENCING]**

JUDGMENT

AMIT BANSAL, J. (Oral)

CM No. 37286/2021(for exemption) in CM(M) 770/2021

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

CM(M) 770/2021, CM No. 37285/2021(for stay) & CM No. 37287/2021(for permission to file relevant record only)

3. The present petition has been filed under Article 227 of the Constitution of India impugning the common order dated 16th September, 2021 passed by the National Consumer Disputes Redressal Commission (NCDRC) in Execution Application No.176/2020 insofar as it directs issuance of recovery certificate against the petitioner company.

4. The respondents, being members of the Flora Welfare Association, filed a complaint under Section 21 of the Consumer Protection Act, 1986, bearing Consumer Case No. 1893/2017 titled ***Flora Welfare Association Vs. Shree Vardhman Infrahome Pvt. Ltd.***, before the NCDRC. The said complaint was disposed of by the NCDRC vide decree dated 15th January, 2019, wherein it was recorded that the matter had been settled between the parties in terms of the written settlement dated 15th January, 2019, and which written settlement was ordered to form part of the said decree. Since the decree was not satisfied, the respondents filed execution applications under Sections 71 and 72 of the Consumer Protection Act, 2019 seeking enforcement of the decree dated 15th January, 2019 of the NCDRC as well as penalties to be imposed upon Shree Vardhman Infrahome Private Limited and its directors for non-compliance with the decree dated 15th January, 2019 of the NCDRC, and from which execution proceedings, the impugned order arises.

5. Mr. Jayant Mehta, learned senior counsel appearing on behalf of the petitioner company states that the Execution Petition from which the present petition arises was filed on 27th August, 2020 after the new Consumer Protection Act, 2019 (new Act) came into effect. He draws attention of the Court to the Settlement Agreement dated 15th January, 2019 in respect of which the Execution Petition has been filed. It is contended that the Settlement Agreement was a composite document which took into account various contingencies before the amount became recoverable from the petitioner company and therefore, the aforesaid agreement did not envisage refund simpliciter.

6. He contends that the impugned order invokes provisions of Section 71 of the new Act, which does not provide for issuance of recovery certificate. The provisions with regard to issuance of recovery certificate only exist in Section 25 of the Consumer Protection Act, 1986 (old Act). It is further contended that the petitioner company had filed objections before the NCDRC and without considering the said objections, the recovery certificate has been ordered to be issued against the petitioner company.

7. Mr. Sethi, learned counsel appearing on behalf of the respondents submits that the petitioner company has defaulted on various obligations in terms of the Settlement Agreement and therefore, the refund has become due from the petitioner company. He further submits that no application has been filed on behalf of the builder before the NCDRC on the ground of *force majeure*.

8. I have heard the submissions of the parties and perused the impugned order passed by the NCDRC. In paragraph 5, 6 and 7 of the impugned order, it has been noted as below:

“5. Here it may be observed that the objections on maintainability, jurisdiction and competency shall be appropriately addressed and answered on the next date of hearing after the responses are filed by the learned counsel for the decree holders and after arguments are heard from the learned senior counsel and the learned counsel for all parties, but the principal objective is to execute the order of this Commission and towards this end this Commission shall on date continue with the further proceedings as per the prevalent practice and the appreciation of law obtaining in this Commission and being uniformly followed by all benches of this Commission.

6. *In the cases where the decree has not been satisfied as per its terms and conditions and the outstanding decretal amounts have been quantified in the execution applications, the decree holders are directed to file individual affidavits through counsel within two weeks affirming the respective quantified decretal amounts outstanding.*

7. *The Registry is requested to issue individual recovery certificates within one week thence, positively, under Section 25(3) of The Consumer Protection Act, 1996/Section 71 of The Consumer Protection Act, 2019 to the concerned District Collector(s) requiring to recover the respective decretal amounts from the judgment debtor company and its directors (i) Mr. Sandeep Jain, (ii) Mr. Nitin Aggarwal, (iii) Mr. Manish Aggarwal and (iv) Mr. Sachin Jain in the same manner as arrears of land revenue.*

8. *It is made explicit here that the amount recovered shall be retained with the Registry of this Commission and a decision on releasing it shall be taken after addressing and answering the objections recorded in para 2 above and after hearing objections if any on the quantification of the respective decretal amounts and on any other objection(s) raised by the judgment debtor company and its directors. Meanwhile, the Registry shall retain the recovered amount in the shape of FDR(s), initially for a period of six months, to be renewed regularly.”*

9. A reading of the aforesaid portions from the impugned order indicates that a determination is yet to be made on the objections filed by the petitioner company before the NCDRC. Paragraph 6 of the order quoted above itself uses the expression ***‘in cases where the decree has not been satisfied as per its terms and conditions.’*** This indicates that a

determination has to be made as to whether or not the decree in terms of the settlement agreement has been satisfied. The petitioner company has filed objections with regard to the execution petition filed under Section 71 of the new Act. Until such objections were decided by the NCDRC, the recovery certificate against the petitioner company could not have been issued.

10. The impugned order indicates that the matter is now listed before the NCDRC on 29th October, 2021 when the objections, as recorded in paragraph 5, are to be considered. The NCDRC is requested to decide the objections filed on behalf of the petitioner company on 4th September, 2021 (Annexure P-16 to the present petition) on the next date of hearing or any short date thereafter.

11. No coercive steps pursuant to the recovery certificate, if any issued, shall be taken against the petitioner company till the time the said objections are adjudicated by the NCDRC.

12. It is clarified that no observations with regard to the merits of the matter have been made in the order passed today and all rights and contentions of the parties, including issues with regard to maintainability, jurisdiction, and merits are kept open.

13. The petition along with pending applications is disposed of.

AMIT BANSAL, J

OCTOBER 26, 2021

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