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

% *Date of Decision: 13.10.2022*

+ **FAO (COMM) 75/2022 & CM Appl.23299/2022**

BRITE NEON SIGNS PRIVATE LIMITED Appellant
Through: Mr Avadh Bihari Kaushik, Advocate.

versus

NORTH DELHI MUNICIPAL CORPORATION Respondent
Through: Mr Kunal Mimani with Mr Kartikey
Bhatt and Mr Sandeep Rai, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MS. JUSTICE TARA VITASTA GANJU

Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J. (Oral):

1. This appeal is directed against the order dated 10.05.2022, passed by the learned District Judge (Commercial Courts), North-West District, Rohini OMP(I)(COMM) 89/2022.

1.1. This action was filed under Section 9 of the Arbitration and Conciliation Act, 1996 [hereafter referred to as the "1996 Act"].

1.2. Via the said action, the appellant had sought a complete waiver of the demand notice dated 26.04.2022 served upon it, whereby it was asked to deposit Rs.1,01,88,426/-.

2. The impugned order of the learned District Judge directed the appellant to deposit Rs.94,38,000/- for the quarter between 29.04.2022 and 28.07.2022. The learned District Judge, thus, stayed the demand notice dated 26.04.2022, subject to the appellant depositing Rs.94,38,000/-.

2.1. Aggrieved by the said direction, the instant appeal has been preferred.

3. On 17.05.2022, after recording the broad contours of the grievance articulated by the appellant, the coordinate Bench directed the appellant to deposit 25% of the demanded amount with the respondent-corporation, within five days of the said order being passed.

4. Mr Kunal Mimani has entered appearance on behalf of the respondent-corporation.

4.1. Mr Mimani affirms that the appellant has deposited 25% of the demanded amount, in terms of the directions issued by this Court on 17.05.2022.

5. We are informed by the counsel for the parties that the Section 9 petition filed by the appellant is listed before the learned District Judge on 01.11.2022.

6. We are also informed by the counsel for the parties that *via* the order dated 31.08.2022 passed in Arbitration Petition No.738/2022, titled ***Brite Neon Signs Private Limited vs. North Delhi Municipal Corporation***, the Court has appointed Hon'ble Mr Justice Rajiv Sahai Endlaw [a former Judge of this Court] as an arbitrator. This petition we are told was, moved under Section 11(6) of the 1996 Act.

7. In these circumstances, counsels for the parties say that this appeal can be disposed of, with a direction that the pending petition under Section 9 of the 1996 Act is placed before the learned Arbitrator for further orders, if any required, by treating the same as an application under Section 17 of the 1996 Act.

7.1. It is ordered accordingly.

8. The appeal is disposed of, with a direction that the Section 9 petition

pending before the learned District Judge, will be placed before the learned Arbitrator.

8.1. The learned Arbitrator will treat the same as an application preferred under Section 17 of the 1996 Act.

8.2. After giving due opportunity to both parties, the learned Arbitrator will pass the requisite order(s).

8.3. The learned Arbitrator will have the liberty to modify/vary the order dated 17.05.2022, passed by this Court.

9. Till such time the final decision is rendered in the application, the interim order dated 17.05.2022 shall continue to operate, which, in effect, has modified the order of the learned District Judge dated 10.05.2022, impugned in the instant appeal.

10. The appeal is disposed of, in the aforesaid terms.

11. Pending application shall stand closed.

12. Consequently, the next date fixed before the learned District Judge i.e., 01.11.2022, shall stand cancelled.

13. The Registry will dispatch a copy of the order passed today, to the concerned District Judge.

(RAJIV SHAKDHER)
JUDGE

(TARA VITASTA GANJU)
JUDGE

OCTOBER 13, 2022/pmc