



\$~9

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

Decision delivered on: 03.05.2023

+ **FAO(OS) (COMM) 56/2019**

M/S EVERSHINE BUILDWELL PVT LTD Appellant
Through: Mr Alok Kumar, Sr. Advocate with Mr
Harish Garg, Mr Amit Kr. Singh and Mr
Varun Maheshwari, Advocates
versus

M/S WIANXX IMPEX PVT LTD & ORS Respondents
Through: Mr Vaibhav Mendiratta, Advocate

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE GIRISH KATHPALIA
[Physical Hearing/Hybrid Hearing (as per request)]

GIRISH KATHPALIA, J. (ORAL)

1. Learned senior counsel for appellant as well as learned counsel for the Resolution Professional submit that the present appeal has become inefficacious in view of culmination of the arbitral proceedings into an award dated 18.06.2019.

2. Briefly stated, a dispute having arisen between the parties, the arbitration clause was invoked by the present appellant and vide order dated 17.11.2011, this court appointed the presiding arbitrator. On 10.03.2012, the Tribunal fixed fees of the arbitrators as Rs.75,000/- per hearing to be paid by each of the party to each of the three arbitrators, in addition to Rs.2,500/- per hearing for secretarial assistance. Before the arbitral tribunal, the present



respondents filed a counterclaim on 27.11.2012 and the arbitral tribunal fixed the fees as Rs.50,000/- per hearing to be paid by each of the party alongwith the secretarial fees. The present appellants continued to pay the fee of the arbitrator diligently but the present respondent fell in default, so the counterclaim was terminated on 07.11.2016 under Section 38 of the Arbitration and Conciliation Act. For the sake of convenience, the relevant portion of the order dated 07.11.2016 is extracted below:

“We have no alternative except to enforce the orders passed by the Tribunal on 06.06.2016. The counter claim filed by the Respondent stood terminated in terms of the order passed by the Tribunal on 06.06.2016 in terms of Section 38 of the Arbitration and Conciliation Act, 1996.”

2.1 The present respondents challenged the said order dated 07.11.2016 by way of petition under Section 34 of the Act and the said petition was allowed by the learned Single Judge of this Court by way of order dated 21.01.2019 (*impugned in the present appeal*) thereby granting the present respondents opportunity to pay the pending fees within a reasonable time.

2.2 But admittedly, the present respondents opted not to pay up.

3. On the very first date before this court i.e., 12.03.2019, the impugned order was stayed till next date and thereafter on 07.05.2019, the interim order was made absolute during pendency of the appeal. As mentioned above, on 18.06.2019, the arbitral proceedings culminated into award in favour of the present appellant and subsequently, by way of judgment dated



23.08.2019 passed by the National Company Law Tribunal, an interim Resolution Professional was appointed in respect of the present respondent no. 1.

4. In view of above circumstances, the present appeal is disposed of as infructuous.

5. File be consigned to records.

GIRISH KATHPALIA, J

RAJIV SHAKDHER, J

MAY 3, 2023/as

Click here to check corrigendum, if any