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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision:- 23.05.2023

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C.R.P. 110/2023 & CM APPL. 23110/2023 -Stay.

M/S OIL INDUSTRY DEVELOPMENT BOARD Petitioner

Through: Mr. Tushar Bhardwaj, Adv.

versus

GODREJ AND BOYCE MFG CO LTD

..... Respondent

Through:

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

REKHA PALLI, J (ORAL)

1. The present revision petition preferred by the Judgment Debtor seeks to assail the order dated 10.03.2023 passed by the learned Executing Court. Vide the impugned order, the learned Executing Court has rejected the petitioner's application under Section 47 of the Code of Civil Procedure (CPC) seeking dismissal of the execution petition preferred by the respondent seeking enforcement of arbitral award dated 30.01.2012.
2. Learned counsel for the petitioner submits that vide award dated 30.01.2012, the arbitral tribunal, while allowing the claims of the respondent, had rejected the counter claims preferred by the petitioner. The said award was assailed by the petitioner by way of a petition under Section 34 of the Arbitration and Conciliation Act being OMP 601/2012. The petition came to be allowed by this Court on 16.09.2019 by rejecting the petitioner's challenge to the award in

so far as it allowed the claims of the respondent but accepted the petitioner's challenge to the rejection of its counterclaim. Consequently, the award was, vide this Court's judgment dated 16.09.2019, modified. By placing reliance on the decision of the Apex Court in *The Project Director, National Highways No. 45E and 220, NHAI vs M. Hakeem, (2021) 9 SCC 1*, learned counsel for the petitioner contends that such a course of action was not permissible as this Court under Section 34 of the Act, does not have the jurisdiction to modify an arbitral award. He therefore submits that not only is the judgment dated 16.09.2019 *non-est* but even the award dated 30.01.2012, having been modified, has become non-enforceable. He therefore prays that the petition be allowed and the impugned order be set aside.

3. Having considered the submissions of the learned counsel for the petitioner and perused the record, I find absolutely no merit in the petition. The petitioner has on the one hand contended that the award is not enforceable at this stage as its counterclaims are still being considered by the arbitral tribunal and on the other hand, has sought to urge that the judgment dated 16.09.2019 modifying the arbitral award being contrary to the decision of the Apex Court in *M. Hakeem (supra)*, the award itself has become *non-est*. In so far as the petitioner's first plea is concerned, I am of the considered view that merely because the petitioner's counter-claims are still pending consideration before the arbitral tribunal, the same would not be a ground to deprive the respondent of its right to seek enforcement of its claims which have not only been allowed by the arbitral tribunal

but also upheld by this Court vide its judgment dated 16.09.2019.

4. Further, even if I were to accept the petitioner's alternative plea that the judgment dated 16.09.2019 modifying the arbitral award is a nullity, that in itself would not imply that the award allowing the claims of the respondent would become *non-est*. In fact, a consequence of accepting the petitioner's alternative plea would be that the modification of the award is required to be ignored; resultantly the award would be executable as it originally stood on 30.01.2012.
5. In the light of the aforesaid, I am unable to appreciate as to how the petitioner can avoid the execution of the award dated 30.01.2012 passed by the arbitral tribunal when its challenge to the part of the award allowing the claims of the respondent already stands rejected by this Court. In my considered view, only because this Court had vide its decision dated 16.09.2019 directed the arbitral tribunal to reconsider the petitioner's counter claims which had been initially rejected by the tribunal, the petitioner cannot now be permitted to contend that the award in itself is unenforceable. The learned Trial Court, in my view was therefore justified in rejecting the petitioner's objection to the enforcement of the award.
6. For the aforesaid reasons, I find no merit in the petition which is, accordingly, dismissed.

(REKHA PALLI)
JUDGE

MAY 23, 2023/sr