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

\+ O.M.P. (E) 1/2024

DEEPAK RANA ..... Petitioner

Through: Mr. Avadh Bihari Kaushik, Mr. Anil Kumar Gupta, Mr. Pawan Kumar Verma, Mr. Prateek Goyal and Rishabh Kumar, Advocates.

versus

JAGAT GANGA CHARITABLE TRUST REGD. & ORS. ..... Respondents

Through: Mr. S.D. Kushwaha, Advocate for R-3 to 5.

**CORAM:**
**HON'BLE MR. JUSTICE PRATEEK JALAN**

**O R D E R**

% **02.05.2024**

1. This is a petition under Section 27(1) of the Arbitration and Conciliation Act, 1996 ["the Act"], seeking the assistance of the Court to summon the following witnesses:-

> *"(i) Bank Manager/Official of State Bank of India, having its branch at Sector-18, Rohini, Delhi with the record of the petitioner's bank account for the relevant period (01.03.2017 till 31.03.2017) regarding the debit entry/ transfer of Rs. 18,00,000/- on 16.03.2017 through RTGS from petitioner's SBI bank account No. 34744452303 into the bank account of Jagat Ganga Charitable Trust/respondent No. 1 herein in its account No. 448701010290082 maintained at Union Bank of India, Auchandi, Delhi-110039.*
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> *(ii) Bank Manager/Official of Union Bank of India, having its branch at Auchandi Village, Delhi-110039 with the record of the bank account of Jagat Ganga Charitable Trust/respondent No. 1 herein for the relevant period (01.03.2017 to 31.03.2017) regarding the credit entry/receipt of Rs. 18,00,000/- on 16.03.2017 through RTGS in its bank account No. 448701010290082 from petitioner's bank account No. 34744452303 maintained with State Bank of India, Sector-18,*

*Rohini, Delhi.*

*(iii) Concerned Official in the office of the Sub-Registrar (SR-VI- D Rohini) located at Kanjhawala, Delhi with the updated complete record including record and copy of Amended Registered Trust Deed of Jagat Ganga Charitable Trust/respondent No. 1 herein registered vide Serial No. 6681 dated 19.10.2020 and Registration No. 255 in Book No.4 Volume No. 112 on page No. 1-20 dated 19.10.2020."*

2. Mr. Avadh Bihari Kaushik, learned counsel for the petitioner, who is the claimant before the Arbitral Tribunal, submits that the Arbitral Tribunal has allowed the petitioner's application by an order dated 30.01.2024, albeit subject to payment of costs. The said order reads as follows:

"*Dear All*

*The matter was taken up today for arguments on Section 27 Application. Through the said Application, the request has been made by the Claimant to allow additional evidence to be adduced more specifically allow 3 additional witnesses to be summoned on behalf of the Claimant being bank officials and the sub registrar to show that payment of Rs. 25 lakhs was made and that the amended Trust Deed is a genuine document and not a forged and fabricated document as contended by the Respondent Nos. 2, 4 and 5.*

*It was argued on behalf the Claimant that the Application has been made primarily because (i) the bank documents/pass book were not available with the Claimant at the time of filing of the Claim statement which are now available (ii) even with the documents, since the same only reflects the account number, it would be necessary to show that the payment has been made into the account of Respondent No.1 for which the concerned bank officials would have to be summoned. In so far as the summoning of the sub-registrar is concerned, it was contended that the Claimant did not summon him earlier for he was made part of the Respondent's witnesses but since he was dropped at a later point in time, it is necessary that the sub-registrar be summoned. Per contra, the Ld. Counsel for the Respondent submitted that the Claimant had enough opportunity to summon these witnesses at an earlier stage and chose not to do so. Hence, such a request ought not be allowed.*

*Having heard the Learned Counsel for the Parties and perused the material on record, this Tribunal deems it fit to allow the Application. While this Tribunal is in agreement with the Respondent that nothing* *prevented the Claimant from summoning these witnesses at an earlier stage, this Tribunal is also mindful of the fact that the present proceedings are arbitration proceedings and the matter is still at the evidence stage though the Claimant's evidence stands closed. The evidence sought to be adduced would be relevant for it relates to some of the issues to be adjudicated by this Tribunal. In order to sub-serve the ends of justice, such request is allowed subject to deposit of costs of Rs. 7,500/- to be deposited with this Tribunal.*"

3. Mr. S.D. Kushwaha, learned counsel for respondent Nos.3 to 5 herein, submits that the Arbitral Tribunal has permitted the petitioner to call these witnesses after conclusion of the petitioner's evidence. According to Mr. Kushwaha, the respondent's evidence was also concluded although the order of the Arbitral Tribunal reads otherwise.

4. Be that as it may, this objection is not required to be considered at the stage of Section 27 of the Act. While exercising powers under Section 27, the Court does not sit in appeal over the decision of the Arbitral Tribunal. Section 27 has to be read with Section 5 and Section 19 of the Act, as held by the judgments of this Court in *Thiess Iviinecs India vs. NTPC Limited & Anr.* [2016 SCC OnLine Del 1819] and in *Steel Authority of India Ltd. vs. Uniper Global Commodities* [2023 SCC OnLine Del 7586]. It is clear from the order of the Arbitral Tribunal reproduced above that the Arbitral Tribunal has allowed the petitioner's request after examining the same and not in a mechanical manner. The remedies available to respondent Nos.3 to 5 are provided under the Act. Those remedies, if any, are reserved.

5. The petition is, therefore, allowed and summons will issue to the witnesses enumerated above to appear before the learned Arbitral Tribunal with the relevant record on the next date of hearing i.e. 28.05.2024 at 04:00 PM, Delhi International Arbitration Centre, Delhi

High Court, Shershah Road, New Delhi.

6. The petition stands disposed of with these directions.

**PRATEEK JALAN, J**

**MAY 2, 2024**
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