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

+ EFA(OS) (COMM) 3/2020 & CM APPL. 8285/2020 CM APPL.
12902/2021 CM APPL. 40049/2023

M/S AEZ INFRATECH PVT LTD Appellant
Through: Mr Praveen K Sharma, Advocate

versus

M/S SOMANI WORSTED LTD & ORS Respondents
Through: Mr. Vivek Kohli, Sr. Adv. with
Ms. Nikta Maheshwari and Mr.
Anmol Chawla, Advocates for R-1 to
R-5

% Date of Decision: 09th January, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T (O R A L)

1. The present appeal has been filed under Section 13 of the Commercial Courts Act, 2015 ('Act of 2015') impugning the order dated 09.01.2020 ('impugned order') passed by the learned Single Judge of this Court ('Executing Court') in OMP (ENF.) (COMM.) No. 74/2019 titled as '**M/s Somani Worsted Limited & Ors. v. AEZ Infratech Private Ltd. & Ors.**' ('execution proceedings'), whereby the Appellant (i.e., the Judgment Debtor) and its directors were directed to file an additional affidavit in the format devised in the judgment dated 05.12.2019 in Ex. P. No. 275/2012 titled as ***Bhandari Engineers and Builders Pvt. Ltd. v. Maharia Raj Joint Venture.***

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1.1 The Appellant herein is the judgment debtor no. 1 ('JD-1') and the Respondent Nos. 1 to 5 herein are decree holders in the execution proceedings. Respondent No. 7 herein is the director of JD-1 and was impleaded as JD-3 in the execution proceedings.

1.2 The facts of the case are that the decree holders have filed the execution proceedings seeking enforcement of the arbitral award dated 28.12.2015 passed in Case Ref. Nos. DAC/492/09-13 and DAC/493/09-13 titled as '**M/s Somani Worsted Limited & Ors. v. AEZ Infratech Private Ltd. & Ors.**'.

1.3 By order dated 03.05.2019, the Executing Court had directed the judgment debtors to file their asset disclosure affidavits as per Form 16A, Appendix E of the Code of Civil Procedure, 1908 ('CPC'); however, the judgment debtors failed to file the said affidavits till 09.01.2020.

1.4 The Executing Court after taking note of the non-compliance passed the impugned order and issued the following directions:-

"4. In the interest of justice, two weeks time is granted to the judgment debtors to file the affidavit of their assets on the date of the beginning of the cause of action, date of the award as well as on today in Form 16A, Appendix-E under Order XXI Rule 41(2) of the Code of Civil Procedure within two weeks failing which judgment debtor No.3 as well as all the Directors of judgment debtor Nos. 1 and 2 shall be detained in civil prison for three months upon deposit of subsistence charges by the decree holder.

5. Judgment Debtor No. 1 and 2 are directed to file an additional affidavit in the format attached as Annexure-B to the judgment dated 05th December, 2019 in Ex.P.No.275/2012 titled **Bhandari Engineers and Builders Pvt Ltd. V. Maharia Raj Joint Venture** within two weeks.

6. Judgment Debtor No. 3 is directed to file an additional affidavit in the format attached as Annexure-A to the judgment dated 05th December, 2019 in Ex.P.No.275/2012 titled **Bhandari Engineers and Builders Pvt. Ltd. v. Maharia Raj Joint Venture** within two weeks.



7. The **judgment debtors are directed to file an additional affidavit to disclose the utilization of the amount advanced by the decree holder to the judgment debtors along with proof of utilization including the bank statements etc.** within two weeks”

(Emphasis Supplied)

1.5 Aggrieved by the directions in the impugned order, the Appellant approached this Court seeking the relief of quashing the impugned order. In this appeal a challenge was laid to the direction of filing affidavit in the form prescribed by ***Bhandari Engineers and Builders Pvt. Ltd. (2019) (supra)***.

2. This Court vide order dated 21.10.2021 stayed the direction in the impugned order to file an affidavit in compliance with ***Bhandari Engineers and Builders Pvt. Ltd. (2019) (supra)*** in view of the subsequent judgment passed by the coordinate Bench of this Court in ***Delhi Chemical and Pharmaceutical Works Pvt. Ltd. v. Himgiri Realtors Pvt. Ltd. (2021) SCC OnLine Del 3603***.

3. The Respondent Nos. 1 to 5 impugned the order dated 21.10.2021 by filing SLP Civil No. 21013/2021 wherein the operation of this Court’s order dated 21.10.2021 has been stayed. The learned senior counsel for Respondent Nos. 1 to 5 states that the Respondents have challenged the maintainability of this appeal in the said SLP. He states that the present appeal is not maintainable under Section 13 of the Act of 2015 and relies upon the judgment of the Supreme Court in ***Kandla Export Corporation and Anr. v. OCI Corporation and Ors., reported as (2018) 14 SCC 715***. He states that there is no impediment in hearing and disposing of this appeal due to the pendency of the said SLP. He states that the remedy, if any, available to the Appellant is to approach the learned Single Judge.

4. In reply, learned counsel for the Appellant states that in view of the



objection on maintainability of appeal he may be given liberty to approach the learned Single Judge for modification of the impugned order in light of the subsequent judgment of this Court in *Delhi Chemical and Pharmaceutical Works Pvt. Ltd.* (supra).

5. Accordingly, in view of the law settled by Supreme Court in *Kandla Export Corporation v. OCI Corporation* (supra) the present appeal is dismissed as not maintainable; whilst, reserving liberty to the Appellant to file an appropriate application before the learned Single Judge for modification of the impugned order dated 09.01.2020. Needless to state that the application when filed shall be decided in accordance with law. The rights and contentions of all the parties are left open.

6. Pending applications stand disposed of.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

JANUARY 9, 2024/hp/MG

Click here to check corrigendum, if any