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

% *Date of Decision: 17.09.2024*

\+ **FAO (COMM) 53/2024**

ROLLZ INDIA WASTE MANAGEMENT PVT LTD .....Appellant

Through: Dr Anurag Kumar Agarwal, Mr Umesh Mishra and Mr Prateek Agarwal, Advocate.

versus

PAN INDIA INFRA PROJECTS PVT LTD .....Respondent

Through: Mr Rishabh Khemuka, Advocate.

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU
HON'BLE MR. JUSTICE SACHIN DATTA

VIBHU BAKHRU, J. (***ORAL***)

1. The appellant has filed the present appeal impugning an order dated 02.01.2024 (hereafter *the impugned order*) passed by the learned Commercial Court whereby the appellant's application for release of the amount deposited in Court in terms of an order dated 24.01.2019 passed in OMP(I)(COMM) 1059/2019 was rejected.

2. The appellant had filed the aforesaid petition under Section 9 of the Arbitration and Conciliation Act, 1996 (hereafter *the A&C Act*), seeking an order restraining the respondent from encashing a bank guarantee (being Bank Guarantee no. 06271LG012117 dated 30.10.2017) for a sum of

₹43,20,000/- issued by Punjab National Bank (hereafter *the PNB*), Naraina Branch, New Delhi at the instance of the appellant in favour of the respondent. The said petition was taken up for hearing on 24.01.2019 and the respondents were restrained from encashing the bank guarantee till the next date of hearing. However, this was subject to the appellant furnishing a fixed deposit receipt (hereafter *the FDR*) in favour of the Court for an amount of ₹29,70,932/-within a period of one week from the said date.

3. The appellant had complied with the aforesaid order and has furnished the FDR for the aforesaid amount to the Court.

4. It is stated that in the meanwhile, the proceedings were initiated against the respondent company (by another creditor) before the National Company Law Tribunal, under the provisions of the Insolvency and Bankruptcy Code, 2016 (IBC) [*Garg Enterprises v. Pan India Infra Project Pvt. Ltd.: CP(IB) No.2815 (MB) 2019*].

5. Thereafter, the appellant's petition under Section 9 of the A&C Act was disposed of by an order dated 05.10.2021.

6. The appellant applied for release of the FDR deposited by it, however, that was rejected by the impugned order, *inter alia,* for the reason that the corporate insolvency resolution process (CIRP) was underway. The learned Commercial Court was of the view that it would have no jurisdiction to entertain the said application.

7. The learned counsel for the liquidator appointed in respect of the

respondent, has joined the proceedings and submits that he has no objection for the present appeal to be allowed and the FDR furnished by the appellant to be released to the appellant.

8. It is pointed out that the respondent has also informed the PNB that it has no claim in respect of the subject bank guarantee and has withdrawn the letter dated 24.01.2019 whereby it was invoked.

9. It is, thus, clear that although the appellant has deposited the FDR with the Court, the respondent has no claim in respect of the same. This is also confirmed by the learned counsel for the liquidator. It is material to note that the FDR in question was directed to be furnished as a condition for an interim order restraining the invocation of the bank guarantee, which was granted to the appellant. The respondent has since withdrawn its claim in respect of certain bank guarantee and has communicated the same to the PNB. The respondent has also asked the PNB to release the margin money deposited by the appellant for obtaining the said bank guarantee. There is no dispute that the amount deposited by the appellant in the form of the FDR before the learned Commercial Court is not a part of a liquidation assets as confirmed by the learned counsel for the respondent.

10. In view of the above, the initiation of proceedings under the IBC against the respondent would have no bearing on the FDR deposited by the appellant with the learned Commercial Court.

11. In view of the above, the appeal is allowed. The learned Commercial Court is directed to forthwith return/refund the fixed deposit amount along

with accrued interest in favour of the appellant.

12. The appeal is disposed of in the aforesaid terms.

VIBHU BAKHRU, J

SACHIN DATTA, J

SEPTEMBER 17, 2024
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Click here to check corrigendum, if any