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

\+ OMP (ENF.) (COMM.) 82/2023

M/S PCI LIMITED ..... Decree Holder

Through: Mr. Upinder Singh, Mr. Sharanya Bhatnagar, Advs.

versus

PRIME MEIDEN LIMITED ..... Judgement Debtor

Through: Mr. Rajesh Rai, Mr. Rohan Rai, Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

<u>O R D E R</u>

% **03.01.2024**

1. This is a petition seeking execution of the award dated 11.07.2022 read with additional award dated 31.08.2022 passed by the learned Sole Arbitrator.

2. As per the decree holder, a sum of Rs. 2,04,16,666/- along with interest at the rate of 9% from 01.09.2022 till date of payment is due and payable against the judgment debtor.

3. It is stated that the same has not been paid.

4. Mr. Rohan Rai, learned counsel for the JD states that the respondent had preferred a petition under Section 34 of the Arbitration and Conciliation Act, 1996. The arguments have been concluded in the matter and the judgment has been reserved. It is therefore prayed that the petition may be deferred to await the outcome of Section 34 of the Arbitration and Conciliation Act, 1996.

5. He further states that the decretal amount stands paid *vide* set off of debit note bearing Nos. 1/18 and 2/18.

6. The same is opposed by Mr. Singh, learned counsel for the decree

holder.

7. I am unable to subscribe to the views of the JD.

8. As regards the set off is concerned, the arbitral award is dated 11.07.2022 and these objections were raised by the respondent before the Sole Arbitrator and adjudicated upon. It is only thereupon that the final award has been passed by the learned Arbitrator.

9. As regards pendency of Section 34 objections are concerned, I may rely upon the judgment of the Hon'ble Supreme Court in "*Hindustan Construction Company Limited & Anr. vs. Union of India & Ors.*" passed in WP(C) No. 1074/2019 and more particularly paragraphs 25, 26 and 30 which read as under:-

> *"**25.** To state that an award when challenged under Section 34 becomes unexecutable merely by virtue of such challenge being made because of the language of Section 36 is plainly incorrect. As has been pointed out hereinabove, Section 36 was enacted for a different purpose. When read with Section 35, all that Section 36 states is that enforcement of a final award will be under the CPC, and in the same manner as if it were a decree of the Court. In fact, this is how Section 36 has been read by a three-judge bench in **Leela Hotels Ltd. V. Housing and Urban Development Corporation Ltd.** (2012) 1 SCC 302 as follows:*
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> > *"45. Regarding the question as to whether the award of the learned arbitrator tantamounts to a decree or not, the language used in Section 36 of the Arbitration and Conciliation Act, 1996, makes it very clear that such an award has to be enforced under the Code of Civil Procedure in the same manner as it were a decree of the court. The said language leaves no room for doubt as to*

the manner in which the award of the learned arbitrator was to be accepted."

26. *To read Section 36 as inferring something negative, namely, that where the time for making an application under Section 34 has not expired and therefore, on such application being made within time, an automatic-stay ensues, is to read something into Section 36 which is not there at all. Also, this construction omits to consider the rest of Section 36, which deals with applications under Section 34 that have been dismissed, which leads to an award being final and binding (when read with Section 35 of the Arbitration Act, 1996) which then becomes enforceable under the CPC, the award being treated as a decree for this purpose.*

…

30. *Thus, the reasoning of the judgments in* ***NALCO*** *(supra), and* ***Fiza Developers and Intra-trade Pvt. Ltd.*** *(supra) being per incuriam in not noticing Sections 9, 35 and the second part of Section 36 of the Arbitration Act, 1996, do not commend themselves to us and do not state the law correctly.1 The fact that* ***NALCO*** *(supra) has been followed in* ***National Buildings Construction Corporation Ltd. v. Lloyds Insulation India Ltd.*** *(supra) does not take us any further, as* ***National Buildings Construction Corporation Ltd.*** *(supra) in following* ***NALCO*** *(supra), a per incuriam judgement, also does not state the law correctly. Thus, it is clear that the automatic-stay of an award, as laid down by these decisions, is incorrect. The resultant position is that Section 36 - even as originally enacted - is not meant to do away with Article 36(2) of the UNCITRAL Model Law, but is really meant to do away with the two bites at the cherry doctrine in the context of awards made in India, and the fact that enforcement of a final award, when read with Section 35, is to be under the CPC, treating the award as if it were a decree of the court."*

10. A perusal of the above paragraphs shows that merely pendency of Section 34 petition does not automatically stay the execution arising from an arbitral award. The arbitral award is executable as a decree of the court and only in case of a stay by the court, the execution of the Arbitral Award can be stayed.

11. Admittedly, there is no stay in the present case.

12. For the said reasons, the execution petition is allowed.

13. The JD is directed to deposit Rs. 2,04,16,666 along with interest at the rate of 9% from 01.09.2022 till date within a period of 6 weeks from today with the Registrar General of this Court.

14. List for compliance on 23.04.2024.

JASMEET SINGH, J

JANUARY 3, 2024 / (MS)

Click here to check corrigendum, if any