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

+ **O.M.P.(MISC.)(COMM.) 270/2020**

ERA INFRA ENGINEERING LTD.

.....Petitioner

Through: Mr. Rakesh Kumar and Mr. Achin
Goel, Advocate.

versus

SONI INFRATECH PVT. LTD.

.....Respondent

Through: Mr. Amit Goel, Advocate.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

ORDER

24.10.2024

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1. The present petition under Section 29A of the Arbitration and Conciliation Act, 1996 (hereinafter '*the A&C Act*') has been filed by the petitioner seeking extension of time for completion of the arbitral proceedings and making of the arbitral award.
2. The present petition was filed on 31.08.2020 and has been pending since then on account of the fact that both the petitioner and the respondent were undergoing Corporate Insolvency Resolution Process (hereinafter '*CIRP*').
3. Today, learned counsel for the petitioner submits that CIRP *qua* the petitioner has come to an end and therefore, the petitioner seeks to press the present petition for grant of requisite time for completion of the arbitral proceedings and making of the arbitral award.
4. It is also brought out during the course of hearing that the CIRP had been initiated *qua* the respondent, pursuant to the order dated 22.11.2019 passed by the NCLT. However, various proceedings took place subsequently



before the NCLAT and the Supreme Court. These proceedings led to an order dated 27.04.2022 passed by the Supreme Court, wherein it has been directed as under:-

23. We find that there is every possibility that if the CIRP is permitted, the cost that the home-buyers will have to pay, would be much higher, inasmuch as the offer made by the resolution applicants could be after taking into consideration the price of escalation, etc. As against this, the Promoter has filed a specific undertaking specifying therein that the cost of the flat would not be escalated and that he would honour the BBA signed by the previous management.

24. In that view of the matter, we are inclined to allow the present appeal. Accordingly, we pass the following order:

A. The appeal is allowed. The impugned order dated 22nd November, 2021 passed by the National Company Law Appellate Tribunal, Principal Bench, New Delhi in I.A. No. 1115 of 2020 in Company Appeal (AT) (Insolvency) No. 1507 of 2019 is quashed and set aside;

B. The affidavit dated 27th December, 2021 filed by Shri Kashi Nath Shukla, the promoter of the respondent No. 1 - Corporate Debtor is taken on record and treated to be an undertaking given to this Court;

C. The appellant/promoter is permitted to complete the project as per the deliberations that took place in the Minutes of the Meeting dated 23rd October, 2021 and in accordance with the affidavit-cum-undertaking dated 27th December, 2021 of the Promoter, Shri Kashi Nath Shukla;

D. The modification application being I.A. No. 1115 of 2020 in Company Appeal (AT) (Insolvency) No. 1507 of 2019 before the NCLAT accordingly stands allowed.

E. From the date of this order, the IRP shall submit quarterly reports to the National Company Law Appellate Tribunal, Principal Bench, New Delhi with regard to the progress of the housing project;

F. The matter be listed before the National Company Law Appellate Tribunal, Principal Bench, New Delhi for such first Status Report on 22nd August, 2022.

5. The promoters of the project in question could not adhere to the



timelines described by the Supreme Court pursuant to which further proceedings took place in the Supreme Court and in the NCLAT, ultimately culminating in an order dated 20.08.2024 whereby the Supreme Court has, *inter alia*, directed as under:-

“7. The respondent/alleged contemnor No.1 shall file a further undertaking that he shall complete the project within a period of six months from today. The undertaking shall also state that the respondent/alleged contemnor No.1 shall not mortgage the flats of the petitioners and that the said flats shall be kept free from any encumbrances.

8. We clarify that in the event the respondent/alleged contemnor No.1 does not complete the projects and handover the possession to the petitioners within a period of six months from today, the same may amount to aggravated contempt of Court.”

6. In the light of the aforesaid proceedings, the affidavit filed on behalf the IRP initially appointed *qua* the respondent, has candidly stated as under:-

“18. I say that from the above facts and circumstances, it is evident that the IRP could act/function as IRP only for a very brief period i.e. from 22.11.2019 to 19.12.2019, 26.02.2019 to 18.03.2019 and 23.11.2021 to 04.01.2022.”

7. In view of the aforesaid stand, there appears to be no impediment in granting the requisite extension of time as contemplated under Section 29A of the A&C Act. Accordingly, the time period for completion of the arbitral proceedings and making of the arbitral award is extended by a period of one year i.e. till 24.10.2025.

8. Needless to say, learned Sole Arbitrator shall consider the subsisting and also any future orders that may be passed by the NCLT/NCLAT/Supreme Court which have a bearing on whether the arbitral proceedings can be continued *qua* the respondent.

9. It shall be open for both the IRP and the promoters of the Respondent



to appear before the learned Sole Arbitrator and render appropriate assistance.

10. The present petition stands disposed of in the above terms.

OCTOBER 24, 2024/at

SACHIN DATTA, J