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

+ **W.P.(C) 11089/2024**

JYOTI CNC AUTOMATION LTD & ANR.Petitioners

Through: Ms. Hetvi Patel, Mr. Pradhuman Gohil, Mr. A.M. Kothari and Mr. Rushabh Kapadia, Advocates.

versus

MS LAL SINGH PANESAR AND SONS & ANR.Respondents

Through: Mr. Vinod Malhotra and Mr. Amol Ranjan, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

27.09.2024

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CM APPL. 57181/2024 (for stay) & W.P.(C) 11089/2024

1. The Petitioner assails the judgment dated 26th April, 2024,¹ passed by National Consumer Disputes Redressal Commission² in First Appeal No. 2066/2018, upholding the final order passed by the State Consumer Dispute Redressal Commission, Punjab at Chandigarh³ dated 4th April, 2018 with certain modifications. The afore-said orders observed the Petitioners to be providing deficient services to the Respondents.
2. A brief background leading to the filing of the present petition is as follows:

¹ "the impugned judgment"

² "NCDRC"



2.1. Respondent No. 1, the original complainant, is engaged in the business of manufacturing knitting machine spare parts since 1985. The said Respondent purchased a Computerized Numerical Controlled machine from the Petitioner on 27th September, 2015 for an amount of INR 25,27,024.50/-.

2.2. Since the installation of the machine, Respondent No. 1 sent several complaints to the Petitioners regarding noise emanating from the machine and technical engineers of the Petitioners made several visits to conduct inspections. On 30th May, 2015, Respondent No. 2 replaced the spindle motor of the machine, however, the noise continued to remain. Dissatisfied from the same, Respondent No. 1 filed a consumer complaint before the State Commission.

2.3. The State Commission through order dated 4th April, 2018, allowed the complaint and directed the Petitioners to make the following payments to Respondent No. 1:

- a. Refund of INR 25,27,024.50/- towards purchase price of the machine;
- b. Interest at the rate of 11.85% per annum on INR 19,00,000/- towards bank loan from the date of purchase until actual payment and interest at the rate of 9% per annum on the remaining INR 6,27,024.50/- from the date of purchase until actual payment;
- c. Payment of INR 1,14,000/- towards the cost of compressor and dryer, of INR 54,000/- towards cost of servo and INR 30,000/- towards transportation, all with an interest at the rate of 9% per annum from the date of purchase until actual payment;
- d. Payment of INR 1,50,000/- as compensation for harassment and

³ “the State Commission”



mental agony, including litigation cost.

2.4. Aggrieved by the said order, Petitioner No. 1 challenged the same before the NCDRC which culminated in the final order dated 26th April, 2024 whereby NCDRC upheld the order of the State Commission but set aside the award of compensation of INR 1,50,000/- towards mental agony suffered by Respondent No. 1.

3. The counsel for the Petitioners points out that as per the directions issued by NCDRC partly allowing the challenge, the amount payable to Respondent No. 1 is INR 39,00,228/-. Against the said amount, an amount of Rs. 19,50,114/- has been deposited with State Commission. Additionally, she submits that the impugned order is *non-est* as it has passed by the coram *non-judice*, and is liable to be set aside. She apprises the Court that Respondent No. 1 has filed a Miscellaneous Application No. 553/2024 in First Appeal No. 2066/2018 before the NCDRC seeking the release of deposited amount which was deposited by them pursuant to order dated 4th April, 2018, passed by the State Commission. In light of the above, she submits that since this Court is yet to consider the jurisdictional question regarding the coram of the NCDRC, Respondent No. 1 ought not to be permitted to withdraw the amount deposited by the Petitioner.

4. Counsel for Respondents has drawn the attention of this Court to a recent decision of the Supreme Court in ***Siddhartha S Mookerjee & Anr. v. Madhab Chand Mitter & Anr.***⁴ In the said matter, the challenge was laid to an order passed by this Court under Article 227 of the Constitution of India, 1950 in relation to an order passed by NCDRC. The question before the

⁴ Civil Appeal No. 3915-3916/2024, decided on 4th March, 2024



Supreme Court was whether this High Court would be considered as a jurisdictional High Court inasmuch as the impugned judgment was passed by the NCDRC. On this issue, the Supreme Court held as follows:

“9. In our opinion, that can hardly be treated as a ground to invoke the jurisdiction of the High Court of Delhi. The respondent No. 1 ought to have approached the High Court of Calcutta being aggrieved by the impugned judgment as the entire cause of action in the present case has arisen in Kolkata, where the patient was operated for ovarian cancer on 24th February, 2012, and expired on 30th July, 2014. The complaint case was filed at Kolkata based on the aforesaid cause of action. Merely, because the NCDRC has allowed the revision petitions filed by the appellants and the respondent no. 2 would not be a ground to vest jurisdiction in the High Court of Delhi.

10. Accordingly, the appeals are allowed. The petitions filed before the High Court of Delhi are disposed of with liberty granted to the respondent no. 1 to approach the High Court of Calcutta for seeking appropriate relief. In the event the respondent no. 1 files a petition before the High Court of Calcutta within four weeks from today, the appellant herein shall not raise any objection as to the maintainability of the said petition on the ground of limitation. It is further directed that in this duration, the appellants shall not rely on the order passed by the NCDRC.”

5. In light of the afore-noted judgment, counsel for Petitioner states that she is agreeable to withdraw the present petition and approach the concerned High Court. She, however, makes a request that considering the urgency in the matter and the fact that since 50% of the awarded amount has already been deposited with the State Commission, the Court may afford an interim protection till such time the Petitioner was to invoke the jurisdiction of the concerned High Court for appropriate reliefs.

6. Accordingly, the present petition is disposed of with the following directions:

- (a) The present petition is dismissed as withdrawn.
- (b) Petitioner No. 1 shall be at liberty to file a fresh petition before the



Court of appropriate jurisdiction in light of the judgment of the Supreme Court in ***Siddhartha S Mookerjee***.

(c) In the event, the Respondents were to file a petition before the High Court of Punjab and Haryana within a period of four weeks from today, the Respondents shall not be entitled to raise any objection as to the maintainability of the said petition on account of limitation.

(d) Till such time, the NCDRC shall not pass any order in the Miscellaneous Application No. 533/2024 in First Appeal No. 2066/2018.

7. With the above directions, the present petition is dismissed, along with pending application(s), if any.

8. All rights and contentions of the parties are left open.

9. Dismissed as withdrawn with the afore-said liberty.

10. The next date i.e., 5th November, 2024, stands cancelled.

SANJEEV NARULA, J

SEPTEMBER 27, 2024

nk/as