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

% ***Date of decision: 12th December, 2024***

+ **C.R.P. 378/2024 & CM APPL. 73091/2024**

1. **DHARAM PAL SINGH RATHOR**Petitioner No. 1
2. **RAVISH RATHORE**Petitioner No. 2
3. **SHIKSHA RATHORE**Petitioner No. 3
4. **MAHINDER KUMAR RATHORE**Petitioner No. 4

**All R/o B-58, Preet Vihar,
Delhi-110092**

Through: **Mr. Chayan Sarkar & Ms. Arshnit
Sandhu, Advocates.**

versus

KRISHAN KIRPA COMPUTER INDUSTRIES PVT LTD

Through its Director

Having its registered Office at:

33 B, 1st Floor, DDA Flats, Ber Sarai,
NRAE JNU, New Delhi-110016

.....Respondent

Through: **None.**

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

CM APPL. 73090/2024 & CM APPL. 73092/2024 (Exemptions)

1. Allowed, subject to all just exceptions.
2. The Applications are disposed of.

C.R.P. 378/2024



3. The present Revision Petition under Section 115 of Code of Civil Procedure, 1908 (*hereinafter referred to as "CPC, 1908"*) has been filed on behalf of the Revisionists/Judgment Debtors against the Order dated 08.11.2024 *vide* which the Objections under Section 47 of CPC, 1908 filed on behalf of the Revisionists/Judgment Debtors, have been dismissed being not maintainable by the learned District Judge, Commercial Court.

4. It is submitted that Arbitral Tribunal committed a jurisdictional error in determining the question in regard to the Income Tax even though the Income Tax Appeal is pending.

5. The Respondent/Decree Holder (Claimant) had filed the Claims before the learned Arbitration, wherein the Issue No. 2 was framed which read as under: -

"2. Whether the Takeover Agreement dated 7th April, 2011 under clauses 5.3 read with 6.2 granted indemnification to the claimant company by the Respondents herein for payment of any demand raised by any authority/Income Tax Department in the instant case for the period prior to execution of Takeover Agreement dated 7th April, 2011? OP Claimant"

6. The learned Arbitral Tribunal after considering the pleadings and the evidence passed an Award dated 20.10.2023, wherein it was held that if the Income Tax Department would recover the demanded amount along with accrual penal interest thereon from the Respondent-Company (Claimant), it shall be entitled to recover the said amount from the Petitioners/Judgment Debtors along with interest @ 12% per annum. Furthermore, the Respondent-Company (Claimant) shall file an Indemnity Bond before the Executing Court in the Execution Proceedings that in case the



Petitioners/Judgment Debtors succeed in their Appeal before the Commissioner of Income Tax, then the Respondent-Company (Claimant) shall refund the entire amount along with interest @ 12% per annum. In case the Respondent-Company (Claimant) failed to return this amount, the Petitioners/Judgment Debtors shall be at liberty to recover the amount by using legal recourse.

7. The learned Arbitral Tribunal decided the issue of the entitlement of the Respondent-Company (Claimant) for indemnification of any liability prior to the Takeover Agreement in favour of the Respondent-Company (Claimant).

8. **The Petitioners/Judgment Debtors** submitted that they are the erstwhile Directors, Promoters and Shareholders of Respondent-Company (Claimant). They entered into the Takeover Agreement dated 07.04.2011 with M/s Supratik Estates Pvt. Ltd., referred to as new Promoters/new Management in the Agreement dated 07.04.2011. The Company was duly taken over by Respondent-Company through its new Directors and controlled by Shri Ranjan Kumar Das and Mr. Sgopi Krishnan, M/s Supratik Estates Pvt. Ltd. is the group of Company of the current Directors of the Respondent-Company (Claimant).

9. The Respondent-Company (Claimant) received a Demand Notice dated 30.12.2016 from the Income Tax Officer, Ward No. 14(4), C.R. Building, New Delhi raising a demand of Rs. 1,28,51,177/- for the Assessment Year 2009-10 i.e., prior to the Takeover Agreement.

10. The amount of Rs. 36,34,060/- was admittedly due to be refunded to the Respondent Company and consequently was adjusted by the Income Tax



Department, on 03.06.2018.

11. The main dispute before the Arbitral Tribunal was whether the Petitioners/Judgment Debtors failed to pay the amount as demanded by the Income Tax Department and are liable for the same. The Respondent Company (Claimant) issued a legal notice dated 22.10.2021 in relation to the Agreement dated 07.04.2011.

12. The Petitioners/Judgment Debtors herein had claimed that M/s Krishan Kirpa Computer Pvt. Ltd. (Respondent herein), of which the Petitioners/Judgment Debtors were the Directors before Takeover Agreement, and had filed the Returns with the Income Tax Department on 30.09.2009 for the Assessment Year 2009-10 declaring a loss of Rs. 47,168/-.

13. The Order dated 30.12.2016 was impugned before the Appellate Authority and is pending adjudication. The learned Arbitral Tribunal, however, passed the impugned Award dated 20.10.2023 allowing the Claims of the Respondent-Company (Claimant).

14. **The Petitioners/Judgment Debtors** thereafter filed their **Objections dated 05.08.2024 under Section 47 of CPC, 1908** thereby highlighting that the Award was not executable as the learned Arbitral Tribunal lacked inherent jurisdiction and the Award was *non-est*. Therefore, it was not executable. However, the learned District Judge, Commercial Courts, has dismissed the said Objections, against which the present Revision Petition has been filed on behalf of the Petitioners/Judgment Debtors.

15. It is further argued that in *Chiranjilal Shrilal Goenka vs. Jasjit Singh*, (1993) 2 SCC 507, it was held that a Decree passed by a Court without



jurisdiction on the subject matter or on the grounds which goes to the root of its jurisdiction or lacks inherent jurisdiction, is a *coram non judice*. Further, it observed that the defect of jurisdiction strikes at the very authority of the Court to pass decree which cannot be cured by consent of the party. A Decree passed by such Court is a nullity and is *non-est*. The nullity and invalidity of such a decision can be raised even at the stage of Execution or in collateral proceedings.

16. Further reliance has been placed on the decision Hindustan Zinc Ltd. vs. Ajmer Vidyut Vitran Nigam Ltd., (2019) 17 SCC 82, where the same position of law was reiterated.

17. In Sarwan Kumar vs. Madan Lal Aggarwal, (2003) 4 SCC 147, the Apex Court had held that the Objections taken by the Judgment Debtors in regard to the executability of a Decree cannot be denied merely because he had not filed a Reply or contested the proceedings which culminated into a Decree. It was held that if the jurisdiction of the Civil Court was barred, the Decree would be a nullity about which the Objections can be successfully raised in the Execution Proceedings.

18. The Supreme Court in Jasbir Singh, (supra) had spelled out that a judgment shall be binding and which is not binding.

19. In State of U.P. vs. Raj Veer Singh, (2024) 1 HCC (All) 541, the Allahabad High Court also held that the Award can be questioned under Section 47 of CPC, 1908 if it has been passed without inherent jurisdiction.

20. Reliance has also been placed on Bhawarlal Bhandari vs. Universal Heavy Mechanical Lifting Enterprises, (1999) 1 SCC 558, wherein while observing that the Executing Court cannot go behind a Decree, but any



objection of inherent lack of jurisdiction can be questioned in the execution proceedings.

21. Similar observations have been made by the Co-ordinate Bench of this Court in Khanna Traders vs. Scholar Publishing House P. Ltd., 2017 SCC OnLine Del 7684.

22. Learned Counsel for the Revisionists/Judgment Debtors has further placed reliance on the decisions in Vidya Drolia vs. Durga Trading Corpn., (2021) 2 SCC 1, Booz Allen & Hamilton Inc. vs. SBI Home Finance Ltd., (2011) 5 SCC 532, Sunder Dass vs. Ram Prakash, (1977) 2 SCC 662, Hindustan Zinc Ltd. vs. National Research Development Corpn., 2023 SCC OnLine Del 330, Srei Equipment Finance Ltd. vs. Sadhan Mandal, 2023 SCC OnLine Cal 831, Man Industries (India) Ltd. vs. Indian Oil Corpn. Ltd., 2023 SCC OnLine Del 3537, Morgan Securities & Credits (P) Ltd. vs. Morepen Laboratories Ltd., 2006 SCC OnLine Del 774, Kotak Mahindra Bank Ltd. vs. Narendra Kumar Prajapat, 2023 SCC OnLine Del 3148, Sadeesh Premnath vs. Kamal Kanojia, 2023 SCC OnLine Del 8538, J.K. Govindarajulu vs. Sriram City Finance Ltd., 2020 SCC OnLine Mad 4697 and ITI Ltd. vs. Siemens Public Communications Network Ltd., (2002) 5 SCC 510 to argue that where there is a jurisdictional error, then the same can be entertained by the Executing Court under Section 47 of CPC, 1908 even though the execution pertains to an Arbitral Award.

23. **The main grounds of challenge** are that the impugned Award delved into the Income Tax demand that was made *qua* the Respondent-Company (Claimant). The demand of tax by the Government is a Sovereign Function of the State and is not arbitrable.



24. In Vidya Drolia, (supra), the Apex Court had held that the correctness and validity of the State or Sovereign Functions cannot be made a direct subject matter of a private adjudicatory process and consequently, were not amenable to arbitration.

25. Reliance has also been placed on the decision in Booz Allen & Hamilton Inc., (supra), wherein the Apex Court drew a distinction between “actions in personam” and “actions in rem” and it was observed that the disputes regarding rights in rem were required to be adjudicated by the Courts and were not suitable for private arbitration.

26. It is claimed that the imposition of Income Tax is a Sovereign Function of the State and could not have been the subject matter of the arbitration. The dispute on which the findings have been given by the learned Arbitral Tribunal was on non-arbitrable disputes and therefore, the Award is *non-est* and nullity.

27. It is submitted that the learned District Judge has failed to appreciate that the Award made by the learned Arbitral Tribunal in regard to the Income Tax dues for which it lacked inherent jurisdiction and, therefore, the impugned Order dated 08.11.2024 of the learned District Judge is liable to be set aside.

28. **Submissions heard and record perused.**

29. It is a settled proposition of law which has been reiterated in various judgments as enumerated above, that if a judgment or a Decree has been passed by a Court or a Tribunal which lacks jurisdiction; the Objections to the same can be taken in the Execution Proceedings.

30. In the light of this settled proposition of law, what needs to be



considered is the contention of the Petitioners/Judgment Debtors that the disputes arbitrated by learned Tribunal were in regard to the Income Tax dues which are not an arbitrable disputes since they are in exercise of Sovereign Function it is in exercise in discharge of Sovereign Function of the State and was, therefore, not arbitrable.

31. In the case of Vidya Drolia, (supra), clearly it has been observed that the disputes which are not arbitrable cannot be referred to arbitration.

32. The sole point for consideration is whether the learned Arbitral Tribunal has delved into the Income Tax dues for which Notice had been served upon the Respondent-Decree Holder (Claimant).

33. From the averments as detailed above, it is evident that the Respondent-Decree Holder (Claimant) had taken over the Respondent-Company in which the Petitioners/Judgment Debtors were the former Directors, under a Takeover Agreement dated 07.04.2011. Under this Agreement, it was specifically contemplated that any dues, claims, debts, liabilities, demands, etc. incurred by the Respondent-Company prior to the signing of the Takeover Agreement dated 07.04.2011, shall be borne by the Petitioners.

34. Herein, it is not in dispute that the Income Tax Notice dated 30.12.2016 raising a demand of Rs. 1,28,51,177/- for the Assessment Year 2009-10 i.e., prior to the Takeover Agreement, was served upon the Respondent-Company (Claimant). Clearly, it was a due which was claimed to be outstanding against the Petitioners and in terms of the Takeover Agreement dated 07.04.2011, the liability of any outstanding Claims and dues prior to the date of Agreement, was not liability to be borne by the



Respondent Company.

35. The disputes that were referred to the learned Arbitral Tribunal were in regard to the dues under the Takeover Agreement dated 07.04.2011 and not in respect of the validity of the Income Tax Demand Notice raised by the Income Tax Department.

36. The learned Arbitral Tribunal has merely given a finding that this Income Tax liability was a claim arising prior to the Takeover Agreement and, therefore, if found due and payable by the Petitioners/Judgment Debtors, then the Respondent-Decree Holder is entitled to recovery of this outstanding due which was prior to the date of Takeover Agreement from the Petitioners/Judgment Debtors.

37. It is not a case where the validity of the Income Tax Return was determined by the learned Arbitral Tribunal. The contentions of the Petitioners/Judgment Debtors that the learned Arbitral Tribunal delved into the validity of Income Tax Demand is absolutely incorrect. The disputes were well within the scope of arbitration and it is wrongly contended that it was a non-arbitrable dispute.

38. As already held, the disputes which were taken up by the learned Arbitral Tribunal were arbitrable and, therefore, the Objections under *Section 47 of CPC, 1908* have been rightly dismissed by the learned District Judge.

39. The learned District Judge in details has considered all the contentions of the Petitioners/Judgment Debtors in the impugned Order.

40. In view of above, there is no infirmity in the impugned Order. Accordingly, the present Revision Petition along with pending

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Application(s), is dismissed.

(NEENA BANSAL KRISHNA)
JUDGE

DECEMBER 12, 2024
S.Sharma