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

\+ EX.P. 33/2018

TOMORROWLAND TECHNOLOGIES EXPORTS LIMITED

..... Decree Holder

Through: Mr Pavan Sachdeva and Mr Ishan Sachdeva, Advs.

versus

KRISHAN LAL MONGA & CO. ..... Judgement Debtor

Through: Mr Anurag Bhatt, Mr Lokesh Pathak and Mr Ankur Gupta, Advs. for proposed judgment-debtor.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

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

% **15.03.2024**

<u>EX.APPL.(OS) 1089/2020</u>

1. This is an application seeking replacement of M/s. Evergrowing Investments and Consultants Private Limited, 101 Sita Ram Mansion, 718/21, Joshi Road, Karol Bagh, New Delhi-110005 as the Judgment Debtor.

2. In the present case, the decree-holder is seeking execution of decree dated 30.10.2013, 30.07.2014 and 17.12.2014 against Krishan Lal Monga & Co. through its proprietor Ms. Parjinder Monga @ Parjinder Kumar Monga.

3. The decree-holder in the present application states that the business of Krishan Lal Monga & Co. has been transferred to the proposed judgment-debtor i.e. M/s. Evergrowing Investments and Consultants Private Limited, 101 Sita Ram Mansion, 718/21, Joshi Road, Karol Bagh, New Delhi-110005.

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4. In support the decree-holder shows an undertaking dated 04.04.1997 which reads as under:

"

Sub: Undertaking

We hereby undertake to settle all the liabilities of the Ex-Member M/s. K.L. Monga & Co. from whom we purchased the Share Ticket, pertaining to Securities and Exchange Board of India Turnover Tax or any other liability as determined by Securities and Exchange Board of India and found payable by the Ex-Member.

As regard to claim of Investor/members we had already submitted the undertaking along with our original application."

5. In addition, the decree-holder also relies upon the judgment dated 25.08.2020 passed by the Division Bench in EFA(OS) 2/2020 and more particularly para 17 which reads as under:

"17. We accordingly set aside the impugned order dated 21st November, 2019 impleading the appellant as a judgment debtor in Execution Petition No.33/2018 as well as making consequential directions, insofar as against the appellant and dispose of EA(OS) No.402/2019 of the respondent no.1 / decree holder, granting liberty to the appellant to, if so desires, make a fresh application before the Executing Court, for seeking recovery of the decretal amount from the appellant, in which so ever capacity and we further clarify that setting aside of the impugned order would not come in the way of the appellant or the respondents in relying upon any of the pleas/facts leading to the order which has been set aside."

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6. It is stated by Mr Sachdeva, learned counsel that in the present case, the status of the judgment-debtor has changed to a corporate status and hence, the proposed judgment-debtor i.e. M/s. Evergrowing Investments and Consultants Private Limited is liable to be replaced as a judgment-debtor and make good the decretal amount.

7. Mr Sachdeva also states that the SEBI registration of M/s. Evergrowing Investments and Consultants Private Limited shows the same number of Krishan Lal Monga & Co. as INB050965032 w.e.f. 29.10.1995 issued on 29.05.1997.

8. The same does not help the decree-holder as it is admitted that M/s. Evergrowing Investments and Consultants Private Limited has purchased the share ticket of M/s. Krishan Lal Monga & Co. and hence the number is bound to be the same.

9. The documents relied upon by the decree-holder namely the undertaking seems to suggest that the share ticket pertaining to SEBI has been purchased by M/s. Evergrowing Investments and Consultants Private Limited. The liabilities that the undertaking seeks to settle are those of SEBI or those determined by SEBI. There is no document on record to show that Krishan Lal Monga & Co. has converted into a corporate structure or that M/s. Evergrowing Investments and Consultants Private Limited has taken over all the assets and liability. The liabilities that the undertaking seeks to settle are those of SEBI or those determined by the SEBI.

10. The fact that Ms. Parjinder Monga @ Parjinder Kumar Monga was a Director and the share holder of M/s. Evergrowing Investments and Consultants Private Limited does not demonstrate that the sole

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proprietorship has converted into a corporate entity called M/s. Evergrowing Investments and Consultants Private Limited.

11. The Division Bench has not given any findings in favour of the decree-holder that the status of the sole proprietorship is converted into a corporate entity.

12. For the said reasons, the application is devoid of merits and is dismissed.

EX.P. 33/2018 & EX.APPL.(OS) 17/2022

13. Mr Sachdeva, learned counsel for the decree-holder does not wish to prosecute the execution petition against the judgment-debtor Ms. Parjinder Monga @ Parjinder Kumar Monga and hence, the execution petition is closed.

14. In case the decree-holder is able to find any assets of the judgment-debtor, the decree-holder will be entitled to revive the present petition.

JASMEET SINGH, J

MARCH 15, 2024
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Click here to check corrigendum, if any

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