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

+ **LPA 373/2023**

**DELHI STATE INDUSTRIAL AND INFRASTRUCTURE
DEVELOPMENT CORPORATION LIMITED**

.....Appellant

Through: Ms. Richa Dhawan and Mr. Anuj
Chaturvedi, Advocates

versus

**M/S M K ENTERPRISES THROUGH ITS PARTNER SH.
MUKESH KUMAR GOYAL**

.....Respondent

Through: Mr. Mudit Bansal, Mr Ramesh K.
Jain and Mr Amaresh Kumar Singh,
Advocates

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

HON'BLE MR. JUSTICE SAURABH BANERJEE

ORDER

03.02.2025

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1. The present appeal under Clause X of the Letters Patent seeks to assail the order dated 24.01.2023 passed by the learned Single Judge in WP (C) 553/2023. Vide the impugned order, the learned Single Judge had allowed the writ petition preferred by the respondent, primarily seeking implementation of the Arbitral Award dated 15.04.2021.

2. Learned counsel for the appellant submits that the learned Single Judge has failed to appreciate that such a Writ Petition to seek enforcement of the Arbitral Award was not maintainable and therefore, even though the respondent has in compliance of the impugned order made certain payments, the same would not be a ground to uphold the impugned order, which is contrary to the settled legal position that a Writ Court cannot deal with a



prayer for enforcement of an Arbitral Award when specific remedies for enforcement are available by way of Section 36 of the Arbitration and Conciliation Act, 1996. He, therefore, prays that the impugned order be set aside.

3. On the other hand, learned counsel for the respondent seeks to defend the impugned order by urging that while the respondent has fully complied with the direction(s) issued in the impugned order, the appellant has also partly complied with the same. He, therefore, contends that the appellant having taken benefit of the impugned order by accepting the payment made by the respondent ought to be directed to fully abide by the impugned order.

4. Having considered the submissions made by the learned counsel for the parties and perused the record, we are of the view that even if the respondent's plea that the appellant has already accepted payment made by the respondent in compliance with the impugned order were to be accepted, we are confronted with a situation wherein, admittedly, a learned Single Judge of this Court had entertained a claim for enforcement of the Arbitral Award in a writ petition, which cannot be overlooked. The said course of action adopted by the learned Single Judge is, per se, not maintainable and thus any order passed by the learned Single Judge in exercise of jurisdiction which never vested with the said Court cannot be sustained.

5. Reference for this is made to the decision of the Apex Court in ***National Highway Authority of India V. Sheetal Jaidev Vade and Ors.***, 2022 SCC OnLine SC 1070, wherein the Apex Court, while dealing with the similar issue, specifically observed that a Court exercising writ jurisdiction cannot direct implementation of an Arbitral Award as under:



“12. Apart from the fact that the award dated 12.06.2018 has been challenged by the NHAI by initiating proceedings under Section 34 of the Arbitration Act which are reported to be pending, the High Court ought not to have entertained the writ petition under Article 226 of the Constitution of India seeking the reliefs to execute the award passed by the learned Arbitral Tribunal/Court, when the award passed by the learned Arbitral Tribunal/Court is to be executed by initiating an execution proceeding before the concerned Executing Court. But, by passing the impugned order/directions the High Court has virtually converted itself into Executing Court. Therefore, once the original writ petitioner was having an efficacious, alternative remedy to execute the award passed by the learned Arbitral Tribunal/Court, by initialing an appropriate execution proceeding before the competent Executing Court, the High Court ought to have relegated the original writ petitioners to avail the said remedy instead of entertaining the writ petition under Article 226 of the Constitution of India which was filed to execute the award passed by the Arbitral Tribunal/Court. If the High Courts convert itself to the Executing Court and entertain the writ petitions under Article 226 of the Constitution of India to execute the award passed by the Arbitral Tribunal/Court, the High Courts would be flooded with the writ petitions to execute awards passed by the learned Arbitrator/Arbitral Tribunal/Arbitral Court.”

6. In light of the aforesaid, we have no other option but to set aside the impugned order. This will, however, not preclude the parties from seeking enforcement of the Arbitral Award as per law or availing of any other remedy, which they want to avail, as per law without seeking enforcement of the Arbitral Award.

7. The appeal is disposed of in the above terms.

REKHA PALLI, J

SAURABH BANERJEE, J

FEBRUARY 3, 2025/So