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

Date of decision: 11.07.2025

+ **OMP (ENF.) (COMM.) 25/2018**

M/S NETHERLANDS INDIA COMMUNICATIONS

ENTERPRISES LTD.

.....Decree Holder

Through: Mr. D. Moitra, Mr. Dhruv Tamta, Mr.
Anil Varshney, Advs.

versus

UNION OF INDIA

.....Judgement Debtor

Through: Mr. Darpan Wadhwa, Sr. Adv. and
Mr. Manu Beri, Adv. for Intervenor

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

: **JASMEET SINGH,J (ORAL)**

1. This is a petition filed under section 36 of Arbitration and Conciliation Act, 1996 ("**1996 Act**") seeking execution of the award dated 17.06.2011 against the judgment debtor for an amount of Rs. 83,62,46,102/- along with interest @ 15% p.a. from 31.01.2018 till the realization of the amount.
2. Pursuant to the orders dated 06.04.2018 and 14.05.2018, the awarded amount has been deposited with the Registrar General of this Court.
3. Subsequently, the judgment debtor challenged the Award by filing an objections under section 34 of 1996 Act which were dismissed on 01.03.2018. Thereafter, the judgment debtor filed an appeal under section 37 of 1996 Act which was also dismissed on 09.05.2018. The judgment debtor also filed an



SLP which was also dismissed on 07.12.2018. Consequently, the Award has attained finality and the same is to be executed.

4. The controversy, however, is with regard to the shareholding of the decree holder. One Mr. Sarabjit Singh Lamba ('Applicant'), on behalf of two entities i.e. Esquire Electronics Inc. and Esquire Electronics, India, filed an application bearing Execution Application No. 869/2019 stating that he was the owner of 45.50% of the shares in the decree holder. He stated that the persons in-charge of the affairs of the decree holder have arbitrarily and maliciously reduced his shareholding from 45.50% to 11.43% during 2004 to 2012.

5. The Applicant preferred a petition before NCLT, Delhi for oppression and mismanagement, the proceedings of which are pending before the NCLT till date. However, *vide* order dated 29.11.2019, the NCLT permitted the decree holder to keep at least 15% of the amount awarded to be received in the present petition intact until further orders. This was subsequently affirmed by the NCLAT *vide* order dated 04.12.2019.

6. Against the said order, the Applicant approached the Hon'ble Supreme Court by way of filing SLP. An order was passed dated 07.02.2020 requiring the decree holder to maintain *status quo* regarding the deposited amount. The SLP of the Applicant was disposed of by the Supreme Court on 17.01.2023 and the operative portion reads as under:

"Be that as it may, since the appeal arises purely out of the interlocutory orders, we do not find it necessary to interfere with the same.

We grant liberty to the appellant(s) to make an appropriate application before the National company Law



Tribunal (in short "NCLT") which is seized of the original proceedings to seek the modification of order dated 29.11.2019.

However, the order of status quo dated 07.02.2020 shall continue to operate for a period of four weeks from today.

We clarify that we have not considered the matter on merits and both the parties would be entitled to raise the rival contentions which would be considered by the learned NCLT on its own merits.

Needless to state that the learned NCL T will take into consideration the necessary concerns to protect the interest of both the parties while considering the application.

In view of the above observations, the appeal is, therefore, disposed of.

Pending application(s), if any, stand(s) disposed of."

7. The decree holder moved an application being 181/2023 before this Court seeking release of entire amount. This Court on 03.07.2023 passed the following order:

"1. Admittedly the amount awarded per award dated 17.06.2011 has since been deposited by the Union of India. The applicant intervenor filed applications viz. Ex.Appl(OS) No.868-869/2019 as a shareholder and Ex-Director of the decree holder company. It is submitted he held about 45.50% shares in the company which were wrongly reduced to 11% and for which he had moved proceedings before the NCLT for oppression and mismanagement. On the other hand the decree holder submits an award was passed in 2011 and an application under Section 34 of Arbitration and Conciliation



Act, filed by the Union of India, was dismissed on 01.03.2018; the appeal under Section 37 was also dismissed on 09.05.2018 and the SLP was dismissed on 07.05.2018. It is alleged for all these years the applicant had never intervened in any judicial process and now when the decretal amount has been deposited by Union of India, he has been filing various proceedings, challenging the release of such amount in favour of decree holder. There is an order dated 29.11.2019 of the NCLT wherein the decree holder company is directed to retain 15% of decretal amount after receiving it from the Court. An application No.2665/2019 moved by the applicant before the NCLT has a prayer to modify the order dated 29.11.2019 and to direct the decree holder to deposit the full award amount instead of 15% only with the Tribunal as and when the same is released to respondent No.1 by this Court in this OMP(ENF)(COMM).

2. It is thus submitted by decree holder any direction for reduction of amount can be passed only once an amount is released in favour of the decree holder and not otherwise. Even in CA No.2665/2019 before the NCLT moved by the intervener supports this fact. He has also referred to IANo.13305/2018 an application for impleadment moved by the present applicant; dismissed as withdrawn on 28.09.2018 and hence submitted the applicant has no locus standi to appear and argue the matter.

3. From the above facts the apprehension of the applicant can be removed once 45.50% of the decretal amount is held by this Court till any decision is taken by NCLT on his application. Order dated 23.03.2023 also supports this view.

4. Hence, till the issue is decided by the NCLT, let 54.5% of the amount be released in favour of the decree holder by the Registrar General of this Court on filing of the surety bond/indemnity bond to his satisfaction within two weeks from today.

5. The application stands disposed of.”

8. Hence, the facts existing as of today is that out of the amount deposited by the judgment debtor, 54.50% has been released to the decree holder. The



dispute is with regard to 45.50 % which is pending. The NCLT has directed the parties to abide by the order of 03.07.2023 and status quo order continues till date.

9. On 17.04.2025, the decree holder approached the Hon'ble Supreme Court on account of the pendency of the proceedings for more than seven years. The Hon'ble Supreme Court on 17.04.2025 passed the following order:-

"1. Heard Mr. Dhruv Tamta, the learned counsel appearing for the petitioner.

2. We take notice of the fact that the award came to be passed on 17-6-2011. The Arbitrator awarded an amount (principal) of Rs . 25,97,18,150/- and pre-suit and pendent lite interest @ Rs.15%which comes to Rs.83,62,46,102/-.

3. An amount of Rs.25 Crore was awarded and further total amount of Rs.9 Crore was awarded for all other circles and cities collectively.

4. The petitioner-herein preferred OMP (ENF.) (COMM.) No. 25/2018 on 5-2-2018 for enforcement of the award passed by the Arbitrator, referred to above.

5. We also take notice of the fact that the respondent – herein (Judgment Debtor) challenged the award under Section 34 of the Arbitration and Conciliation Act, 1996 with a delay of 2335 days.

6. The High Court dismissed the said petition rejecting the prayer for condonation of delay. It also appears from the materials on record that the respondent in compliance of the



orders dated 6-4-2018 and 14-5-2018 respectively passed by the High Court deposited the arbitral award along with interest with the Registrar General of the High Court.

7. The Appeal under Section 37 of the Act, 1996 also came to be dismissed vide order dated 9-5-2018.

8. We also take notice of the fact that some proceedings are pending before the National Company Law Tribunal.

9. We dispose of this Special Leave Petition with a request to the High Court to give top priority to the execution petition filed by the petitioner and see to it that the same is disposed of on its own merits in accordance with law within a period of three months from today. We say so considering the fact that execution petition is pending for final disposal past seven years.

10. All other pending applications shall be decided expeditiously.

11. If for any reason if the execution petition is not decided within a period of 3 months, it shall be open for the petitioner to come back to this Court”

10. From the aforesaid facts, it is clear that the decree holder has an award in his favour which attained finality. The amount of 45.50% of the amount deposited has not been released on account of the order dated 03.07.2023 passed by this Court which continues to till today.

11. The apprehension of the Applicant is that in case it is held by the NCLT that the Applicant has been prejudiced by the change of shareholding, there



may not be any amount to restitute him.

12. Learned counsel for the decree holder very fairly states that the amount may be released to the decree holder along with up-to-date accrued interest subject to his furnishing of security of an immoveable property or any other security, which need not be in the form of a bank guarantee, to the satisfaction of the Registrar General. This security shall remain unencumbered till the time proceedings before NCLT are pending.

13. The same is acceptable to this Court.

EX. APPL. (OS) 720/2024

14. This is an application filed by SBI seeking release of an amount of Rs. 1,99,31,092.65/- along with interest to the SBI.

15. Mr. Salwan, learned senior counsel for SBI has drawn my attention to the Recovery Certificate issued by the Recovery Officer under Section 19(22) of the Recovery of Debts and Bankruptcy Act 1993 ("**DRT 1993**") for an amount of Rs. 55,75,749/- along with pendente lite and future interest @ 14% per annum from 19.01.2007 till date of realization.

16. An appeal filed against the order of DRT has been dismissed on 16.05.2025 and hence, the amount is due and payable to SBI as of today.

17. Section 28(2) of DRT 1993 reads as under:

"If any amount is due from any person to the defendant, the Recovery Officer may require such person to deduct from the said amount, the amount of debt due from the defendant under this Act and such person shall comply with any such requisition and shall pay the sum so deducted to the credit of the Recovery Officer:

Provided that nothing in this sub-section shall apply to any



part of the amount exempt from attachment in execution of a decree of a Civil Court under section 60 of the Code of Civil Procedure, 1908 (5 of 1908)

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(4) The Recovery Officer may apply to the court in whose custody there is money belonging to the defendant for payment to him of the entire amount of such money, or if it is more than the amount of debt due, an amount sufficient to discharge the amount of debt so due..”

18. Learned counsel for the decree holder in opposition to the SBI states that the SBI is not entitled to approach the Court and only the Recovery Officer under Section 28(4) of the DRT 1993 is allowed to approach this Court.

19. He also states that intervener i.e. SBI cannot be permitted to participate in enforcement proceedings. Reliance is placed on *National Highways Authority of India (NHAI) v. China Coal Construction Group Corp., 2006 SCC OnLine Del 115* and *NTT Docomo Inc. v. Tata Sons Limited, 2017 SCC OnLine Del 8078*.

20. As regard the first objection is concerned, it is relevant to extract the order dated 22.08.2023 passed by the DRT wherein the following observations have been made:-

“4.1 The concerned in Hon’ble High Court of Delhi, New Delhi is directed under the provisions of the RDDB Act read with 2nd Schedule of Income Tax Act as above not to release any amount to Netherland India Communications Enterprises Ltd. reg. no. US4899DL1995PLC071577 under



the arbitration award as Recovery Certificate dated 15.03.2010 amounting to Rs.55,17,749/- along with pendent lite and future interest @14% p.a. w.e.f. 19.01.2007 till the realisation and also cost of Rs.58,000/- is payable to SBI. The concerned in Hon'ble High Court of Delhi is also directed to disclose the bank details of CD1Netherland India Communications Enterprises Ltd. in which amount if any has been credited by Hon'ble High Court of Delhi.

4.2 CH Bank is directed to file bank details/PAN of CD1 M/s Netherland India Communications Centre Pvt Ltd. under affidavit before the next date of hearing

4.3 CH Bank is also directed to file formal reply on the aforesaid applications/objections before the next date of hearing.

Let a copy of this order be given DASTI to the CH Bank for service to the Hon'ble Registrar General, Hon'ble High Court of Delhi and concerned and file service report.

Re-notify the matter on 25.08.2023.”

(Emphasis added)

21. Vide Order dated 08.07.2025, the DRT has again observed as under:-

“10. Taking stock of all the facts and circumstance of the case, CD no. 1 and 2 are given two weeks' time to file their reply to the present IA with advance copy to the CH Bank. However, keeping in view the provisions of Section 29 read with Section 28(4) of the RDB Act and Rule 31 of the Second Schedule of Income Tax Act, I am of the view that till disposal



of the present IA, the Hon'ble Registrar General of the Hon'ble High Court of Delhi be requested that the amount lying in the matter to the extent of Rs.2,25,83,026.00 outstanding against the CDs as on 05.07.2025 as per the latest statement of account filed by the CH Bank today is hereby attached till further orders. The Hon'ble Registrar General of Hon'ble High Court of Delhi is requested not to release the said amount in favour of the CDs herein till further orders.

11. CH Bank is directed to serve a copy of this order upon the Hon'ble Registrar General of Hon'ble High Court of Delhi with the request to direct the concerned officials not to release the amount as stated above in para-10, till further orders.

Re-notify the matter for hearing on this IA on 01.08.2025."

(Emphasis added)

22. To my mind, the said paras are sufficient compliance of section 28(4) of DRT 1993. There is no fixed format for the Recovery Officer to apply to this Court. Thus, the first objection is rejected.

23. As regards the rights of SBI being an impleader is concerned, the factual narration reproduced above clearly shows that the SBI is a Recovery Certificate Holder before the DRT, the appeal filed against the order of the DRT has already been dismissed, hence, the SBI is entitled to the said amount. In addition, the relevant section of DRT 1993 quoted above in clear word states that the recovery officer is entitle to recover the said amount in whose custody the money is lying deposited.



24. For the said reason, it is directed that an amount as per the Recovery Certificate along with interest lying with the Registrar General be remitted to the Recovery Officer, DRT in OA 13/2007 for the release of the amount to SBI in accordance with law.

25. The application is disposed of.

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26. The balance amount after remitting the amount due and payable to SBI shall be released to the decree holder subject to furnishing security for the released amount to the satisfaction of the Registrar General as described above.

27. Learned Counsel for the decree holder is unable to show any further amount due and payable to it as of today.

28. In case there are any amounts due and payable to the decree holder after the amounts are released, the decree holder shall be entitled to revive the present petition.

29. The present petition is disposed of in the aforesaid terms.

30. Pending applications, if any, are also disposed of.

JASMEET SINGH, J

JULY 11, 2025/as

(Corrected and released on 17.07.2025)