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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR-5996-2024

Reserved on:-21.10.2024

Date of Pronouncement:-20.11.2024

Apollo International Limited**...Petitioner****Versus****Man Structurals Private Limited****...Respondent****CORAM : HON'BLE MR. JUSTICE SUVIR SEHGAL**

Present: Mr.Akshay Bhan, Senior Advocate with
Mr.Shantanu Bansal, Advocate and
Mr.Rohit Nagpal, Advocate
for the petitioner.

Mr.Pancham Surana, Advocate and
Mr.Himanshu Setia, Advocate
for the respondent.

SUVIR SEHGAL, J.(ORAL)

1. Instant revision has been filed under Article 227 of the Constitution of India assailing order dated 06.09.2024, Annexure P1, passed by the Commercial Court, Gurugram whereby while partly accepting an application under Section 36 (3) of the Arbitration and Conciliation Act, 1996 (for short "the Arbitration Act"), it was directed that the petitioner will deposit the entire decretal amount with the Registrar General of the High Court of Delhi with a request that the



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amount be not disbursed till the final decision of the main petition under Section 34 of the Arbitration Act.

2. Learned Senior Counsel for the petitioner has argued that a memorandum of understanding dated 11.04.2019 was executed between the petitioner and the respondent. They submitted a tender for an award of a contract by the U.P. Power Transmission Corporation. An LOI dated 22.02.2020 was awarded in favour of the parties, which was cancelled without executing a contract. A dispute arose between the parties, which was referred to arbitration and by award dated 10.10.2023, Annexure P2, an amount of Rs.14,44,70,000/- besides interest and cost of arbitration, was passed in favour of the respondent. The petitioner then filed a petition under Section 34 of the Arbitration Act along with an application under Section 36 (3) *ibid* for stay of the enforcement of the arbitral award. The respondent filed an execution petition before the High Court of Delhi and by order dated 23.01.2024, Annexure P4, the High Court directed the petitioner to maintain status quo in respect of its immovable properties and by subsequent order dated 15.07.2024, Annexure P8, petitioner was directed to deposit the decretal amount with the Registrar General of the High Court within eight weeks. Learned Senior Counsel states that the application for stay of enforcement of award was contested by the respondent and *vide* impugned order, Annexure P1, it has been partly allowed, as noticed above. He asserts that while partly accepting the application, learned Commercial Court has erred in directing the petitioner to deposit the decretal amount with the High Court. Placing reliance upon the judgment of the Hon'ble Supreme Court in *M/s Unibros Versus All*



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India Radio, 2023 AIR (Supreme Court) 5231, learned Senior Counsel has argued that the learned Arbitrator has accepted the claim relating to loss of profit in the absence of any evidence to substantiate the claim. Contending that the award is contrary to the public policy of India, he urges that it is likely to be set aside under Section 34 of the Arbitration Act. A reference has also been made by him to the judgment of the Bombay High Court in *CFM Asset Reconstruction Private Limited and others M/s SAR Parivahan Private Limited and others, 2024 SCC On Line Bom 1659*. He asserts that as depositing such a huge decretal amount would result in a blockade of funds, impugned order be modified and the petitioner be permitted to furnish an insurance bond or bank guarantee in lieu of the deposit of the decretal amount.

3. On the basis of the advance copy, respondent is represented through a counsel, who has opposed the prayer. He has pointed out that the petitioner had made a similar prayer by filing an application, Annexure P10, before the High Court of Delhi, which stood rejected vide order dated 23.09.2024, Annexure P9. After having failed before the Delhi High Court, petitioner has chosen to challenge the order, Annexure P1, by filing the instant petition by not disclosing the developments, which took place before the High Court of Delhi. He has argued that the award passed under the Arbitration Act has to be executed like a money decree and there is no error in the impugned order passed by the Commercial Court, Gurugram. Reference has been made by him to *B.L. Kashyap and Sons Ltd. Versus Emaar India Ltd., Law Finder Doc Id # 2280385*.

4. I have heard counsel for the parties and considered their



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respective submissions.

5. An examination of the impugned order shows that Commercial Court, Gurugram directed the petitioner to deposit the awarded decretal amount with the Executing Court i.e. the High Court of Delhi and requested the Registrar General of Delhi High Court not to disburse the amount till the decision of the pending objections filed under Section 34 of the Arbitration Act. It cannot be disputed that an award passed under Section 36 of the Arbitration Act has to be executed like a money decree. This Court is of the view that with the imposition of the above condition, the interest of the petitioner stands safeguarded. The amount has to be retained by the Executing Court and is not to be released to the respondent till the time the objections are adjudicated on merits.

6. Arbitration proceedings are primarily meant for a quick resolution of disputes. In case an award passed by the Arbitrator is allowed to be automatically stayed or the judgment debtor is granted permission to furnish an indemnity bond or is given liberty of not depositing the amount, the very purpose of quick resolution of disputes through arbitration would stand defeated. Holding that argument of the judgment debtor qua liquidity crunch equally applies to the decree holder, High Court of Delhi in *B.L. Kashyap's* case (supra) held that business cannot be run on mere bank guarantees and liquid cash is required to run any enterprise. For deciding an application under Section 36 (3) of the Arbitration Act, whereby stay has been sought by the judgment debtor, the merit of the objections filed under Section 34 of the Arbitration Act are not to be considered. Therefore, the judgments relied upon by the counsel for the petitioner are not



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applicable for the decision of the instant revision petition. This Court, therefore does not find substance in the arguments raised by counsel for the petitioner.

7. At this stage, the Court deems it necessary to revert to the application, Annexure P10, filed by the petitioner before the High Court of Delhi. The relevant extract of the application (Para 05) is reproduced hereunder:-

“5. That for the reasons aforesaid, the judgment debtor also submits that the Hon’ble may further extend the said period of eight weeks granted vide order dated 15.07.2014 for a further period of eight weeks in the interest of justice to enable the judgment debtor to comply with the directions or such modified directions as would henceforth be issued by this Hon’ble Court on consideration of the instant application.”

8. As is apparent from the above, the stand taken by the petitioner before the High Court of Delhi was that it is prepared to deposit the amount in terms of orders dated 15.07.2024, Annexure P8, but sought more time to comply with the said direction or any other modified direction. Despite having taken a stand that the petitioner is willing to deposit the amount and upon failing to secure a favourable order, petitioner chose to challenge the order, Annexure P1 passed by the Commercial Court by way of an instant revision petition. This amounts to approbation and reprobation and the petitioner cannot be permitted to take a different stand before the Courts. This Court does not find any illegality in the impugned order passed by the Commercial Court, Gurugram.



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9. For the foregoing reasons, petition is devoid of any merit and is dismissed with no order as to costs.

**(SUVIR SEHGAL)
JUDGE**

20.11.2024

Brij

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No