

EX No. 576/19

M/S ABB INDIA LIMITED Vs. M/S TECHNO AIRCON
INDUSTRIES PVT LTD

25.03.2021

Present : Sh. Pranav Malhotra, Ld. Counsel for DH.

Ms. Ananya Bhattacharya, Ld. Counsel for JD.

File take up today on an application moved by DH seeking early hearing of the matter. Notice of the application was issued to the JD. Pursuant thereof counsel Ms. Ananya Bhattacharya has appeared for JD.

1. By way of the present application, DH has sought appointment of *Bailiff* as well as directions to the JD to file affidavit of income and assets in terms of the judgment titled as “*M/s. Bhandari Engineers & Builders Pvt. Ltd. vs. M/s. Maharia Raj Joint Venture & Ors.*” passed by Hon'ble High Court of Delhi in Ex. No.275/2012 on 05.08.2020. Learned counsel for the DH submits that no payment has been received in the execution proceedings till date.

2. Learned counsel for the JD submits that her objection application under Section 47 CPC and another application under Section 340 Cr.P.C. are pending for disposal.

3. Learned counsel for the DH on the other hand submits that the objection application under Section 47 CPC is not maintainable before this Court in any manner in as much as the JD has already filed a petition under Section 34 of the Arbitration Act before another Court of learned Additional District and Sessions judge wherein JD has not been able to secure any stay order till date. Just to prolong the proceedings and

to gain time, the present application under Section 47 CPC has been filed by the JD. Learned counsel for the DH has relied upon two judgments – one passed by Hon'ble High Court of Allahabad in case of “*M/s Larsen & Toubro Limited v. M/s Maharaji Education Trust*” 2010 SCC OnLine All 1866 and another passed by Hon'ble High Court of Calcutta in case of “*Fingertips Solutions Pvt. Ltd. v. Dhanashree Electronics Limited*” 2016 SCC OnLine Cal 681. He has stated that in terms of both these judgments Section 47 CPC has no applicability in execution of an award. The recourse must be made to Section 34 of Arbitration Act only.

4. Heard both the parties. Record perused.

5. Admittedly, till date there is no stay on the execution proceedings. The appointment of the *Bailiff* was also deferred by this Court as time was granted to the JD vide order dated 15.01.2021 to take legal recourse in the pending petition under Section 34 of the Arbitration Act. However, till date no stay has been granted by the Court on the petition of the JD under Section 34 of the Arbitration Act. I have perused both the citations filed by learned counsel for the JD. In case of “*M/s Larsen & Toubro Limited v. M/s Maharaji Education Trust*” (supra) reliance has also been placed upon the judgment of Hon'ble Apex Court in the Court of “*Paramjeet Singh Patheja v. ICDS Ltd.*” AIR 2007 SC 168. In the said judgment, it has been categorically held that the Arbitrator is not a Court, and arbitration is not an adjudication and, therefore, an award is not a decree. It has further been held that the award not being covered under the definition of a decree, objection with respect to its validity can only be raised as provided under Section 34 of the Act and not by taking resort to Section 47 C.P.C.

6. Thus, considering the totality of the facts and circumstances, the execution being of the award passed by the learned Arbitrator, the pendency of petition under Section 34 of the Arbitration Act before learned ADJ challenging the said award, and more so there being no stay on the said petition till date, the present objection application under Section 47 CPC is not maintainable at all. The same stands dismissed as being not maintainable.

7. JD is directed to file the affidavit of income and assets in terms of the judgment titled as “*M/s. Bhandari Engineers & Builders Pvt. Ltd. vs. M/s. Maharia Raj Joint Venture & Ors.*” within four weeks from today.

8. Be listed for further proceedings on **04.06.2021**, the date already fixed.

(Shunali Gupta)
Additional District Judge-05
South-East District, Saket Court
New Delhi /25.03.2021