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

+ **FAO (COMM) 39/2021**

**M/S TARUN POLYMERS** ..... Appellant

Through: **Mr. Vijay Kumar Meena, Adv.**

versus

**M/S ELECTRONICA FINANCE LIMITED** ..... Respondent

Through: **Mr. Vijay Kumar & Mr. Anubhav**

**Dubey, Advs.**

**Mr. Kush Gupta, Adv.**

**CORAM:**

**HON'BLE MR. JUSTICE VIBHU BAKHRU**

**HON'BLE MR. JUSTICE AMIT BANSAL**

**ORDER**

% **17.11.2023**

**CM APPL. 42146/2022, 42147/2022, 42148/2022, 19728/2023 & REVIEW PET. 242/2022 in FAO (COMM)-39/2021**

1. The review petitioner/appellant has filed the present petition seeking review of the order dated 04.05.2021 whereby the above-captioned appeal FAO(COMM) 39/2021 captioned *Tarun Polymers v. Electronica Finance Limited*, was allowed and the order dated 21.10.2020 passed by the learned Commercial Court in OMP(I)COMM No.2475/2020 captioned *Electronica Finance Ltd. v. Tarun Polymers*, was set aside.

2. In terms of the *ex parte* order dated 21.10.2020, the learned Commercial Court had allowed the respondent's application filed under Section 9 of the Arbitration and Conciliation Act, 1996 (hereafter '**the A&C Act**') and had appointed the receiver to take the possession of the equipment financed by the respondent. The said order was passed without notice to the



review petitioner/appellant and without affording the review petitioner/appellant an opportunity to be heard.

3. The learned counsel appearing for the review petitioner/appellant had referred to the Term Loan cum Hypothecation Agreement dated 27.09.2017 (hereafter '**the Agreement**') which expressly provided that the venue of the arbitration would be Pune or such other place as the lender may in its sole discretion determine. The Agreement further provided that the courts at Pune and such other place would have exclusive jurisdiction in respect of the Agreement.

4. Concededly, the Agreement was entered into at Mumbai, Maharashtra. The review petitioner/appellant carries on its business in Thane, Maharashtra. The Agreement also expressly records the respondent's address as Kailaschandra Apartment, S.No. 128/1A, Plot No. 3, Paud Road, Kothrud, Pune.

5. The above-captioned appeal was listed before this Court on 11.01.2021. Amongst other contentions, the review petitioner/appellant had also urged that a petition under Section 9 of the A&C Act could not be disposed of on the first date without issuing any notice to the review petitioner/appellant (respondent before the trial court).

6. The learned counsel for the respondent had readily conceded that the appeal was liable be allowed and the order dated 21.10.2020 passed by the learned Commercial Court, which was impugned in the appeal, was required to be set aside.



7. In view of the above, this Court allowed the above captioned appeal by an order dated 04.05.2021. However, since there was no dispute that the review petitioner/appellant owed a substantial sum to the respondent (stated to be over ₹40 lacs at the material time) and the equipment was hypothecated to the respondent, this Court did not consider it apposite to pass an unconditional order for returning the possession of the equipment, which was taken over by the respondent in the meantime, pursuant to the learned Commercial Court's order dated 21.10.2020. This Court had directed return of the equipment in question, subject to the review petitioner/appellant making a payment of at least 50% of the dues owed to the respondent. However, the review petitioner/appellant was not agreeable to the same.

8. This Court had held that the respondent was not liable to return the possession of the machinery as a consequence of the review petitioner/appellant succeeding in securing the order for setting aside the learned Commercial Court's order dated 21.10.2020 that was impugned in the above-captioned appeal.

9. The learned counsel appearing for the review petitioner/appellant submits that the order dated 04.05.2021 is liable to be reviewed. He points out that one of the principal contentions advanced before this Court was that the courts at Delhi do not have the jurisdiction to entertain the application under Section 9 of the A&C Act. The said contention was not considered by this Court. Further, since the possession of the equipment was taken over by the respondent pursuant to the order of the Commercial Court dated 21.10.2020, that was set aside, the consequential direction to return the



equipment was required to be passed.

10. It is also pointed out that although the respondent had taken over the possession of the equipment pursuant to the order dated 21.10.2020 passed by the learned Commercial Court under Section 9 of the A&C Act, the respondent has not taken any steps for pursuing the arbitral proceedings.

11. We find no ground to review the order dated 04.05.2021. Admittedly, the equipment in question was hypothecated to the respondent and there is no dispute that the review petitioner/appellant had defaulted in its repayment obligations. Undisputedly, the respondent had a right to takeover possession of the equipment in question for enforcement of its security interest.

12. The review petitioner/appellant had preferred a Special Leave Petition (SLP No.7489-7490/2021) before the Supreme Court, against the order dated 04.05.2021, but the same was also dismissed by an order dated 29.07.2022.

13. The respondent has also not taken steps for sale of the machinery or recovery of the dues. It is contended on behalf of the review petitioner/appellant that the value of machinery taken over at the material time was more than ₹1.25 crores and the delay caused by the respondent in releasing the machinery has caused severe loss to the review petitioner/appellant. In view of the above, we consider it apposite to clarify that the order dated 04.05.2021 does not preclude the review petitioner/appellant from availing appropriate remedies, including remedies for recovery of the excess value of the equipment or any loss suffered on account of delay in realising the value of the equipment



14. It is clarified that all rights and contentions of the parties in this regard are reserved.

15. The review petition is disposed of in the aforesaid terms. All pending applications are also disposed of.

**VIBHU BAKHRU, J**

**AMIT BANSAL, J**

**NOVEMBER 17, 2023**

Ch

*[Click here to check corrigendum, if any](#)*