

\$~10 (2021)

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

+ **O.M.P.(EFA)(COMM.) 1/2018 and IA Nos. 3457/2018, 3459/2018, 3460/2018, 3461/2018, 5648/2018, 5649/2018, 5650/2018, 5652/2018, 10154/2018, 7905/2019, EX.APPL.(OS) Nos. 248/2020 & 1187/2020**

TAQA INDIA POWER VENTURES PRIVATE
LIMITED & ANR.

..... Decree Holders

Through: Mr Ashish Dholakia, Senior Advocate
with Ms Anuradha Agnihotri, Mr
Ketan Guar, Ms Manasa Sundarraman
and Mr Mohanakrishna, Advocates.

versus

NCC INFRASTRUCTURE HOLDINGS
LIMITED

..... Judgement Debtor

Through: Mr Nakul Dewan, Senior Advocate
with Dr. Amit George, Mr Jai Sahai
Endlaw, Mr P. Harold, Mr Amol
Acharya, Mr Rayadurgam Bharat and
Mr. Rishabh Dheer, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **01.02.2022**

[Hearing Held Through Videoconferencing]

1. Mr Dewan, learned senior counsel appearing for the respondent (Judgment Debtor), has completed his arguments regarding maintainability of the present petition.
2. At the end of the arguments, he submitted in the event this Court decides against the respondent and finds that the petition is maintainable, the respondent should be given an opportunity to file its objection on merits.

3. The aforesaid contention is clearly unacceptable. The respondent cannot file its opposition in a piecemeal manner. It is seen that the present petition was filed in the year 2018 and has been pending since. Sufficient opportunity was granted to the respondent to file its objections, however, the respondent has limited its objection only on the ground of territorial jurisdiction of this Court.

4. Mr Dholakia, learned senior counsel appearing for the petitioner (Decree Holder), referred to the decision of the Supreme Court in ***LMJ International Limited v. Sleepwell Industries Company Limited: (2019) 5 SCC 302*** and drew the attention of this Court to the following paragraph from the said decision:

“17.We are of the considered opinion that the scheme of Section 48 of the Act does not envisage piecemeal consideration of the issue of maintainability of the execution case concerning the foreign awards, in the first place; and then the issue of enforceability thereof. Whereas, keeping in mind the legislative intent of speedy disposal of arbitration proceedings and limited interference by the courts, the Court is expected to consider both these aspects simultaneously at the threshold. Taking any other view would result in encouraging successive and multiple round of proceedings for the execution of foreign awards. We cannot countenance such a situation keeping in mind the avowed object of the Arbitration and Conciliation Act, 1996, in particular, while dealing with the enforcement of foreign awards. For, the scope of interference has been consciously constricted by the legislature in relation to the execution of foreign awards. Therefore, the subject application filed by the petitioner deserves to be rejected, being barred by constructive res judicata, as has been justly observed by the High Court in the impugned judgment.”

5. Mr Dholakia submits that the aforesaid decision was also followed by the Supreme Court in a later decision in *Government of India v. Vedanta Limited and Ors.: (2020) 10 SCC 1*.

6. Mr Dewan contested the aforesaid position and referred to the decision of the Supreme Court in *Shristi Infrastructure Development Corporation Limited v. Rishima SA Investments LLC (Mauritius) & Anr.: Civil Appeal No. 5696 of 2019, decided on 19.07.2019*. On the strength of the said order, he submitted that the question of filing further objections under Section 48 of the A&C Act would only arise after the Court has decided the issue regarding territorial jurisdiction to enforce an award under Section 47 of the A&C Act.

7. The contention that it is permissible for the respondent to file its objections in a piecemeal manner is clearly unacceptable. The reliance placed on the decision of the Supreme Court in *Shristi Infrastructure Development Corporation Limited v. Rishima SA Investments LLC (Mauritius) & Anr. (supra)*, is also misplaced. In that case, the Supreme Court had directed that the stage of filing of information in Form 16A be deferred after the Court had taken a decision regarding the jurisdiction to enforce the award. This was merely a direction to defer the stage of furnishing the list of assets against which an award could be enforced. The same is not an authority for the proposition that a party opposing enforcement of an award is entitled to file objections in multiple stages.

8. Although this Court finds no ground to grant further time to the respondent to file any objection on merits, nonetheless, in the interest of

justice, this Court considers it apposite to do so *albeit* on payment of cost. Subject to the respondent depositing a sum of ₹1,00,000/- with the Delhi High Court Legal Services Committee within a period of one week from today, the respondent is granted an additional opportunity to file its objections regarding enforcement of the award, without prejudice to its contentions regarding maintainability of the present petition, within a period of two weeks.

9. The petitioner is also at liberty to file a reply to the objections that may be filed within a period of one week thereafter.

10. List for further proceedings on 15.03.2022.

FEBRUARY 1, 2022
RK

VIBHU BAKHRU, J

Click here to check corrigendum, if any