THE HIGH COURT OF SIKKIM : GANGTOK

(Civil Jurisdiction)

DATED : 28th July, 2022

DIVISION BENCH : THE HON'BLE MRS. JUSTICE MEENAKSHI MADAN RAI, JUDGE
THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

Review Pet.(C) No.01 of 2022

Petitioners : Sikkim Power Development Corporation and Another

versus

Respondents : M/s. Amalgamated Transpower (India) Ltd.

Application under Order XLVII Rule 1
of the Code of Civil Procedure, 1908

Appearance

Mr. Tarun Johri, Advocate with Ms. Tamannna Chettri and Mr. Tenzing Thinlay Lepcha, Advocates for the Petitioners.

Mr. Prateek K. Chadha, Advocate with Ms. Rachana Rai, Advocate for the Respondent.

O R D E R

Meenakshi Madan Rai, J.

1. The Petitioners/Appellants have filed an application under Order XLVII Rule 1 of the Code of Civil Procedure, 1908 (for short, the "CPC"), dated 01-02-2022, seeking a review of the Order dated 07-10-2021 passed in I.A. No.1 of 2020 in Arb.A. No.1 of 2020, on grounds that the Order suffers from an error apparent on the face of it.

2(i). For clarity in the matter, it is essential to recapitulate that the Petitioners/Appellants under Section 34 of the Arbitration and Conciliation Act, 1996 (for short, the "Arbitration Act") had challenged the Award dated 30-09-2017 of the sole Arbitrator before the Learned Commercial Court, East Sikkim, at Gangtok, in Arbitration Case No.05 of 2017 [*Sikkim Power Development*

Corporation Ltd. (SPDCL) and Another vs. *Amalgamated Transpower (India) Ltd. (ATPIL)*]. The Arbitral Tribunal had allowed the claim filed by the Respondent and dismissed the counter-claims filed by the Petitioners/Appellants. A decree of specific performance of the Agreement dated 21-12-2002 was passed in favour of the Respondent with damages against the Appellants. The Learned Commercial Court, East Sikkim, at Gangtok, partly upheld the Arbitral Award dated 30-09-2017 vide its impugned Order dated 26-12-2019. An Appeal being Arb.A. No.01 of 2020 against the finding of the Learned Commercial Court was filed by the Petitioners herein.

(ii) Notice was issued on 22-06-2020 to the Respondent on I.A. No.01 of 2020 *supra* the application filed by the Appellants seeking a Stay of the impugned Judgment of the Learned Commercial Court. In the interregnum, the Learned Single Judge of this Court granted *ex parte ad interim* stay of the impugned Judgment until further orders.

(iii) After hearing the rival submissions of Learned Counsel for the parties, the *ex parte ad interim* order of stay was confirmed vide Order dated 07-10-2021. The directions of this Court in the said Order were *inter alia* as follows;

> ***"8.(i)*** In view of the rival contentions put forth, we are of the considered opinion that Learned Counsel for the Appellants has made out a case for grant of Stay of the operation of the Arbitral Award till further orders of this Court.
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> ***(ii)*** Consequently, the *ex parte ad interim* Order of Stay granted by this Court vide Order, dated 22.06.2020, stands confirmed until further orders.
>
> ***(iii)*** However, considering the submissions of Learned Counsel for the Respondent as reflected *supra*, whereby his specific prayer is for deposit of the amounts as granted in Prayer "G" and Prayer 'I', the Appellants are directed to deposit two Bank Drafts,

> one for a sum of Rs.85,43,11,904/- (Rupees eighty five crores, forty three lakhs, eleven thousand, nine hundred and four) only, (i.e. Rs.47,13,53,405/- + Rs.38,29,58,499/-) and another for a sum of Rs.265,10,00,000/- (Rupees two hundred and sixty five crores and ten lakhs) only, within sixteen weeks from today.
> ……..**"**

3. The Appellants filed the instant Review Petition on 01-02-2022 as stated *supra* seeking a review of the Order dated 07-10-2021, along with I.A. No.01 of 2022 an application under Section 5 of the Limitation Act, 1963, seeking condonation of 76 days delay in filing the Review Petition, while placing reliance on the Order of the Hon'ble Supreme Court dated 10-01-2022 in ***In Re : Cognizance for Extension of Limitation*** [*Miscellaneous Application No.21 of 2022 in Miscellaneous Application No.665 of 2021 in Suo Motu Writ Petition (C) No.03 of 2020*]. Contesting the aforementioned delay, the Respondent on 21-02-2022 filed I.A. No.05 of 2022 in Arb.A. No.01 of 2020 and averred *inter alia* as follows therein;

> **"18.** That, in addition to the Review Petition, the Appellants have also filed an Application of Condonation of delay of 76 days (i.e. from 06.11.2021 to 20.01.2020) sighting (sic) Hon'ble Supreme Court of India's suo-motu cognizance of situation arising from COVID. But, as per the records of this Hon'ble Court, the Appellants had submitted their detail arguments in Virtual Court on 25.10.2021, 26.10.2021; have done physical filing of Documents in Ist/2nd week of Nov.2021; appeared through V.C on 10.11.2021 and appeared physically before this Hon'ble Court during court proceeding on 24.11.2021.**"**

Learned Counsel for the parties were heard on the delay petition (*supra*) and in consideration of the Order of the Hon'ble Supreme Court, the delay was condoned and the Review Petition taken up for hearing. A reply dated 01-06-2022 was filed on behalf of the Respondent to the Review Petition dated 01-02-2022.

4. Prior in time, on 21-02-2022, an application being I.A. No.5 of 2022 came to be filed by the Respondent under Section 151 of the CPC along with an affidavit *inter alia* submitting that the non-depositing of the amount by the Appellants despite the Order of this Court dated 07-10-2021, under the guise of a frivolous Review Petition along with a frivolous petition for condonation of delay is also an epitome of dodging payment of the amount ordered. Reply was filed by the Appellants to this application *supra* on 20-04-2022.

5. Learned Counsel for the Petitioners contended that an error apparent on the face of the Order dated 07-10-2021 passed in I.A. No.01 of 2020 in Arb.A. No.01 of 2020 existed for the reasons enumerated hereinbelow; that, the Petitioners/Appellants under Section 151 of the CPC had filed an application for Stay, being I.A. No.01 of 2020 in Arb.A. No.01 of 2020 on 06-03-2020. Reply to which was filed by the Respondent on 22-03-2021 and a rejoinder thereof by the Appellants on 23-04-2021. That, the Respondent in its reply dated 22-03-2021 to the application for Stay had *inter alia* stated as under;

> "19. The amount which is due to be deposited by the Appellants in view of the operation of the 2015, Act and the settled law, an amount of Rs.131,56,40,332/- (Due as on 30.09.2020) has already become final and binding in terms of Section 36 of the Arbitration and Conciliation Act with respect to Prayer G and Prayer K of the Award. For this the Respondent has already filed an Execution Petition before the Hon'ble District Judge, East Sikkim, registered as Civil Execution Case No.15 of 2020. Therefore the remaining amount which is further liable to be deposited the Appellants are mentioned in the TABLE below.
>
> | **Findings in the Arbitral Award** | **Whether interfered by the Commercial Court U/s 34?** | **Amount payable to the Respondent/ Applicant** |
> |---|---|---|

The Tribunal awarded Rs.265.10 Crores towards Prayer 1 (Loss toward Cost Escalation) (Para 803 @ Pg. 419)	No	Rs.265.10 Crores with post award interest of 18% (Refer Para 813 @ Page 425 of the Award) approximating to Rs.431,00,17,589/- (Upto 23.3.2021)
Total		**Rs.431,00,17,589/-**

20. The Respondent having filed a separate Appeal under Section 37, before this Hon'ble Court as Arb. A/80/2020, seeking for an alternate claim of damage as granted by the Arbitral Tribunal the above mentioned amount in the table has not been pressed for execution.**"**

[emphasis supplied]

6. That, in view of the reply *supra*, the Respondent had thus admitted that as far as the amount of Rs.265,10,00,000/- (Rupees two hundred and sixty five crores and ten lakhs) only, was concerned the Respondent was not pressing for its execution as they had preferred a separate Appeal before this Court seeking an alternate claim for damages. It was further submitted that, contrary to the aforestated averments, the Respondent during the course of arguments on the Stay application prayed for the deposit of the amount of Rs.265,10,00,000/- (Rupees two hundred and sixty five crores and ten lakhs) only. That, despite the above averments in the reply of the Respondent to the Stay application at Paragraphs 19 and 20, extracted *supra*, while confirming the interim Order dated 22-06-2020, this Court in its Order dated 07-10-2021 directed the Appellants to deposit two Bank Drafts in the Registry of this High Court for an amount of Rs.85,43,11,904/- (Rupees eighty five crores, forty three lakhs, eleven thousand, nine hundred and four) only, [i.e. Rs.47,13,53,405/- (Rupees forty seven crores, thirteen lakhs, fifty three thousand, four hundred and

five) + Rs.38,29,58,499/- (Rupees thirty eight crores, twenty nine lakhs, fifty eight thousand, four hundred and ninety nine] and another Bank Draft of an amount of Rs.265,10,00,000/- (Rupees two hundred and sixty five crores and ten lakhs) only, within 16 (sixteen) weeks from 07-10-2021. That, the Order consequently suffers from an error apparent on the face of it as it failed to take into consideration the submissions of the Respondent that they were not pressing for execution of the awarded amount of Rs.265,10,00,000/- (Rupees two hundred and sixty five crores and ten lakhs) only. That, this Court had also failed to take into consideration that the Respondent had consciously not pressed for execution of the said amount. That, in the light of the stand of the Respondent the direction for deposit of the said amount of Rs.265,10,00,000/- (Rupees two hundred and sixty five crores and ten lakhs) only, is erroneous. It was also stated that the Court erred in directing the Appellants to deposit the balance Bond amount in Court and failed to take into consideration that when the Respondent had itself breached its obligation to submit the Bank Guarantee to the Petitioners, then the Petitioners could not have been legally called upon to deposit the amount of the balance Bond amount. Hence, the grounds submitted are sufficient for this Court to review its Order dated 07-10-2021 thereby deleting/modifying the direction to the Appellants to deposit the Bank Draft of Rs.85,43,11,904/- (Rupees eighty five crores, forty three lakhs, eleven thousand, nine hundred and four) only and Rs.265,10,00,000/- (Rupees two hundred and sixty five crores and ten lakhs) only.

7(i). *Per contra*, it was contended by Learned Counsel for the Respondent that firstly the Arbitration Act, as amended, is a complete Code in which there is no provision for a Review and hence, the Appellants could not file a Review Petition under Order XLVII Rule 1 of the CPC seeking a review of its Order. That, in the absence of any such provision, any Order in review, if passed would be *ultra vires*, illegal and without jurisdiction. That, this Court in its Order dated 07-10-2021 has directed deposit of the amount in terms of the provisions of Section 36 of the Arbitration Act, as amended in 2015, and under binding precedents of the Hon'ble Supreme Court which the Petitioners are seeking an alteration by claiming a review, which is wholly impermissible. That, in fact the Petitioners have under the guise of a Review Petition filed an Appeal assailing the Order of this Court, which can only be filed through an appropriate appeal before the higher Court and not through a Review Petition. It was next urged that in prescribing the amount to be deposited under Section 36 of the Arbitration Act, as amended in 2015, the Court does not consider whether any Execution Petition towards any particular claim is filed or not. The Court is only to consider the awarded amount or what is the amount concurrently upheld by the Court under Section 34 of the Arbitration Act as in the instant case. That, the claim of the Petitioners that the Order to deposit Rs.265,10,00,000/- (Rupees two hundred and sixty five crores and ten lakhs) only, is erroneous in light of Paragraphs 19 and 20 of the reply of the Respondent dated 22-03-2021, to the Stay application, is totally false. That, the directions of this Court to the Appellants to deposit the two Bank Drafts within 16 (sixteen) weeks' period ended on 27-01-

2022 despite which the Appellants failed to make the deposits and instead filed the Review Petition. That, whether Execution Petition is to be filed or not is the discretion of the Respondent. That, Section 36 of the Arbitration Act, as amended in 2015, expressly provides for deposit of the awarded amount for grant of stay, it does not state the relevance of filing or non-filing of Execution Petition by the award holder.

(ii). That, the Petitioners' interpretation that as the Respondent had not pressed for execution meant that they would not press for execution of the claim is bizarre. That, as soon as the Respondent noticed that the Petitioners had not deposited the two Bank Drafts as per the Order of this Court dated 07-10-2021, the Respondent filed an Execution Petition for Prayer 1 for Rs.265,10,00,000/- (Rupees two hundred and sixty five crores and ten lakhs) only, before the Commercial Court on 19-02-2022 which is registered as Execution Petition (C) No.05 of 2022. That, in fact, the Petitioners have not even deposited a separate Bank Draft of Rs.85,43,11,904/- (Rupees eighty five crores, forty three lakhs, eleven thousand, nine hundred and four) only, for which they have not sought any extension, establishing a deliberate defiance of the Order of this Court. Hence, in light of the above mentioned facts and circumstances, this Court be pleased to dismiss the Review Petition with exemplary costs.

8. Learned Counsel for the Appellants in rebuttal contended that the Appellants had legally and validly invoked the grounds permissible under Law for review of the Order and also on the basis of facts as applicable to the case in question. It was reiterated that the Respondent itself had stated that it was not

pressing for execution of Order relating to the award of the amount of Rs.265,10,00,000/- (Rupees two hundred and sixty five crores and ten lakhs) only. This being a material fact it had a legal bearing on the exercise of discretion by this Court while deciding the application of Stay of the arbitral award preferred by the Appellants. It is denied that Sections 34 and 37 of the Arbitration Act mandates that the hearing of objection petition/appeal on merits can be taken up only on the amount which was directed by the Court being deposited by the Appellants/Objectors, hence the Petition filed by the Respondent under Section 151 of the CPC be dismissed.

9. The rival contentions were heard at length and given due consideration. While addressing the arguments of Learned Counsel for the Respondent that the Arbitration Act is a self-contained Act which provides for no review, in ***ITI Ltd.*** vs. ***Siemens Public Communications Network Ltd.***[1] the Supreme Court held as hereunder;

> **"19.** Revisional jurisdiction of a superior court cannot be taken as excluded simply because subordinate courts exercise a special jurisdiction under a special Act. The reason is that when a special Act on matters governed by that Act confers a jurisdiction on an established court, as distinguished from a *persona designata*, without any words of limitation, then the ordinary incident of procedure of that court including right of appeal or revision against its decision is attracted. The right of second appeal to the High Court has been expressly taken away by sub-section (3) of Section 37 of the Act, but for that reason it cannot be held that the right of revision has also been taken away. ……..**"**

The Supreme Court ***in Mahanagar Telephone Nigam Limited*** vs. ***Applied Electronics Limited***[2] held that;

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[1] (2002) 5 SCC 510

[2] (2017) 2 SCC 37

> **"27.** Section 5 which commences with a non obstante clause clearly stipulates that no judicial authority shall interfere except where so provided in Part I of the 1996 Act. As we perceive, the 1996 Act is a complete code and Section 5 in categorical terms along with other provisions, lead to a definite conclusion that no other provision can be attracted. Thus, the application of CPC is not conceived of and, therefore, as a natural corollary, the cross-objection cannot be entertained. Though we express our view in the present manner, the judgment rendered in *ITI Ltd.* [*ITI Ltd.* v. *Siemens Public Communications Network Ltd.*, (2002) 5 SCC 510] is a binding precedent. The three-Judge Bench decision in *International Security & Intelligence Agency Ltd.* [*MCD* v. *International Security & Intelligence Agency Ltd.*, (2004) 3 SCC 250] can be distinguished as that is under the 1940 Act which has Section 41 which clearly states that the procedure of CPC would be applicable to appeals. The analysis made in *ITI Ltd.* [*ITI Ltd.* v. *Siemens Public Communications Network Ltd.*, (2002) 5 SCC 510] to the effect that merely because the 1996 Act does not provide CPC to be applicable, it should not be inferred that the Code is inapplicable seems to be incorrect, for the scheme of the 1996 Act clearly envisages otherwise and the legislative intendment also so postulates.
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> **28. As we are unable to follow the view expressed in *ITI Ltd.*** [*ITI Ltd.* v. *Siemens Public Communications Network Ltd.*, (2002) 5 SCC 510] **and we are of the considered opinion that the said decision deserves to be reconsidered by a larger Bench. Let the papers be placed before the Hon'ble the Chief Justice of India for constitution of an appropriate larger Bench."**
>
> [emphasis supplied]

However, later in time in ***Municipal Corporation of Greater Mumbai and Another*** vs. ***Pratibha Industries Limited and Others***[3] a two Judge Bench of the Hon'ble Supreme Court expounded as follows;

> **"10.** Insofar as the High Courts' jurisdiction to recall its own order is concerned, the High Courts are courts of record, set up under Article 215 of the Constitution of India. Article 215 of the Constitution of India reads as under:
>
> > "**215.** ***High Courts to be courts of record***.—Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself."
> >
> > **It is clear that these constitutional courts, being courts of record, the jurisdiction to recall their own orders is inherent by virtue of the fact that they are superior courts of record. This has been recognised in several of our judgments."** [emphasis supplied]

[3] (2019) 3 SCC 203

The extract in ***Municipal Corporation of Greater Mumbai*** (*supra*) being self-explanatory with regard to the powers of review no further elucidation is necessitated on this point.

10. Now to consider what an error apparent on the face of the record is, the Hon'ble Supreme Court has observed in a plethora of Judgments as to what such an error consists of. In ***Satyanarayan Laxminarayan Hegde*** vs. ***Mallikarjun Bhavanappa Tirumale***[4]**,** it was held as follows;

> **"17.** ……. **An error which has to be established by a long drawn process of reasoning on points where there may conceivably be two opinions can hardly be said to be an error apparent on the face of the record.** As the above discussions of the rival contentions show the alleged error in the present case is far from self-evident and if it can be established, it has to be established, by lengthy and complicated arguments. We do not think such an error can be cured by a writ of certiorari according to the rule governing the powers of the superior court to issue such a writ. In our opinion the High Court was wrong in thinking that the alleged error in the judgment of the Bombay Revenue Tribunal viz., that an order for possession should not be made unless a previous notice had been given was an error apparent on the face of the record so as to be capable of being corrected by a writ of certiorari.**"** **[emphasis supplied]**

11. It is relevant to note that Learned Counsel for the Appellants in his arguments on the Stay application, which were recorded by this Court and reflected in the Order dated 07-10-2021 nowhere put forth the plea that under Paragraphs 19 and 20 of the reply dated 22-03-2021 of the Respondent to the application for Stay, the Respondent had not pressed for deposit of the amount of Rs.265,10,00,000/- (Rupees two hundred and sixty five crores and ten lakhs) only. In fact, it was the specific argument of Learned Counsel for the Appellants that the amount awarded is a large amount sans a submission seeking exemption from payment of

[4] AIR 1960 SC 137

Rs.265,10,00,000/- (Rupees two hundred and sixty five crores and ten lakhs) only, on the ground that the amount of Rs.265,10,00,000/- (Rupees two hundred and sixty five crores and ten lakhs) only, has not been pressed in execution. This Court in Paragraph 5(i) to Paragraph 7 of the Order dated 07-10-2021 observed as follows;

> ***5.(i)*** The rival submissions having been heard *in extenso*, it may appropriately be mentioned that the Stay granted vide Order, dated 22.06.2020, was an *ex parte ad interim* relief and hence the matter was taken up for hearing on 28.09.2021. While considering the requirements of the provisions of Section 36 of the Arbitration Act and Order XLI Rules 5 and 6 of the CPC, it is apposite to notice that in ***Manish vs. Godawari Marathwada Irrigation Development Corporation*** (*supra*), the Hon"ble Supreme Court, while disagreeing with the decision of the Bombay High Court which had ordered 60% deposit, pending the Section 37 Appeal, observed inter alia as follows;
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> > "…… since these are money decrees there should be 100% deposit, with the respondent being entitled to withdraw the amount deposited and furnish solvent security to the satisfaction of the High Court."
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> The impugned Order of the High Court was set aside.
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> ***(ii)*** In ***Pam Developments Private Limited*** (*supra*), the grant of unconditional Stay to Government with respect to proceedings under Section 34 of the Arbitration Act, 1996, by invoking the provisions of Order XXVII Rule 8-A of the CPC were being considered. The Hon"ble Supreme Court observed that the invocation of Order XXVII Rule 8-A of the CPC by the High Court for the grant of the unconditional Stay to Government with respect to Arbitral Award passed against it was not proper. It was held *inter alia* thus;
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> > "**28**. Section 36 of the Arbitration Act also does not provide for any special treatment to the Government while dealing with grant of stay in an application under proceedings of Section 34 of the Arbitration Act. Keeping the aforesaid in consideration and also the provisions of Section 18 providing for equal treatment of parties, it would, in our view, make it clear that there is no exceptional treatment to be given to the Government while considering the application for stay under Section 36 filed by the Government in proceedings under Section 34 of the Arbitration Act.
> >
> > **29.** Although we are of the firm view that the archaic Rule 8-A of Order 27 CPC

> has no application or reference in the present times, we may only add that even if it is assumed that the provisions of Order 27 Rule 8-A CPC are to be applied, the same would only exempt the Government from furnishing security, whereas under Order 41 Rule 5 CPC, the Court has the power to direct for full or part deposit and/or to furnish security of the decretal amount. Rule 8-A only provides exemption from furnishing security, which would not restrict the Court from directing deposit of the awarded amount and part thereof.
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> **30.** For the foregoing reasons, we are of the opinion that the impugned order passed by the Calcutta High Court granting unconditional stay of the arbitration award dated 21-1-2010, cannot be sustained in the eye of the law. ……"

(iii) In ***Board of Control for Cricket in India*** (*supra*), Section 34 Applications under the Arbitration and Conciliation Act, 1996, were all filed prior to the coming into force of the Amendment Act w.e.f. 23.10.2015. In the four Appeals, the Section 34 Applications were filed after the Amendment Act came into force. The Court went into a detailed discussion about the pre-amended Section 36 and amended Section 36 of the Arbitration Act. The 246th Law Commission Report which led to the Amendment Act was also discussed in the ratio, wherein the reason for proposing to replace Section 36 of the Arbitration Act of 1996 was considered and it was observed therein that the unamended Section 36 of the Act made it clear that an Arbitral Award became enforceable as a Decree only after the time for filing a Petition under Section 34 had expired, or after the Section 34 Petition was dismissed. In other words, the pendency of a Section 34 Petition rendered an Arbitral Award unenforceable, hence the admission of a Section 34 Petition virtually paralysed the process for the Winning Party/Award Creditor. The Report also observed that the Hon'ble Supreme Court in ***National Aluminium Co. Ltd. v. Pressteel & Fabrications (P) Ltd.*** [(2004) 1 SCC 540] had criticized the said situation in the following words;

> "**44**. ……..
>
> '***11.*** **However, we do notice that this automatic suspension of the execution of the award, the moment an application challenging the said award is filed under Section 34 of the Act leaving no discretion in the court to put the parties on terms, in our opinion, defeats the very objective of the alternate dispute resolution system to which arbitration belongs.** We do find that there is a recommendation made by the Ministry concerned to Parliament to amend Section 34 with a proposal to empower the civil court to pass suitable interim orders in such cases. In view of the urgency of such amendment, we sincerely hope that necessary steps would be taken by the authorities concerned

> at the earliest to bring about the required change in law.' "
>
> **[Emphasis supplied]**

That, the Amendment in Section 36 was to ensure that mere filing of an Application under Section 34 does not operate as an automatic Stay on the enforcement of the Award. It was held inter alia as follows;

> "**60.** This brings us to the manner of enforcement of a decree under CPC. A decree is enforced under CPC only through the execution process (see Order 21 of the Code of Civil Procedure). Also, Section 36(3), as amended, refers to the provisions of the Code of Civil Procedure for grant of stay of a money decree. This, in turn, has reference to Order 41 Rule 5 of the Code of Civil Procedure, which appears under the Chapter heading, "Stay of Proceedings and of Execution". This being so, it is clear that Section 36 refers to the execution of an award as if it were a decree, attracting the provisions of Order 21 and Order 41 Rule 5 of the Code of Civil Procedure and would, therefore, be a provision dealing with the execution of arbitral awards. ……"

6. In light of the ratiocinations referred to hereinabove, it is evident that in terms of Section 36(2) and (3) of the Arbitration Act, which came into effect from 23.10.2015, in order to obtain a Stay of operation of the Arbitral Award, the party assailing the Award may file an application seeking such relief from the Court. The Court, in turn, has the discretion to consider the prayer and grant Stay of operation of the Arbitral Award, subject to conditions that it may impose as deemed fit. As per Section 36(3) of the Arbitration Act, however, when the party seeks Stay of the operation of the Arbitral Award for payment of money, the Court is to consider the provisions for grant of Stay of a Money Decree under the provisions of Order XLI of the CPC. The argument of Learned Counsel for the Appellants that the Court is only to be guided by the provisions of the CPC and there is no mandate that the Code is to be complied with cannot be countenanced, in view of the specific direction of the Hon"ble Supreme Court as laid down in ***Manish vs. Godawari Marathwada Irrigation Development Corporation*** *supra* and the discussions that have emanated in ***Board of Control for Cricket in India*** *supra*. Thus, while considering the prayer of the Appellants for grant of Stay of the operation of the Arbitral Award made against them for payment of money, this Court is required to follow the provisions of Order XLI Rule 5 of the CPC.

7. In consideration of the discussions that have emanated supra and the law laid down by the Hon"ble Supreme Court, it is not necessary to delve into a prolix discussion of the provisions of Section 36 of the Arbitration Act and Order XLI Rules 5 and 6 of the CPC. Suffice it to state that when Stay is to be

granted, a deposit is to be made by the party seeking Stay of the operation of the Arbitral Award.**"**

12. In view of the Order extracted hereinabove, we are of the considered opinion that the Petitioners have indeed failed to demonstrate any error manifest on the face of the Order, which is in fact in due compliance of the statutory provisions and the law laid down by the Hon'ble Supreme Court on this facet. The intention of the Appellants is evidently to stall executing the Order of this Court by filing this facetious Petition which is more in the nature of an Appeal than a Review Petition. The Petitioners ought to be mindful that the Order which is sought to be reviewed is an order granting a stay and not an order for execution of a Decree.

13. Hence, the Review Petition deserves to be and is accordingly dismissed. The amount directed to be deposited vide Order of this Court dated 07-10-2021 be made good within four weeks from today failing which necessary steps as per law will follow.

14. Costs of Rs.20,000/- (Rupees twenty thousand) only, are imposed on the Petitioners who are to deposit the amount in the Sikkim State Legal Services Authority within a week from the date of this Order, to be utilized for the senior citizens in "Lee Al Old Age Home", Tintek, East Sikkim.

15. Consequently, the Review Pet.(C) No.01 of 2022 and I.A. No.05 of 2022 in Arb.A. No.01 of 2020, both stand disposed of.

(Bhaskar Raj Pradhan)
Judge
28-07-2022

(Meenakshi Madan Rai)
Judge
28-07-2022

Approved for reporting : **Yes**

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