

Areo li Sarl vs Gaurav Dhawan on 23 January, 2023

Author: Yashwant Varma

Bench: Yashwant Varma

\$~33

*

+

IN THE HIGH COURT OF DELHI AT NEW DELHI
O.M.P.(EFA)(COMM.) 12/2021, EX.APPL.(OS) 993/2021,
EX.APPL.(OS) 994/2021, EX.APPL.(OS) 2831/2022 &
EX.APPL.(OS) 3253/2022

AREO II SARL

..... Decree Holder
Through: Mr. Sandeep Sethi, Sr. Adv.
with Mr. Prateek Kumar, Mr.
Madhav Khosla and Ms.
Apeksha Dhaninjay, Advs.

versus

GAURAV DHAWAN

..... Judgement Debtor
Through: Mr. D. P. Singh, Mr. Devansh
Arya and Mr. V. C. Sondhi,
Advs.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA
ORDER

% 23.01.2023

1. The present enforcement petition referable to Sections 48 and 49 of the Arbitration and Conciliation Act, 1996 ["the Act"] seeks enforcement of the partial award dated 10 December 2020 and the final award dated 22 February 2021 passed by the London Court of International Arbitration. The award which was ultimately drawn and of which enforcement is sought allows the claims laid by the decree holder here and proceeds to award a sum of USD 99,658,056.08 which as per the decree holder is equivalent to INR 739,82,43,796.60 towards defaulted payment and GBP 148,504.80 equivalent to INR 1,53,59,267 towards arbitration and legal costs. Those conversions are based on the exchange rates as prevailing on 03 August 2021.

2. Pursuant to notices issued on this petition, the respondent/Judgment Debtor had filed its objections resisting the enforcement of the award. However, when the matter was taken up for hearing today, learned counsel for the judgment debtor fairly conceded that the objections as taken would not fall within the ambit of Section 48 (1) of the Act and therefore cannot detract from the award being executed as if it were a decree of court.

3. Having considered the material placed on the record, the Court is of the considered opinion that the enforcement of the aforesaid award is also not liable to be refused in terms of Section 48(2) of the Act. The Court is thus satisfied that the award is enforceable under Part II of the Act as a decree of the court.

4. Pursuant to the order dated 21 March 2022 read with order dated 13 April 2022, the Affidavit of Assets which had been filed by the judgment debtor had been placed in sealed cover. Upon arriving at the conclusions recorded above, the sealed cover was opened and a copy of the Affidavit of Assets was also provided to learned counsel appearing for the enforcement petitioner.

5. On a perusal of the disclosures made in the said affidavit, the Court notes that the judgment debtor is not shown to be in possession of any properties in India. The bank accounts details which are set forth in Enclosure A-2 referred to accounts existing in India, Malta, United Arab Emirates [UAE] and Thailand. The judgment debtor has failed to disclose the amounts standing to the credit of the accounts which are maintained in India. One of the accounts which is stated to be maintained with HDFC Bank already stands frozen in terms of the order dated 24 May 2021 passed in Ex. P. No. 37 of 2021.

6. The bank account maintained in Malta is stated to be dormant. Insofar as bank accounts in the UAE are concerned, the majority of those are stated to be frozen at the behest of banks. However, no details in respect thereof have been furnished. The bank accounts in Thailand are also stated to be dormant.

7. The J.D. has set forth details of house properties in Enclosures A-4 and A-5. Those details are extracted hereinbelow:-

"

"ENCLOSURE A-4 : DETAILS OF HOUSE PROPERTY S.No. City/Count
Communit Buildin Unit Type Area Purchase Mortgage Mortgaging Principal ry y g
No. (sq.ft.) Price Status Bank Outstnding (as (AED) in 2020)(AED)

1. A1 Hebiah 704 1BR 1,305.99 721,800 Mortgaged 629,815
2. First New 802 1BR 1,357.97 745,200 Mortgaged 650,210
3. Bridge 804 1BR 1,357.97 1,093,466 Mortgaged Dubai 346,790
4. Hill 1 1102 1BR 1,328.05 721,800 Mortgaged Islamic 629,815
5. 1104 1BR 1,328.05 732,000 Mortgaged Bank PJSC 638,667
6. Jabal Ali Med 38 112 1BR 957.99 770,000 Mortgaged 378,492

7. First 311 1BR 957.99 770,000 Mortgaged 393,675
8. Med 46 407 1BR 968.75 767,000 Mortgaged 393,675
9. 912 Studio 499.01 465,000 Mortgaged 245,992
10. Dubai, UAE Crescent 1409 2 BR 1,328.06 863,200 Mortgaged Mashreq 553,207
11. Meaisem Tower 1508 2 BR 1,278.01 863,200 Mortgaged Bank 553,207
12. First A 1708 2 BR 1,328.06 863,200 Mortgaged 554,619
13. Crescent 1009 2 BR 1,278.01 830,700 Mortgaged 579,546 Tower B
14. Lago 808 2 BR 1,256.04 900,000 Mortgaged 579,546 Vista B
15. A1 Emirate E-95 6BR 14,428.0 19,500,00 Mortgaged Emirates 13,422,011
Tanayah s Hills 5 00 NBD Bank Fourth
16. Dubai, UAE Goldcre PH-4 5 BR 6,168.90 3,543,672 Mortgaged Mashreq
2,456,674 st Views Bank Enclosure A-5: Details of other Property S. City/
Community Building Unit Type Area Purchase Mortgage Mortgaging Principal No.
Country No. (Sq. Ft.) Price Status Bank Outstandi (AED) ng (as in 2020AED)
1. 2301 Office 1,199.42 575,721 Mortgaged 332,208
2. Mazaya 2302 Office 1,771.20 843,750 Mortgaged 490,691
3. Dubai, A1Thanyah AA1 2303 Office 1,199.31, 5,75,669 Mortgaged 332,208 UAE
Fifth
4. 2304 Office 1,267.56 608,429 Mortgaged 351,332
5. 2305 Office 1,691.44 811,690 Mortgaged 468,527
6. 2306 Office 1,757.85 843,750 Mortgaged 487,093 Mashreq
7. 2307 Office 1,693.81 750,000 Mortgaged Bank 469,358
8. 2308 Office 1,260.02 604,800 Mortgaged 332,208
9. Tiffany 2407 Office 1,000.00 1,262,500 Mortgaged 374,909 Towers

8. The aforesaid thus constrains the Court to frame attachment orders in respect of the properties which are set forth in Enclosures A-

4 and A-5 for the purposes of satisfaction of the amount awarded to the petitioner. Accordingly, let attachment orders issue in respect of the properties set forth in Enclosures A-4 and A-5 and which have been extracted hereinabove.

9. The present order be treated as a precept referable to Section 46 of the Code of Civil Procedure, 1908 read with the provisions enshrined in the agreement between the Republic of India and the UAE on Juridical and Judicial Cooperation in Civil and Commercial Matters for the Service of Summons, Judicial Documents, Commissions, Execution of Judgements and Arbitral Awards.

10. The copy of the present order be also forwarded by the Registry to the Secretary in the Ministry of Law & Justice and Ministry of Corporate Affairs for further and appropriate action being taken in terms of the above.

11. Let the matter be called again on 23.02.2023.

YASHWANT VARMA, J.

JANUARY 23, 2023 neha