$~56

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

% *Date of Decision : 18.09.2026*

\# **CNR No. DLHC010780532024**

\+ **RFA(COMM) 473/2024**

HARNEET MADAN .....Appellant
Through: Mr. Ujjwal Jha, Advocate.

versus

M/S. HNP GROUP HOTELS & ORS. .....Respondents
Through: Mr. Vidur Sikka, Advocate for applicant.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TEJAS KARIA

TEJAS KARIA, J. (*ORAL*)

CM APPL. 32986/2026

1. The present Application has been filed by Respondent No. 1 seeking modification of the order dated 22.04.2025 ("**Order**") passed in the present Appeal, to the extent that the amount of ₹55,86,102/- ("**Amount**") by the Appellant with the Registry of this Court be released to Respondent No. 1 without requiring it to furnish an unconditional bank guarantee equivalent to the Amount and that, in the event the Appellant succeeds in the Appeal, the rate of interest at which Respondent No. 1 is required to refund the Amount be reduced from 12% per annum.

2. The Appellant has preferred the present Appeal assailing the judgment and decree dated 31.07.2024 ("**Impugned Judgment and**

Decree") passed by the learned District Judge (Commercial Court-04), South East District, Saket Courts ("**Trial Court**") in Civil Suit (Comm) No. 564/2019, titled '*M/s HNP Group Hotels vs Hameet Madan & Anr.*' ("**Suit**"), in favour of Respondent No. 1.

3. This Court, *vide* order dated 11.11.2024, stayed the operation of the Impugned Judgment and Decree, subject to the Appellant depositing the decretal amount together with interest. Pursuant thereto, the Appellant deposited the Amount with the Registry of this Court.

4. Thereafter, Respondent No. 1 filed an application bearing CM No. 14963/2025 seeking release of the Amount. This Court, *vide* the Order, allowed CM No. 14963/2025, subject to Respondent No. 1 furnishing an unconditional bank guarantee for the Amount.

5. Learned Counsel for Respondent No. 1 submitted that, pursuant to the Order, Respondent No. 1 approached its bank for issuance of the bank guarantee; however, the bank informed Respondent No. 1 that such guarantee could be issued only upon furnishing sufficient collateral security or, in the alternative, creating a fixed deposit equivalent to or exceeding the amount of the bank guarantee.

6. Learned Counsel for Respondent No. 1 further submitted that Respondent No. 1 lacks the financial capacity either to furnish such collateral or to create a fixed deposit of such magnitude. It was also submitted that Respondent No. 1 would be required to incur charges of approximately ₹90,000/- per annum for issuance of a bank guarantee of around ₹60,00,000/-, thereby imposing an additional financial burden upon Respondent No. 1, which has already suffered losses and has limited means.

7. Learned Counsel for Respondent No. 1 contended that, in the aforesaid circumstances, the condition imposed *vide* the Order requiring the furnishing of an unconditional bank guarantee for release of the Amount is onerous and causes undue hardship to Respondent No. 1. It was further contended that Respondent No. 1, being the decree-holder under the Impugned Judgment and Decree, is otherwise entitled to the decretal amount, which already stands secured by the Amount.

8. Learned Counsel for the Appellant submitted that the Amount had been directed to be deposited as security for the decretal amount under Order XLI Rule 5 of the CPC and that, therefore, the condition requiring Respondent No. 1 to furnish an unconditional bank guarantee while withdrawing the Amount during the pendency of the Appeal was justified. It was further submitted that Respondent No. 1 cannot seek a reduction in the rate of interest of 12% per annum as Respondent No. 1 had itself agreed to the said rate at the time of passing of the Order.

9. We have heard learned Counsel for the parties and perused the material placed on record.

10. This Court, *vide* the Order, allowed CM No. 14963/2025 and permitted Respondent No. 1 to withdraw the Amount, subject to furnishing an unconditional bank guarantee for the Amount. The Order further records the undertaking of Respondent No. 1 that, in the event the Appellant succeeds in the Appeal, Respondent No. 1 shall refund the Amount together with interest at the rate of 12% per annum.

11. By way of the present Application, Respondent No. 1 seeks modification of both the aforesaid conditions imposed *vide* the Order, on the

ground that furnishing an unconditional bank guarantee would require it to provide collateral security or create a fixed deposit for an equivalent amount and would also entail charges for issuance of the bank guarantee. Respondent No. 1 further seeks a reduction in the rate of interest of 12% per annum, to which it had agreed at the time of passing of the Order.

12. Order XLI Rule 5(3)(c) of the Code of Civil Procedure, 1908 provides that no order for stay of execution shall be made unless the Court is satisfied that security has been furnished by the applicant for the due performance of such decree or order as may ultimately be binding upon the applicant. In the present case, this Court, *vide* order dated 11.11.2024, stayed the operation of the Impugned Judgment and Decree, subject to deposit of the decretal amount together with interest as security for due execution of the Impugned Judgment and Decree. In compliance thereof, the Appellant has deposited the Amount with the Registry of this Court.

13. The condition requiring Respondent No. 1 to furnish an unconditional bank guarantee for release of the Amount was imposed *vide* the Order while permitting Respondent No. 1 to withdraw the Amount during the pendency of the Appeal. The submission of the Respondent No. 1 that for issuance of the bank guarantee, a collateral security or a fixed deposit is required and charges in connection therewith are to be paid cannot be a sufficient ground for dispensing with the condition imposed *vide* the Order.

14. The Amount was deposited pursuant to the order dated 11.11.2024 as security for the decretal amount. Permitting its withdrawal without furnishing the bank guarantee would leave the Deposited Amount unsecured and would, in effect, amount to permitting execution of the Impugned

Judgment and Decree during the pendency of the Appeal.

15. As regards the prayer for reduction of the rate of interest, the Order records that Respondent No. 1 had agreed that, in the event the Appellant succeeds in the Appeal, Respondent No. 1 would refund the Deposited Amount together with interest at the rate of 12% per annum. Having expressly agreed to the said rate at the time of passing of the Order, Respondent No. 1 has failed to disclose any ground warranting its modification. We, therefore, find no justifiable basis to modify the same.

16. For the foregoing reasons, we find no merit in the prayer made by Respondent No. 1 for modification of the conditions imposed *vide* the Order. Accordingly, the present Application is dismissed.

TEJAS KARIA, J

DEVENDRA KUMAR UPADHYAYA, CJ

SEPTEMBER 18, 2026
Hk