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

Date of Reserve: 11.8.2008
Date of Order: 13.08.2008

CM(M) No. 1483/2007
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13.08.2008

M/s Prakash Industries Limited

... Petitioner

Through: Mr. J.P.Gupta, Advocate &
Mr. Alok Singh, Advocate

Versus

M/s Space Capital Services Ltd.

... Respondent

Through: Mr. Vivek Chib, Advocate

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

JUDGMENT

By this petition under Article 227 of the Constitution of India, the petitioner has challenged the validity and constitutionality of two orders dated 13.7.2007 & 13.9.2007 passed by the learned Arbitral Tribunal in arbitration proceedings between the parties. The respondent has taken the exception that such a petition was not maintainable. The arguments on maintainability of the petition have been heard.

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2. The contention of the petitioner is that the Arbitral Tribunal like any other Tribunal was adjudicating the rights of the parties and was subject to superintendence of High Court under Article 227 of the Constitution of India. The petitioner has relied upon *L.Chandra Kumar v. Union of India* (1997) 3 SCC 261 para 99, which reads as under:

99. In view of the reasoning adopted by us, we hold that clause 2(d) of Article 323-A and clause 3(d) of Article 323-B, to the extent they exclude the jurisdiction of the High Courts and the Supreme Court under Articles 226/227 and 32 of the Constitution, are unconstitutional. Section 28 of the Act and the 'exclusion of jurisdiction' clauses in all other legislations enacted under the aegis of Articles 323-A and 323-B would, to the same extent, be unconstitutional. The jurisdiction conferred upon the High Courts under Articles 226/227 and upon the Supreme Court under Article 32 of the Constitution is a part of the inviolable basic structure of our Constitution. While this jurisdiction cannot be ousted, other courts and Tribunals may perform a supplemental role in discharging the powers conferred by Articles 226/227 and 32 of the Constitution. The Tribunals created under Article 323-A and Article 323-B of the Constitution are possessed of the competence to test the constitutional validity of statutory provisions and rules. All decisions of these Tribunals will, however, be subject to scrutiny before a Division Bench of the High Court within jurisdiction the Tribunal concerned falls. The Tribunals will, nevertheless, continue to act like courts of first instance in respect of the areas of law for which they have been constituted. It will not, therefore, be open for litigants to directly approach the High Courts even in cases where they question the vires of statutory legislations (except where the legislation which creates the particular Tribunal is challenged) by overlooking the jurisdiction of the Tribunal concerned. Section 5(6) of the Act is valid and constitutional and is to be interpreted in the manner we have indicated.

3. A perusal of judgment of the Hon'ble Supreme Court in *L.Chandra Kumar v Union of India* (supra) would show that the reliance placed by the petitioner on this judgment to contend that the High Court should invoke

jurisdiction under Article 227 of the Constitution was totally misconceived. The aforesaid case deals with the legislative competence and constitutional validity of the Parliament's power to create Tribunals under Article 323-A and 323-B. The judgment is not applicable in the present case as it does not deal with the issue. This judgment neither expressly nor by implication suggests that an Arbitral Tribunal is a Tribunal over which this Court can exercise superintendence under Article 227 of the Constitution of India. On the other hand in *SBP & Co. v. Patel Engineering Ltd. & Anr.* (2005) 8 SCC 618, the Hon'ble Supreme Court observed as under:

45. *It is seen that some High Courts have proceeded on the basis that any order passed by an Arbitral Tribunal during arbitration, would be capable of being challenged under Article 226 or 227 of the Constitution. We see no warrant for such an approach. Section 37 makes certain orders of the Arbitral Tribunal appealable. Under Section 34, the aggrieved party has an avenue for ventilating its grievances against the award including any in-between orders that might have been passed by the Arbitral Tribunal acting under Section 16 of the Act. The party aggrieved by any order of the Arbitral Tribunal, unless has a right of appeal under Section 37 of the Act, has to wait until the award is passed by the Tribunal. This appears to be the scheme of the Act. The Arbitral Tribunal is, after all, a creature of a contract between the parties, the arbitration agreement, even though, if the occasion arises, the Chief Justice may constitute it based on the contract between the parties. But that would not alter the status of the Arbitral Tribunal. It will still be a forum chosen by the parties by agreement. We, therefore, disapprove of the stand adopted by some of the High Courts that any order passed by the Arbitral Tribunal is capable of being corrected by the High Court under Article 226 or 227 of the Constitution. Such an intervention by the High Courts is not permissible.*

46. *The object of minimizing judicial intervention while the matter is in the process of arbitrated upon, will certainly be defeated if the*

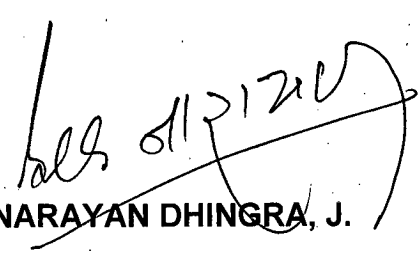
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High Court could be approached under Article 227 or under Article 226 of the Constitution against every order made by the Arbitral Tribunal. Therefore, it is necessary to indicate that once the arbitration has commenced in the Arbitral Tribunal, parties have to wait until the award is pronounced unless, of course, a right of appeal is available to them under Section 37 of the Act even at an earlier stage.

4. It is, therefore, apparent that this Court cannot exercise power of its superintendence over the Arbitral Tribunal appointed by the parties for adjudication of their disputes. The parties can take recourse to the remedy as provided under the Arbitration and Conciliation Act against the orders of the Tribunal. Against the orders passed by the Arbitral Tribunal, the jurisdiction of this Court under Article 227 of the Constitution cannot be invoked. The Supreme Court in *The Engineering Mazdoor Sabha v. Hind Cycles Ltd.* Bombay 1 SCR (1963) Suppl. 625 held that the arbitrator to whom industrial disputes are voluntarily referred under Section 10(a) of the Industrial Disputes Act though performs a quasi judicial duty is not a Tribunal within the meaning of Article 136(1) of the Constitution, since, the State has not infested him with its inherent judicial powers.

5. In view of the legal position being very clear on this aspect this petition is not maintainable and is liable to be dismissed. The petition is hereby dismissed.

August 13, 2008
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SHIV NARAYAN DHINGRA, J.