

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

+ **FAO Nos. 189/2011 & 190/2011**

% **13th October, 2011**

1. **FAO NO.189/2011**

BHARAT HEAVY ELECTRICALS LTD. & ANR. Appellants
Through: Mr. Sandeep Sethi, Senior Advocate with
Mr. A.K. Roy, Advocate.

VERSUS

DPC ENGINEERING PROJECT PVT. LTD. Respondent
Through: Mr. Gurvinder Singh, Advocate.

2. **FAO No.190/2011**

BHARAT HEAVY ELECTRICALS LTD. & ANR. Appellants
Through: Mr. Sandeep Sethi, Senior Advocate with
Mr. A.K. Roy, Advocate.

VERSUS

DPC ENGINEERING PROJECT PVT. LTD. Respondent
Through: Mr. Gurvinder Singh, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

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

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of these first appeals under Section 37 of the Arbitration & Conciliation Act, 1996 (hereinafter referred to as 'the

Act') is to the impugned orders of the Court below dated 21.2.2011 and 5.2.2011. By the impugned orders, the petition of the respondent under Section 9 of the Act has been allowed and the appellant No.1 has been restrained from withholding with it the monies claimed by the respondent herein, the petitioner in the Court below, under the subject contract as also other contracts. Both these appeals involve similar issues and are based on similar facts and are therefore being disposed of by this common judgment. For the sake of convenience, reference is made to the facts of FAO No.189/2011.

2. The facts of the case are that the respondent herein was awarded the contract, being contract No.620/09, being one of eight contracts for erection, testing, commissioning and trial operation of a Turbine Generator set with auxiliary and piping at District Jhansi, UP dated 3.10.2009. The case of the respondent in the petition filed under Section 9 of the Act was that it had completed almost 57% of the work within 10 months against total time allowed of 18 months in spite of which the contract was being terminated without any fault on the part of the respondent. It was alleged that termination notice dated 14.5.2010 issued by the appellant No.1 herein was illegal and fabricated. The respondent claims to have replied to the legal notice seeking reconsideration of the termination notice to which there was no response, whereupon the arbitration clause No.33 in the contract was invoked by the respondent vide its letter dated 9.6.2010. The

appellant no.1 herein, and respondent no.1 before the Court below, submitted in the reply to the Section 9 petition that respondent herein was a defaulting contractor who failed to perform his obligation under the contract. It was the stand of the appellants that they were forced to terminate the contract because in spite of repeated notices, the respondent did not improve its work at site. On account of the breach of contract committed by the respondent, its contract was terminated and the contract was awarded to M/s. Vasavi Power Services Pvt. Ltd. on 11.6.2010 at the risk and cost of the respondent herein in terms of clause 25 of the general conditions of the contract. It was further the case of the appellant that the contract in question is in respect of a project of national importance which was time bound and that the correspondence between the parties would show that the same had to be terminated on account of defaults and breaches on the part of the respondent herein.

3. By the impugned orders, the appellant No.1 herein, and the respondent in the Court below, has been restrained from withholding the monies which are claimed by the contractor under the subject contract and also under other contracts. The only issue which is therefore required to be examined in these appeals is whether the impugned orders are correct when they restrain the appellant No.1 from withholding the monies which are claimed by the respondent herein under the subject contract No.620 of 2009 and also the other contracts. To complete the narration it is stated that the

respondent herein had claimed various other reliefs in its petition under Section 9 of the Act, and though which were declined by the impugned order, yet there is no appeal filed by the respondent herein against the impugned orders for the reliefs declined.

4. It is trite that the petition under Section 9 of the Act has to be decided on the same principles contained in Order 39 Rules 1 and 2 of Code of Civil Procedure, 1908 (CPC) viz on the basis of existence of a prima facie case, balance of convenience and irreparable injury.

5. A reference to the impugned orders shows that there is no discussion as to how the respondent has a prima facie case. All that the impugned orders bring out is that there are disputes which will be decided in arbitration and therefore till such decision is taken by the Arbitrator, the respondent herein is entitled to the relief restraining the appellant No.1 from withholding the amounts. In the impugned order dated 21.2.2011, subject matter of FAO 189/2011, the Court below has after observing that there were disputes and differences with respect to termination of contract stated as under:-

“However, whether the default is intentional or circumstantial and cause of breach is yet to be determined in the arbitral proceedings”.

In the impugned order dated 5.2.2011, which is the subject matter of FAO No.190/2011, the Court below observes that there is vicious circle of

allegation, one following the other and the Court further observes “however the liability of the plaintiff is yet to be established”.

Both the orders conclude by observing that since the arbitral proceedings are still pending, till the time the liabilities of the petitioner therein are fixed either by the Court or by the Arbitrator, there cannot be withholding of payments.

6. In order to appreciate the lack of any effective application of mind while passing the impugned orders, I would seek to reproduce the whatever limited reasoning which the trial Court below has given so as to appreciate that the orders are clearly flawed and have to be set aside. The relevant paras of the impugned order dated 21.2.2011 holding the respondent entitle to injunction are paras 15 to 17 and which read as under:-

“15. In reply to a letter, petitioner had requested the respondents not to adjust the payment of one contract against the other as he would not be able to make payment to his work force and other supplier/creditor and ultimately Jhansi contract would also be terminated. The contract has already been terminated by the respondent company before filing the present petition. The contract in question is in respect of a project of national importance which is time bound. It becomes apparent from the mails and correspondence exchanges between the petitioner and the respondent that termination of the contract has been occasioned due to default and breaches on the part of the petitioner which has forced the respondent to get the work executed at the risk and cost of the claimant in terms of the contract. However, whether the default is intentional or circumstantial and cause of breach is yet to be determined in the arbitral proceedings. But the act of the respondent in termination and assignment of the said contract to third party is saved by sub-clause 25.1 and 25.3 of Clause 25 of contract.

16. Various documents placed on record to establish the inability of the petitioner to complete the contract, however, petitioner alleges non-payment by the respondents as one of the cause for failure on his part for non completion of the work. While the respondents allege defaults and failure to performance on all fronts leading to stopping of payment and termination of the contract of the petitioner.

17. Keeping in view the arguments by both the counsels and from perusal of the records and the fact that the arbitration proceedings are still pending. The prayer of the petitioner is allowed to the extent that till the time the liabilities of petitioner, if any, are fixed for the other contractors either by the court or by the arbitrator for the disputed contract, no payment be withheld as regards the contract no.620/09 for Jhansi, U.P. site to the extent for the work done and till the time the liability, if any, and if ever fixed for other contractors, the same may not be recovered from the running bills of the contract no.620/09 till the final outcome of the arbitration proceedings.”

The impugned order dated 5.2.2011 contains the following reasons for grant of injunction:-

“17. Various mails and letters exchanged between the petitioner and the respondents do establish that the work under the impugned contract was not completed by the petitioner and thus awarded to M/s. Steel Builders on 23.08.2010 after cancellation of contract of the petitioner vide mail/letter dated 27.07.2010. The petitioner has submitted that the work at Shrinagar site could not be completed as the payments of the said contract were withheld by the respondent. To prove this, he has relied on a letter dated 28.06.2010, wherein the AGM of respondent company has written that some of the R.A.s of the petitioner have been passed on the basis of work actually executed and verified by site, however, the payments have been withheld as the work of the petitioner had been short closed at some of the respondent’s site and some is being carried out by respondents through other vendors and at risk and cost of the petitioner.

18. In reply to that letter, petitioner had requested the respondents not to adjust the payment of one contract against that one as otherwise he would not be able to make payment to

his work force and other supplier/creditor and ultimately Shrinagar contract would also be terminated. Although the contract has been terminated by the respondent company, after filing of present petition, none of the clauses of 25 of the contract prohibits the respondent from terminating the contract in case of pendency of application under Section 9 of Arbitration & Conciliation Act. The contract in question is in respect of a project of national importance which is time bound. It becomes apparent from the mails and correspondence exchanged between the petitioner and the respondent that the termination of the contract has been occasioned due to default and breaches on the part of the petitioner which has forced the respondent to get the work executed at the risk and cost of the claimant in terms of the contract. However, whether the default is intentional or circumstantial and cause of breach is yet to be determined in the arbitral proceedings. But the act of the respondent in termination and assignment of the said contract to third party is saved by sub-clauses 25.1 and 25.3 of Clause and 25.3 of Clause 25 of the contract. In view of the fact that contract at Srinagar Site has already been terminated and assigned to another company, thus prayers of the petitioner that the respondents, its agent, representative or officials be restrained to create hurdle in completing the Srinagar project and also the prayer that the respondents be asked to work as per rule and no arbitrary action be taken against the petitioner company without due process of law, become infructuous and are thus disallowed.

19. Various documents placed on record do establish the inability of the petitioner to complete the contract, however, petitioner alleges non payment by the respondents of his due payment to be the cause of failure on his part for non completion of the work while the respondent allege defaults and failure to performance on all fronts leading to stopping of payment and termination of the contract of the petitioner. The reasons cited by both the parties seem like a vicious circle, one perpetually following the another. Sub- clause 25.4 of clause 25 authorises the respondent to recover any moneys due from the contractor from out of any moneys due to the contractor under this or any other contract or from the security deposit. However, the liability of the plaintiff is yet to be established. Thus the prayer of the petitioner is allowed to the extent that till the time the liabilities of petitioner, if any, are fixed for the other contracts either by the court or by the arbitrator for the disputed contract,

no payment be withheld as regards the contract no.578/09 for Shrinagar, Uttarakhand site and till the time the liability, if any, and if ever fixed for other contracts, the same may not be recovered from the running bills of the contract no.578/09.”

7. Learned senior counsel for the appellants basically relied upon the decision of the Supreme Court in the case of **M/s. H.M. Kamaluddin Ansari & Co. Vs. Union of India and Others AIR 1984 SC 29** to canvass the proposition that the appellants may not be entitled to appropriate and recover the monies, however, the appellant No.1 cannot be restrained from withholding the amounts. Reliance is also placed upon Clause 25.4 of the contract which provides that the appellant No.1 is entitled to recover monies due from the contractor from out of any money due to the contractor under this or any other contract or from the security deposit. Learned senior counsel for the appellants, however, restricts his relief to a lesser relief not of recovery of amounts but entitlement to withhold the amount till the conclusion of the arbitration proceedings.

8. Learned counsel for the respondent per contra relies upon a Division Bench judgment of this Court in the case of **Simplex Infrastructures Ltd. Vs. National Highways Authority of India 177 (2011) DLT 248**. The Division Bench in the judgment in the case of **Simplex Infrastructures Ltd. (supra)** has relied upon the decision of the Supreme Court in the case of **Transmission Corp. of A.P. Ltd. Vs. Lanco**

Kondapalli Power (P) Ltd. JT 2005 (10) SC 542, which held that an injunction can be granted to continue an existing state of affairs so that payment can be made in terms of the existing state of affairs which have been acted upon by the parties for a long period of time. The Division Bench in the case of **Simplex Infrastructures Ltd. (supra)** distinguished the judgment of the Supreme Court in the case of **M/s. H.M. Kamaluddin Ansari & Co. (supra)** by holding that under the new Arbitration Act of 1996, as compared to the old Act of 1940, an injunction can be granted which has the effect of causing payment of amounts to the petitioner in a petition under Section 9 of the Act. Counsel for the respondent also has stated that respondent has a prima facie case in its favour as also the balance of convenience. It is argued that the respondent will be caused irreparable injury if interim orders were not granted by the Court below and if the interim orders are vacated by this Court.

9. So far as the issue as to entitlement of the appellants to withhold the monies under the subject contract or under other contracts, the issue is squarely covered by the decision in the case of **M/s. H.M. Kamaluddin Ansari & Co. (supra)** in which it has been held that though there cannot be recovery or appropriation of an amount by the person who is liable to make the payment however, such person cannot be forced to make the payment and he is entitled to withhold the same. The relevant observations of the

Supreme Court are contained in paras 13, 14, 19, 21 and 30 of the judgment and which read as under:-

“13. As some doubt was raised in the Delhi High Court as to the exact scope of the ratio of the Union of India Vs. Raman Iron Foundry, AIR 1974 SC 1265 (supra) the matter was referred to a Full Bench apparently to consider the earlier Division Bench judgments in Marwar Tent Factory Vs. Union of India, AIR 1975 Delhi 27 and Air Foam Industries P. Ltd. v. Union of India, AIR 1973 Delhi 253. The Full Bench in Mohan Meakin Breweries Ltd. v. Union of India, AIR 1975 Delhi 248 took the view that though an injunction could be granted in those matters restraining the Union of India from adjusting or recovering any damages claimed by it from other pending bills of the contractor no order of injunction restraining the Union of India from withholding the payments due to the contractor under other pending bills could be issued.

14. Following the Full Bench decision the Division Bench in the present case held that the Court in arbitration proceedings was not competent to issue an injunction restraining the Union of India from withholding the amount due to the appellant-contractor under other pending bills. The only remedy of the appellant is to proceed outside the arbitration proceedings for the payments due under the pending bills, from the respondent. The Court can, however, restrain the Union of India from recovering or appropriating the amount due to the appellant-contractor under pending bills towards the damages claimed by the Union, unless it has been adjudicated upon or admitted by the other side.

19. On the own case of the appellant that there was no concluded contract between the parties containing an arbitration clause it will be difficult to say that the application for injunction moved by the appellant was for the purpose of and in relation to arbitration proceedings. This apart the amount due under the pending bills to the appellant was not the subject matter of the present proceedings and therefore the injunction order restraining the respondents from withholding the amount due to the appellant under the pending bills in respect of other contracts could not be said to be for the purpose of and in relation to the present arbitration proceedings. In this view of the matter it was not open to the Court to pass the interim injunction restraining the respondents from withholding the amount due to the appellant under pending bills in respect of other contracts.

21. It is true that the order of injunction in that case was in negative form. But if an order enjoined a party from withholding the amount due to the other side under pending bills in other contracts, the order necessarily means that the amount must be paid. If the amount is withheld there will be a defiance of the injunction order and that party could be hauled up for infringing the injunction order. It will be a contradiction in terms to say that a party is enjoined from withholding the amount and yet it can withhold the amount as of right. In any case if the injunction order is one which a party was not bound to comply with, the Court would be loath and reluctant to pass such an ineffective injunction order. The Court never passes an order for the fun of passing it. It is passed only for the purpose of being carried out. Once this Court came to the conclusion that the Court has power under Section 41(b) read with Second Schedule to issue interim injunction but such interim injunction can only be for the purpose of and in relation to arbitration proceedings and further that the question whether any amounts were payable by the appellant to the respondent under other contracts, was not the subject-matter of the arbitration proceedings and, **therefore, the Court obviously could not make any interim order which, though ostensibly in form an order of interim injunction, in substance amounted to a direction to the appellant to pay the amounts due to the respondent under other contracts, and such an order would clearly be not for the purpose of and in relation to the arbitration proceedings;** the subsequent observation of the Court that the order of injunction being negative in form and substance, there was no direction to the respondent to pay the amount due to the appellant under pending bills of other contracts is manifestly inconsistent with the proposition of law laid down by this Court in the same case.

30. We are clearly of the view that an injunction order restraining the respondents from withholding the amount due under other pending bills to the contractor virtually amounts to a direction to pay the amount to the contractor-appellant. Such an order was clearly beyond the purview of Clause (b) of Section 41 of the Arbitration Act. The Union of India has no objection to the grant of an injunction restraining it from recovering or appropriating the amount lying with it in respect of other claims of the contractor towards its claim for damages. But certainly Cl.18 of the standard contract confers amply power upon the Union of India to withhold the amount and no injunction order could be

passed restraining the Union of India from withholding the amount.”
(Emphasis supplied)

10. A reference to the aforesaid paras of the judgment in the case of ***M/s. H.M. Kamaluddin Ansari & Co. (supra)*** brings out the following conclusions:-

(i) The amount which is claimed to be due by a contractor under other contracts cannot become the subject matter of another arbitration proceedings in another contract i.e. it is only one particular contract which is the subject matter of arbitration and the other contracts which are not the subject matter of the arbitration proceedings in a Section 9 petition of one contract and therefore an order in a petition under one contract cannot result in an injunction to take payment under other contracts which are not the subject matter of subject arbitration proceedings. (vide para 19 of the judgment)

(ii) An order of injunction directing that a person cannot withhold the amount in fact is an order directing payment of the amount. (vide para 21 of the judgment)

(iii) Though a person cannot during the pendency of the arbitration proceedings recover and appropriate the amount which he claims to be due, however, there is nothing which prevents a person from withholding the amounts recovering or appropriating the same. (vide para 30 of the judgment).

11. Ordinarily therefore in terms of the decision in ***M/s. H.M. Kamaluddin Ansari & Co. (supra)*** nothing further would have to be seen and the petition of the respondent under Section 9 of the Act is liable to be straightway dismissed. However, the decision of a Division Bench in the case of ***Simplex Infrastructures Ltd. (supra)*** would have to be examined as to whether the facts of the present case falls within the ratio of the said judgment for the petition under Section 9 of the respondent to be allowed. A reference to the facts in the case of ***Simplex Infrastructures Ltd. (supra)*** shows that with respect to the contract awarded to the contractor payments were made in terms of a particular interpretation of clause 70.3 of the contract for a period of three years and for which 31 interim payment certificates were issued for payment. It is only thereafter that the National Highways Authority of India Limited (owner of the project) suddenly decided that interpretation of clause 70.3 was different and consequently refused to make payment although 31 interim payment certificates were issued on the basis of interpretation for around three years of the operation of the contract. These facts were similar to the facts of the decision of the Supreme Court in the case of ***M/s. Transmission Corporation of A.P. (supra)*** wherein payment was made for power generated for a long period of time at 368.144 MW and which was sought to be reduced suddenly after a long period of time to 351.49 MW. It is these actions of wanting to alter a continuous course of conduct which was enjoined by the Supreme Court in

the case of ***M/s. Transmission Corporation of A.P. (supra)*** and also by the Division Bench of this Court in the case of ***Simplex Infrastructures Ltd. (supra)***. Further, the Division Bench of this Court while granting the injunction secured NHAI Ltd. by directing that payments which will be received by the contractor will be secured by nothing less than bank guarantees covering the payments made.

12. It is relevant at this stage to note the Constitution Bench decision of the Supreme Court in the case of ***Padma Sundra Rao (dead) and others Vs. State of T.N. and Others (2002) 3 SCC 533***. The Constitution Bench of the Supreme Court has specifically stated in this judgment that the Courts should not place reliance on a decision without discussing as to how the factual situation fits in with the facts of the decision on which reliance is placed. The Supreme Court cautioned that there is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment. The Supreme Court directed that it is to be remembered that judicial utterances are made in setting of facts of a particular case and one additional or different fact may make a world of difference between conclusions in two cases. This is the ratio given in para 9 of the judgment.

13. In my opinion, therefore, considering the facts of the present case in which there is no consistent conduct of the appellant no.1 herein

over a long period of time by which regular payments were made to the contractor, the decision of Division Bench of this Court in the case of ***Simplex Infrastructures Ltd. (supra)*** cannot apply. Further, during the course of arguments, learned counsel for the respondent herein, and the petitioner in petition under Section 9 of the Act, has taken up a stand that the respondent is not ready to accept payment by securing the appellant by means of bank guarantees to cover the amounts. In the contract which is the subject matter of FAO No.189/2011 the appellant No.1 has an approximate claim of Rs.121.5 lacs and which is comprised of two amounts being 59.5 lacs being the amount due towards the liquidated damages for delay in performance of the contract and the amount of Rs.62 lacs which is claimed to be the difference in the value of the subject contract and the risk and cost purchase tender issued after termination of the contract. In the contract which is the subject matter of FAO No.190/2011 the claim of the appellant no.1 is for Rs.3.55 crores of which an amount of Rs.86 lacs is towards the liquidated damages and an amount of Rs.2.69 crores is towards the claim of damages for the difference in the risk and cost purchase tender awarded at a higher price.

14. I am bound by the decisions of the Supreme Court in the case of ***M/s. Transmission Corporation of A.P. (supra)*** and Division Bench of this Court in the case of ***Simplex Infrastructures Ltd. (supra)***. However, an issue will have to be examined at an appropriate time as to whether an

injunction which effectively directs payment can be issued by the Court although disputes concerning that issue are pending. There are various reasons why possibly such an injunction may not be permissible. The first reason is that in order to claim an amount if a person is allowed to seek an injunction instead of filing a suit for recovery then no suit for recovery need ever have to be filed. Every suit of recovery will be filed as a suit for injunction directing payment. The effect will be that no ad valorem court fees will be required to be paid and the relief of injunction will suffice irrespective of the monetary value of the relief claimed. Such a relief of injunction is also impermissible by virtue of Section 41(h) of Specific Relief Act, 1963 which provides that when equally efficacious relief can be obtained by any other usual mode, the relief of injunction cannot be granted. It is trite that when no final injunction can be granted surely an interim injunction also cannot be granted. What cannot be finally claimed cannot also be claimed by an interim order. What cannot be directly done cannot indirectly be got done. I may note that whereas an entitlement of a money which is decreed in a suit for recovery of money will be by a final judgment/adjudication, if by an interim injunction amounts are directed to be paid, then the effect will be that an interim order for payment of moneys can be passed in a suit for recovery of money, although there are vexed questions of facts which can only be decided after trial at the stage of final judgment in a suit. To claim payment by an interim injunction would be that there is an entitlement to recovery

of monies although there is no final decree of recovery of money merely on the ground that a prima facie case exists for recovery of money. This possibly may not be legally permissible. Further another consequence is that an interim injunction effectively directing payment will have an effect similar to recovery of money in execution proceedings although there is no final money decree capable of execution. All these aspects were not brought to the notice of the Hon'ble Supreme Court when the case of **M/s. Transmission Corporation of A.P. (supra)** was decided and nor was brought to the notice of the Division Bench of this Court when the case of **Simplex Infrastructures Ltd. (supra)** was decided. Finally, I may add that the spirit of the decision in **M/s. H.M. Kamaluddin Ansari & Co. (supra)** was basically to prevent an injunction, effect of which is to allow payment of money by interim orders. This spirit and ratio of the Supreme Court in the case of **M/s. H.M. Kamaluddin Ansari & Co. (supra)** in no manner can be said to have been whittled down and diluted by the wide language Section 9 of the new Arbitration Act, 1996 inasmuch so far as the final relief of injunction is concerned, the Courts are still governed by the provision of Section 41(h) of the Specific Relief Act, 1963 whereby there cannot be granted injunction when a suit for recovery of moneys has to be filed. Maybe in an appropriate case, these aspects will be examined.

15. So far as the present case is concerned, a reference to the impugned order shows that except stating the disputes which have arisen

there is no discussion as to how at all there is a prima facie case in favour of the respondent herein. Merely because disputes exist, an injunction does not automatically follow. Every disputed question of fact requires trial, but it is only a bonafide disputed question of fact which entitles a plaintiff to get an injunction. If every disputed question of fact requires injunction then in all suits interim injunction will automatically follow because every suit has disputed questions of facts requiring trial. The Supreme Court in the case of ***M. Gurudas and Others Vs. Rasaranjan and Others 2006 (8) SCC 367*** has clarified that while considering grant of order of injunction it is necessary that contention of the plaintiff must be bonafide i.e. every disputed fact may require a trial but only a bonafidely disputed question of fact will entitle a grant of interim injunction. This is explicitly stated by the Supreme Court in para 21 of the decision in the case of ***M. Gurudas and Others (supra)***.

16. In my opinion, the respondent herein does not have any prima facie case as there is no consistent past conduct of many years when payment were made as was the position in the cases of ***Transmission Corporation*** or ***Simplex Infrastructures Ltd.*** There is no balance of convenience in favour of the respondent. The argument of the learned counsel for the respondent that an irreparable injury will be caused to the respondent if payments are not made to the respondent is an argument on which no weight can be attached inasmuch as law does not entitle a person to get payment on an equitable ground that the business will be ruined if

payments are not paid inasmuch as existence of a prima facie case is a sine qua non. As I have already observed not only there is no prima facie case in favour of the respondent herein, the balance of convenience is in favour of the respondent.

17. Quite clearly, the impugned orders fail in correctly applying the triple tests of prima facie case, balance of convenience and irreparable injury. As already held by me above merely because disputed questions of fact exist cannot mean that interim orders necessarily have to follow.

18. In view of the above, the appeals are allowed. Impugned orders dated 5.2.2011 and 21.2.2011 are set aside. The petition of the respondent under Section 9 of the Act will accordingly stand dismissed, leaving the parties to bear their own costs.

OCTOBER 13, 2011
Ne

VALMIKI J. MEHTA, J.