IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

F.A.O.No.7020 of 2015 (O&M)
Date of Decision: October 15th, 2015

Fornax Real Estate Limited, E29, Ist Floor, Connaught Place, New Delhi

...Appellant

Versus

M/s Chandigarh Spun Pipe Company, Chandigarh & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

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

Present: Mr.Anupam Gupta, Senior Advocate with
Mr.V.K.Sachdeva, Advocate,
for the appellant.

Mr.Puneet Bali, Senior Advocate with
Mr.Inderjit Kaushal, Advocate &
Mr.Arun Gupta, Advocate,
for the respondents.

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AMIT RAWAL, J.

Appellant-Fornax Real Estate Limited is in appeal against the impugned order dated 14.9.2015, whereby, during the pendency of the objections filed by them under Section 34 of the Arbitration and Conciliation Act, 1996 (for short “1996 Act”), the Principal/Objecting Court, on an application filed by the respondents, directed them to furnish the security/bank guarantee to the tune of tune of ₹55,00,00,000/- (Fifty Five Crores only) to secure the awarded amount if the award is ultimately upheld against them within a period of four weeks from the date of the passing of the award, failing which, as per the affidavit dated 9.9.2015 furnished by the authorised representative, first charge will automatically be created on the Optionally Convertible Debentures with further directions to respondent Nos.3 and 4, i.e., Estate Officer, Union Territory, Chandigarh and Chandigarh Administration, Chandigarh not to transfer ₹4.93 Crores. For the sake of brevity, the operative part of the order under challenge reads thus:-

> "*Thus, looking the instant case through legal prism coupled with factual position referred to and discussed above, it is deemed expedient to direct respondent No.1 to furnish the security/bank guarantee to the tune of Rs.55,00,00,000/- (Rs.Fifty Five Crores only) to secure the awarded amount if the award is ultimately upheld against them within a period of four weeks from today, failing which respondent No.1 will disclose the Unique identification number of optional convertible debenture as mentioned in affidavit dated 09.09.2015 furnished by Hardeep Singh, Authorized representative of respondent No.1 and first charge will automatically be created on the Optionally Convertible Debentures. And the directions issued to respondents No.3 & 4 with regard to non transfer of Rs.4.93 crores to respondent No.1 shall remain continue. This order will continue till the Award, if finally affirmed, in favour of petitioners, is satisfied. With these observations, the instant petition as well as the application filed under Section 9 of Arbitration & Conciliation Act read with Section 151 of Civil Procedure Code have been disposed off. File be consigned to the record room.*"

Mr.Anupam Gupta, learned Senior Counsel assisted by Mr.V.K.Sachdeva, appearing for the appellant eloquently and with vehemence urged that there is no provision under 1996 Act to pass such orders. The impugned order tantamounts to be an order under Section 18 of the Repealed Act, i.e., Arbitration Act, 1940 and raised the following submissions:-

1) Section 36 of the Arbitration Act clearly envisages that no award shall be executed until the application under Section 34 of 1996 Act has been rejected;

2) There is stark difference/contrast within the provisions of the old Act and new Act. The aforementioned order intending to secure the amount tantamounts to execution of a decree, which is not within the parlance of provisions of 1996 Act. In support of the aforementioned submission, has relied upon the judgment of the Hon'ble Supreme Court rendered in **National Aluminium Co.Ltd. Versus Pressteel & Fabrications (P) Ltd. and Anr., (2004) 1 SCC 540, National Buildings Construction Corporation Ltd. Versus Lloyds Insulation India Ltd., (2005) 2 Supreme Court Cases 367** and two judgments of Madhya Pradesh and Bombay High Courts, i.e., **M/s Cmi Limited Versus Union of India,** decided on 31.8.2015 and **M/s.Afcons Infrastructure Ltd. Versus The Board of Trustees of the Port,** decided on 4.9.2013 and as well as the reports of 2001 and August, 2014 of the Law Commission of India in respect of suggesting the amendments in the Arbitration and Conciliation Acts, 2001 and 2014, which was recommended to the Law Commission in pursuance to the

directions contained in **National Aluminium Co.Ltd. (supra).** By referring to entire judgment, Mr.Gupta assiduously submitted that the Hon'ble Supreme Court, on a plain construction of Section 36 of 1996 Act, held that there was no power to the Court to direct the execution of the award when an application under Section 34 of Act challenging the award was pending. Vis-a-vis the ratio decidendi culled out in **National Aluminium Co.Ltd,** he has drawn the attention of this Court to paragraphs 10 and 11 of the judgment. For the sake of brevity, the same are reproduced herein under:-

> *10. Learned counsel for the applicant then contended that nearly 16 years have gone-by since the dispute between the parties arose and since the said dispute was first referred to an arbitrator. After the passage of such a long time, the applicant has been able to get only a partial award in his favour, but still he is unable to enjoy the fruits of that award also because of the proceedings initiated under section 34 of the 1996 Act. In this factual background, he prays that to do complete justice, we should consider the objections of both the parties to the said award and decide the same in these proceedings. Since we have come to the conclusion that the parties having agreed to the procedure under the 1996 Act to be followed by the arbitrator for the post-award proceedings also, the provisions of the said Act would prevail and the said statute having specifically provided for a remedy under section 34 of the 1996 Act, it may not be proper for us to exercise our jurisdiction under Article 142 of the Constitution to adjudicate upon the objections filed by both the parties to the award.*

Learned counsel then prayed that at least the amount representing that part of the award which is in their favour should be directed to be deposited in the competent civil court by the respondents herein so that the applicant could enjoy the fruits of the said award during further proceedings. At one point of time, considering the award as a money decree, we were inclined to direct the party to deposit the awarded amount in the court below so that the applicant can withdraw it on such terms and conditions as the said court might permit them to do as an interim measure. But then we noticed from the mandatory language of section 34 of the 1996 Act, that an award, when challenged under section 34 within the time stipulated therein, becomes unexecutable. There is no discretion left with the court to pass any interlocutory order in regard to the said award except to adjudicate on the correctness of the claim made by the applicant therein. Therefore, that being the legislative intent, any direction from us contrary to that, also becomes impermissible. On facts of this case, there being no exceptional situation which would compel us to ignore such statutory provision, and to use our jurisdiction under Article 142, we restrain ourselves from passing any such order, as prayed for by the applicant.

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 concerned

Ministry to the 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"

c) The plain language of Section 34 of 1996 Act clearly envisages that as and when the award is challenged as per the provisions of sub-section (3) of Section 34 within the stipulated time, it becomes inexecutable. The interim order tantamounts to execution of the award before the decision of objections filed under Section 34 of 1996 Act, which are pending adjudication and the next date before the Objecting Court is 17.10.2015. He further submits that in case such order is allowed to stand, it would defeat the very objective of the alternative dispute, resolution system to which the arbitration belongs.

d) The District Judge, Chandigarh failed to appreciate that the objections filed under Section 34 of 1996 Act and the application filed by the respondents under Section 9 were being proceeded on the same dates and the issue involved in both the petitions was interconnected. The Court below ought not to have interdicted by passing the impugned order.

e) After the amendment, there is a total sea change in the new Act, i.e., on juxtaposition of the provisions of 1940 Act and 1996 Act, there is a complete profound transformation inasmuch as that 1940 Act envisaged the interim measures post award, much less, empowers the Court to pass such interim orders in case it is apparently found that the party against whom the award has been passed intended to defeat, delay or obstruct the execution of the decree, but, however, no such provision has been prescribed in 1996 Act. Even the recommendations of the Law Commission are still under consideration and the Act is yet to be amended and so long so the 1996 Act is not amended, interim order is not sustainable in the eyes of law.

The judgments rendered by the Constitutional Bench in **M/s SBP & Co. Versus M/s Patel Engineering Ltd. and another, (2005) 8 Supreme Court Cases 618** would not apply for the reason that it pertained to a dispute which revolved around the functioning of the Chief Justice and his designate under Section 11 of 1996 Act and not with regard to the grant of interim measures as envisaged under Section 9 of the Act. The provisions of Section 9 only apply prior to the reference of dispute to the arbitrator and post reference, the aggrieved party would have remedy to seek interim measure as per the provisions of 17 of 1996 Act and not in the manner and mode, i.e., the post award when the objections against the impugned order are pending adjudication.

The Hon'ble Supreme Court in **M/s Sundaram Finance Ltd. Versus M/s NEPC India Ltd., (1999) 2 Supreme Court Cases 479** dealt with the grant of interim measures by the Court prior/during referring the dispute to the arbitrator and not after the passing of the award and in this contest, relied upon paragraphs 15, 16 and 19 of the judgment.

By referring to the judgment in **M/s.Afcons Infrastructure Ltd. (supra),** he has built his argument, to submit that after discussing the provisions of Section 9 read with Section 36 of 1996 Act, it has unequivocally been held that the order of full deposit of arbitral award would tantamount to and be in aid of execution of the award inasmuch as that the money award statutorily remains inexecutable and unenforceable and the Court must be guided by the parameters under Section 9 read with Section 36 of 1996 Act, which does not permit the Court to order a deposit as it would amount to appeal against the decree or order of the Court. He further submits that in case the appellant fails to furnish the bank security as directed, the charge on the Optionally Convertible Debentures will be created, which will seriously prejudice and effect the working of the Company and, thus, prays that the impugned order be set-aside and the direction be issued to the Objecting Court to decide the objections as expeditiously as possible.

Mr.Puneet Bali, learned Senior Counsel assisted by Mr.Inderjit Kaushal, Advocate for the respondents submits that the conduct of the appellant has not been fair, rather dishonest inasmuch as that before referring the alleged dispute to the arbitrator, the appellant-Company had initiated proceedings under Section 9 of 1996 Act and as per the order passed by this Court in FAO No.404 of 2009, the respondents were restrained not to alienate the property in dispute. However, since the arbitrator has rendered the award in favour of the respondents, the appellant has taken a volte-face in contesting with vigor an application filed under Section 9 of 1996 Act on behalf of the respondents. He further submits that apprehending suspicious activities at the behest of the appellant, the respondent-caveators filed an application under Section 9 of 1996 Act and the Objecting Court, vide order dated 15.3.2013, restrained the appellant from alienating, in any manner, the immovable properties, shares and securities, money held in bank accounts. The order dated 15.3.2013 reads thus:-

> "*BEFORE THE HONBLE DISTRICT JUDGE, CHANDIGARH*
> *Arbitration Case No.60 of 2013*
> *M/s CHANDIGARH SPUN PIPE COMPANY AND ORS*
> *PETITIONERS*
> *VERSUS*
> *FORNAX REAL ESTATE LTD. AND OTHERS*
> *RESPONDENTS*
>
> *Present: Sh.Inderjit Kaushal, Counsel for the petitioner.*
> *Petition under Section 9 of the Arbitration and Conciliation Act received by way of fresh institution, it be checked and registered adjournment prayed to address the arguments for grant of expert interim protection, to come up on 15.03.2013 for arguments.*
> *Sd/-S.K.Aggarwal DJ/14.03.2013*
>
> *Present: Sh.Inderjit Kaushal, Counsel for the Petitioner*
> *Heard. A prayer to grant the exparte order of interim*

protection pending execution of the arbitral award, dated 21.01.2013 has been made. Let, notice of the petition be issued to the respondents for 20.03.2013 and in the mean while, respondent No.1 is restrained from alienating in any manner immovable properties, shares and securities, money held in bank accounts, copy of petition and process fee of Rs.50/- already attached.

Sd/-S.K.Aggarwal DJ/15.03.2013"

Even after the passing of the aforementioned order, the appellant-Company withdrew ₹111 Crores from their account and transferred in the name of Lucina Land Development Limited, a fellow subsidiary company. Apprehending that the respondents would not be able to seek execution of the same being decree-holders, the Objecting Court passed the impugned order directing them to furnish the bank guarantee. He has further drawn the attention of this Court to the provisions of Section 9 of 1996 Act, which reads thus:-

"9. Interim measures, etc. by Court.—A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court—

(i) for the appointment of a guardian for a minor or a person of unsound mind for the purposes of arbitral proceedings; or

(ii) for an interim measure of protection in respect of any of the following matters, namely:—

(a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;

(b) securing the amount in dispute in the arbitration;

(c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising

for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

(d) interim injunction or the appointment of a receiver;

(e) such other interim measure of protection as may appear to the court to be just and convenient, and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it."

By referring to the aforementioned provisions, he has relied upon sub-clauses (b), (d) and (e) of Clause (ii) of Section 9 of 1996 Act to say that the Court "before or during" the arbitral proceedings or at any time "after" making arbitral award but before it is enforced, can pass an order for securing the amount in dispute in the arbitration, the interim injunction and such other interim measure of protection as it may appear to the Court to be just and convenient. In support of his aforementioned contention, has relied upon the Division Bench judgment of Andhra Pradesh High Court rendered in **I.Sudershan Rao and others Versus Evershine Builders Private Limited Mumbai and another, 2013(2) ArbiLR 52** to contend that a similar occasion arose before the Court of Andhra Pradesh and after taking into consideration the judgments rendered by the Hon'ble Supreme Court in **National Buildings Construction Corporation Ltd.** and **National Aluminium Co.Ltd,** (supra) held that the aforementioned judgments did not refer to the power of the Court under Section 9 of 1996 Act. He has referred to Paras 8, 9, 10, 11 to 16 and then para 26 of the judgment. The same read thus:-

8. Thus, the first point to be considered is whether Section 9 of the Act has no application to a situation where the award is passed and consequently the present AOP is not maintainable. Section 9 of the Act provides for grant of interim relief by the court and the object of this provision is too well known to require any mention here. The opening words of Section 9 read "a party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with Section 36, apply to a court" and the section then sets out various types of interim reliefs which can be sought by a party. It is clear that the words "at any time after the making of the arbitral award but before it is enforced in accordance with Section 36" clearly show that the interim reliefs stipulated in the said section can be sought even after the passing of the award but before it becomes enforceable.

9. Section 36 of the Act enacts that an arbitral award becomes enforceable like a civil court decree, where the time for filing an application under Section 34 of the Act for setting it aside has expired or when such an application if already filed, is dismissed by the court. In the present case, AOP.Nos.713 of 2009, 328 of 2011 and 329 of 2011 which are filed against the award in question are still pending and therefore in view of Section 36, it follows that the award has not become enforceable. In the above circumstances and in the light of the plain language of Section 9, Sri Ramakrishna Reddy's contention under this point cannot be accepted.

10. Sri Ramakrishna Reddy relied upon two decisions of the Supreme Court, one in National Buildings Construction Corpn. Ltd. v. Lloyds Insulation India Ltd., (2005) 2 SCC 367 and the other in National Aluminium Co. Ltd. v. Pressteel & Fabrications (P) Ltd., (2004) 1 SCC 540. We have gone through the two decisions and are of the considered view that *they do not deal with Section 9 and its scope at all and they cannot be considered an authority for the proposition that Section 9 has no application for grant of interim reliefs after the passing of the award. A perusal of the said two decisions would show that they are an authority for the proposition that a part of the award cannot be enforced in view of Section 36 of the Act even though it is not challenged, as the whole award is made unenforceable when an application is made under Section 34 challenging the other part of the award and is pending. As Sri Ramakrishna Reddy placed heavy reliance upon the above two decisions, we propose to set out the facts and the conclusions reached by the Supreme Court in the said two decisions.*

11. In National Buildings Construction Corpn. Ltd. (1 supra), the facts are these. The appellant and the respondent (before the Supreme Court) entered into an agreement under which the respondent was to supply certain material and make construction. Disputes having arisen between them, they were referred to arbitration and both parties filed claims and counter claims. Ultimately, the arbitrator by his award held that Rs.13,97,072.24 ps. was due to the respondent and Rs.9,85,316/- was due to the appellant. The arbitrator then held that the respondent was entitled to recover a sum of Rs.4,11,756/- which was the difference between the aforesaid two amounts.

12. The respondent challenged that part of the award which went in favour of the appellant, and at the same time sought execution of the award for Rs.13,97,072.24 ps. in his favour and succeeded in the High Court. On appeal, the Supreme Court held that since the award was a composite one dealing with both the claims, it was unenforceable as a whole in view of Section 36 of the Act, since the application by the respondent under Section 34 of the Act for setting aside that *portion of the award which was in favour of the appellant, was pending.*

13. The Supreme Court after setting out the facts and legal position in para 6 of the judgment held as follows after considering the principle or ratio laid down in the case of National Aluminium Co. Ltd. (2 supra) which is the second decision relied upon by Sri Ramakrishna Reddy.

> *"6. We are of the view that the award clearly states that after an adjustment of accounts, the only amount payable by the appellant to the respondent was Rs.4,11,756. How the arbitrator arrived at this figure is not for us to see. For the purposes of Section 36 of the Act, the court cannot be called upon to go behind the awarded amount and deal with the processes by which the amount was arrived at. There is on record only one award for the amount of Rs.4,11,756. Even though the respondent claims that the application under Section 34 was filed in respect of part of the award, it is in fact only a process by which the arbitrator has arrived at the awarded amount. This would mean that the award as a whole cannot be enforced under Section 36 of the Act. As held by the Court in National Aluminium Co. Ltd. (SCC p.546, para 10).*
>
> *"... the mandatory language of Section 34 (Section 36) of the 1996 Act, that an award, when challenged under Section 34 within the time stipulated therein, becomes unexecutable. There is no discretion left with the court to pass any interlocutory order in regard to the said award except to adjudicate on the correctness of the claim made by the applicant therein. Therefore, that being the legislative intent, any direction from us contrary to that, also becomes impermissible."*

14. The Supreme Court in substance refused to enforce a *partial award which was in favour of the party who sought its enforcement, on the ground that when an application is filed under Section 34 of the Act questioning the award, the whole of the award becomes unenforceable or inexecutable and held that it cannot exercise its jurisdiction even under Article 142 of the Constitution, in the face of the language of Section 36 of the Act.*

15. In para 11 of the judgment in National Aluminium Co. Ltd. (2 supra), the Supreme Court dealt with certain recommendations by the Law Commission and expressed the hope that Section 34 should be amended to provide for enforcement of that portion of the award which is not under challenge; and observed as follows.

> *"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."*

16. The observations in the above two decisions about lack of power in the court to pass interlocutory order with respect to the award relate only to the enforcement of a part of the award when the other part alone is challenged under Section 34 and when that challenge is pending, but not with reference to the power of the court under Section 9 of the Act which *speaks of granting interim relief even after passing of the award. Thus the above observations do not support the contention of Sri Ramakrishna Reddy.*

26. Section 9 relating to interim measures/reliefs is silent about the criteria and procedure which should be kept in view by the court while granting interim reliefs. However, Section 9 itself reads that the court while dealing with applications for interim reliefs shall have the same power of making orders as it has for the purpose of, and in relation to, any proceedings before it. A perusal of various interim reliefs including interim injunctions which can be granted under Section 9 of the Act would show that they are similar to those enumerated in Order 39 of the Code of Civil Procedure, 1908 (for short the Code), and can be termed to be in the nature of supplemental proceedings contemplated under Section 94 of the Code which are always taken in aid of final adjudication of a matter. Even sub-section (1) of section 37 of the Specific Relief Act, 1963, which is the law governing injunctions says that temporary injunctions are regulated by the Code. It therefore follows that interim injunctions to be granted under Section 9 are governed by the criteria and the guiding factors stated in Order 39 of the Code. No dispute has been raised on this aspect by either side."

By referring to the aforementioned judgments, he has submitted that Section 9 of 1996 Act relates to interim measures/reliefs, which should be kept in view by the Court while granting interim reliefs. In essence, on going through the provisions of Section 9, the powers of the Court are similar to those enumerated in Order 39 of the Civil Procedure Code and can be termed to be in the nature of supplemental, proceedings contemplated under Section 94 of the Code. He further submits that even sub-section (1) of Section 37 of the Specific Relief Act, 1963 says that temporary injunctions are regulated by the Code, thus, there is illegality and perversity in the interim injunction granted by the Court while entertaining an application under Section 9 of 1996 Act.

He further submits that both the judgments relied upon by the appellant did not pertain to the applicability of the provisions of Section 9 of 1996 Act and were confined only to execution of whole or part of the award during the pendency of the objections under Section 34 of 1996 Act. There is no dispute to the fact that so long so the objections under Section 34 are pending, the award cannot be executed and the order impugned cannot be said, much less, tantamounts to execution of the award being a decree and has been passed only to protect the right and interest of the respondents in whose favour the award has been passed. He further submits that the judgment rendered by the Andhra Pradesh High Court was assailed before the Hon'ble Supreme Court vide SLP(C) No.31464 of 2012 and vide order dated 14.7.2014, the same was dismissed as withdrawn. He further submits that since the Hon'ble Supreme Court in **Firm Ashok Traders and another (supra)** had an occasion to ponder upon the applicability of provisions of Section 9 of 1996 Act vis-a-vis grant of interim relief, pre arbitration stage and while referring to the provisions of Section 9, which has been referred to in paragraph 18 of the said judgment, it observed that need for Section 9 in spite of Section 17 has been enacted for the reason that Section 17 would operate only during the existence of of the Arbitral Tribunal as its being functional but so far as the period pre and post the arbitral proceedings is concerned, the party requiring an interim measure of protection shall have to approach only the Court, which obligates the Court to pass any order while deciding the application filed, if any and, thus, prays that the appeal be dismissed as there is no illegality and perversity in the order under challenge.

Mr.Gupta, in rebuttal, submits that the Hon'ble Supreme Court in **Firm Ashok Traders and another (supra)** had an occasion to refer the provisions of Section 9 while deciding the controversy arose between the unregistered partnership firm with regard to interim measure at pre-arbitral stage. In essence, that in case the party is able to seek any interim relief under the provisions of Section 9, it can not lie in slumber without resorting to the adjudication of the dispute by seeking appointment of arbitrator either on account of agreement between the parties or through the intervention of the Court.

I have heard the learned counsel for the parties and appraised the paper book.

A plain reading of Section 9 of 1996 Act, leaves no manner of doubt that the Court has jurisdiction to pass any interim measure, much less, any injunction in order to secure the amount in dispute after making of arbitral award. In my view, the ratio decidendi culled out by the Division Bench of the Andhra Pradesh High Court is squarely applicable to the facts and circumstances of the present case inasmuch as that the ratio decidendi culled out by the Hon'ble Supreme Court in **National Buildings Construction Corporation Ltd.** and **National Aluminium Co.Ltd, (supra),** did not deal with the applicability of provisions of Section 9 post award, in case affected party intended to squander away its moveable and immovable assets, and its scope, as it only dealt with the enforcement/execution of the award during the pendency of the objections under Section 34 of 1996 Act. As per the facts of the aforementioned cases, the party had moved an application for execution of the award during pendency of the objections, which was ultimately denied on the premise that there would be an automatic stay, the moment the award is being challenged within the time prescribed under Section 34(3) of 1996 Act. In essence, Section 36 of 1996 Act would come into force and the award would remain unenforceable till the objections under Section 34 are rejected. The observations of the Hon'ble Supreme Court in **National Buildings Construction Corporation Ltd.** and **National Aluminium Co.Ltd,** did not deal with the power of the Court to pass an interlocutory order with respect to the award, which was, in part, sought to be executed. There is no reference or discussion vis-a-vis the power of the Court by invoking the provisions of Section 9 of the Act, in essence, envisioning the stage/situation, which may arise post arbitration award, i.e., during the pendency of the objections.

No doubt, in **Firm Ashok Traders and another Versus Gurumukh Das Saluja and others, (2004) 3 Supreme Court Cases 155,** the Hon'ble Supreme Court adjudicated a lis between the parties at an pre-arbitral proceedings and not with regard to the post arbitral award, but traversed through the provisions of 1996 Act to say that there was no ultimate analysis to the said provisions, i.e., as to whether the Court would have jurisdiction to grant interim measure while entertaining the application under Section 9 of 1996 Act during the pendency of the objections filed under Section 34 of 1996 Act. The conduct of the appellant in siphoning of the funds is writ large. During the course of arguments, Mr.Puneet Bali has referred to the balance sheet of the appellant-company to show that during the financial year 1.4.2013 to 31.3.2014, the appellant has taken out a sum of ₹1,11,45,000/- and had put in the account of Lucina Land Development Limited. Thus, in order to secure the amount of the awarded amount, in case the award is upheld, the respondents would not be able to seek execution of the award being the decree-holders, thus, plea/contention of Mr.Gupta, noticed above, that Objecting Court could not have entertained nor had jurisdiction to pass any interim order, during the pendency of objections, is hereby rejected/repelled and, in my view, the respondents would be left in lurch, in essence, award being decree would remain unenforceable. Thus, the view expressed by the Court below that in case the appellant is not put any condition, the respondents would suffer irreparable damages and injury is upheld and rightly so, the appellant has been directed to furnish the security/bank guarantee. Mr.Puneet Bali, during the course of hearing, submitted that he would be satisfied in case the appellant-company furnishes a bank guarantee and his client would not be interested in seeking the charge of the Optionally Convertible Debentures as the value of the debentures keeps on fluctuating, though as per the affidavit filed by the appellant, the value of the debentures was almost ₹111 Crores.

Keeping in view my aforementioned observations, I do not find any substance in the submissions made on behalf of the appellant. I also do not find any illegality and perversity in the order under challenge. The same is accordingly upheld.

The observations shall not be construed as an expression on merits and demerits of the pending objections.

Resultantly, the appeal is dismissed.

October 15th, 2015 **(AMIT RAWAL)**
ramesh **JUDGE**