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IN THE HIGH COURT OF DELHI AT NEW DELHI

Reserved on: April 6, 2015

Decision on: May 1, 2015

O.M.P. 1349/2014

ASPIRE INVESTMENTS PVT LTD. Petitioner

Through: Mr. T.K. Ganju, Senior Advocate
with Mr. Atish Dipankar, Advocate.

versus

NEXGEN EDUSOLUTIONS PVT LTD. Respondent

Through: Mr. Sangram Patnaik,
Mr. Vikramjeet and Ms. Tehrina Hussain,
Advocates.

CORAM: JUSTICE S. MURALIDHAR

J U D G M E N T

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01.05.2015

1. The challenge in this petition under Section 34 of the Arbitration and Conciliation Act of 1996, ('Act'), by the Petitioner Aspire Investments Pvt. Ltd. ('ASPL') is to an interim Award dated 26th June 2014 passed by the sole Arbitrator dismissing the application filed by the Petitioner under Order XII Rule 6 CPC read with Section 31 of the Act.

Background

2. The background to the present petition is that the premises at Flat Nos. F 601-608 and F 610-619 on the 6th Floor of Aditya Tower Building, Plot No.5, Laxmi Nagar, District Centre, Delhi was given on lease by the Petitioner to the Respondent Nexgen Edusolutions Pvt. Ltd. ('NEPL') on a monthly rent of Rs.1,50,000 under lease dated 27th March 2008. Although the lease deed stated that the lease was for a period of ten years admittedly the lease deed was unregistered and, therefore, it was in effect a month to month tenancy. Initially for a period of three months the Respondent was required to pay Rs.75,000 per month to account for the period to make the leased premises habitable. The full rent of Rs.1,50,000 was payable from 27th June 2008 onwards. The Respondent paid the Petitioner Rs.9 lakhs as security deposit and advance rent for the initial three months.

3. According to the Petitioner, the Respondent failed to pay rent after taking possession of the leased premises. Despite several reminders the default continued. By a notice dated 13th October 2008, the Petitioner terminated the tenancy. The Respondent was asked to vacate and hand over the possession of the leased premises on or before 1st November 2008.

4. In its reply dated 23rd October 2008, the Respondent contended that it had to repair the roof top and the expenses incurred thereby was required to be reimbursed by the Petitioner. It maintained that the

lease deed was typed on requisite stamp paper and, therefore, there was no question of month to month tenancy. The Respondent claimed Rs.35.5 lakhs from the Petitioner reserving its right to sue the Petitioner.

Suit filed by the Petitioner

5. The Petitioner then filed CS (OS) 192 of 2009 in this Court against the Respondent for recovery of possession, arrears of rent with the prayer that the Respondent should be directed to hand over physical possession of the leased premises to the Petitioner. Along with the suit, the Petitioner also filed IA No. 1286 of 2009 under Order XXXIX Rule 10 CPC seeking directions to pay the Petitioner *mesne* profits and damages. In the suit, Respondent filed a counter-claim seeking a decree against the Petitioner in the sum of Rs.30,75,155 towards repair of the premises and Rs.3,52,750 towards the repair of the roof along with *pendente lite* and future interest, Rs.50 lakhs towards the loss of business opportunity, reputation and goodwill and Rs.20 lakhs on account of mental agony, harassment etc. The Respondent also filed IA No. 5332/2009 under Section 8 of the Act seeking reference of the disputes to arbitration.

6. In its order dated 14th July 2009, the Court noted that with the Respondent being unable to show that it had paid the monthly rent under the lease deed from 27th June 2008, the prayer in IA No.

1286/2009 under Order XXXIX Rule 10 CPC ought to be granted. The Court noted that the Respondent sought one week's time to bring the pay order in the sum of Rs.18 lakhs without prejudice to its rights and contentions. On 24th July 2009, Mr. Santosh Mangal, a Director of the Respondent, was present in Court and made a statement to the effect that he had on that day paid the Petitioner a sum of Rs.4,89,140 being the first instalment of arrears of rent @ Rs.1,50,000 less TDS for the period 1st August 2008 to 1st July 2009. He undertook to pay the next instalment of the same amount on 31st August 2009 and the third instalment of the same amount on or before 30th September 2009. He undertook to pay the current rent as and when it would fall due from 1st August 2009. The Court then disposed of the application under Order XXXIX Rule 10 CPC.

7. On 24th November 2009, the Petitioner's Suit CS (OS) No. 192/2009 was disposed of with the Respondent's application under Section 8 of the Act seeking reference of the disputes to arbitration being allowed by the Court. Thereafter the Respondent filed an application being Arbitration Petition no. 459/2009 under Section 11 (6) of the Act seeking the appointment of an Arbitrator. The said petition was disposed of by the Court on 17th May 2010 appointing a former Judge of this Court as a sole Arbitrator. It is stated that around October 2010, the Respondent again defaulted in payment of the mesne profits/rent in terms of the order passed by the Court on 24th July 2009.

Petitioner's Application before the Arbitrator

8. Before the learned Arbitrator, the Respondent filed a claim inter alia seeking specific performance and registration of the lease deed. The Petitioner then filed an application under Order XII Rule 6 CPC read with Section 31 of the Act seeking possession of the suit premises. It was contended before the learned Arbitrator that with notice for termination of tenancy in terms of Section 106 of the Transfer of Property Act, ('TP Act') having been duly served and with the tenancy being on a month to month basis, the Respondent was continuing in the premises without any authority of law after the expiry of 15 days of the service of notice in terms of Section 106 of the TP Act. It was accordingly submitted that the decree for possession can be straightway passed on the admitted facts of existence of relationship of landlord and tenant since the rent was more than Rs.3,500 per month. It was further pointed out that the unregistered lease deed could not be looked into even for collateral purposes under Section 49 of the Registration Act. Reference was also made to Section 17 (1A) of the Registration Act.

9. The above application was resisted by the Respondent by contending that the issue framed by the learned Arbitrator on 17th November 2012 was inter-connected with the issue raised in the application and that if the application of the Petitioner were to be allowed it would not only straightway decree the counter-claim but

would decide the issue at the initial stage and without trial. The Respondent also referred to the proviso to Section 49 of the Registration Act which stated that even an unregistered document affecting immovable property may be received as an evidence of a contract in a suit for specific performance or of evidence of any collateral transaction not requiring registration of the documents.

10. Reference was also made to Section 17(1A) and Section 53A of the TP Act which when read with Section 49 of the Registration Act should persuade the Arbitrator to conclude that lease was for a period of ten years and could be terminated only in terms of the said lease deed. It was further submitted that an education institution would stand on a different footing and a tenancy involving such institution would have to be viewed differently. Allowing an application of the Petitioner seeking possession of the premises would cause irreparable loss not only to the Respondent but also to several students pursuing their course. Reliance was placed on the decision in *Sheth Maneklal Mansukhbhai v. Messers Hormusji Jamshedji Ginwalla & Sons (1950)1 SCR 75* where inter alia it was held that the defence under Section 53A of the TP Act was available to a person who had agreement of lease in his favour although no lease has been executed and registered.

Impugned interim Award of the Arbitrator

11. The learned Arbitrator in the impugned Award dated 26th June 2014 came to the following conclusions:

(a) The Petitioner could not have terminated the tenancy by giving notice under Section 106 of the TP Act since it was as much the responsibility of the Petitioner as the Respondent to get the lease deed, which was for ten years, registered.

(b) The intention of the Respondent was to take possession of the leased premises for ten years.

(c) The Petitioner cannot be allowed to take advantage of its own wrong in not coming forward to get this lease deed registered.

(d) Allowing the Petitioner's application at the interim stage would cause irreparable loss to the students along with the Respondent.

(e) Allowing the application at the initial stage would be amounting to allowing the counter-claim itself.

(f) It was not understandable that why the Petitioner avoided getting the lease deed registered.

(g) Since there was a serious dispute as to what prevented the Petitioner from taking steps to get the lease deed registered the provisions of Order XII Rule 6 CPC were not applicable.

(h) While there may be a dispute as regards the prayer for specific performance of a lease deed for ten years, the execution of the lease deed, the signatures thereon, the acceptance of rent continuously were

factors that persuaded the Arbitrator not to grant any interim relief to the Petitioner as prayed for.

(i) There could be no interim Award in the facts and circumstances of the case.

Submissions of counsel

12. It is first submitted by Mr. T.K.Ganju, learned Senior counsel appearing for the Petitioner that in the present case all three mandatory conditions for passing an Award on admission were clearly established and, therefore, an Award for possession of the leased premises was liable to be passed under Section 31 (6) of the Act. In other words, there was a landlord and tenant relationship, the rent was above Rs.3,500 per month and, there was a valid termination of tenancy with the Respondent having received the notice under Section 106 of the T.P. Act. An Award for possession was liable to be passed by the learned Arbitrator under Section 31(6) of the Act read with principles analogous to those under Order XII Rule 6 CPC. Mr. Ganju, relied on the decisions in ***Burmah Shell Oil Distributing v. Khaja Midhat Noor (1988) 3 SCC 44***, ***New Okhla Industrial Development Authority v. Army Welfare Housing Organization (2010) 9 SCC 354***, ***Samir Mukherjee v. Devinder Kumar Bajaj 71 (1998) DLT 477 (DB) (Del)*** and ***Jagat Taran Berry v. Sardar Sant Singh AIR 1980 Delhi 7*** to urge that a lease deed which is not registered would automatically

render the tenancy on a month to month basis which then was terminable by giving 15 days' notice.

13. Mr. Ganju next submitted that in terms of the decisions in *Avinash Kumar Chauhan v. Vijay Krishna Mishra* (2009) 2 SCC 532 and *SMS Tea Estates Pvt. Ltd. v. Chandmari Tea Co. Pvt. Ltd.*, 2011 (7) SCALE 747 an unregistered and unstamped lease deed, which was compulsorily registerable “cannot be read even for collateral purposes.” It is then submitted that the principles governing Order XII Rule 6 CPC would apply on arbitral proceedings. Reliance was placed on the decisions in *Charanjit Lal Mehra v. Kamal Saroj Mahajan* 2005(11) SCC 279, and *ITDC Ltd. v. Chandar Pal Sood & Son* 2000 (53) DRJ (DB) where the Court held that a lease extending one year could only have been extended by executing a registered document by a lessor or lessee and in the absence of a registered document it must be a monthly lease. This was affirmed by the Division Bench in *Vijaya Myne v. Satya Bhushan Kaura* 142 (2007) DLT 483 (Del). For the proposition that the principles analogous to Order XII Rule 6 CPC applies to arbitral proceedings, reliance was placed on the decisions in *Rama Ghai v. U.P. State Handloom Corporation* 91 (2001) DLT 386, *Rajeev Saluja v. Bhartiya Industries Ltd.* AIR 2003 Delhi 142, *Kanwal Kishore Manchanda v. S.D. Technical Services Pvt. Ltd.* 121 (2005) DLT 98 and *K.N. Chhiber v. SAE India Ltd.* 2003 3 AD (Delhi) 561. It was submitted that an interim Award could be passed at any stage of proceedings. It was submitted that the

decisions in *Sunil Kapoor v. Himat Singh* 167 2010 DLT 806 and of the Punjab & Haryana High Court in *Sukhwinder Kapoor v. Himat Singh* AIR 2012 P&H 97 had taken note of the amendments to the Registration Act as well as TP Act.

14. Mr. Ganju further submitted that the claim for specific performance of the lease deed for registration cannot be granted since Section 23 of the Registration Act provides that a document which requires registration has to be presented within four months from the date of its execution. Where the document is not presented for registration within four months, the Registrar might direct such document to be accepted for registration on payment of a fine not exceeding ten times the amount of appropriate registration fees, provided that the extended period does not exceed four months. It is pointed out that the Respondent never presented the document for registration even within the extended period of another four months as required by Section 25 of the Registration Act. The lease deed could not now be registered since more than 8 months have elapsed. Since the Respondent had not availed of the statutory remedy under the Registration Act, the question of a direction being issued to the Petitioner to come forward to get the lease deed registered did not arise.

15. Finally it is submitted that the Court has, under Section 34 of the Act, the power to modify the impugned Award and even grant the

relief prayed for. Reliance is placed on the decisions in *Union of India v. Arctic India 2007 (4) Arb. LR 524 (Bom)*, *Union of India v. Modern Laminators Ltd. 2008 (3) Arb. LR 489 (Del)* and *Ms. G v. ISG Novasoft Technologies Ltd. (decision dated 2nd September 2014 in OMP No. 463/2012)*

16. Mr. Sangram Patnaik, learned counsel appearing for the Respondent, resisted the above pleas by submitting that since the learned Arbitrator has yet to consider the evidence, the impugned order dated 26th June 2014 cannot even be termed as an interim Award. He submitted that it was the Petitioner who defaulted in not coming forward for the registration and, therefore, the Respondent had no option other than going for arbitration. It is submitted that the limited scope of the powers of the Court under Section 34 (2) (b) (ii) should dissuade the Court from interfering with the impugned Award. Reliance was placed on *McDermott International Inc. v. Burn Standard Co. Ltd. (2006) 11 SCC 181* which holds that the Courts can interfere only in exceptional circumstances. There was no power to modify the Award. It can only “quash the Award leaving the parties free to begin the arbitration again if it is so desired.” Reliance was also placed on the decision in *Shyam Telecom Ltd. v. ICOMM Ltd. 2010 117 DRJ 642*. Mr. Patnaik submitted that the question of non-registration of the lease deed had any way been considered by the learned Arbitrator.

Nature of the impugned order

17. The Court would like to first examine the issue concerning the nature of the impugned order of the learned Arbitrator. By the impugned order the learned Arbitrator dismissed the Petitioner's application under Order XII Rule 6 CPC as not maintainable. In other words, the order was final as far that relief claimed by the Petitioner. Consequently, the order was in the nature of an Award as far as the said application was concerned. Since it was at the interlocutory stage, it could be termed as an interim Award. Resultantly it is amenable to challenge under the grounds set out in Section 34 of the Act.

Effect of non-registration of the lease deed

18. The Court finds that the basic premise on which the learned Arbitrator has proceeded is contrary to the settled legal position concerning compulsory registration of a lease deed where the period of lease is more than 11 months. The Arbitrator had to examine whether the Respondent could insist on a prayer requiring the Sub-Registrar to register the lease deed in its favour. One of the legal issues framed by the Arbitrator on 21st January 2012 reads as under:

“Whether the lease deed dated 27th March 2008 was required to be registered in favour of the Plaintiff in the office of the concerned Sub-Registrar and if so the consequences thereof?”

19. The learned Arbitrator proceeded on the basis that since it was as much the responsibility of the Petitioner as the Respondent to have the lease registered and since Petitioner did not cooperate in getting the lease deed registered even after several reminders, the Petitioner was precluded from treating the lease deed as a month to month tenancy and terminating it by giving notice under Section 106 of the TP Act. In doing that, the learned Arbitrator appears to have introduced a deemed legal fiction by which a document that required compulsory registration for it to be acted upon, was in fact treated as such even when it admittedly was not registered. The learned Arbitrator appears to have wholly overlooked the settled legal position regarding the mandatory nature of the statutory provisions requiring registration.

20. In the first place the learned Arbitrator ignored the effect of the amendment to the Registration Act with effect from 24th September 2001 when Section 17(1A) was introduced. Simultaneously both Sections 49 of the Registration Act and Section 53A of the TP Act were also amended. Section 17 (1A) of the Registration Act post the amendment with effect from 24th September 2001 reads as under:

“Section 17 (1A): The documents containing contracts to transfer for consideration, any immovable property for the purpose of Section 53A of the Transfer of Property Act, 1882 (4 of 1882) shall be registered if they have been executed on or after the commencement of the Registration and Other Related Laws (Amendment) Act, 2001 and if such documents are not registered on and

after such commencement, then they shall have no effect for the purposes of the said Section 53A.”

21. In the proviso to Section 49 of the Registration Act, the words “or as evidence of part performance of a contract for the purposes of Section 53A of the Transfer of Property Act, 1882” were omitted by Act 48 of 2001 with effect from 24th September 2001. The net result of the above amendments is that the benefit of Section 53A of the TP Act cannot be availed unless the document which is compulsorily registerable is actually registered. In the present case, therefore, the Respondent could not take advantage of Section 53A of the TP Act. Apart from the fact that what the present case involves is an agreement of lease and not an agreement to sell, the fact remains that the lease deed was in fact not registered.

22. The learned Arbitrator could not have entertained any prayer for specific performance for registration of the lease deed for more than one reason. The first is that under Section 23 of the Registration Act a document cannot be registered unless presented within four months from the date of execution. Under Section 25 of the Registration Act, the Registrar can accept a document presented after four months where the delay is properly explained and such delay in any event not exceed four months. However, he may impose a fine not exceeding ten times the registration fee. In the present case, the Respondent never presented the document for registration even within 8 months of

the date of document. Even assuming that the Petitioner did not come forward to get the document registered nothing prevented the Respondent from going to the office of the Sub-Registrar and demanding registration in which case the Registrar could require the Petitioner's presence.

23. Section 71 of the Registration Act states that the Sub-Registrar has to record his reasons for refusing registration of a document. Section 72 provides that an appeal against such order refusing registration would lie to the Registrar. Where the Registrar also refuses registration then under Section 77, the person aggrieved can even institute a suit in a civil court praying for a direction that the document be registered if such document is presented for registration within 30 days after the passing of such decree. Admittedly, the Respondent did not avail of any of the above remedies.

24. In similar circumstances where the statutory remedies were not availed of, the Court have refused to entertain prayer that the document should be directed to be registered (see ***Jhaman Mahton v. Amrit Mahton AIR 1946 Pat 62 (DB)***, ***Uma Jha v. Chetu Mander AIR 1926 Pat 89 (DB)*** and ***Rameshwar Prasad Sahi v. Mt. Anandi Devi AIR 1960 Pat 109***). In the last mentioned case, the Patna High Court observed as under:

“It was open to Plaintiff in the present case to present the document before the Registrar for registration under

Section 23 of the Indian Registration Act within a period of four months from the date of its execution. It was also open to him under S.25 of the Indian Registration Act, to present the document for registration after a further period of four months. There is also provision in Sec.75 of the Indian Registration Act for compulsory registration of the document, and Sec. 77 of the Act provides for the institution of a suit by the person aggrieved in case of refusal of registration by the Registrar of the document in question.

In the present case the Plaintiff did not take any steps under the Registration Act either for presenting the document before the Registrar or in getting it registered, and the failure of the Plaintiff to take any kind of action for a period of about twelve months is tantamount, in our opinion, to an abandonment of the contract and waiver of his rights to sue for specific performance. Delay of this kind is always fatal to the Plaintiff in a suit for specific performance, and it is well settled by numerous authorities that in a case of this description the Plaintiff is not entitled to a decree for specific performance of the contract which is a discretionary relief.”

25. Likewise in ***Ram Singh Sant Ram v. Jasmer Singh Hardit Singh*** AIR 1963 Punjab 100 (DB), the Court held that the sale deed could not be asked to be registered since more than 8 months had elapsed after the date on which it was executed.

26. The net result is that the learned Arbitrator could not have treated the unregistered lease deed as registered. The learned Arbitrator erred in ignoring the non-registration of the lease deed in question and treating the lease period as ten years and thereby holding that no notice of termination under Section 106 of the TP Act could have been issued by the Petitioner.

27. If the Arbitrator ultimately comes to the conclusion that the Petitioner was not justified in refusing to come forward to have the lease deed registered, the Arbitrator may at that stage consider any alternative relief provided such relief has been prayed for by the Respondent. Otherwise, the Arbitrator had to proceed on the basis that there was a valid notice of the termination of lease issued by the Petitioner to the Respondent which had to be given effect to.

28. Turning to the application filed by the Petitioner under Order XII Rule 6 CPC, in the considered view of the Court, the learned Arbitrator committed a patent illegality in observing that the said provision would not be applicable “as there is serious dispute as to what made the applicant not to take any steps to get the lease deed of a period of ten years registered particularly in view of the purpose for which it was given that is for running an Education Institute which could not have been run on a monthly basis.” The fact that the Respondent was running an educational institution was not relevant as far as the nature of the lease is concerned. There was no room for

equities as far as the requirement for registration of the lease deed was concerned. There was also no room for equities as regards the consequences of such non-registration.

Maintainability of the Petitioner's application

29. As far as Order XII Rule 6 CPC was concerned, in the context of the prayer made by the Petitioner, only three factors were really relevant:

- (i) Was there a relationship of landlord and tenant between the parties?
- (ii) Was the rent above Rs.3,500 per month?
- (iii) Was there a valid termination of the tenancy by issuance of notice by the landlord to the tenant?

30. The answers to all the above questions had to be in the affirmative on the pleadings of the parties. In ***Rama Ghai v. U.P. State Handloom Corporation*** (*supra*), this Court observed as under:

“7. As regards the provisions of Order 12 Rule 6 a decree can be passed either on admission of facts or on question of law. In the instant case the relationship of landlord and tenant is not in dispute nor the service of notice dated 12.12.1995 is in dispute nor the service of subsequent notices though the validity of last notice has been challenged. There is an unvarying unanimous current of opinion that once the relationship of landlord and tenant is established and termination of tenancy either by way of

efflux of time or by way of notice of termination is not in dispute nothing survives in the defence of the tenant against the decree for possession.

16. In order to invoke the provisions of Order 12 Rule 6, CPC the Court has to scrutinise the pleadings in their totality and ignore the evasive and unspecific denials either as to the relationship or as to the service of notice or as to the nature of tenancy.”

31. The above legal position was consistent with the settled legal position as explained by the Supreme Court in ***Charanjit Lal Mehra*** (*supra*). As far as arbitration proceedings are concerned, principles analogous to Order XII Rule 6 CPC have been held to be applicable. [see ***Numero Uno International Ltd. v. Prasar Bharti*** 2008 (5) RAJ 1 (DB) (Del),, ***Bharat Overseas Construction (P) Ltd. v. University Teachers Co-operative Housing Society Ltd.*** 1991 (1) Arb LR 234 (Del) and ***Naraindas R. Israni v. Delhi Development Authority*** 1994 (2) Arb LR 301 (Del).]

32. Consequently, the Court is of the view that impugned interim Award suffers from a patent illegality inasmuch as it held that the principles analogous to Order XII Rule 6 CPC were not applicable in arbitration proceedings. The Court also holds that the learned Arbitrator erred in observing that the grant of the interim relief prayed for by the Petitioner would be granting the final relief in the

Petitioner's counter-claim in the arbitral proceedings. It is seen that only one of the prayers was for restoration of possession. The other prayers were for damages. Even the Respondent has claimed damages from the Petitioner. Therefore, it is not as if nothing would survive in the arbitral proceedings if the Petitioner's application under Order XII Rule 6 CPC were to be allowed. For all the above reasons the Court holds that the impugned interim Award dated 26th June 2014 is unsustainable in law and requires to be set aside.

Consequential relief

33. In a dispute of the present nature, where initially a suit for possession was filed by the Petitioner and a counter-claim was filed by the Respondent in the said suit claiming the relief of specific performance, where the disputes are ultimately referred to arbitration, the parties cannot be placed in a more disadvantageous position than they would if the suit had continued. If the arbitration proceedings do not provide a more efficacious remedy than available in a civil suit then the very purpose of arbitral proceedings might get defeated. In other words, if the power of an Arbitrator to grant relief analogous to that which could be granted in terms of Order XII Rule 6 CPC is not recognised, arbitration will turn out to be an inefficacious and pointless remedy which could never have been intended by the legislature.

34. This approach is necessary for dealing with the further aspect in the matter as to the kind of relief that can be granted by the Court where it comes to the conclusion that a relief that ought to have been granted by an Arbitrator was wrongly declined. The Court is conscious of the limitations of the consequential reliefs that can be granted by a Court as noticed in *McDermott International Inc. v. Burn Standard Co. Ltd.* (supra). Only yesterday in *Puri Construction P. Ltd. v. Larsen and Toubro* (decision dated 30th April 2015 in FAO (OS) No. 21 of 2009) a Division Bench (DB) of this Court re-visited the question and impliedly overruled the view taken in *Union of India v. Modern Laminators Ltd.*; *Union of India v. Arctic India* and *Ms. G v. ISG Novasoft Technologies Ltd.* (supra) that inherent in the powers of the Court under Section 34 of the Act is the power to modify an Award. The DB has approved the decisions in *Managing Director v. Asha Talwar 2009 (5) ALJ 397*, *Cybernetics Network Pvt. Ltd. v. Bisquare Technologies Pvt. Ltd.*, 188 (2012) DLT 172 *Bharti Cellular Limited v. Department of Telecommunications*, 2012 (4) Arb LR 473 (Delhi), *State Trading Corporation of India Ltd. v. Toepfer International Asia PTE Ltd.*, 2014 (3) Arb LR 105 (Delhi); *Delhi Development Authority v. Bhardwaj Brothers*, AIR 2014 Delhi 147 and *Central Warehousing Corporation v A.S.A. Transport*, (2008) 3 MLJ 382 all of which held that once an award has been set aside, consequential reliefs cannot be granted under Section 34. After discussing the above decision, the DB concluded:

“This Court is inclined to follow the decisions in *Central Warehousing Corporation*, *Delhi Development Authority*, *State*

Trading Corporation of India Ltd., Bharti Cellular Limited, Cybernetics Network Pvt. Ltd. and Asha Talwar. The guiding principle on this issue was laid down by the Supreme Court in *McDermott International Inc.* (supra), where the Court held:

“The 1996 Act makes provision for the supervisory role of courts, for the review of the arbitral award only to ensure fairness. Intervention of the court is envisaged in few circumstances only, like, in case of fraud or bias by the arbitrators, violation of natural justice, etc. The court cannot correct errors of the arbitrators. It can only quash the award leaving the parties free to begin the arbitration again if it is desired. So, scheme of the provision aims at keeping the supervisory role of the court at minimum level and this can be justified as parties to the agreement make a conscious decision to exclude the court's jurisdiction by opting for arbitration as they prefer the expediency and finality offered by it.”

35. Turning to the case on hand, the impugned interim Award which dismissed the Petitioner's application has been held to be unsustainable in law. However, in terms of the above decision in ***Puri Construction P. Ltd. v. Larsen and Toubro*** (supra), this Court cannot grant the consequential relief of allowing the said application. Nevertheless, since the arbitral proceedings are continuing, and the application in question seeks interlocutory relief, the effect of the Court's present order would be that the said application would stand restored to the file of the Arbitrator.

36. Accordingly, the Court sets aside the impugned interim Award dated 26th June 2014 and restores the Petitioner's application in

question to the file of the Arbitrator for passing appropriate orders thereon in light of this judgment.

37. The petition is accordingly allowed with the above directions with costs of Rs. 10,000 which will be paid by the Respondent to the Petitioner within four weeks.

MAY 1, 2015/dn

S. MURALIDHAR, J

