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

+ W.P.(C) No. 8085/2015

RAJEEV GUPTA Petitioner

Through: Mr. Sanjay Kumar, Adv.

Versus

DELHI METRO RAIL CORPORATION LIMITED Respondent

Through: Mr. Rajiv Chandhiok, Adv. with Mr.
Puneet Garg, Law Officer.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **15.09.2015**

1. Passover is sought on behalf of the counsel for the petitioner.
2. The counsel for the respondent appearing on advance notice states that the petitioner, by keeping this petition alive, is seeking adjournments before the Arbitral Tribunal.
3. The petition impugns the order dated 25th April, 2015 of the Sole Arbitrator, in arbitration underway between the petitioner and the respondent Delhi Metro Rail Corporation Limited (DMRC) under the provisions of the Arbitration and Conciliation Act, 1996.
4. The petition is entirely misconceived. It is the settled position in law that the writ petitions with respect to the arbitral proceedings are not maintainable. The seven Judge Bench of the Supreme Court in ***S.B.P. and Co. Vs. Patel Engineering Ltd.*** (2005) 8 SCC 618 held that there is no warrant for the approach adopted by some of the High Courts that any order passed by an Arbitral Tribunal during arbitration would be capable of being

challenged under Article 226 or 227 of the Constitution of India. It was held, (i) that Section 37 of the Arbitration Act makes certain orders of the Arbitral Tribunal appealable; (ii) under Section 34 the aggrieved party has an avenue for ventilating his grievance against the award including any in-between orders that might have been passed by the Arbitral Tribunal acting under Section 16 of the Act; (iii) that the party aggrieved by any order of the Arbitral Tribunal, unless has a right of appeal under Section 37 of the Act, has to wait until the award is passed by the Tribunal - this appears to be the scheme of the Act; (iv) the Arbitral Tribunal is after all, the creature of a contract between the parties i.e. Arbitration Agreement even though if the occasion arises, the Chief Justice may constitute it based on the contract between the parties; but that would not alter the status of the Arbitral Tribunal; it will still be a forum chosen by the parties by agreement; that thus the orders passed by the Arbitral Tribunal are capable of being corrected by the High Court under Article 226 or 227 of the Constitution and such an intervention by the High Courts, is not permissible; (v) that the object of minimizing judicial intervention while the matter is in the process of being arbitrated upon, will certainly be defeated if the High Court could be approached under Article 227 or under Article 226 of the Constitution against every order made by the Arbitral Tribunal; and, (vi) therefore it is necessary that once the arbitration has commenced in the Arbitral Tribunal, parties have to wait until the award is pronounced unless of course a right of appeal is available to them under Section 37 of the Act even at an earlier stage.

5. A Division Bench of this Court in ***Awasthi Construction Co. Vs. Govt. of NCT of Delhi*** MANU/DE/5926/2012 faced with the same issue was shown a judgment of the High Court of Patna in ***Senbo Engineering Limited v. State of Bihar*** AIR 2004 Patna 33 and noticed that the High Courts of Bombay and Allahabad also have held the writ remedy to be available against an order of the Arbitral Tribunal against which no remedy was available but differed from the same. The same view has been reiterated by the subsequent Division Benches in ***ATV Projects India Ltd. Vs. Indian Oil Corporation Ltd.*** 200 (2013) DLT 553 and in ***Dhanraj Bajaj and Company vs. Navodaya Vidyalaya Samiti*** MANU/DE/2288/2014.
6. The Supreme Court in ***Lalitkumar V. Sanghavi Vs. Dharamdas V. Sanghavi*** (2014)7 SCC 255 held that the view taken by the Bombay High Court that against an order of the Arbitral Tribunal jurisdiction of the High Court under Article 226 of the Constitution can be invoked is not in accordance with law laid down in ***S.B.P. and Co.*** supra.
7. At this stage, the counsel for the petitioner appears but upon being asked to show as to how the writ petition lies against an order of the Arbitral Tribunal, only states that an Arbitral Tribunal is a Court and since against the orders of the Court, petitions under Article 227 of the Constitution of India are maintainable, this petition would lie.
8. Interestingly, this petition has not been filed as a petition under Article 227 which would bear the nomenclature CM(M) but as a petition under Article 226 of the Constitution of India.
9. The counsel for the petitioner then seeks adjournment to search the case law to support maintainability of the petition.

10. The Supreme Court and Division Benches of this Court having pronounced on the matter, the question of granting any adjournment does not arise; even otherwise, the counsel ought to have prepared the matter before filing the petition and / or before appearing in the same, inasmuch as the listing itself of the petition was subject to the objection as to the maintainability on this aspect.

11. Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 15, 2015

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