

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

ARBITRATION PETITION (LODG.) NO. 306 OF 2016

M/s. Schneider Electric Pvt. Ltd. .. Petitioner
Vs.
M/s. Palm Grove Beach Hotels Pvt. Ltd and Anr. .. Respondents

Mr.Sandeep Waghmare for petitioner.
Mr.M.M. Vashi, senior advocate a/w. Ms.Aparna Devekar i/b M.P. Vashi Associates for respondent no.1.

**CORAM : K.R.SHRIRAM, J.
DATE : 1ST APRIL, 2016**

P.C.

1 This application is made under Section 9 of the Arbitration and Conciliation Act, 1996 (for short, the 'said Act'). The application was lodged on 25th February 2016. Section 9 of the said Act underwent an amendment pursuant to the Arbitration and Conciliation (Amendment) Act, 2015, that came into effect on 23rd October 2015. Section 9 as amended reads as under :

9 Interim measures etc. by Court. --[(1)] 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 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 part) 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.

(2) Where, before the commencement of the arbitral proceedings, a Court passes an order for any interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the Court may determine.

(3) Once the arbitral tribunal has been constituted, the Court shall not entertain an application under sub-section (1), unless the Court finds that circumstances exist which may not render the remedy provided under section 17 efficacious.”.

2 Therefore, Sub-section (3) of Section 9 warrants that once the arbitral tribunal has been constituted, the Court shall not entertain an application under sub-section (1), unless the Court finds that circumstances exist which may not render the remedy provided under section 17 efficacious.

3 Admittedly, the Arbitral Tribunal is constituted and the tribunal consists of three Retired Judges of the Supreme Court of India, one of whom was the Chief Justice of India. The Tribunal held hearing on 10th March 2016 and has issued directions by consent of parties.

4 I asked the counsel for the applicant to show the averments in the petition as to which are those circumstances that exists for the Court to intervene under Sub-section 3 of Section 9 as amended. The counsel was unable to show any such averment. In fact, the counsel cannot show because in paragraph 2(aa) of the plaint, it is states “*the formation of Arbitral Tribunal is under way*”, whereas now the tribunal has been constituted.

5 The Court suggested to the counsel for the applicant that he should withdraw this application and move the Arbitral Tribunal under Section 17 of the said Act, but the counsel stated that he is not inclined to withdraw the petition and the Court may pass necessary orders.

6 Having considered the provisions of Section 9 as amended, in my view unless the party is able to show the circumstances, which may not render the remedy as provided under Section 17 efficacious, the Court cannot intervene. The petitioner has not shown any such circumstances.

7 The application, therefore, stands dismissed.

(K.R. SHRIRAM, J.)