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

APPEAL (L) No. 277 OF 2016

Cethar Limited (Formerly known
as Cethar Vessels Limited) ... Appellants
Vs.
M/s. Sinewave Biomass Power Pvt. Ltd. ... Respondents

Mr. R. D. Soni i/b Jayant Gohil i/b Trupti Gohil, for the Appellants.
Mr. Rahul Narichania, Sr. Counsel a/w Siddhant Chhabria, K. R.
Dajiervala, Yazdi Jijina i/b Mulla & Mulla & CBC, for the
Respondents.

CORAM : V. M. KANADE, &
Mrs. SWAPNA S. JOSHI, JJ.

DATE : OCTOBER 10, 2016

PC.

1. Heard the learned counsel appearing on behalf of the Appellants and the counsel appearing on behalf of the Respondents.
2. The Appellants are aggrieved by an order passed by the Sole Arbitrator under Section 17 of the Arbitration & Conciliation Act, 1996 (hereinafter referred as "the Act"). By the said order, on an application made by the Respondent-Claimant seeking security from

the Appellant herein, the learned Sole Arbitrator was pleased to direct the Appellant herein to furnish security of Rs. 1.5 crores within a period of 8 weeks. Mr. Soni, the learned senior counsel appearing for the Appellants submitted that though the learned Arbitrator had given a finding, initially, in favour of the Appellants, however, in the operative part of the order, the learned Arbitrator has asked the Appellants to furnish security of Rs. 1.5 crores. The learned counsel for the Appellants submitted that the Appellants would not encash the bank guarantee. Upon a statement being made that the money, which was lying in the bank in respect of the bank guarantee, would not be withdrawn, the learned Arbitrator came to a conclusion that the liquidated damages were to the tune of Rs. 2-3 crores. He further submitted that the money which was lying with the bank was to the tune of Rs. 1.37 crores, and therefore, this was sufficient security for the purpose of protecting the claim of the Respondents - Claimants. He has invited our attention to the impugned order passed by the learned Arbitrator.

3. He submitted that the observation made by the learned Arbitrator that - no efforts were made on behalf of the Respondents to

disclose the details of assets and valuations thereof or the entities to whom the properties were encumbered in affidavit, is not correct, since in the main arbitration proceeding the learned Arbitrator has not insisted on the disclosure of the liabilities and financial position.

4. He further submitted that the learned Arbitrator at one stage had observed that in view of the undertaking and the bank guarantee, the Claimants' claims have already been secured to that extent. He submitted that having recorded this finding, there was no reason why the learned Arbitrator has asked the Appellants to furnish further security. In our view, the said submission is without any substance. The learned Arbitral Tribunal has power of the Court of granting relief claimed under Section 17 of the Act. He further stressed the manner in which the order is to be passed under Order 38, Rule 5 of the Code of Civil Procedure, 1908, which is an order passed for the purpose of protecting the claim of the Claimant. He has also observed that the claim of damages had to be first adjudicated, and therefore, the question of securing liquidated damages will not arise. He then submitted that claim of the Claimant is Rs. 2.52 crores. At the same time, the learned Arbitrator has then taken into consideration the

financial position of the Appellant, and has observed that there was no disclosure on affidavit about the liabilities and securities offered to them. The learned Arbitral Tribunal thereafter has observed that the Court or the Tribunal had the discretion to mould the relief in appropriate cases. In paragraph XXVI he has observed that :

“XXVI On the aforesaid backdrop, it will be necessary to consider as to whether the case was made out for grant of an Order for furnishing security. Considering this aspect on the backdrop of the financial situation of the company and taking into account major part of unsubstantiated claims of either parties and considering the percentage for awarding liquidated damages; which prima facie; can be assumed in favour of the Claimants. The Tribunal is of the considered view that the Respondent should continue to be bound by their undertaking dated 10.6.2016 and should further furnish a security to the satisfaction of the Tribunal in the sum of Rs. 1.5 crores within 8 weeks from the date of this order. The application for interim measures stands disposed in terms of this order.”

5. In our view, the learned Sole Arbitrator has considered

the matter from all perspectives, and has felt that in the interest of justice, it would be advisable to secure the claim of the Claimants by asking the Appellants to furnish the security of Rs. 1.5 crores. The learned Arbitrator has, therefore, discretion vested in him while passing the impugned order after considering the correct position of law. We are, therefore, not inclined to interfere with the interim order passed by the learned Arbitrator under Section 17 of the Act. Appeal is, therefore, dismissed. Time, however, to furnish the security is extended by a further period of six weeks. Needless to state that all these observations are prima facie in nature, and the learned Arbitrator shall not be influenced by the same.

Sd/-

[Mrs. SWAPNA S. JOSHI, J.]

Sd/-

[V. M. KANADE, J.]

Vinayak Halemth