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

REVIEW PETITION NO.80 OF 2015
IN
ARBITRATION PETITION NO.24 OF 2010

M/s.Ashapura Minechem Ltd.	...Petitioner
V/s.	
Pacific Basin IHX (UK) Ltd.	...Respondent

Mr.Shyam Mehta, Senior Counsel with Mr.Rushabh Sheth, Ms.Pooja Batra and Mr.M.S. Bodhanwalla i/b M.S. Bodhanwalla & Co. for the Petitioner.

Mr.Sunip Sen with Mr.Vishal Sheth and Ms.Viloma Shah i/b Hariani & Co. for the Respondent.

CORAM : R.D. DHANUKA, J.
DATE : 9TH FEBRUARY, 2016.

P.C. :-

1. By this review petition, the petitioner seeks review of the judgment dated 3rd July, 2015 passed by this Court allowing the arbitration petition filed by the original petitioner under section 49 of the Arbitration & Conciliation Act, 1996 for enforcement of the arbitral award dated 8th July, 2009 read with award dated 15th March, 2010 and for a declaration that those two arbitral awards are not enforceable as a decree of this Court.

2. Mr.Mehta, learned senior counsel for the review petitioner

tenders a draft amendment and submits that the review petitioner seeks to amend one additional ground in the review petition, which was not raised in the review petition. He submits that it is the case of the review petitioner that the concession made by the learned senior counsel appearing for the review petitioner before this Court, recorded in paragraph 11 of the order in question was mistaken and erroneous and even otherwise the same being concession of law was not binding on the review petitioner.

3. Mr.Sen, learned counsel for the original petitioner opposes this request for seeking amendment to the review petition and also the review petition on the ground that there is no error apparent on the face of record.

4. This Court had recorded the statement made by the learned senior counsel in paragraph 11 of the order in question that various preliminary objections / grounds raised by the review petitioner in paragraph 4 of the affidavit in reply did not survive in view of the order passed by this Court on 20th December, 2010, which is upheld by the Division Bench and also in view of the law laid down by the Supreme Court and this Court and therefore, the review petitioner did not press the said objections accordingly. This Court has decided the other objections which were pressed by the review petitioner at the time of hearing.

5. In my view, the review petitioner has not made out any case for amendment of the review petition and for raising additional ground. Even if the amendment would have been allowed, it would not be a ground for review of the order passed by this Court in question. The concession was made by the learned senior counsel in view of the orders passed by this Court which had attained finality and in view of the law laid down by the Supreme Court. In my view, the application for amendment made at this stage by the review petitioner is thus not well founded and cannot be allowed.

6. I have perused the grounds of review raised in the review petition. A perusal of the grounds clearly indicates that the review petitioner seeks recall of the order passed by this Court on merits of the matter. In my view, the review of the order on merits is not maintainable. The review petitioner has not made out any case under Order 47 Rule 1 of the Code of Civil Procedure, 1908. There is no error apparent on the face of record. The review petition is accordingly dismissed. No order as to costs.

7. At this stage, Mr.Mehta, learned senior counsel for the review petitioner submits that since the review petitioner has been already declared as sick, the original petitioner cannot proceed with execution of the foreign award against the review petitioner. He submits that this Court has already clarified this issue in the order

passed by this Court on 3rd December, 2015 in Arbitration Petition No.561 of 2009. Mr.Sen, learned counsel for the original petitioner has no objection if this issues is clarified.

8. It is therefore, made clear that in view of the review petitioner already having been declared as sick and implementation of the said order is pending before the B.I.F.R., the original petitioner would not be entitled to take any steps in execution of the foreign award and seek any relief which would be in violation of section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 without the permission of B.I.F.R.

(R.D. DHANUKA, J.)