

**CM No. 11837-CII of 2016 and
CM No. 10079-CII of 2016 in
CM No. 10080-CII of 2016 in
FAO No. 8029 of 2015(O&M)**

**IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
CM No. 11837-CII of 2016&
CM No. 10079-CII of 2016 in
CM No. 10080-CII of 2016 in
FAO No. 8029 of 2015(O&M)
Date of decision : May 31 , 2016**

M/s Indian Oil Corporation Ltd. and others

..... Applicant

Versus

M/s Shiv Oil Carrier, Indian Oil Transported Contractor

..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

**Present:- Mr. Ashish Kapoor , Advocate
for the applicant-appellant.**

**Mr. S. S. Behl, Advocate and
Mr. I.P.S.Kohli, Advocate
for the respondents.**

- 1. Whether reporters of local papers may be allowed to see the judgment ?**
- 2. To be referred to the reporters or not?**
- 3. Whether the judgment should be reported in the digest?**

**Amit Rawal, J (oral).
CM No. 11837-CII of 2016**

C.M.is allowed.

Reply and Annexures taken on record.

FAO No. 8029 of 2015

**Main appeal is fixed for 1.8.2016. With the consent of
both the parties the appeal is taken on board today itself.**

The appellant-Indian Oil Corporation Ltd.is aggrieved of

the order dated 29.3.2016 whereby in proceedings initiated under Section 9 of the Arbitration and Conciliation Act, 1996, at the instance of respondent-Contractor who was awarded a contract for providing tankers/truck for transportation of the oil granting, interim direction viz-a-viz black listing of the transportation Company till the decision of the arbitration proceedings has been ordered to be kept in abeyance.

Mr. Ashish Kapoor, learned counsel appearing on behalf of the applicant-appellant submits that the interim order under challenge tantamounts to granting of final relief therefore cannot be allowed to continue during the arbitral proceedings.

He further submits that in pursuance to the agreement dated 31.12.2011 the respondent-Company was given contract for supplying petroleum products regarding 67 Tank Trucks. The period was extended upto 30.6.2015. However owing to certain dispute the agreement was terminated on 3.6.2015. The arbitrator, through the intervention of Court, had been appointed and has entered into reference. The next date before the arbitrator is 10.6.2016. During the interregnum as an interim measure the respondent-Company invoked the jurisdiction of the court under Section 9 of the Arbitration and Conciliation Act, 1996 to seek interim measure viz-a-viz black listing of the Company and its fleet which is not permissible in law as the partners of the respondent-Company are common in the other firm namely M/s Mehra Oil Carrier to whom the contract had already been awarded and few tankers belong to both the firms.

He further submits that the said M/s Mehra Oil Carrier

has filed CWP No. 9468 of 2016 which is listed before this Court on 1.6.2016. The conduct of the respondent-Company is not appreciable but vindictive in as much as for violation of the alleged interim order filed the contempt petition under Section 10 and 12 of the Contempt of Courts Act, 1971, before principal court, which was assailed in this Court in CR No. 8211 of 2015 and the same has been set aside. Even comments of the concerned judicial officer were called upon.

In support of his contentions he has relied upon the judgment rendered by Hon'ble Supreme Court in **Percept D'Markr (India) Pvt. Ltd. Vs. Zaheer Khan and another 2006 (4) SCC 227** to contend that in case interim injunction tantamounts to granting entire relief the same could not be granted. He has further relied upon para 14 of the judgment rendered in **Best Sellers Retail (India) Pvt. Ltd. Vs. Aditya Biral Nuvo Ltd.and others (2012) 6 SCC 792** to contend that even where prima facie case is in favour of the plaintiff, the Court will refuse temporary injunction when it can be compensated in terms of damages. The interim stay in the present case has seriously pre judiced the interest of the Indian Oil Corporation as few of the vehicles are commonly owned by both the firms.

He has also relied upon the judgment rendered by Division Bench of this court in 21882 of 2014 to contend that there cannot be any judicial review viz-a-viz black listing of the Company.

Mr. S. S. Behl, learned counsel appearing on behalf of the respondents submits that the interim order is most innocuous and in case the black listing of the Company had not been stayed the contractor would have been deprived of to fetch other contracts rather is in violation of

Article 19 of the Constitution of India. The Contract had already been terminated and the matter is pending adjudication before the arbitrator, thus will be within the domain of the arbitrator to determine claim and counter claim, if any. His client is not averse if some time line is fixed for disposal of the dispute. The Indian Oil Corporation is unnecessarily raising grievance on the ground that certain vehicles of both the firms are same/common. The parties have filed their respective claims and application for amendment of the claim is also pending adjudication, thus urges this Court for affirming the impugned order. In support of his contentions he has relied upon the judgment in **Fornax Real Estate Limited Vs. M/s Chandigarh Spun Pipe Company, Chandigarh and others 2015 (4) L.A.R 277** to contend that in case the appellant is not put to any condition, the respondents would suffer irreparable loss and injury.

I have heard learned counsel for the parties and appraised the paper book and of the view that on plain reading of the provisions of Section 9 of the Arbitration and Conciliation Act, 1996 it leaves no manner of doubt that a party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced can apply to a court for interim measure. It would be apt to reproduce the operative part of impugned order:-

“After going through the above said observations of the Hon'ble High court, the objections raised by the learned counsel for the respondents with regard to the maintainability of the present application, on the ground that Arbitration and Conciliation Act, 1996 nowhere provides for extending the provisions of Section 151 of the Civil Procedure Code, to the

proceedings under Section 9 of the Act, does not hold any water. In para 8 of the order dated 10.3.2016, the Hon'ble High Court has categorically mentioned that "if according to the petitioners, the learned Additional District Judge actually intended keeping in abeyance the order dated 3.6.2015 in so far as it blacklisted the fleet and the crew, they must have the order clarified." Further in para 9 of the said order dated 10.3.2016 of Hon'ble High Court it has been recited that "However, in the event of the petitioners having the order clarified the decision of the respondents would have to be reviewed in the light of and in accordance with the clarification, if any, that may be issued by the Additional District Judge in respect of the order dated 29.10.2015." A perusal of the above observations make it clear that the Hon'ble High Court has given the liberty to the applicant to get clarify the judgment dated 29.10.2015 to the effect, as detailed above. In other words, the Hon'ble High Court has not passed any restrictive order in giving the clarification in the judgment dated 29.10.2015, passed by this Court.

Accordingly, the present application is disposed of with the clarification that "terminating the contract which has been kept in abeyance is dated 3.6.2015 and blacklisting of transporting company shall be kept in abeyance, means keeping in abeyance the blacklisting of entire fleet along with its crew till the decision of arbitral proceedings of M/s Shiv Oil Carrier" Original arbitration file be sent back. Present file be consigned to record room after due compliance."

There is no dispute to the ratio decidendi culled out in the judgment referred (supra) by the learned counsel for the appellant but the fact remains that each case has to be examined on the basis of the facts involved.

Shorn of the facts noticed above, the contract has already been ceased to exist and the blacklisting of the Company would prevent the respondent-Company to carry on the business, much less it would be violation of Article 19 of the Constitution of India. It is still not known whether the trucks belonged to both the firms or not. It is a matter of coincidence that few of the truck are commonly owned by both the firms and the matter in respect of the other firm is sub judiced as noticed above.

The impugned order in my view does not tantamount to passing of the final order. The arbitrator has already entered into reference. On the last date this Court was apprised that owing to pendency of present appeal the arbitrator showed his predictament in continuing with the arbitration proceedings and sought clarification and this Court clarified that arbitrator shall be free to proceed further with the arbitration proceedings.

In view of the aforementioned facts, the order under challenge does not suffer from any illegality and perversity, much less is in consonance with the provisions of Section 9 of the Arbitration and Conciliation Act as well as judgment rendered by this Court in **Fornax Real Estate Limited's case (supra)**.

No ground for interference is made out.

Both the parties are not averse, for fixing of time frame for disposal of the arbitration proceedings.

It is expected that the Hon'ble arbitrator shall make endeavour to expedite the arbitration proceedings by fixing or framing a time line.

Any observation made by this Court shall not be

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construed as an expression on the merits of the case.

The appeal stands disposed of.

**(AMIT RAWAL)
JUDGE**

**May 31 , 2016
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