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

+ CM(M) 717/2016 & CM Nos.26655-26656/2016

CAPRI GLOBAL ADVISORY SERVICES PVT LTD..... Petitioner

Through Mr.Praveen Agarwal, Adv.

versus

DELHI GURGAON SUPER CONNECTIVITY LTD..... Respondent

Through Mr.Ashish Dholakia and Mr.Gautam
Bajaj, Advs.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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27.07.2016

1. By the present petition the petitioner seeks to impugn the Order dated 28.4.2016 passed by the Arbitral Tribunal whereby the application of the petitioner for re-examining Mr.Sanjay Sharma as a witness of the claimant was dismissed.

2. Mr.Dholakia, learned counsel appearing for the respondent has at the outset pointed out that this Court would have no jurisdiction to entertain the present petition. He relies upon a judgment of the Supreme Court in the case of *M/s.S.B.P.& Co. Vs. M/s. Patel Engineering Ltd. and Anr., AIR 2006 SC 450* where the Supreme Court held that orders of the Arbitral Tribunal are not capable of being challenged under Article 226 and 227 of the Constitution of India. The relevant paragraph reads as follows:- copy para 44

“44. It is seen that some High Courts have proceeded on the basis 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. We

see no warrant for such an approach. Section 37 makes certain orders of the arbitral tribunal appealable. Under Section 34, the aggrieved party has an avenue for ventilating his grievances against the award including any in-between orders that might have been passed by the arbitral tribunal acting under Section 16 of the Act. 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. The arbitral tribunal is after all, the creature of a contract between the parties, the 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. We, therefore, disapprove of the stand adopted by some of the High Courts that any order passed by the arbitral tribunal is capable of being corrected by the High Court under Article 226 or 227 of the Constitution of India. Such an intervention by the High Courts is not permissible.”

3. In the light of the above legal position settled by a Constitution Bench of the Supreme Court in my opinion the present petition does not lie. The petitioner would be entitled to raise the objections raised herein at an appropriate stage as envisaged under the Arbitration and Conciliation Act, 1996.

4. Petition stands disposed of.

JAYANT NATH, J

JULY 27, 2016

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