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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO(OS) (COMM) 53/2016 &CM Nos. 25690-25691/2016**
M/S GREEN POWER INTERNATIONAL PVT LTD Appellant

Through: Mr. R.K. Pathania, Advocate along
with Mr. Atul Kumar Sinha,
Advocate.

versus

TRIVENI ENGINEERING & INDUSTRIES LTD Respondent
Through: Mr. Sanjeev Anand, Advocate along
with Mr. Akshay Kapoor, Advocate.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

% **03.08.2016**

The appellant objected to the maintainability of arbitration proceedings and approached this court under Section 37 of the Arbitration and Conciliation Act, 1996 claiming to be aggrieved by the two orders of the arbitral tribunal dated 26.04.2016 and 28.04.2016. The Ld. Single Judge by the impugned order rejected the appeal stating that this court does not possess jurisdiction in light of the arbitration clause which according to him binds the parties. At the outset, the respondent disputes the jurisdiction of this court pointing out that by virtue of Section 37 (3) of the Arbitration and Conciliation Act, 1996, the present appeal is barred.

The appellant refutes the submission with respect to jurisdiction by relying upon Section 13(1) of the Commercial Courts, Commercial Division and Commercial Appellate Division of the High Courts Act,

2015. It is also submitted that since there has been no final determination vis-a-vis the rights of the parties and the plea of jurisdiction as well as issue of maintainability under Section 13 of the appeal itself, in view of the arbitration clause was gone into, this court should not interfere.

Section 13 and 16 of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 Act reads as under:-

“13. Appeals from decrees of Commercial Courts and Commercial Divisions-(1) Any person aggrieved by the decision of the Commercial Court or Commercial Division of a High Court may appeal to the Commercial Appellate Division of that High Court within a period of sixty days from the date of judgment or order, as the case may be:

Provided that an appeal shall lie from such orders passed by a Commercial Division or a Commercial Court that are specifically enumerated under Order XLIII of the Code of Civil Procedure, 1908 (5 of 1908) as amended by this Act and Section 37 of the Arbitration and Conciliation Act, 1996 (26 of 1996).

(2) Notwithstanding anything contained in any other law for the time being in force or Letters Patent of a High Court, no appeal shall lie from any order or decree of a Commercial Division or Commercial Court otherwise than in accordance with the provisions of this Act.

“16. Amendments to Code of Civil Procedure, 1908 in its application to commercial disputes-(1) The provisions of the Code of Civil Procedure, 1908 (5 of 1908) shall, in their application to any suit in respect of a commercial dispute of a Specified Value, stand amended in the manner as specified in the Schedule.

(2) The Commercial Division and Commercial Court

shall follow the provisions of the Code of Civil Procedure, 1908 (5 of 1908), as amended by this Act, in the trial of a suit in respect of a commercial dispute of a Specified Value.

(3) Where any provision of any rule of the jurisdictional High Court or any amendment to the Code of Civil Procedure, 1908 (5 of 1908), by the State Government is in conflict with the provisions of the Code of Civil Procedure, 1908 (5 of 1908), as amended by this Act, the provisions of the Code of Civil Procedure as amended by this Act shall prevail.”

Section 37 of the Arbitration and Conciliation, 1996 reads as follows:-

37. Appealable orders – (1) An appeal shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:-

(a) granting or refusing to grant any measure under Section 9.

(b) setting aside or refusing to set aside an arbitral award under section 34.

(2) An appeal shall also lie to a Court from an order granting of the arbitral tribunal-

(a) accepting the plea referred in sub-section (2) or sub-section (3) of Section 16; or

(b) granting or refusing to grant an interim measure under section 17.

(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.”

It is quite evident that Section 13(1) no doubt enables parties to approach the Commercial Appellate Division of the High Court within 60 days from the date of judgment or order of the Commercial Courts or Commercial Division of the High Court. At the same time, the

proviso limits the jurisdiction of the Commercial Appellate Division of each High Court to entertain those appeals which are maintainable in terms of Order XLIII of the Civil Procedure Courts (CPC) and Section 37 of the Arbitration and Conciliation Act, 1996. Now, a plain reading of Section 37 in our opinion excludes the jurisdiction of a Division Bench to examine the correctness of an appellate order under Section 37. It is not in dispute that once a party approaches a court – in appeal, a further appeal is barred by the virtue of Section 37 (3). This interpretation accords to the general scheme of the Arbitration and Conciliation Act, which by Section 50(2) similarly highlights that an appellate order cannot be challenged by a further appeal. In our opinion, this is also in conformity with the general procedural law in the country that a second appeal would not advance against an interlocutory appellate order. The phraseology of Section 37(3) of the Arbitration and Conciliation Act rules out the possibility of a second appeal. Therefore, permitting one - in respect of an interlocutory proceeding - would defeat the need of creation of a commercial courts as well as the underlying object of speedy dispute resolution under the Arbitration and Conciliation Act, 1996.

There is no merit in the appeal. It is accordingly dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

AUGUST 03, 2016/sapna