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HIGH COURT OF CHHATTISGARH, BILASPUR

Arbitration Appeal No.26 of 2015

(Arising out of order dated 30-4-2015 passed by the District Judge, Bilaspur in M.J.C.No.112/2015)

Order reserved on: 22-9-2017

Order delivered on: 3-11-2017

M/s Orissa Concrete & Allied Industries Limited, 53, Industrial Area, Bhanpuri, Patralay Birgaon, Raipur (C.G.), Registered Office at 3, Gokhle Road, Kolkata (West Bengal), through Banshi Chowdhury, aged about 55 years, S/o Late Ramrenu Chowdhury, Liaison Officer, M/s Orissa Concrete & Allied Industries Limited, 53, Industrial Area, Bhanpuri, Patralay Birgaon, Raipur, Tehsil and District Raipur, R/o A-20, Madhav Rao Sapre Nagar, Raipur, Tahsil & District Raipur (C.G.), Civil & Revenue District Raipur (C.G.), P.S. Khamtarai, Raipur (C.G.)

(Applicant)
---- Appellant

Versus

1. Union of India, through the General Manager, South East Central Railway, G.M. Building, Bilaspur (C.G.)

2. South East Central Railway, through the General Manager (Engineering), G.M. Building, Bilaspur (C.G.)

3. Chief Engineer (T.S. & H.Q.), South East Central Railway, G.M. Building, Bilaspur (C.G.)

(Non-applicants)
---- Respondents

For Appellant:	Mr. Kishore Shrivastava, Senior Advocate with Mr. Kapil Jain and Mr. Sunil Verma, Advocates.
For Respondents:	Mr. Abhishek Sinha and Miss S. Harshita, Advocates.

Hon'ble Shri Justice Sanjay K. Agrawal

C.A.V. Order

1. The short question that arises for consideration in this appeal is, whether the learned arbitration court is justified in refusing interim injunction to the appellant herein filed under Section 9 of the

Arbitration and Conciliation Act, 1996, finding no merit in the said application.

2. Brief facts shorn of superfluities, essential to adjudicate the point brought before this Court are as under: -

2.1) The respondent Union of India (Railways) had floated a tender for manufacture and supply of Pre-stressed Mono Block Concrete Line Sleepers (Pre-tensioned Type) for Broad Gauge (1673 mm) from existing RDSO Certified Concrete Sleeper Plants in which the appellant also participated and tender was opened on 22-4-2013 and ultimately, the contract in question was awarded to the appellant and purchase order was issued in its favour on 17-10-2013 for manufacture and supply of Pre-stressed Mono Block Concrete Line Sleepers. The quantity to be supplied was 1,40,750 numbers of Sleepers within a period of 2 years 30 days from 28-9-2013. Thereafter, the Sleepers so supplied were said to be passed and accepted by the respondents and payments were said to have been made to the appellant, thereafter finding the Sleepers sub-standard, termination notice was issued by the respondents and contract was terminated on 18-11-2014 and thereafter, notice dated 21-11-2014 was issued by the respondent South East Central Railway (SECR) to the State Bank of India (SBI) for encashment of bank guarantee to the extent of Rs.20 lakhs and memo dated 24-11-2014 was also issued to redeposit the paid amount i.e. ₹ 8,55,78,821/- and by memo dated 29-12-2014, an information was sent by the respondent SECR to the other Railways to hold the amount payable to the appellant. Lastly, on 29-12-2014, a memo was issued to the appellant to deposit ₹ 79,01,773/-. Thereafter, the appellant filed an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (for short, 'the Act of 1996') for appointment of arbitrator. The said application is said to have been allowed by this Court and the arbitral proceeding is said to have been commenced before the sole arbitrator.

2.2) The appellant then filed application under Section 9 of the Act of 1996 for grant of interim injunction under Section 9(1)(ii)(d) of the said Act for staying the operation of orders dated 18-11-2014, 21-11-2014, 24-11-2014 and 29-12-2014 (two orders), by way of interim injunction. The arbitration court dealing with the application under Section 9 of the Act of 1996 did not find any prima facie case in favour of the appellant nor found any balance of convenience in its favour, likewise, no incalculable loss in non-grant of temporary injunction in its favour and thereby rejected the application under Section 9 leading to filing of this appeal under Section 37(1)(b) of the Act of 1996.

3. Mr. Kishore Shrivastava, learned Senior Counsel appearing on behalf of the appellant, would vehemently submit that the order passed by the arbitration court declining to grant interim injunction in favour of the appellant under Section 9(1)(ii)(d) of the Act of 1996, is clearly unsustainable and bad in law. He would further submit that the Sleepers were inspected, admitted and payments were made and without affording an opportunity of hearing, such an order of termination of contract was passed. He would also submit that the learned arbitration court grossly erred in proceeding on the

basis that there is threat to public safety and therefore the appellant is not entitled for relief of interim injunction. He would also submit that unless and until the claim or dues payable or penalty is adjudicated by the competent court of law or by the arbitral tribunal, the Union of India, it has no power or authority to recover the un-adjudicated amount of damages or penalty, as the sum due or payable on the appellant would only become payable when the same is adjudicated and decided by the arbitral tribunal. He would strongly and heavily place reliance upon a decision of the Supreme Court in the matter of **Union of India v. Raman Iron Foundry**[1], paragraphs 4, 5, 6, 7 and 8, and also relied upon the judgments of the Supreme Court in the matters of **M/s. Gangotri Enterprises Ltd. v. Union of India and others**[2] and **State of Karnataka v. Rameshwara Rice Mills**[3], paragraphs 7, 8 and 9, and lastly, relied upon the judgment of this Court in the matter of **Macadum Makers v. State of Chhattisgarh and others**[4], to buttress his submission.

4. Mr. Abhishek Sinha, learned counsel appearing for the respondents, vehemently opposing the submissions made by Mr. Shrivastava, learned Senior Counsel, would submit as under: -

    1. The prayer made in this appeal is final relief which may be claimed at the conclusion of arbitral proceeding and hence grant of such a relief which has been claimed in this appeal as well as in the application under Section 9 of the Act of 1996, is clearly impermissible in law.

1 AIR 1974 SC 1265
2 AIR 2016 SC 2199
3 AIR 1987 SC 1359
4 AIR 2012 Chh 123

2. The orders dated 21-11-2014 and 29-12-2014 are nothing but proposal and communications made pursuant to and in consequence of the termination notice dated 18-11-2014 and the appellant having not challenged the termination of contract by the respondent SECR, the instant appeal seeking relief of interim injunction would not be maintainable in absence of challenge to the notice dated 18-11-2014.

3. The appellant has miserably failed to set out any case in its pleadings made in the application under Section 9 of the Act of 1996 and material on record to establish prima facie case, balance of convenience and irreparable loss, and there is no evidence available on record to demonstrate that prima facie, termination of contract is bad and unsustainable in law, and it is not in public interest to grant interim injunction in favour of the appellant. Therefore, the appeal as framed and filed is liable to be rejected, as the learned arbitration court is absolutely justified in rejecting the application under Section 9 of the Act of 1996 by declining to grant said injunction under Section 9.

5. I have heard learned counsel for the parties, considered the rival submissions made herein-above and also gone through the records with utmost circumspection.

6. The first question would be what is the principle to be applicable for grant of interim injunction under Section 9 of the Act of 1996, whether the general principles governing the grant of temporary injunction under Order 39 of the Code of Civil Procedure, 1908

would be applicable or it will be governed by the provisions contained in the Act of 1996.

7. The said issue is no longer undetermined and undecided, as it has been held in the matter of **Arvind Constructions Co. (P) Ltd. v. Kalinga Mining Corporation and others**[5] that under Section 9 of the Act of 1996 i.e. power of arbitration court to pass interim orders, well recognised principles applicable to exercise of general power to grant interim injunction under Order 39 of the CPC and the Special Relief Act, would be applicable to exercise of power under Section 9. As no special condition for exercise of that power has been laid down in the Act of 1996, therefore, the general rules of procedure of the court would apply. The Supreme Court observed in paragraph 15 of the report as under: -

> 15. The argument that the power under Section 9 of the Act is independent of the Specific Relief Act or that the restrictions placed by the Specific Relief Act cannot control the exercise of power under Section 9 of the Act cannot prima facie be accepted. The reliance placed on *Firm Ashok Traders v. Gurumukh Das Saluja*[6] in that behalf does not also help much, since this Court in that case did not answer that question finally but prima facie felt that the objection based on Section 69 (3) of the Partnership Act may not stand in the way of a party to an arbitration agreement moving the court under Section 9 of the Act. The power under Section 9 is conferred on the District Court. No special procedure is prescribed by the Act in that behalf. It is also clarified that the Court entertaining an application under Section 9 of the Act shall have the same power for making orders as it has for the purpose and in relation to any proceedings before it. Prima facie, it appears that the general rules that governed the court while considering the grant of an interim injunction at the threshold are attracted even while dealing with an application under Section 9 of the Act. There is also the principle that when a power is conferred under a

5 (2007) 6 SCC 798
6 (2004) 3 SCC 155

> special statute and it is conferred on an ordinary court of the land, without laying down any special condition for exercise of that power, the general rules of procedure of that court would apply. The Act does not prima facie purport to keep out the provisions of the Specific Relief Act from consideration. No doubt, a view that exercise of power under Section 9 of the Act is not controlled by the Specific Relief Act has been taken by the Madhya Pradesh High Court. The power under Section 9 of the Act is not controlled by Order 18 Rule 5 of the Code of Civil Procedure is a view taken by the High Court of Bombay. But, how far these decisions are correct, requires to be considered in an appropriate case. Suffice it to say that on the basis of the submissions made in this case, we are not inclined to answer that question finally. But, we may indicate that we are prima facie inclined to the view that exercise of power under Section 9 of the Act must be based on well-recognised principles governing the grant of interim injunctions and other orders of interim protection or the appointment of a Receiver."

8. Similarly, in the matter of **Adhunik Steels Ltd. v. Orissa Manganese and Minerals (P) Ltd.**[7], the Supreme Court again held that the well-recognised principles applicable to exercise of general power to grant interim relief, including specific injunctive relief, under Order 39 of the CPC and the Specific Relief Act, would be applicable to exercise of power under Section 9 of the Act of 1996. In paragraph 20 of the report, the Supreme Court observed as under: -

> "20. No special condition is contained in Section 9 of the Act. No special procedure is indicated. In *American Jurisprudence*, 2nd Edn. it is stated:
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> > "In judicial proceedings under arbitration statutes ordinary rules of practice and procedure govern where none are specified; and even those prescribed by statute are frequently analogous to others in common use and are subject to similar interpretation by the courts." "

9. The aforesaid two decisions clearly indicate that in order to decide

7 (2007) 7 SCC 125

the application under Section 9 of the Act of 1996, general and well recognised principles for grant of temporary injunction would be applicable. Now, the question is whether the principles governing the appellate power would also be applicable while considering the appellate powers as prescribed under Order 43 Rule 1 (r) of the Code of Civil Procedure, 1908 and would be applicable to appeal under Section 37(1)(b) of the Act of 1996. In my considered opinion, the principles applicable for adjudicating appeal under Order 43 Rule 1(r) of the CPC against the order granting or refusing temporary injunction would also be applicable to appeals under Section 37(1)(b) of the Act of 1996.

10. The Supreme Court in the matter of **Wander Ltd. v. Antox India (P) Ltd.**[8] has laid down the factors to be considered by the appellate court against the order of interlocutory injunction and has held that in an appeal against granting or refusing temporary injunction that is appeal against the exercise of discretion by the trial Court, the appellate Court should not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely, and observed as under: -

> "14. The appeals before the Division Bench were against the exercise of discretion by the Single Judge. In such appeals, the appellate court will not interfere with the exercise of discretion of the court of first instance and substitute its own discretion except where the discretion has been shown to have been exercised arbitrarily, or capriciously or perversely or where the court had ignored the settled principles of law

8 1990 Supp SCC 727

> regulating grant or refusal of interlocutory injunctions. An appeal against exercise of discretion is said to be an appeal on principle. The appellate court will not reassess the material and seek to reach a conclusion different from the one reached by the court below if the one reached by that court was reasonably possible on the material. The appellate court would normally not be justified in interfering with the exercise of discretion under appeal solely on the ground that if it had considered the matter at the trial stage it would have come to a contrary conclusion. If the discretion has been exercised by the trial court reasonably and in a judicial manner the fact that the appellate court would have taken a different view may not justify interference with the trial court's exercise of discretion. After referring to these principles, Gajendragadkar, J. in *Printers (Mysore) (P) Ltd. v. Pothan Joseph*[9] held: (AIR p. 1159, para 9)
>
> > '9. … These principles are well established; but, as has been observed by Viscount Simon in *Osenton (Charles) & Co. v. Johnston*[10]: (AC p. 138)
> >
> > > "... The law as to the reversal by a Court of Appeal of an order made by a judge below in the exercise of his discretion is well established, and any difficulty that arises is due only to the application of well-settled principles in an individual case." '
> >
> > The appellate judgment does not seem to defer to this principle."

11. The law laid down in **Wander Ltd.** (supra) has been followed by the Supreme Court with approval in the matters of **Purshottam Vishandas Raheja and another v. Shrichand Vishandas Raheja (Dead) Through LRs and others**[11] and **Mohd. Mehtab Khan and others v. Khushnuma Ibrahim Khan and others**[12].

12. Now, this would bring me to the merits of the matter.

13. At this stage, it would be appropriate to notice Section 9 of the Act

9 AIR 1960 SC 1156 : (1960) 3 SCR 713
10 1942 AC 130 : (1941) 2 All ER 245 (HL)
11 (2011) 6 SCC 73
12 (2013) 9 SCC 221

of 1996 which reads as under: -

> "**9. Interim measures, etc. by Court**.—A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with Section 36, apply to a Court:—
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> (i) for the appointment of a guardian for a minor or a person of unsound mind for the purposes of arbitral proceedings; or
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> (ii) for an interim measure of protection in respect of any of the following matters, namely:—
>
> (a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;
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> (b) securing the amount in dispute in the arbitration;
>
> (c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;
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> (d) interim injunction or the appointment of a receiver;
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> (e) such other interim measure of protection as may appear to the Court to be just and convenient,
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> and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.
>
> (2) Where, before the commencement of the arbitral proceedings, a court passes an order for any interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the court may determine.

> (3) Once the arbitral tribunal has been constituted, the court shall not entertain an application under sub-section (1), unless the court finds that circumstances exist which may not render the remedy provided under Section 17 efficacious."

14. Power to grant interim injunction under Section 9 of the Act of 1996 is not unbridled. It is subject to certain limitations and restrictions, such as, firstly, it can be exercised by the court to the same extent and in the same manner as it could be for the purpose of, and in relation to any proceedings before it and secondly, the exercise of power to make interim arrangements should not militate against any power which might be vested in any arbitral tribunal. The power conferred under Section 9 of the Act of 1996 is to be exercised by the court only in sparing circumstances. The interim direction can be issued under Section 9 of the Act of 1996 only for the purpose of arbitration proceeding and with a view to protect the interest of the parties.

15. It appears that the said provision i.e. Section 9 of the Act of 1996 is pari materia provision to Section 41 of the Arbitration Act, 1940 along with the Second Schedule. Section 41 of the Arbitration Act, 1940 provides as under: -

> "**41. Procedure and powers of Court**.—Subject to the provisions of this Act and of rules made thereunder—
>
> > (a) the provisions of the Code of Civil Procedure, 1908 shall apply to all proceedings before the Court, and to all appeals, under this Act, and
> >
> > (b) the Court shall have, for the purpose of, and in relation to, arbitration proceedings, the same power of making orders in respect of any of the matters set out in the Second Schedule as it has for the purpose of, and in relation to, any proceedings before the Court:

> Provided that nothing in clause (b) shall be taken to prejudice any power which may be vested in an arbitrator or umpire for making orders with respect tot any of such matters."

16. In view of clause (b) of Section 41 of the Arbitration Act, 1940, the arbitration court has been given power of passing orders in respect of any of the matters set out in Second Schedule for the purpose of and in relation to any proceedings before the court. The Second Schedule of the Arbitration Act, 1940, clearly includes 'interim injunction' and the 'appointment of receiver'.

17. A bench of three Judges of the Supreme Court in the matter of **M/s H.M. Kamaluddin Ansari and Co. v. Union of India and others**[13] has held that for grant of interim injunction under Section 41 of the Arbitration Act, 1940, the arbitration court has got the power to pass an order of injunction only for the purpose of and in relation to arbitration proceedings before the court, and observed as under in paragraph 20: -

> "20. On the own case of the appellant that there was no concluded contract between the parties containing an arbitration clause it will be difficult to say that the application for injunction moved by the appellant was for the purpose of and in relation to arbitration proceedings. This apart, the amount due under the pending bills to the appellant was not the subject matter of the present proceedings and, therefore, the injunction order restraining the respondents from withholding the amount due to the appellant under the pending bills in respect of other contracts could not be said to be for the purpose of and in relation to the present arbitration proceedings. In this view of the matter it was not open to the court to pass the interim injunction restraining the respondents from withholding the amount due to the appellant under pending bills in respect of other contracts."

18. Section 9 of the Act of 1996 also empowers the arbitration court to

13 (1983) 4 SCC 417

pass an interim injunction under Section 9(1)(ii)(d) and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it. Therefore, the interim injunction has to be granted only for the purpose of, and in relation to, the proceedings before it. In order to invoke Section 9 of the Act of 1996, (1) there should be a dispute which had arisen with respect to the subject-matter of the dispute, with respect to the arbitration tribunal; and (2) there has to be manifest intention on the part of the applicant to take recourse at the time of filing of application under Section 9. The application can be entertained under Section 9 of the Act of 1996 before the Court only if in a given case the subject-matter of arbitration comes within its original jurisdiction both discretionary as well as territorial. (See **M/s. Sundaram Finance Ltd. v. M/s. NEPC India Ltd.**[14].)

19. It is well-settled that grant of temporary injunction is discretionary and in exercise of judicial discretion in granting temporary injunction, the Court will take into reckoning the following factors as guidelines: -

    1. Whether the applicant seeking interim injunction has made out a prima facie case.

    2. Whether the balance of convenience is in his favour, that is, whether it could cause greater inconvenience to him if the interim injunction is not granted than the inconvenience which the other party would be put to if the injunction is granted. As to that, the governing principle is whether the party seeking

14 AIR 1999 SC 565

interim injunction could be adequately compensated by awarding damages and the defendant could be in a position to pay them.

3. Whether the person seeking injunction would suffer irreparable loss and that cannot be compensated in terms of money.

20. In order to find out prima facie case as claimed by the appellant, it would be appropriate to scan the application under Section 9 of the Act of 1996 filed by the appellant herein. In the application filed by the appellant before the arbitration court, in para 10, the appellant pleaded that on 18-11-2014 its contract has been terminated and the respondent has issued notices to the Bank for invocation of bank guarantee of ₹ 20 lakhs on 21-11-2014 and also issued recovery order on 24-11-2014 for recovery of ₹ 9,87,71,814/- and on 29-12-2014 issued letters to other zones of Railway to withhold the payments due to the appellant and also issued notice dated 29-12-2014 for recovery of ₹ 79,01,773/-, and all the above orders are contrary to law, arbitrary and illegal. Finally, it was also pleaded that if the above-stated orders passed against the appellant are allowed to be implemented and acted upon, it will cause irreparable loss and injury to the appellant, as the employees of the appellant Company would become unemployed and finally claimed that effect and operation of memo / orders dated 18-11-2014, 21-11-2014, 24-11-2014 and 29-12-2014 (two orders) be restrained by an order of temporary injunction.

21. The said application was replied by the respondents stating inter

alia that the appellant has supplied sub-standard Sleepers of 30 numbers and the CBI has also registered an offence under Sections 13(2) and 13(1)(d) of the Prevention of Corruption Act, and that the respondents have got the right of lien under the IRS conditions and the question of irreparable injury to the appellant does not arise, and the application deserves to be rejected.

22. The arbitration court by its impugned order rejected the application filed by the appellant finding no prima facie case and also did not find that balance of convenience lie in favour of the appellant and further held that incalculable loss to the appellant in terms of money does not arise, as termination of contract is in public interest.

23. It would be appropriate to mention here that the arbitration application filed by the appellant under Section 11(6) of the Act of 1996 has already been allowed and the matter has been referred to the sole arbitrator in which statement of claim has been filed as stated at the Bar.

24. The appellant has prayed in the application filed under Section 9 of the Act of 1996, till the arbitral tribunal passes an award, the implementation of the order of terminating the impugned contract dated 18-11-2014; the notice dated 21-11-2014 directing the appellant's Bank invoking bank guarantee of ₹ 20 lakhs; the memo dated 24-11-2014 directing deposit of ₹ 1,31,92,993/- and ₹ 8,55,78,821/- as provisional penalty; again the memo dated 29-12-2014 directing other Railways to recover/withhold the balance amount of ₹ 10,40,93,329/- from the bills or any other amount

available, if any, of the aforesaid firm; and lastly, again the memo dated 29-12-2014 directing the appellant to deposit ₹ 79,01,773/- towards recovery of transportation and unloading cost of Sleepers, be stayed.

25. The impugned contract was terminated with effect from 18-11-2014 and it has already been given effect to and its implementation cannot be stayed by way of interim injunction, as same would amount to granting final relief to the appellant.

26. It is stated at the Bar that bank guarantee has already been invoked by the respondent SECR on 28-12-2014 whereas, the application under Section 9 of the Act of 1996 was filed on 18-2-2015, so interim injunction is not grantable, as bank guarantee was not alive on the date of making application under Section 9 of the Act of 1996.

27. By memo dated 24-11-2014, the respondent SECR has imposed provisional penalty of ₹ 1,31,92,993/- & ₹ 8,55,78,821/- and by memo dated 29-12-2014 directed other Zonal Railways to withhold the balance outstanding amount. It is stated at the Bar that SECR had already deducted/withheld an amount of ₹ 4,54,18,524/- from the amount due and payable to the claimant. Since an amount of ₹ ₹ 4,54,18,524/- has already been deducted/withheld, so no order of interim injunction can be granted qua that amount, as it would amount to grant of final relief by way of interim injunction and such a claim is pending adjudication before the arbitral tribunal.

28. It is the submission of Mr. Shrivastava, learned Senior Counsel

appearing for the appellant, that the impugned amount is sought to be recovered without the amount due is adjudicated by the competent court of law or arbitral tribunal duly constituted and therefore such an amount cannot be recovered / withheld by the respondent in view of the decision rendered by the Supreme Court in **Raman Iron Foundry's** case (supra). Mr. Sinha, learned counsel for Union of India, has opposed this submission on three counts firstly, that such a plea has not been raised specifically either in the application filed under Section 9 of the Act of 1996 before the arbitration court or before this Court in the memorandum of appeal filed, therefore, the respondents are deprived of replying the said plea competently by way of pleading; secondly, clause 2403 of the IRS Conditions of Contract clearly deals with lien in respect of claims in other contracts without adjudication but same could not be filed in absence of plea on behalf of the appellant either before the arbitration court or before this Court; and thirdly, the judgment of **Raman Iron Foundry's** case (supra), relied upon by Mr. Shrivastava, learned Senior Counsel, has expressly been distinguished by a three-judge Bench decision of the Supreme Court in **M/s. H.M. Kamaluddin Ansari and Co.** (supra). It is correct to say that the appellant has not raised specific plea either before the arbitration court or in the memorandum of appeal filed before this Court in this regard and raised this plea for the first time before this Court at the time of argument that the amount in dispute ought to have been adjudicated firstly by the jurisdictional court or tribunal before it is sought to be recovered / withheld by the Union of India and as such, the respondents are deprived of placing their stand before this Court as even clause 2403 of the IRS Conditions of Contract which according to the respondents, deals with the right of lien of the Union of India in respect of claims in other contracts, is not on record. Therefore, this Court is not in advantageous position to deal with the submissions of the parties in this regard in absence of plea and supporting documents by the parties. It is left open to be raised at appropriate proceeding.

29. Apart from above, the appellant has not brought any material on record to establish that any recovery at present is being made and no specific pleading has been made in the application and no additional affidavit has been filed before this Court to demonstrate that any coercive steps are being made after the rejection of its application by the learned District Judge. The appellant is at liberty to file an application under Section 17 of the Act of 1996 as amended with effect from 23-10-2015 for interim measures before the learned arbitral tribunal, if occasion so arises.

30. The arbitration court has not found prima facie case, balance of convenience in favour of the appellant and finding of the arbitration court not being perverse or capricious, it would be inappropriate to grant any interim injunction in favour of the appellant reversing the order of the arbitration court following the principle of law laid down by the Supreme Court in **Wander Ltd.** (supra). I do not find any illegality in the impugned order.

31. As a fallout and consequence of aforesaid discussion, the appeal deserves to be and is accordingly dismissed leaving the parties to

bear their own cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma