

VAT

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

**WRIT PETITION No. 1391 OF 2017**

**WITH**

**NOTICE OF MOTION No. 302 OF 2017**

**IN**

**WRIT PETITION No. 1391 OF 2017**

1. **Business India Exhibitions)  
Pvt. Ltd.**, a private limited )  
company duly incorporated )  
under the Companies Act, 1956 )  
and having its registered office )  
at B-201/218, Dalamal Tower, )  
Nariman Point, Mumbai 400021)
  
2. **Mr. Ashok Advani** )  
of Mumbai Indian Inhabitant, )  
residing at 21, Framroze Court,)  
Marine Drave, Mumbai 400 020)
  
3. **Business India Publications)  
Ltd.**, )  
a limited company duly )  
incorporated under the )  
Companies Act, 1956 and )  
having its registered office at )  
14<sup>th</sup> Floor, Nirmal Building )  
Nariman Point, Mumbai 400021)...Petitioners

Versus

- 1.1. **Hon'ble Arvind V. Savant** )  
**(Retd. Justice)**, an Indian )  
 Inhabitant and Former Chief )  
 Justice of the Kerala High Court)  
 residing at / having his office )  
 address at 104-A, Mittal Tower,) )  
 Nariman Point, Mumbai-400 021)
2. **Fursa Mauritius SPV1** )  
 is a special purpose vehicle )  
 incorporated under the laws )  
 of Maritius and having its )  
 registered office at 608 St. )  
 James Court, St. Dennies )  
 Street Port Louis, Republic of )  
 Mauritius )
- 1.3. **Navigator Capital Advisor** )  
**Pvt. Ltd.** )  
 a company incorporated under )  
 the Companies Act, 1950, )  
 having its office at 79, Gujarati )  
 society, Nehru Road, )  
 Vile Parle (East), Mumbai- )  
 400 057 )...Respondents

.....  
 Ms. Soma Singh i/b. Mr. Vivek Sharma, for the Petitioners

Ms.Kshama Loya i/b. Nishith Desai Associates,for the Respondents  
 .....

**CORAM: ANOOP V. MOHTA AND  
 SMT. AJUJA PRABHUDESSAI,JJ.**

**DATE :- 18TH JULY, 2017.**

**ORAL JUDGMENT -[PER ANOOP V. MOHTA, J.]**

1. Heard finally. Rule. Rule is made returnable forthwith. The name

of Respondent No.1 is deleted. Amendment to be carried out accordingly.

2. The Petitioners have invoked the Article 226 of the Constitution of India and thereby challenged the impugned order passed by the Private Arbitral Tribunal. This Court on 24<sup>th</sup> April, 2017 not entertained the Petitioners' case and permitted them to withdraw the petition (Writ Petition No. 857 of 2017), with liberty to take out appropriate steps challenging the order impugned. The petition accordingly was disposed of as withdrawn. The Petitioners, however, again filed the present writ petition.

3. Considering the scheme of Arbitration and Conciliation Act, 1996 (for short, "the Arbitration Act") and the remedies so available and provided for every stage/ every order, there is no question of entertaining the writ at this stage or at any stage of such arbitral proceedings. The parties need to invoke the remedy so available under the Arbitration Act.

4. The learned counsel appearing for the Petitioners has relied upon a Division Bench Judgment of Madhya Pradesh High Court, (Bench at Indore) in ***Manish Kedia & Ors. Vs. Shri S.L. Jain (Retired***

**Justice) & Anr.**<sup>1</sup>, whereby it is concluded as under:-

“14. In the considered opinion of this court once the arbitral proceedings have come to an end by virtue of Section 32 of the Act of 1996, the learned Arbitrator has become *functus officio* and could not have passed any further orders and, therefore, the writ petition under article 226 of the Constitution of India is certainly maintainable in the peculiar facts and circumstances of the case.”

5. We are not inclined to such view on facts and on settled law of Supreme Court in **Lalitkumar V. Sanghavi (D). Th. LRs Neeta Lalit Kumar Sanghavi & Anr. Vs. Dharamdas V. Sanghavi & Ors.**<sup>2</sup>. The relevant portion of the judgment reads as under:-

“45.....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”.

That need not, however, necessarily mean that the application such as the one on hand is maintainable under Section 11 of the Act.”

“14. On the facts of the present case, the applicability of sub-clauses (a) and (b) of Section 32 (2) is clearly ruled out and we are of the opinion that the order dated 29<sup>th</sup> October, 2007 by

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1 WP No. 5870 of 2016 dated 3 April 2017.

2 (2014) 7 SCC 255

which the Tribunal terminated the arbitral proceedings could only fall within the scope of Section 32, sub-Section (2), sub-clause (c) i.e. the continuation of the proceedings has become impossible. By virtue of Section 32(3), on the termination of the arbitral proceedings, the mandate of the arbitral tribunal also comes to an end. Having regard to the scheme of the Act and more particularly on a cumulative reading of Section 32 and Section 14, the question whether the mandate of the arbitrator stood legally terminated or not can be examined by the court “as provided under Section 14 (2)”.

15. The expression “Court” is defined expression under Section 2(1) (e) which reads as follows:-

“Section 2(1) (e) “Court” means the principal Civil Court of original jurisdiction in a district, and includes the High Court in exercise of its ordinary original civil jurisdiction, having jurisdiction to decide the questions forming the subject-matter of the arbitration if the same had been the subject-matter of a suit, but does not -include any civil court of a grade inferior to such principal Civil Court, or any Court of Small Causes.”

16. Therefore, we are of the opinion, the apprehension of the appellant that they would be left remediless is without basis in law.”

5. The judgment so referred and relied upon by the Learned Counsel appearing on behalf of the Petitioner is of **Manish Kedia (supra)**. In our view, is not acceptable situation in view of the settled position of law so laid down by the Supreme Court in many judgments.

6. The scope of power under Article 226/227 of the Constitution of India, to interfere with arbitral proceedings against any order passed by the Arbitral Tribunal, is well defined. The Himachal Pradesh High Court in case of **M/s. P.K. Construction Co. and another v. Shimla Municipal Corporation and others**<sup>1</sup> has observed the same view that Writ is not maintainable. This Court also in **Chhabildas s/o Tukaram Khadke Vs. Jalgaon Municipal Council & Ors.**<sup>2</sup> refused to entertain writ petition against the arbitral tribunal order. Even otherwise, once the scheme of Arbitration Act is recognized, accepted and provided all the remedies, there is no question to entertain any writ petition, pending such arbitral proceedings, specifically when, against such order, the remedy is available needs to be invoked. Present petition, therefore, is rejected, at this stage itself, as not maintainable.

7. However, it is made clear that the remedy available to the Petitioner under the Arbitration Act be invoked. Accordingly, writ petition is dismissed with above stated liberty.

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1 AIR 2017 Hiachal Pradesh 103

2 2017 (4) Mh.L.J.66

8. In view of the disposal of writ petition, nothing survives in the notice of motion. Notice of Motion No. 302 of 2017 is also disposed of accordingly. No order as to costs.

**(SMT. ANUJA PRABHUDESSAI, J.) (ANOOP V. MOHTA, J.)**