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

% ***Date of decision: 25.07.2017***

+ **ARB. A. (COMM.) 18/2017**

**INDIAN RAILWAY CATERING AND TOURISM  
CORPORATION LTD.**

..... Petitioner

Through Mr.Nikhil Majithia, Adv.

versus

**BHARAT CATERING CORPORATION**

..... Respondent

Through

**CORAM:**

**HON'BLE MR. JUSTICE JAYANT NATH**

**JAYANT NATH, J.(ORAL)**

**IA No.8301/2017 (exemption)**

Exemption allowed subject to all just exceptions.

Application stands disposed of.

**ARB. A. (COMM.) 18/2017**

1. Present petition is filed under section 37(2)(b) of the Arbitration and Conciliation Act, 1996 seeking to set aside the impugned order dated 29.5.2017 passed by the learned Arbitrator only partially allowing the application under section 17 of the Act filed by the petitioner. By the impugned order the learned Arbitrator passed an injunction order restraining the respondents not to sell, transfer, alienate or create third party interest in the immoveable property. They were also restrained from selling, transferring, alienating their moveable assets except in the normal course of business. Respondents were directed to furnish an affidavit disclosing their

assets at the time of invoking the arbitration clause, existing assets with reasons for the change in assets within a period of two weeks from that date.

2. The case of the petitioner is that they invited tenders for various trains over a period of time to provide catering service on board. The respondent was awarded license for various units of catering service. Disputes having arisen between the parties arbitration proceedings commenced.

3. The respondents are said to have filed an application under section 16 of the Act before the learned arbitrator. Concurrently, they are also said to have filed a Writ Petition before the Allahabad High Court. The Allahabad High Court is said to have passed an order of status quo on 29.08.2012. The Writ Petition was finally disposed of on 04.08.2016 on account of which the claim of the petitioner before the Arbitrator was confined to the mobile catering unit.

4. During pendency of the proceedings the petitioner has filed an application under section 17 of the Act. In the said application, the learned Arbitrator has passed an interim order, as noted above. The order notes that the amount claimed by the petitioner is a significant amount but the learned Arbitrator noted that he is not persuaded to direct that a bank guarantee be furnished as the same would involve additional expenses.

5. I have heard learned counsel for the petitioner. He has strenuously urged that termination of the contract has been challenged before this court in Writ Petition and the writ petition was dismissed on 15.2.2010 upholding the termination by the petitioner. He further submits that this order was upheld by the Division Bench. It is his contention that in view of the judgment of the Division Bench of this court nothing further survives and the respondent should have been directed to furnish a bank guarantee for the

full amount claimed by the respondent. A perusal of the record shows that the respondents have also filed a counter-claim. The respondent seeks damages on account of illegal premature termination of the contract service. It also seeks to plead that the two main trains, namely, Rajdhani and Shatabadi Express were not handed over to the respondents. Various such allegations have been made claiming loss and damages suffered.

6. Section 17 of the Act reads as follows:-

**“17. Interim measures ordered by arbitral tribunal**

(1) A party may, during the 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 the arbitral tribunal—

- (i) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or
- (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;
  - (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;
  - (d) interim injunction or the appointment of a receiver;

(e) such other interim measure of protection as may appear to the arbitral tribunal to be just and convenient, and the arbitral tribunal shall have the same power for making orders, as the court has for the purpose of, and in relation to, any proceedings before it.

(2) Subject to any orders passed in an appeal under section 37, any order issued by the arbitral tribunal under this section shall be deemed to be an order of the Court for all purposes and shall be enforceable under the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were an order of the Court.”

7. The Division Bench of this court in *Ajay Singh vs. Kal Airways Private Limited and Ors*, 2017 SCC OnLine Del 8934/ (MANU/DE/1820/2017) held as follows:-

“26. Though apparently, there seem to be two divergent strands of thought, in judicial thinking, this court is of the opinion that the matter is one of the weight to be given to the materials on record, a fact dependent exercise, rather than of principle. That Section 9 grants wide powers to the courts in fashioning an appropriate interim order, is apparent from its text. Nevertheless, what the authorities stress is that the exercise of such power should be principled, premised on some known guidelines - therefore, the analogy of Orders 38 and 39. Equally, the court should not find itself unduly bound by the text of those provisions rather it is to follow the underlying principles. In this regard, the observations of Lord Hoffman in *Films Rover International Ltd. v. Cannon Film Sales Ltd.* (1986) 3 All ER 772 are fitting:

*“But I think it is important in this area to distinguish between fundamental principles and what are sometimes described as 'guidelines', i.e. useful generalizations about the way to deal with the normal run of cases falling within a*

*particular category. The principal dilemma about the grant of interlocutory injunctions, whether prohibitory or mandatory, is that there is by definition a risk that the court may make the 'wrong' decision, in the sense of granting an injunction to a party who fails to establish his right at the trial (or would fail if there was a trial) or alternatively, in failing to grant an injunction to a party who succeeds (or would succeed) at trial. A fundamental principle is therefore that the court should take whichever course appears to carry the lower risk of injustice if it should turn out to have been 'wrong' in the sense I have described. The guidelines for the grant of both kinds of interlocutory injunctions are derived from this principle.”*

27. It was observed later, in the same judgment that:

*“The question of substance is whether the granting of the injunction would carry that higher risk of injustice which is normally associated with the grant of a mandatory injunction. The second point is that in cases in which there can be no dispute about the use of the term 'mandatory' to describe the injunction, the same question of substance will determine whether the case is 'normal' and therefore within the guideline or 'exceptional' and therefore requiring special treatment. If it appears to the court that, exceptionally, the case is one in which withholding a mandatory interlocutory injunction would in fact carry a greater risk of injustice than granting it even though the court does not feel a 'high degree of assurance' about the plaintiff's chances of establishing his right, there cannot be any rational basis for withholding the injunction.”*

8. Hence, as per the above noted legal position, grant of interim orders is a matter of weight to be given to the material on record.
9. On the facts of the case, the learned Arbitrator was not persuaded to direct furnishing of a bank guarantee by the respondents. This is a plausible

conclusion based on the facts stated above. Various counter claims of the respondents are also pending. Merely because the writ court upheld the termination of the contract by the petitioner would not imply that the defence/counter claim of the respondent gets knocked down. There are no reasons to interfere in the impugned order.

10. Present petition is dismissed. All pending applications, if any, also stand disposed of.

**JULY 25, 2017**

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**JAYANT NATH, J.**

