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

NOTICE OF MOTION NO.782 OF 2017
IN
COMMERCIAL ARBITRATION PETITION NO.186 OF 2016

Sara Chemicals & Consultants ...Applicant

IN THE MATTER BETWEEN :

Ogene Systems (I) Pvt. Ltd. ...Petitioner

V/s.

Sara Chemicals & Consultants ...Respondent

Mr.Chetan Kapadia with Mr.Abhishek Bhadang, Mr.S. Mukri and Ms.Shilpa Upadhyay i/b India Law for the Applicant / Original Respondent.

Mr.Shyam Kapadia with Mr.Niket Soni i/b Dhruve Liladhar for the Respondent / Original Petitioner.

CORAM : R.D. DHANUKA, J.
DATE : 1ST MARCH, 2018.

P.C. :-

1. By this notice motion filed under section 34(4) of the Arbitration & Conciliation Act,1996, the original respondent seeks an order and direction against the arbitral tribunal to resume proceedings and to reconsider the application under section 33 dated 26th July, 2016 afresh after giving both the parties an opportunity of being heard in the matter and pass a fresh order on the said

application in accordance with section 33(7) read with section 31(2) of the Arbitration & Conciliation Act, 1996.

2. It is not in dispute that the arbitral award was rendered by the arbitral tribunal comprising of three members. The respondent herein had made an application under section 33 the Arbitration & Conciliation Act, 1996 before the arbitral tribunal on 26th July, 2016. The application was however heard and disposed of only by the presiding arbitrator and not by the arbitral tribunal, though after hearing both the parties. The order passed by the learned presiding arbitrator is also subject matter of the Arbitration Petition No.186 of 2016. The said arbitration petition is admitted.

3. In my view, the order under section 33 the Arbitration & Conciliation Act, 1996 could not have been passed by the presiding arbitrator alone and thus an opportunity should be granted to the arbitral tribunal to resume proceedings and to eliminate the grounds of challenge and more particularly on the ground that the learned presiding arbitrator alone could not have passed an order on the application filed under section 33 of the Arbitration & Conciliation Act, 1996.

4. Mr.Shyam Kapadia, learned counsel appearing for the original petitioner states that the applicant to the notice of motion has however, filed Execution Application (Lodging) No.1319 of 2017 and

has applied for execution of the original award as well as the order dated 26th July, 2016 contending that the original award has merged with the order dated 26th July, 2016.

5. In view of this objection raised by Mr. Shyam Kapadia, learned counsel for the original petitioner, Mr. Chetan Kapadia, learned counsel for the original respondent / applicant on instructions states that he will withdraw the said Execution Application (Lodging) No.1319 of 2017 pending before this Court with liberty to file a fresh execution application depending upon the outcome of the order that may be passed in this application. The statement is accepted.

6. The application filed under section 33 of the Arbitration & Conciliation Act, 1996 is restored to file before the arbitral tribunal. The arbitral proceedings to be resumed for elimination of the ground that the learned presiding arbitrator alone could not have entertained the application under section 33 of the Arbitration & Conciliation Act, 1996. It is made clear that the fresh order shall be passed by the arbitral tribunal comprising of all three members and not only the presiding arbitrator.

7. The applicant shall withdraw the Execution Application (Lodging) No.1319 of 2017 pending before this Court with liberty to file a fresh application depending upon the outcome of the said application filed by the applicant under section 33 of the Arbitration &

Conciliation Act, 1996.

8. The notice of motion is made absolute in aforesaid terms. The applicant is directed to convey this order to the arbitral tribunal for compliance.

(R.D. DHANUKA, J.)