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

Date of decision: <u>13th February, 2018</u>

\+ **O.M.P. 21/2012**

MOHAN MEAKIN LTD ..... Petitioner

Through: Mr.Sandeep Sethi, Sr. Adv. and Mr.Darpan Wadhwa, Sr. Adv. with Mr.P.K.Mittal, Mr.Ashish, Advs.

versus

INTERNATIONAL BREWERIES LTD ..... Respondent

Through: Ms.Suruchi Mittal, Mr.Abhishek Gautam, Advs.

CORAM:
HON'BLE MR. JUSTICE NAVIN CHAWLA

<u>NAVIN CHAWLA, J. (Oral)</u>

1. The present petition has been filed by the petitioner challenging the Interim Award dated 22.12.2011 passed by the Sole Arbitrator whereby the Arbitrator has allowed the respondent to withdraw a sum of Rs.70,00,000/- (Rupees Seventy Lakhs Only) (alongwith the interest accrued thereon) which had been deposited by the respondent with the Registrar General of this Court pursuant to the order dated 28.07.2010 passed by this Court in OMP No. 337/2008 titled International Breweries Ltd. vs. Mohan Meakin Ltd.

2. The above mentioned order of this Court had directed the respondent to deposit an amount of Rs.70,00,000/- (Rupees Seventy Lakhs Only) with the Registrar General of this Court. It was further directed that it would be open to the respondent to move an

application under Section 17 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act) before the Sole Arbitrator being appointed by the same order, seeking interim measures with respect to the amount so deposited. It was on this condition that the respondent was also allowed to operate its other bank accounts that had been attached by this Court vide order dated 18.08.2008 passed in FAO (OS) No. 341/2008 titled ***Mohan Meakin Ltd. v International Breweries Ltd.***

3. It seems that the respondent, thereafter filed an application under Section 17 of the Act before the Arbitrator. The petitioner filed its reply to the said application, *inter alia* contending as under:

> *"3. That admittedly, both the Directors of the Respondent Company are not Indian nationals and are residents of Canada. It is submitted that in fact, the Claimant would be moving an Application for directions to secure the Claimant Company in respect of the entire amount which the Claimant has claimed before this Arbitral Tribunal as there are every likelihood that in the event the Claimant succeed, the Claimant would not be in a position to recovery the amounts as both the Directors of the Respondent Company will leave the country and the Claimant would be left high and dry and would not be able to recover the amount which this Arbitral Tribunal will ultimately award to the Claimant in terms of the present proceedings. As such also, the present Application merits no consideration and is liable to be dismissed."*

4. The above submission, though material for consideration of an application under Section 17 of the Act, finds no mention in the

Impugned Award.

5. Section 17 of the Act prior to its amendment is reproduced hereunder:-

> *"17. **Interim measures ordered by Arbitral Tribunal –***
> *(1) Unless otherwise agreed by the parties, the arbitral tribunal may, at the request of a party, order a party to take any interim measure of protection as the arbitral tribunal may consider necessary in respect of the subject-matter of the dispute.*
> *(2) The arbitral tribunal may require a party to provide appropriate security in connection with a measure ordered under sub-section (1)."*

6. A reading of the above provision would show that it is aimed at providing "interim measure of protection" to a party to the arbitration proceedings. The Arbitral Tribunal may also require a party to provide appropriate security in connection with such interim measure of protection.

7. The Arbitrator in his Impugned Interim Award has held that the respondent is entitled to withdraw the amount of Rs. 70,00,000/- (Rupees Seventy Lakhs Only) alongwith interest accrued thereon. In passing the said Award, the Arbitrator relies upon the purported admission made by the petitioner in its Statement of Claim. I have already discussed the effect of the admission in my order passed today, while allowing OMP (COMM) No.115/2017. In my opinion, the Arbitrator has erred in passing the impugned Award based on this purported admission alone.

8. In any case, what was before the Arbitrator was an application under Section 17 of the Act and he could not have proceeded to pass

an Interim Award on the same. This itself shows lack of application to the parameters to be applied while considering the application under Section 17 of the Act by the Arbitrator. The Arbitrator in this regard observed as under:

> *"10. Further, although this application is filed by the Petitioner:- M/s International Breweries Pvt. Ltd. under section 17 of the Act in view of order dated 28.07.2010 passed by Hon'ble Delhi High Court, however, only prayer (b) of the application can be entertained under section 17 of the Act. But, the Interim Award can be passed only under Section 31(6) of the Act as prayed in prayer (a) and therefore, I treat the application of the petitioner-M/s International Breweries Pvt. Ltd. as one under section 31 of the Act and pass the Interim Award accordingly."*

9. The Arbitrator has therefore, proceeded to grant relief to the respondent that was beyond what was even prayed for.

10. As the final Award dated 25.02.2017 passed by the Arbitrator has been set aside by me in a separate order passed in OMP (COMM) No.115/2017, this Interim Award cannot be sustained and is liable to be set aside. The parties may initiate fresh proceedings in accordance with law, with respect to the amount of Rs.70 lacs (and interest accrued thereon) lying deposited with the Registrar General of this Court.

11. The petition is allowed in the above terms, with no orders as to costs.

NAVIN CHAWLA, J.

FEBRUARY 13, 2018/RN