# IN THE HIGH COURT OF BOMBAY AT GOA

## APPEAL UNDER ARBITRATION ACT NOS. 1, 2 & 3 OF 2019

## APPEAL UNDER ARBITRATION ACT NO. 1 OF 2019

M/s Impala Distillery and Brewery Limited, Through its Director, Mrs. Maria Monica J. Monte Cruz, having its registered office at Gold Road, Pajifond, Margao, Goa – 403 601. .... Appellant

Versus

M/s Viiking Beverages Pvt. Ltd., registered office at 6th Floor, JMJ House, Orchard Avenue, Hiranandani Gardens, Powai, Mumbai – 400 076. .... Respondent

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Mr. M.A. Siddiqui with Mr. M.K.N. Mishra, Mr. Naroof Ahmed and Mr. Harshad Arsekar, Advocates for the Appellant.

Mr. Shivan Desai, Advocate for the Respondent.

## APPEAL UNDER ARBITRATION ACT NO. 2 OF 2019

Viiking Beverages Pvt. Ltd., having its registered office at 6th Floor, JMJ House, Orchard Avenue, Hiranandani Gardens, Powai, Mumbai – 400 076.
Represented through its Director, Mr. Nikash Ahuja, son of Senny Ahuja, aged 30 years, bachelor, authorized representative, Indian National, Resident of Florentine, A-904, Hiranandani Garden, Powai, Mumbai, 400 076, Maharashtra. .... Appellant

Versus

Impala Distillery and Brewery Limited, having its registered office at Gold Road, Pajifond, Margao, Goa – 403 601. .... Respondent

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Mr. Shivan Desai, Advocate for the Appellant.

Mr. M.A. Siddiqui with Mr. M.K.N. Mishra, Mr. Naroof Ahmed and Mr. Harshad Arsekar, Advocates for the Respondent.

**APPEAL UNDER ARBITRATION ACT NO. 3 OF 2019**

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| M/s Impala Distillery and Brewery Limited, Through its Director, having its registered office at Gold Road, Margao, Goa – 403 601. | …. | Appellant |
| Versus | | |
| M/s Viikings Beverages Pvt. Ltd., Through its Director, 6th Floor, JMJ House, Orchard Avenue, Hiranandani Gardens, Powai, Mumbai. | …. | Respondent |

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Mr. M.A. Siddiqui with Mr. M.K.N. Mishra, Mr. Naroof Ahmed, Mr. Pravin Faldessai and Ms. J. Collasso, Advocates for the Appellant.

Mr. Shivan Desai, Advocate for the Respondent.

**CORAM:- C. V. BHADANG, J.**

**RESERVED ON: 14th MARCH, 2019**

**PRONOUNCED ON: 8th MAY, 2019**

**COMMON ORDER**:

All these appeals are between the same parties and they involve common and connected questions of law and facts. As such, they are being disposed of by this common order.

2. The brief facts necessary for the disposal of the Appeals may be stated thus:-

The appellant, Impala Distillery and Brewery Ltd. (Impala) is a Company incorporated under the Companies Act and is engaged in the business of manufacture and supply of beer. The respondent, Viiking Beverages Pvt. Ltd. (VBPL) is also a Company incorporated under the Companies Act and is engaged in the business of production and distribution of beverages. Impala is the owner of the brand “King's”and “Belo” beer, while the respondent, VBPL is the owner of beer and vodka premix.

3. The subject matter of present dispute is a brewery belonging to the appellant at village Assolda, Quepem, Goa. The said brewery is herein after referred to as the said plant.

4. Impala was carrying on manufacturing of alcoholic/non-alcoholic beverages at the said plant. The respondent, VBPL was interested in setting up a production facility for alcoholic/non-alcoholic beverages in Goa. According to VBPL, there were outstanding loan liability on the said plant of Economic Development Corporation (EDC) and Industrial Development Bank of India (IDBI) to the tune of Rs.35 crores and on account of financial crisis, the production facility at the plant was not operational, in as much as the production

required installation of new machinery. Mr. Vijay Monte Cruz of Impala had requested VBPL to bail them out of the situation, as such, there was an agreement between the said parties to lease the plant on monthly rent of Rs.25,000/-. Accordingly, VBPL addressed a letter dated 21.03.2012 to Impala *inter alia* stipulating that the initial lease period of 18 to 24 months would be a rent free period, in as much as the repairs and installation of the new machinery would be undertaken during the said period.

5. Further, according to VBPL, the amount incurred towards the new machinery and to make the plant operative was to be considered as security deposit, to be returned to VBPL when the possession of the plant would be handed back to Impala. Impala gave reply to the said letter on 26.03.2012 and eventually, the possession of the plant was handed over to VBPL on 02.04.2012, when the tenancy commenced. The agreement was valid for 42 months, expiring on 11.04.2018. Eventually, the plant was ready for commencement of production in November, 2014.

6. On 21.11.2014, an amount of Rs.3 lakhs was paid to Impala as advance rent. It appears that prior thereto i.e. on

11.11.2014, the parties entered into an agreement referred to as a “brewing agreement”, where VBPL conceded non-assignable, non-transferable and non-exclusive rights to manufacture and sell VBPL's beer and vodka premix. The parties executed two addendums to the said brewing agreement i.e. on 23.01.2015 and 12.05.2015.

7. It may be mentioned that prior to the execution of the two addendums, according to VBPL, the parties had broadly agreed for sale of 51% shares of Impala, in favour of Mr. Sachin Joshi of VBPL and a draft memorandum of understanding (MoU) to that effect was prepared, which however, did not materialise and was never executed. In short, according to VBPL, in terms of understanding between the parties, including the lease of the plant in favour of VBPL, the parties “collaborated” for the purpose of manufacture of beer and vodka premix of brands belonging to VBPL and “King's” beer belonging to Impala.

8. In February, 2016, IDBI made an attempt to take over the plant under the provisions of the Securatisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act, for short), which led VBPL to

file an application under Section 17 of the SARFAESI Act being Securatisation Application No. 22/2016 before the Debt Recovery Tribunal at Mumbai (DRT). On 23.02.2016, the DRT passed an order directing the parties to maintain status quo and also called a report from the Mamlatdar as to the actual status of the plant. Feeling aggrieved, IDBI filed Miscellaneous Appeal No. 103/2016 before the Debt Recovery Appellate Tribunal at Mumbai (DRAT), which is said to be pending.

9. The material case made out by the respondent, VBPL is that even after the expiry of the “brewing agreement”, on 11.04.2018, by efflux of time, the parties continued with the manufacturing agreement and were considering execution of a fresh contract to continue with the manufacturing collaboration. In keeping with the said understanding, Impala vide deed of assignment dated 24.08.2018, assigned all their rights in the trademark “King's” in favour of VBPL for a consideration of Rs.5 lakhs, which was paid vide cheque dated 24.08.2018 and an additional amount of Rs.90,000/- was also paid towards the tax payable on the said amount. According to VBPL, it was agreed between the parties that Impala shall execute a partial lease deed of the plant and machinery, so that in terms of the Goa Excise Act and the Rules, the licence can be

assigned to VBPL and VBPL shall commence billing in its name and simultaneously, VBPL shall enter into an agreement with Impala. The reconciliation of the accounts was pending on account of failure on the part of Impala to furnish the necessary information. It was therefore agreed between the parties that pending the reconciliation of accounts, a partial lease deed of the plant and machinery and assignment of licence and simultaneously manufacturing contract, wherein VBPL appoints Impala as a contractor to manufacture alcoholic/non-alcoholic beverages, will be executed. However, reconciliation of the accounts could not be made for want of information from Impala.

10. It is contended that inspite of understanding, Impala backed out and refused to execute the partial lease deed, unless and until the accounts were reconciled. It is contended that the production activities at the plant continued in terms of the existing agreement by the parties. However, on 01.10.2018, it was noticed that Mr. Vijay Monte Cruz of Impala entered the plant and locked the cabin of the production manager and did not release the payment of raw material, which led to stoppage of production. In such circumstances, the operations at the plant had ceased. Further, according to VBPL, there are stocks

belonging to VBPL worth Rs.2.5 crores, lying in the said plant, which are more specifically described in Exhibit A-20 to the application. The list of machinery lying in the said plant belonging to VBPL is listed in Exhibit A-21, while the list of raw material lying in the said plant is set out in Exhibit A-22.

11. According to VBPL, in as much as the Excise licence was in the name of Impala, the billing was to be done in the name of Impala and the receivables were also routed through the Bank Account of Impala. It was also contended that in pursuance to sale of beer and vodka premix of VBPL in pursuance to manufacturing agreement, an amount of Rs.7.2 crores is outstanding and is payable to VBPL from the distributors and companies, as set out in Exhibit A-23.

12. It was in these circumstances that VBPL filed an application under Section 9 of the Arbitration and Conciliation Act, 1996 (Act, for short) being ARP No. 15/2018, against Impala before the learned District Judge, Margao for the following reliefs:-

> *A. Pending hearing and disposal of arbitration proceeding, this Hon'ble Court be pleased to restrain the respondent, its agents, its employees, its representatives, its servants from withdrawing and/or transferring any*

*amounts from the said 4 bank accounts mentioned herein below except in favour of the applicant:*

i. *HDFC Bank, A/C No.50200003804725;*

ii. *State Bank of India, A/C No. 11064742903;*

iii. *Axis Bank, A/C No. 9150200428854646*

iv. *Axis Bank, A/C No. 915020042738780*

B. *Pending hearing and disposal of arbitration proceeding, this Hon'ble Court be pleased to direct the respondent, its agents, its employees, its representatives, its servants to transfer all the accrued and/or to be accrued amounts due to the applicant from the distributors and corporations in favour of the applicant;*

C. *Pending hearing and disposal of arbitration proceeding, this Hon'ble Court be pleased to restrain the respondent, its agents, its employees, its representatives, its servants in any manner interfering with and/or disposing the existing stock (mentioned in Exhibit 20), raw material (mentioned in Exhibit 21) and machinery (mentioned in Exhibit 22) of the applicant, and/or respondent be restrained from interfering with the possession of the applicant in respect to the said plant and/or creating any third party rights in respect of the said Plant;*

D. *Ad-interim reliefs in terms of 'A' to 'C';*

E. *Ad-interim ex-parte reliefs in terms of 'A' to 'D';*

F. *For any other reliefs, deemed appropriate in the nature and circumstances of the case.*

13. Impala filed reply to the application resisting the same.

14. It is not denied that on expiry of the brewing agreement dated 11.04.2018, the parties have been conducting regular business on the existing terms and VBPL was placing regular orders upon Impala and Impala was providing manufactured goods in terms of their prior understanding. It was contended that VBPL after procuring all the relevant information under the guise of a further workable agreement misused such confidential information to coerce it to submit to its unrealistic demand and terms. It was contended that the brewing agreement, containing the arbitration clause had already expired by efflux of time and therefore, VBPL was not entitled to invoke the jurisdiction of the Court under Section 9 of the Act.

15. The learned District Judge by an order dated 07.12.2018, has partly allowed the application as far as prayer clause 'C' is concerned. The relief under prayer clauses 'A' and 'B' has specifically been rejected. Feeling aggrieved, by the grant of prayer clause 'A' of the application, Impala has filed AUA No. 1/2019, while the rejection of prayer clauses 'B' and

'C' has been challenged by VBPL in AUA No. 2/2019.

16. It may be mentioned that Impala filed a separate application under Section 9 of the Act, against VBPL being Arbitration Application (Commercial) No. 1/2019 for the following reliefs:

> *A. Restrain the respondent(s) or its directors, employees, agents or affiliates from using in the course of trade or in any manner the trade mark "Goa Kings" or assigning, licensing or otherwise dealing with the said mark and*
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> *B. Restrain the respondent(s) or its directors, employees, agents or affiliates from ingress or egress from the property known as Majilkhazam bearing survey no. 22/1, admeasuring 8700 square metres situated at Assolda, Quepem, Goa and survey no. 22/5 admeasuring further 450 square metres or claiming any right or interest in the said property in any manner whatsoever or creating any third party interest, encumbrances or rights by itself or through its directors, employees, agents or affiliates and*
>
> *C. Restrain the respondent(s) or its directors, employees, agents or affiliates from hindering or obstructing or causing to hinder or obstruct the day to day functioning in the manufacturing or trading of the brand "Goa Kings" beer or any other operation incidental or ancillary thereto by the petitioner or any other entity or juristic person under the authority of the petitioner;*
>
> *D. Restrain the respondent from creating any*

*impediment, obstruction in resuming operations by the applicant as its factory and plant, without utilizing the machineries and stock of the respondent;*

*E. Restrain the respondent and its officials, hired, henchmen, unknown accomplices or any person acting through or its behalf from entering or creating any nuisance, impediment whatsoever in the premises of the applicant and working thereof by the applicant;*

*F. Pass ex-parte interim/ad-interim orders in terms of prayer clause A-E above;*

*G. Grant costs of the present proceedings and of those incidental thereto in favour of the applicant and against the respondents and*

*H. Pass such order or further orders as this Hon'ble Court may deem fit and proper in the present facts and circumstances of the case.*

17. That application was opposed on behalf of VBPL *inter alia* on the ground that the application was not maintainable in view of the order dated 07.12.2018, passed by the learned Principal District Judge in ARP No. 15/2018 and the Court has already exercised jurisdiction under Section 9 of the Act.

18. The learned District Judge, by an order dated 30.01.2019, has rejected the said application, which is subject

matter of challenge in AUA No. 3/2019.

19. I have heard Mr. Siddique, the learned Counsel for Impala and Mr. Desai, the learned Counsel for VBPL. Perused record. The parties have also filed written synopsis of their arguments. I have also gone through the same.

20. Mr. Siddique, the learned Counsel for Impala submitted that there is no subsisting or surviving agreement between the parties, in as much as the agreement between the parties which contained an arbitration clause was for a period of 42 months, which expired by efflux of time. It is submitted that subsequent thereto, some business activities were continued only on some oral agreement between the parties and therefore, the application under Section 9 of the Act was not maintainable. It is submitted that the learned District Judge was in error, in holding that there was no detailed reply filed by Impala to traverse the allegations by VBPL. It is submitted that in the circumstances, it was not necessary for Impala to file a detailed reply. It is submitted that the documents filed by VBPL on the basis of which, the interim relief is sought are “sleazy”, documents, which are not acceptable. It is submitted that the learned District Judge has

granted reliefs in excess of what was prayed. In this regard, it is pointed out that the reliefs sought vide prayer clause C was restricted to (i) stock, (ii) machinery and (iiii) raw materials belonging to VBPL. However, vide para 71 of the impugned judgment, the District Judge has restrained "Impala", from interfering and/or disposing existing stock/machinery/raw material in the factory, which is in excess of the relief claimed, which was not permissible, which ought to have been restricted to stock/machinery/raw material of the applicant, VBPL. It is submitted that the impugned judgment is silent on the issue of restraining Impala from interfering with the alleged possession of VBPL over the plant, which means that the said relief has been denied. It is submitted that the dispute as to possession does not flow, from the arbitral clause and that dispute is beyond the purview of the arbitration clause. It is submitted that various clauses of the brewing agreement dated 11.11.2014 alongwith the two addendums, are clearly indicative of the fact that the possession of the plant was never parted with, in favour of VBPL and Impala continues to be in possession of the plant. It is submitted that there is not even a whisper of there being a lease between Impala and VBPL. It is submitted that the unsigned MoU, on which reliance is placed by VBPL itself, admits that the possession of the plant is with the lessor, Impala and there was no earlier lease at any point of time. It is submitted that if at all there was any lease created on account of exchange of letters dated 21.03.2012, 26.03.2012 and 02.04.2012, then there was no occasion to pay the advance rent in the month of November, 2014. It is submitted that the said documents do not inspire confidence. It is submitted that the order dated 23.02.2016, passed by the DRT is not conclusive, in as much as it is not final and it is subject matter of challenge before the DRAT. The said order only directs the Mamlatdar, to submit the report, which is not yet submitted. It is submitted that some of the documents on which VBPL has placed reliance are forged and fabricated documents. It is thus submitted that the learned District Judge was not justified in granting the prayer clause C.

21. Insofar as AUA No. 3/2019, is concerned, it is submitted that the learned District Judge while entertaining the application filed by Impala in Arbitration Application (Commercial) No. 1/2019 has amplified the reliefs granted, vide order dated 07.12.2018, which was not permissible. It is submitted that the learned District Judge has treated the application under Section 9 filed by Impala as review application and has further amplified the reliefs, granted vide

order dated 07.12.2018 in ARP No. 15/2018. It is submitted that the impugned order clearly shows, non application of mind to the facts and circumstances of the case. It is submitted that the learned District Judge ought to have granted the reliefs claimed by Impala in Arbitration Application (Commercial) No. 1/2019. It is submitted that there is clear documentary evidence to show that brewing and manufacturing in the plant was being done by Impala and as a consequence, the possession of the plant continues with Impala and there are no documents to show that VBPL is in possession of the plant.

22. Insofar as AUA No. 2/2019 filed by VBPL is concerned, it is submitted that prayer clauses A and B in ARP No. 15/2018 have rightly been rejected. It is submitted that the nature of the reliefs as claimed therein can be granted only in very exceptional circumstances, which are lacking in this case. It is submitted that page 294 of the compilation in AUA No 2/2019 shows the details of the balance and it does not show that the amounts are payable to VBPL. It is submitted that the brewing agreement and the addendums do not justify the claim of VBPL. It is submitted that the summary of the transactions at page 295 does not inspire confidence. It is thus submitted that AUA No. 1/2019 and AUA 3/2019 filed by Impala may be

allowed, while AUA No. 2/2019 filed by VBPL be dismissed.

23. The learned Counsel for Impala has placed reliance on the decision of the Supreme Court in the case of **Himangni Enterprises Vs. Kamaljeet Singh Ahluwalia (2017) 10 SCC 706**, the decision of this Court in the case of **Tata Capital Financial Services Limited Vs. M/s Deccan Chronicle Holdings Limited 2013 SCC Online Bom 307**, the decision of the Calcutta High Court in the case of **SREI Equipment Finance Limited Vs. Aqdas Maritime Agency Private Limited 2014 SCC Online Cal 14315** and a decision of the Delhi High Court in the case of **Escorts Limited Vs. Knorr Bremse-AG 2007 SCC Online Del 1541**.

24. On the contrary, it is submitted by Mr. Desai, the learned Counsel for VBPL that the challenge in AUA No. 1/2019 is limited to the order, by which, the appellant, Impala, has been restrained from interfering and/or dispossessing VBPL of the existing stock (Exhibit-20), raw material (Exhibit-21) and machinery (Exhibit-22). It is submitted that there is no challenge in the appeal to the extent of grant of prayer clause C whereby, the appellant, Impala is restrained from interfering with the possession of VBPL of the said plant. It is submitted

that it is clear from the grounds as also the facts mentioned in the Arbitration Application (Commercial) No. 1/2019, filed by Impala under Section 9 of the Act. It is submitted that even after the learned District Judge passed an order dated 23.06.2018, wherein the grant of said reliefs in terms of prayer clause C was confirmed by the learned District Judge, the appeal memo in AUA No. 1/2019 has not been amended. It is submitted that the reply filed by Impala to the application under Section 9 filed by VBPL, is cryptic and does not deny the averments in the application that upon request of Mr. Monte Cruz, Mr. Sachin Joshi of VBPL had agreed to take over the factory premises, including the plant and machinery on lease. It is submitted that it is further apparent from the exchange of letters dated 21.03.2012 and 26.03.2012 between the parties. It is pointed out that the exchange of these letters is not disputed. It is submitted that VBPL, upon taking over the possession of the said plaint had carried out extensive repair work and the plant was made ready for production only in November, 2014 and in this background, the brewing agreement dated 11.11.2014 was drawn and executed between the parties. It is the specific case made out by VBPL that the brewing agreement was executed in the background of the existing lease and the brewing agreement was directly linked with the lease, both of which are intricately linked, insofar as the rights of the parties, under the brewing agreement, is concerned, which is not disputed by Impala. It is submitted that on payment of advance rent of Rs.3 lakhs and VBPL obtaining a central sales tax registration, the parties entered into the first and second addendums. It is submitted that the orders passed by the DRT also clearly establishes the possession of VBPL in respect of the plant. It is further submitted that the deed of assignment dated 24.08.2018 clearly indicates the intention of the parties of parting possession of the plant, in the back ground of the lease in favour of VBPL. It is submitted that the learned District Judge, has rightly taken note of the short reply filed by Impala, which did not even deny any material allegations, made by VBPL in their application. It is submitted that the learned District Judge, has rightly come to the conclusion that the dispute is covered under the Arbitration agreement as per Clause 17.1, which finding is based on the interpretation of the relevant clauses of the brewing agreement. It is submitted that the arbitrability of the dispute with regard to the possession of the plant by VBPL has rightly been considered by the learned District Judge and the view taken by the learned District Judge is a reasonable and plausible view. It is submitted that the issue pertaining to the arbitrability of the dispute has not been challenged by VBPL in AUA No. 1/2019. It is submitted that even otherwise, Impala is estopped from raising the said ground, in as much as Impala has also invoked Section 9 of the Arbitration Act by filing Arbitration Application (Commercial) No. 1/2019. It is submitted that the only limited apprehension expressed therein is that the observations in para 71 of the impugned judgment travel beyond the reliefs claimed and it may not be read as relating to the entire stock, raw material and machinery in the said plant, including those belonging to Impala. It is submitted that the said apprehension is misconstrued in view of the fact that the reliefs claimed are limited to Exhibits 20, 21 and 22, which relate to the stock, raw material and machinery belonging to VBPL only. It is submitted that VBPL has already invoked the arbitration clause and has appointed its Arbitrator and Impala has failed to comply with its mandate. It is submitted that vide letter dated 11.04.2012, Impala has admitted that it was a sick industrial unit with limited means and under utilized capacities and depreciating turnovers and value. It is submitted that Impala has now made a good repute and is leading in its business. It is submitted that the order dated 30.01.2019, which is assailed in AUA No. 3/2019 does not call for any interference.

25. Insofar as AUA No. 2/2019 is concerned, it is contended that the learned District Judge inspite of holding in para 59 of the impugned judgment that the balance of convenience tilts in favour of VBPL, has erred in refusing to grant reliefs as per prayer clauses (a) and (b). It is submitted that the learned District Judge was in error in holding that VBPL has not produced any material, more particularly, in the nature of bank records, balance sheets, vouchers, accounts, receipts etc. and it relates only to summary of transaction, which according to the learned District Judge was an "unsubstantiated piece of paper". It is submitted that the learned District Judge, was also in error, in refusing to grant the reliefs as per prayer clauses A and B, on the ground that the only remedy for VBPL is to proceed with the arbitration and to recover the amount. It is submitted that the learned District Judge was in error in holding that the grant of prayer clauses A and B would tantamount to granting final relief and nothing would survive in the dispute. In this regard, it is submitted that the total outstanding amount, according to VBPL, is much in excess of Rs.7.2 crores, which is recoverable from the debtors/customers, who had purchased the vodka premix and other beverages manufactured at the said plant. It is submitted that the learned District Judge proceeded on the premise that

the total outstanding dues were Rs.7.2 crores, which is not correct. It is submitted that prayer clauses A and B are relatable to Exhibits 20 to 22 only as held by the learned District Judge. It is submitted that Exhibit 23 is not disputed by the respondents, in their reply, which the learned District Judge has failed to consider. It is submitted that Exhibit 23 is substantiated by way of summary of debtors and statements and the said documents, were part of the record, before the learned District Judge. It is therefore submitted that AUA No. 2/2019 may be allowed and prayer clauses A and B of ARP No. 15/2018 be granted.

26. The learned Counsel for VBPL has placed reliance on the decision of the Supreme Court in the case of **Wander Ltd. & Others Vs. Antox India P. Ltd. 1990 Supp. SCC 727** and **Skyline Education Institute (Pvt.) Ltd. Vs. S.L. Vaswani & Others (2010) 2 SCC 142**.

27. I have carefully considered the rival circumstances and the submissions made.

28. Notwithstanding the extensive narration of facts and the rival submissions, these Appeals can be disposed off on

short count as there is a subsequent development, which has a bearing on the issues involved in these Appeals. This Court, by an order dated 03.05.2019 in Application for Appointment of Arbitrator No. 4/2019 has appointed Shri Justice Naresh H. Patil, former Chief Justice of this Court as the nominee Arbitrator on behalf of VBPL and Shri Justice A.P. Lavande, former Judge of this Court on behalf of Impala. Both these Arbitrators have been requested to appoint a Presiding Arbitrator in terms of the provisions of the Act. Sub-section 3 of Section 9 of the Act provides that once the Arbitral Tribunal has been constituted, the Court shall not entertain an application under sub-section (1) of Section 9 of the Act, unless the Court finds that the circumstances exist, which may not render the remedy, provided under Section 17 of the Act efficacious. Thus, the legislative intent clearly indicates that once an Arbitral Tribunal has been constituted (which in terms of the order dated 03.05.2019, passed by this Court shall stand constituted on the nomination of the Presiding Arbitrator), the Court shall not entertain an application under sub-section (1), except when, the Court finds that a remedy under Section 17 of the Act may not be efficacious.

29. I have considered the nature of the reliefs, sought by VBPL in ARP No. 15/2018 and I find that the reliefs prayed for, can also be claimed before the Arbitral Tribunal under Section 17 of the Act.

30. AUA No. 2/2019 by VBPL is only to the extent of refusal by the learned District Judge to grant prayer clauses A and B. The learned District Judge has refused to grant prayer clauses A and B, on the ground that the VBPL has only produced plain xerox copies and there are no vouchers, receipts maintained by VBPL of such transactions and therefore, VBPL is not entitled to recover Rs.7.2 crores from Impala. It is in this view of the matter that the learned District Judge has refused to grant prayer clauses A and B.

31. Mr. Desai, the learned Counsel for VBPL has submitted that the learned District Judge was not right in holding that the claim is based only on some xerox copies. He further submitted that the total claim of VPBL is much in excess of Rs.7.2 crores and therefore, the grant of prayer clause B cannot amount to granting the whole relief. *Prima facie*, at this stage, I am not inclined to accept the said contention, in as much as the prayer clauses reproduced above, do not restrict

the claim to Rs.7.2 crores.

32. Insofar as AUA No. 3/2019 is concerned, it arises out of the order dated 30.01.2019, passed by the learned District Judge in Arbitration Application (Commercial) No. 1/2019, in which, out of several prayers made, only prayer clauses B, D and E were pressed. The learned District Judge while considering these prayer clauses, has noted the earlier order passed in ARP No. 15/2018, in which, only prayer clause C was granted.

33. The learned District Judge has rightly found that the entire prayer clause C was granted in favour of VBPL and it cannot be restricted by the observations in para 71 of the order passed in ARP No. 15/2018. It cannot be accepted that by passing the order dated 30.01.2019, the learned District Judge has enlarged the relief granted earlier in ARP No. 15/2018. The contention on behalf of Impala that the application under Section 9 of the Act was not maintainable also, *prima facie*, cannot be accepted, as Impala itself has invoked Section 9 of the Act by filing Arbitration Application (Commercial) No. 1/2019. Considering the overall circumstances, I am not inclined to interfere with the impugned order passed.

34. In the result, the following order is passed:

**<u>O R D E R</u>**

All the Appeals are dismissed. It is however made clear that if the parties apply for interim measures under Section 17 of the Act, before the Arbitral Tribunal, the Arbitral Tribunal shall not be influenced by the observations or findings of the learned District Judge in the impugned order or of this Court and if any such application is filed, the same shall be decided on its own merits and in accordance with law.

In the circumstances, there shall be no order as to costs.

**C. V. BHADANG, J.**

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