

psv

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION
COMMERCIAL ARBITRATION PETITION (L.) NO.347 OF 2019**

Vistra ITCL (India) Ltd. ..Petitioner
Vs.
VBC Ferro Alloys Ltd. & Ors. ..Respondents

Mr.Rashmin Khandekar with Ms.Jigisha i/b. Negandhi Shah & Himayatullah for Petitioner.
Mr.Rafeeq Peermohideen i/b. Ms.Sapna Rachure for Respondent Nos.1 and 3 to 7.

**CORAM : G.S. KULKARNI, J.
DATE : 23rd APRIL, 2019**

P.C.:

Heard learned Counsel for the petitioner and learned Counsel for the respondent Nos.1 and 3 to 7.

2. It is stated that respondent No.2-VBC Industries Ltd. is in liquidation.

3. This is a petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 (for short, “the ACA”) to enforce the award of the arbitral tribunal whereby the petitioner has prayed for interim measures pending enforcement of the arbitral award dated 13 March 2019.

4. Initially on 25 August 2016 this Court (S.J. Kathawalla, J.) by an order passed on Arbitration Petition (L.) No.911 of 2016 granted the following interim reliefs which need to be noted :-

“3. In view of the aforesaid facts and circumstances, the Respondents are restrained by an order and injunction from in any manner selling, alienating, encumbering, parting with possession and/or creating third party rights in respect of any of their assets.”

5. Thereafter the parties were before the arbitral tribunal. By an order passed by the learned sole arbitrator on the Section 16 application on 12 September 2017, the above relief granted by this Court, however in terms of a statement as made on behalf of the respondent, was granted. The arbitral tribunal passed the following order:-

“5. When the matter came up for hearing today on behalf of the Respondents, Learned Counsel on instruction states that they would not in any manner sell, alienate, encumber, part with possession and/or create further third party rights in respect of any of their assets as disclosed in the Affidavits.

6. Considering the above statement and as there was an earlier Order of the High Court dated 25th August, 2016 in the Petition under Section 9 of the Act, the Respondents are restrained by an order and injunction from in any manner selling, alienating, encumbering, parting with possession and/or creating further third party rights in respect of any of their assets.”

6. There is no dispute that the said order recording the statement made on behalf of the respondent continued to operate till the publication of the award.

7. Now as the award is published, the petitioner has prayed for interim measures in terms of the prayers as made in paragraphs 42 (a), (b) and (c) of the petition.

8. Learned Counsel for the respondent Nos.1 and 3 to 7 on instructions states that subject to respondents' rights to challenge the

award, the said statement as made on behalf of the respondents and as recorded by the arbitral tribunal in the order dated 12 September 2017 can be continued and remain in operation until the award is enforced, however, without prejudice to the rights and contentions of these respondents and the rights of the respondents to challenge the award in proceedings under Section 34 of the ACA. This statement made on behalf of respondent Nos.1 and 3 to 7 is accepted. Ordered accordingly.

9. In view of the fair stand taken by the respondents to continue the statement as recorded by the arbitral tribunal as noted above, further adjudication of this petition is not called for. The petition is accordingly disposed of in the above terms.

10. Learned Counsel for the respondent Nos.1 and 3 to 7 also states that there is no change of the position of the assets from what it was when the arbitral tribunal passed the order dated 12 September 2017. Statement is accepted.

11. All contentions of the parties on merits, on any future proceedings are expressly kept open.

[G.S. KULKARNI, J.]