

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**ORDINARY ORIGINAL CIVIL JURISDICTION****NOTICE OF MOTION NO.708 OF 2017****IN****COMMERCIAL ARBITRATION PETITION NO.384 OF 2017**

Litostroj Power D.O.O.Applicant/Petitioner

vs

IVRCL Ltd. And Anr. ...Respondents

.....

Ms. Juhi Mathur, a/w. Mr. Nitesh Jain, i/b. Shardul Amarchand Mangaldas & Co., for the Applicant/Petitioner.

Ms. Shilpa Kapil, for Respondent No. 1.

Mr. Dharmesh Jain, a/w. Mr. Aamir Farooqui, i/b. Mr. Anil Agarwal, for Respondent No.2.

.....

CORAM : S.C. GUPTE, J.

DATED: 9 APRIL 2019

P.C.:

. This notice of motion is taken out by the original Petitioner *inter alia* seeking certain reliefs in respect of a fixed deposit receipt held by the first Respondent Company. It appears that the arbitration reference between the parties is at an advanced stage. Secondly, it also appears that the first Respondent Company is facing corporate insolvency proceedings and an Interim Resolution Professional (“IRP”) has been appointed. The IRP would have to prosecute the arbitration reference, if so desired, and seek relief, if any, before the arbitrator or alternatively in the insolvency proceedings. Learned Counsel for the first Respondent Company states that the fixed deposit receipt has been renewed and is

still held by the first Respondent Company. The statement is noted. In view of the statement and the position noted above, the notice of motion is disposed of with liberty to the Applicant/Petitioner to seek appropriate relief in this behalf from the arbitral forum or NCLT, as the case may be.

2. Learned Counsel for the Applicant/Petitioner submits that even if an arbitral forum has been constituted and is seized of the reference, this Court should pass an appropriate order on the notice of motion, since this Court can, in any event, pass an order under Section 9 before, during or after the reference. The question is not whether the Court can do so; the question is whether the Court should do so in this case. In the circumstances noted above, this Court is of the considered view that any application for further reliefs may appropriately be made before the arbitral forum now constituted or before NCLT in the liquidation proceedings, as the case may be. This is not to suggest that this Court has no jurisdiction but that it chooses not to exercise it in the facts of the case. The notice of motion is disposed of accordingly with liberty as noted above.

3. So far as Section 9 petition is concerned, since the order already passed therein has perpetuated all this while and the arbitration reference is now at an advanced stage, the arbitration petition is disposed by continuing that order pending the reference.

(S.C. GUPTE, J.)