

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO.1 OF 2019

IN

REVIEW PETITION (L) NO.43 OF 2019

IN

COMMERCIAL ARBITRATION PETITION NO.384 OF 2017

Litostroj Power D.O.O.

....Applicant/Petitioner

vs

IVRCL Ltd. And Anr.

...Respondents

.....

Dr. Birendra Saraf, a/w. Mr. Nitesh Jain, i/b. Shardul Amarchand Mangaldas & Co., for the Applicant/Petitioner.

Mr. Dharmesh S. Jain, i/b. Mr. Anil Agarwal, for Respondent No.2.

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CORAM : S.C. GUPTE, J.

DATED: 16 OCTOBER 2019

P.C.:

. This commercial review petition seeks review of an order passed by this Court on an application made to it under Section 9 of the Arbitration and Conciliation Act. There is a delay of 76 days in filing this review petition. Interim Application No.1 of 2019 is taken out for condonation of that delay. For the reasons stated in the interim application, the delay is condoned. Office shall number the commercial review petition accordingly. The interim application is disposed of.

2. By the order under review, this Court continued interim relief existing as of that date, i.e. 9 April 2019, pending disposal of the arbitral reference, with liberty to the Applicant/Petitioner to seek further

appropriate reliefs before the arbitral forum itself or before NCLT, as the case may be, since, by that time, the first Respondent company, who is the Respondent to the arbitral reference, was also facing insolvency proceeding and an Interim Resolution Professional (IRP) was appointed. The clarification or modification sought in this order is to extend this interim relief for a further limited period after the award is delivered in the arbitral reference. This application is made on the basis of the opinion of an expert in Singapore law, who has opined that as a matter of Singapore law, an arbitral tribunal based in Singapore is not competent to issue an order, or extend the benefit, of interim protection beyond the date of the award. It is submitted by the Review Petitioner (original Applicant in the arbitration petition under Section 9) that the interim relief granted by this Court would, thus, extend only till the Singapore based arbitral tribunal makes its award. It is submitted that, thereafter, the tribunal would be *functuous officio* and would not be able to extend the relief granted by this Court. It is submitted that in the premises, even if the award were to be in favour of the Petitioner herein, interim relief pending execution of that award in terms of what has been ordered by this Court pending hearing of the reference cannot be ordered by the Singapore based arbitral tribunal. It is submitted that under Section 9 of the Act, this Court has power to order protective interim measures even post award and that this Court, in the premises, should exercise that power and extend the interim protection granted by the order under review, namely, order dated 9 April 2019, for a limited period beyond the date of the award. The request seems to be reasonable.

3. This review petition has been duly served by the Review Petitioner on Respondent No.1 through the IRP. An affidavit in proof of such service has already been tendered to the Court. Despite service, none appears on behalf of the Respondent.

4. In the premises, it is ordered that the interim protection granted by this Court in terms of its order dated 9 April 2019, shall extend for a period of six weeks from the date of the award of the arbitral tribunal. The order of 9 April 2019 shall stand modified accordingly. The review petition is disposed of.

(S.C. GUPTE, J.)

Smita
Gonsalves

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