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

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Date of Decision: 05.07.2019

+ **O.M.P. (COMM) 235/2019**

GOYAL MG GASES PRIVATE LIMITED Petitioner
Through Mr. Vikas Aggarwal and Mr. Anshu
Mahajan, Advs.

versus

PANAMA INFRASTRUCTURE DEVELOPERS PRIVATE
LIMITED & ORS. Respondents
Through None

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J. (ORAL)

1. This is a petition filed under Section 34 of the Arbitration and Conciliation Act, 1996 (in short '1996 Act').
2. Via the instant petition challenge is laid to an order dated 14.5.2019 passed by the learned Arbitrator.
3. The learned Arbitrator vide order dated 14.5.2019 has disposed of the petitioner's (who is the original claimant) application under Order 1 Rule 10 of the Code of Civil Procedure, 1908 (in short 'CPC'). Though the provisions of CPC are not applicable to arbitration proceedings as is evident upon a perusal of the provisions of Section 19 of the 1996 Act, I would assume that the petitioner sought to invoke via its application dated

14.5.2019 the principles analogous to Order 1 Rule 10 of the CPC.

4. I must indicate at the very outset that it is my understanding that a petition under Section 34 would not lie qua the impugned order which, as indicated above, dealt with an application for impleadment of third parties who concededly are not parties to the arbitration agreement.

5. Mr. Aggarwal, who appears for the petitioner, has relied upon Section 16(6) and Section 31(6) of 1996 Act to contend that a petition under Section 34 would lie against such an order.

6. To be noted, Section 16 deals with the competence of the Arbitral Tribunal to rule on its own jurisdiction. In sum, Section 16 encompasses the *Kompetenz-Kompetenz* principle.

7. It is not the petitioner's case that the jurisdiction of the Arbitral Tribunal is in question; an aspect which put to Mr. Aggarwal to get over the impediment, Mr. Aggarwal drew my attention to Subsection (6) of Section 16 and Subsection (6) of Section 31 of the 1996 Act. Based on these provisions, it was contended that while Section 16(6) gave liberty to the aggrieved party to challenge the award under Section 34, Section 31(6), *inter alia*, provided that the arbitral tribunal may at any time during the arbitral proceedings make an interim award on any matter with respect to which it may make a final award.

7.1 It is, thus, Mr. Aggarwal's contention that the issue of the kind which was raised by the petitioner in its application which was disposed of by the arbitral tribunal by the impugned order resulted in an interim award and, therefore, the Section 34 petition would lie as contemplated under Section 16(6) of the 1996 Act.

8. I am unable to agree with the contention of Mr. Aggarwal.

8.1 The application praying for impleadment of third parties is not a matter which would dovetail into the final award. The fact that the petitioner is aggrieved by disposal of such an application would not morph the order into an interim arbitral award as contended by Mr. Aggarwal.

8.2 I have not been shown any authority which is directly on the point and takes a view contrary to what is stated herein above.

9. Be that as it may, even on merits I find that the petition is not sustainable.

10. Briefly, the captioned petition has been filed in the background of the following broad facts.

10.1 The parties, it appears, entered into an agreement dated 2.9.2016 in respect of 11 windmills alongwith land and building situate in the State of Karnataka.

10.2 Evidently, disputes arose with respect to the agreement dated 2.9.2016 which, it seems, impelled the respondents to terminate the said agreement.

10.3 The termination was brought about by respondents on 25.7.2017.

11. Given this circumstance, the petitioner approached this Court by way of five (5) Section 9 petitions.

11.1 This Court, on 20.12.2017, passed an interim order directing the respondents to maintain *status quo* with regard to possession and ownership of the “windmill assets”.

11.2 The order was made absolute on 29.5.2018 in view of the failure of the respondents to disclose the name of the persons who had bought the said “windmill assets” from them.

11.3 I may also indicate that on the same date i.e. 29.5.2018, the Section 11 petitions filed by the petitioner were also disposed of with the appointment

of an arbitrator as prayed.

12. The petitioner, thereafter, filed an application under Section 17 before the arbitral tribunal in which, in the first instance, a *status quo* order was passed on 10.7.2018. Finally, the application under Section 17 filed by the petitioner was disposed of on 8.8.2018.

12.1 Accordingly, the relief sought via prayer clause (a) in the Section 17 application was allowed. Respondents were directed to maintain *status quo* the title and possession of the “windmill assets” situate in Karnataka as also in the State of Rajasthan during the disposal of the arbitration proceedings.

12.2 It may be relevant to note that the arbitral tribunal in this order noted the fact which was recorded in its earlier order of 10.7.2018 that the respondents had indicated to it that the “windmill assets” located in Karnataka (the subject matter of the instant proceedings) have been sold and the third party interest has been created; a fact which was refuted by the petitioner.

12.3 Insofar as the second prayer was concerned whereby deposit of the entire revenue generated from the “windmill assets” between 1.4.2016 and 31.8.2016 was sought was rejected.

13. Thereafter, pleadings were completed in the matter. Concededly, the Statement of Defence (in short ‘SOD’) was filed by the respondents on 14.9.2018.

13.1 It is not in dispute that in the SOD the respondents did disclose the name of the parties to whom the “windmill assets” located in the State of Karnataka had been sold.

13.2 It is also not in dispute that the relevant documents pertaining to sale

were filed by the respondents alongwith the SOD.

13.3 Despite having received this information the petitioner chose not to move the arbitral tribunal for impleadment of entities who had bought the subject “windmill assets” from the respondents up until April, 2019.

14. It is in this background that the application for impleadment of third parties came up for hearing before the arbitral tribunal. The arbitral tribunal has dismissed, *inter alia*, on the ground that the petitioner had apart from anything else delayed making an application for impleadment of the third parties to whom this “windmill assets” had been sold.

14.1 Besides this, the arbitral tribunal has also taken the view and, in my opinion correctly, that if the reliefs claimed by the petitioner which are in the nature of specific performance of the agreement dated 2.9.2016 and for declaring the sale agreements dated 19.7.2017 entered into between respondents and the third parties as null and void- are allowed, then, a “meaningful decree” would be available to the petitioner in the matter.

15. Mr. Aggarwal’s submission that the petitioner would have no recourse against the third party entities who have bought the “windmill assets” situate in Karnataka is, to my mind, an erroneous plea for the reason that the third parties cannot get a better title than the respondents.

15.1 Besides this, in my view, it is important to bear in mind that every order passed by an arbitral tribunal which may impact the final award does not result in an interim award. An award is like a judicial decree which not only determines the rights of the parties with regard to matters in issue but also gives the reasons for reaching such a determination. Therefore, an interim order passed by an arbitral tribunal at an interim stage has to be tested on these parameters before it can be said that it is in nature of an

interim award. The impugned order, in my view, tested on these parameters, cannot qualify as an interim award.

16. Therefore, if the petitioner were to succeed finally in the matter before the arbitral tribunal, it will have an award which hopefully would morph into a decree which can give petitioner a cause of action to proceed further in the matter both against the respondents and perhaps the third party entities.

17. The apprehensions expressed by Mr. Aggarwal, in my view, are misplaced.

18. I find no merit in the petition both on the ground of maintainability as well as on merits.

19. The petition is, accordingly, dismissed.

RAJIV SHAKDHER, J

JULY 05, 2019

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