

Via video conferencing

\$~2

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

O.M.P.(I) (COMM.) 253/2020

ACHENBACH BUSCHHUTTEN

..... Petitioner

Through Mr.Amir Singh Pasrich with Mr.Amit
Ranjan Singh, Advs.

versus

ARCOTECH LTD.

..... Respondent

Through Mr.Ritin Rai, Sr.Adv. with Ms.Sonia
Dube, Mr.Shatadru Chakraborty, Ms.Surbhi
Anand, Advs.

CORAM:

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

%

31.08.2020

I.A. 7523/2020

1. Allowed, subject to all just exceptions.

O.M.P.(I) (COMM.) 253/2020

2. This is a petition filed under Section 9 of the Arbitration and Conciliation Act, 1996 seeking the following reliefs:-

“A. Direct the Respondent company to provide solvent security by way of a deposit in the Registry of this Hon'ble Court of an Indian Rupee sum equivalent to at least Euros 16.5 Million (liquidated sum claims as per the SoC) as also towards damages yet to be quantified for the period of adjudication of the arbitration and upto satisfaction of the final award;

B. Direct the Respondent to forthwith make advance payment of the agreed liquidated sum of €5.5 Million due and payable to the Claimant/ Applicant as per Invoices annexed to the SoC as Annexures "C-12" and "C-15" thereof and due as per the Amendment Agreement dated 27th September 2016 referred to

above (Annexure - "C-15" to the SoC) upon such terms as this Hon'ble Court may deem fit;

C. Until such time as the aforesaid security is provided and payment made to the extent sought for in prayers A & B above, issue an injunction or other direction (as also emergency ad-interim orders) to restrain the Respondent from alienating, encumbering, selling, disposing off, dealing with or creating third party rights, directly or indirectly of the Respondent's assets, and those found out pursuant to prayer D, until the final disposal of the arbitration proceedings and realisation of the awarded amount;

D. Direct the Respondent to disclose on affidavit any and all available assets of the company, with details of the receivables, bank accounts with bank balances, moveable and immovable property in India or abroad, loans and advances (due to the Respondent Company) as on 4th May 2020 (date of the first set of directions from the Learned Tribunal extracted above into paragraph 11) along with full details setting out faithful and frank disclosure as sought for in the Claimant's letter dated 19th May 2020 as on the date of this Application;

E. Issue an injunction or other direction (and ad-interim orders) of status quo to restrain the Respondent from operating its bank accounts, withdrawing funds, transferring trade receivables (whether earned directly or through related/affiliate concerns), moving funds or loans and advances to related concerns, affiliates etc. except on such terms as are set by this Hon'ble Court and/or maintaining the same at such level or in such amount as may be directed by this Hon'ble Court.

F. Grant cost of this application to the Applicant/Petitioner/Claimant.

G. Grant such other and/or further interim measures of protection, orders for securing the amount in dispute in the arbitration and/or conservatory measures as may appear to this Hon'ble Court to be just and convenient, including directions/orders for ad-interim relief and/or pass such other ,and/or further order(s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present

case.”

3. The present petition seeking interim direction has been preferred by the petitioner primarily on the ground that the three member Arbitral Tribunal, which was appointed by the London Court of International Arbitration (India) [LCIA] on 19.12.2019 pursuant to its request on 25.09.2019, has till date not passed any orders on the petitioner's interim application moved on 24.04.2020.

4. Learned counsel for the petitioner submits that on account of the inaction on the part of the learned Tribunal, more particularly, the learned Chairperson/Presiding Arbitrator, the petitioner had sent repeated reminders to the learned Chairperson for expeditious disposal of its pending application for interim relief. However, despite the said request, no action was taken by the learned Tribunal, compelling the petitioner to make a representation to the LCIA for substitution of the learned Chairperson. He submits that after the filing of the present petition, the petitioner has now received a communication dated 28.08.2020, from which it had learnt that the Chairperson so appointed, has withdrawn from the arbitration proceedings and, therefore, the LCIA is likely to take steps to appoint another Chairperson/Presiding Arbitrator shortly.

5. After some arguments, learned counsel for the petitioner submits that since the petitioner is hopeful that the LCIA will now expeditiously appoint a new Chairperson/Presiding Arbitrator, and the learned Tribunal thereafter will take expeditious steps to decide the petitioner's application for interim relief, pleadings wherein are already complete, he has instructions not to press the present petition

but seeks liberty to approach the Court again in case, no action is taken by the LCIA and the learned Tribunal within the next four weeks.

6. The petition stands dismissed as withdrawn, with liberty as prayed for.

7. It is hoped that the LCIA and the learned Tribunal will act expeditiously and keep in mind that the petitioner's application for interim relief is pending for the last four months.

REKHA PALLI, J

AUGUST 31, 2020

sr