

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

ARBA No. 7 of 2021

M/s Varahi Associates, Through Its Partner, Shri Subhash Singh, Having Its Head Office At C/o Shri Vinayak Petroleum (Kharsia Dharamjaigarh Main Road) At P.O. Chandrashekharapur (Edu.), Tehsil Dharamjaigarh, District Raigarh Chhattisgarh- 496665

---- Petitioner

Versus

South Eastern Coal Fields Limited Through The Chairman Cum Managing Director, Secl Bhavan, Seepat Road, Bilaspur 495555 Chhattisgarh.

---- Respondents

For Petitioner	:	Mr. Rishabh Garg, Advocate
For Respondent	:	Mr. Vaibhav Shukla, Advocate

Hon'ble Shri Justice P. Sam Koshy

Order on Board

08/06/2021

1. Aggrieved of the order dated 15.03.2021 passed by the learned 2nd Additional District Judge, Bilaspur in MJC (Civil) No. 08/2021, the present appeal under Section 37 of the Arbitration Act has been filed. Vide the impugned order (Annexure A/1) the learned Court below has rejected the application under Section 9 for an interim relief preferred by the applicant.
2. The fact in brief is that the applicant-a Contractor had participated in a tender floated by the respondents dated 10.02.2018 for loading of coal as also for transportation of coal from the Eastern Part of Sector-D at Dhanpuri OCM of Sohagpur area. It is said that on account of non-performance by the present applicant, the management of SECL has blacklisted the applicant-firm for a period of 24 months vide order dated

08.12.2020 and have also ordered for the forfeiture of the EMD and the contract has been terminated. Against the said action, the applicant has preferred an application under Section 11 seeking for appointment of an arbitrator and at the same time, the applicant also approached the learned District Court under Section 9 seeking for an interim relief. The interim relief sought for was for staying the effect and operation of the order of blacklisting which was for a period of 24 months.

3. The learned District Court after due consideration of the submissions rendered on either side and also on perusal of the pleadings, particularly the nature of contract and the conditions of the contract vide the impugned order has rejected the application leading to the filing of the present appeal under Section 37.
4. The contention of the learned counsel for the applicant is that the findings given by the Courts below while rejecting the section 9 application are totally extraneous and are not relevant to the relief sought for under Section 9. According to the applicant, the interim relief was confined to the blacklisting part and the staying of the said order till the arbitration proceedings are finalized, whereas the consideration by the learned Court below were in fact more on the terms and conditions of the contract, which were not either relevant while deciding the section 9 application or would have been relevant while the final decision of the arbitration proceedings.
5. The further contention of the applicant is that the reason why they had sought for an interim protection seeking stay of the operation of the blacklisting is that it would be difficult for the arbitrator to finally by

allowing the arbitration in favour of the applicant decide the actual monetary loss incurred by the applicant on account of the blacklisting.

6. The learned counsel for the applicant referred to a couple of decisions rendered by the Hon'ble Supreme Court as also by this High Court whereby interim relief against the blacklisting part has been considered and allowed.
7. Having heard the contention on behalf of the applicant and on perusal of the impugned order passed by the learned District Judge, this Court finds that the learned Court below has duly appreciated and considered all the contentions that the applicant has raised while deciding the section 9 application and it is also revealed that the learned Court below while deciding the application has also taken note of the prima-facie case and also the balance of convenience and the aspect of irreparable loss before deciding and have dealt with each of these three ingredients, which are otherwise to be made out for grant of interim protection. That as the Court below has having dealt with the three aforesaid issues reached to the conclusion that the applicant can be suitably compensated in case the arbitration proceedings stands decided in favour of the applicant and at this stage no case of grant of interim relief has been made out.
8. This Court on due consideration of the grounds and findings given by the Court below while deciding section 9 application do not find any gross error committed by the Court below or having any scope for interference in the given factual backdrop of the case. This Court fully endorses the findings given by the Court below and does not find any

merit in the Section 37 appeal preferred by the applicant herein. Reserving the right of the applicant to take appropriate remedies before the Arbitrator, the present appeal under Section 37 stands rejected.

Sd/-
(P. Sam Koshy)
Judge

Ved