

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

COMMERCIAL ARBITRATION PETITION NO. 449 OF 2021

Motilal Oswal Financial Services Limited	}	
	}	Petitioner
Versus		
Dhanera Diamonds and Ors.	}	Respondents

Dr. Birendra Saraf-Senior Advocate with Mr.Robin Shah and Mr. Satchit Bhogle i/b. Parinam Law Associates for the petitioner.

Mr. Durgaprasad Poojari for the respondents.

CORAM :- G. S. KULKARNI, J.

DATE :- SEPTEMBER 30, 2021

PC :-

1. This is a petition filed under section 9 of the Arbitration and Conciliation Act, 1996 (hereafter “the Act” for short), whereby the petitioner has prayed for protective reliefs pending the enforcement and execution of the award. The award is now subject matter of challenge at the behest of the respondent before the appellate tribunal. Prior to the commencement of the arbitration proceedings, the petitioner had moved before this Court a petition filed under section 9 of the Act CARB E-CASE No. 3252020. By an order dated 3rd July 2020 passed by Mr. Justice S. C. Gupte (as His Lordship then was) the following interim protection was granted to the petitioner: -

“ORDER

(i) There will be temporary injunction against Respondent Nos. 1 to 5 restraining them from alienating or disposing of assets disclosed in the Affidavit of disclosure dated 27th May 2020 filed by Mr. Vinod Shah on behalf of the Respondents. This temporary injunction shall apply for a period of six weeks from today;

(ii) The Petitioner shall be at liberty to apply for interim reliefs under Section 17 of the Act before the arbitral tribunal constituted by the Stock Exchange in of the Petitioner's request within this period of six months. In case the arbitral tribunal cannot be constituted for any reason not attributable to the Petitioner, the Petitioner will be at liberty to apply for extension of the ad-interim reliefs granted herein before this court;

(iii) All rights and contentions of the parties on merits of the interim protection sought as well as the main controversy between the parties, are kept open, to be agitated before the arbitral tribunal;

(iv) The Arbitration Petition is disposed of accordingly."

2. The above order came to be modified to some extent by a further order dated 8th July 2020 passed by His Lordship. The amended order was made available to the parties.

3. It is not in dispute that such interim protection, which was granted by this court by the above orders passed by this Court has continued to remain in operation even post the pronouncement of the arbitral award by the learned Arbitrators. This petition was filed on 12th June 2021 after the arbitral award was made, praying for further reliefs pending enforcement of the award. Under the arbitral award the respondents were directed to pay to the petitioner inter alia an amount of Rs.80, 74,40,241.51 under the contract in question.

4. This Court [Mr. Justice Dama Sheshadri Naidu (as His Lordship then was)] passed the following order in this petition

on 28th June 2021, as under: -

“Before the arbitration proceedings had been initiated, on 3rd July 2020 this Court passed an interim order restraining the respondents from ‘alienating or disposing of’ assets disclosed in the affidavit of disclosure, dated 27th May 2020. Later, during the arbitration proceedings, too, the interim order continued to hold the field.

2. As the record reveals, the respondents suffered an award and are required to pay to the petitioner Rs.80,74,40,241.51/-. Of course, there is a challenge pending against the award; but there is no interim protection for the Respondents in that challenge. The arbitral award is operative.

3. Now, the petitioner has come with this petition under Section 9 of the Arbitration and Conciliation Act. Pending further adjudication in this matter, the petitioner wants the Court to continue the interim protection it had granted on 3rd July 2020.

4. The Respondents’ counsel on this count seeks three weeks’ time to file a reply.

5. Post the matter on 19th July 2021. Meanwhile, this Court’s interim order, dated 3rd July 2020, shall continue to bind the respondents.”

5. Thus the interim protection, which came to be granted to the petitioner in the earlier proceedings filed under section 9 of the Act has continued to remain in operation, by virtue of the above orders which operate till date.

6. Dr. Saraf, learned senior advocate appearing for the petitioner has drawn my attention to the fact that there is further affidavit of disclosure filed in the petition on 15th July 2021, wherein the disclosure is not different from what was disclosed in the earlier affidavit. Nonetheless, Dr. Saraf would submit that it is the petitioner’s contention that the disclosure so made is deficient.

7. Be that as it may, in the present circumstances, when the appeal against the arbitral award itself is heard and closed for orders by the appellate tribunal it would be in the interest of justice that the relief as granted by this court by the order dated 3rd July 2020 and as continued by further order dated 28th June 2021, and which has continued to operate till date, be ordered to be further continued till the disposal of the pending arbitral appeal, and for a period of 4 weeks thereafter. It is accordingly ordered.

8. With the aforesaid observations, the arbitration petition stands disposed of. No costs.

9. All contentions of the parties in the pending appeal, are expressly kept open.

10. Liberty is granted to the parties to file appropriate proceedings as and when need so arises.

(G. S. KULKARNI, J.)

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signed by
RAJU
DATTATRAYA
GAIKWAD
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