IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMMERCIAL ARBITRATION PETITION (L) NO. 18843 OF 2021

Mcnally Bharat Engineering Co. Ltd. … Petitioner

vs.

Tata Capital Financial Services Ltd. … Respondent

Mr. Bhupesh Dhumatkar a/w. Ms. Archana Karmokar i/b. M/s. Divya Shah Associate for the Petitioner.

Mr. Darshit Jain a/w. Ms. Sanaya Dadachanji and Mr. Shantanu Ray i/b. M/s. Manilal Kher Ambalal & Co. for the Respondent.

CORAM : A. K. MENON, J.

DATED : 2nd SEPTEMBER, 2021.

P.C. :

1. By this petition the petitioner challenge an order passed by the sole Arbitrator under section 17 of the Arbitration and Conciliation Act,1996. The petitioner is aggrieved by the part of the order in the petition. Prayer clause (a) reads as follows :

(a) That this Hon'ble Court be pleased to set aside the impugned Order dated 26th April 2020 ('Exhibit-G' hereto) to the extent of directing the Petitioner to deposit monies in the sum of Rs. 28,31,63,054.68 (Rupees Twenty Eight Crore Thirty One Lakh

Sixty Three Thousand Fifty Four and Sixty Eight Paisa) in a specifically designated escrow account or in the alternative to furnish an unconditional and irrevocable Bank Guarantee of Rs.28,31,63,054.68 (Rupees Twenty Eight Crore Thirty One Lakh Sixty Three Thousand Fifty Four and Sixty Eight Paisa) of any nationalized bank, in favour of the Respondent and granted other reliefs as prayed for in the impugned Order against the Petitioner ;

2. An Arbitral tribunal directed the respondent to deposit a sum of Rs.28,31,63,054.68 in a designated escrow account in a Nationalised bank until passing of the final Award or any further orders. In this regard it is clarified that there is no charge or lien or encumbrance in respect of that escrow account. As an alternative tribunal directed respondent to furnish the unconditional and irrevocable bank guarantee of the aforesaid bank for the aforesaid sum. The bank guarantee shall be kept valid and alive till passing of the final Award or any further orders. Further reliefs have also been sought.

3. Mr.Dhumatkar on behalf of the applicant today submits that the order is unwarranted and without any basis in fact and in law, in the sense the amount claimed to be monetary value of certain preference shares issued by the respondent to the claimant. The quantum though is disputed Mr. Dhumatkar states that no such direction could have been passed when

tribunal is yet to assess the merits of the claimants claim. Not only has the tribunal directed payment of money into the escrow account it also directed the respondent not to deal with, dispose of certain shares of one MSEL and directing disclosure of all assets of the respondents within four weeks. An injunction was also been issued and all of these Mr. Dhumatkar assails as being unwarranted in the facts and circumstances of the case.

4. Mr. Dhumatkar has taken me through the reasons given by the Tribunal on paragraph 116 onwards and he submits that the tribunal has proceeded on the basis as if the claimant was entitled to succeed and has directed the respondent to secure the entire claim. He submits that this is unsustainable. In fact he has invited my attention to paragraph 136 of the order which deals with the reason why protection is liable to be granted. In that respect the arbitral tribunal has taken into consideration the interim measures of protection that would be justified in the facts of the case. It has proceeded on the basis of prima facie case made out by the claimant and that is dealt with in sufficient detail in the order. Breaches by respondent have been highlighted and specified in paragraph 124.

5. The petitioner's contention is that the preference shares cannot be redeemed nor monetary value can be claimed. Interim relief has to be made in aid of final relief, but in the instant case final relief has been granted by directing the amount aforesaid to be secured.

6. Although Mr. Dhumatkar has sought to urge that the entire order is bad and required to be set aside, the petition as filed only challenges the first part directing monies to be deposited in a specified account, in the alternative furnish a bank guarantee.

7. On behalf of the claimant the application is opposed on the basis that even interest payable on the preference shares has not been paid. The claimants are entitled to an order securing the amount in dispute and that is precisely what the arbitrator has done.

8. Having heard counsel for the parties, I find that the order under Section 17 is dated 26th April, 2020. The petition is lodged only on 24th August, 2021 after more than a year. The Tribunal has considered the case on both sides and has come to the conclusion that the applicant / petitioner had not disputed the fact that there were other transactional documents with terms, conditions obligation and consequences in the event of default. The defaults have been dealt with in the impugned order and the tribunal has recorded that at the prima facie stage protection ought to be granted, more particularly after taking into account financial statements of the claimant for the Financial year 2018-19. I find the impugned order has analyzed the facts and concluded that the protection granted is necessary. Moreover, there is absolutely no explanation for having approached the Court at this belated stage after the time for compliance has expired. It is seen that this appeal has

been filed only after a Contempt Petition has been filed on 10th August, 2021 on which the Court has reportedly issued notice. Thus it is obvious that this is but one more attempt to stall compliance of the order of the tribunal.

9. In the circumstances the view taken by the tribunal is certainly a possible view and I find no perversity in the either approach of the tribunal or relief that is granted in the order. Accordingly, I pass the following order :

(i) Arbitration petition is dismissed.

(ii) No costs.

(A. K. MENON, J.)