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

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Date of Judgment: 23.04.2021

+ **ARB.A. (COMM) 13/2021 & I.A. 4495/2021, 4496/2021 & 4497/2021**

SUPERTECH LIMITED

..... Appellant

Through

Mr Ishan Dewan, Advocate
with Mr Chaitanya Sharma, Mr
Lokesh Malik and Mr Anant
Singh Negi, Advocates.

versus

B.E. BILLIMORIA AND CO. LTD.
& ANR.

..... Respondents

Through

Mr Dhaval Deshpande,
Advocate with Ms Madhavi
Parkar, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

[Hearing held through video conferencing]

VIBHU BAKHRU, J. (ORAL)

1. The appellant (hereinafter 'Supertech') has filed the present appeal under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996 (hereinafter the 'A&C Act') impugning an interim order dated 04.12.2020 (hereinafter the 'impugned order') passed by the learned Arbitral Tribunal under Section 17 of the A&C Act.

2. By the impugned order, the learned Arbitral Tribunal has permitted the respondent (hereinafter 'Billimoria') to unconditionally remove its 'Plant and Machinery and Miyan Framework' as mentioned in the Addendum Agreement dated 14.01.2017 (hereafter 'the Adendum Agreement') within a month without disturbing the work at the site in question. In addition, the learned Arbitral Tribunal also permitted Billimoria to approach the Chairman or Secretary of the Institution of Engineers (India) with the request to appoint an engineer or a team of three engineers to carry out inspection of the project site and take broad joint measurements within one month from the date of the said order. The learned Arbitral Tribunal also directed that the charges for conducting the said exercise will be borne equally by Billimoria and Supertech.

3. The disputes between the parties relate to their Agreement for construction of sixty-six story high-rise apartments, located at Sector-74, Noida, U.P. (hereinafter referred to as 'North Eye Project').

4. Supertech had invited bids for construction of North Eye Project. Billimoria had submitted its bid pursuant to the said invitation. Its bid was accepted and, on 30.05.2011 Supertech issued a Letter of Award communicating the same to Billimoria. Thereafter, on 11.10.2011 the parties entered into an Agreement for construction of the North Eye Project. Billimoria claims that on 12.02.2014 the Project Management Committee ('PMC') informed Billimoria that the contract value of North Eye Project was amended to ₹526.95 crores.

5. Certain disputes have arisen between the parties in connection with the said Agreement and the Arbitral Tribunal is in seisin of the said disputes.

6. Prior to the reference of the disputes to the learned Arbitral Tribunal, Billimoria filed a petition under Section 9 of the A&C Act [O.M.P.(I) (COMM) 320/2020] seeking various reliefs including that Supertech be restrained from terminating the contract between the parties and be permitted to remove such machinery from the site. Billimoria also sought directions to be issued to Supertech to deposit certain sums which, according to Billimoria, were due and payable to it. Whilst the said petition was pending, the Arbitral Tribunal was constituted comprising of a former Judge of the Supreme Court of India as the learned Sole Arbitrator and the parties were referred to the Tribunal. In the circumstances, by an order dated 07.09.2020, this court directed that the said petition under Section 9 of the A&C Act be treated as an application under Section 17 of the A&C Act.

7. Thereafter, Billimoria filed another application under Section 17 of the A&C Act seeking certain additional interim reliefs and sought directions from the learned Arbitral Tribunal to permit its representatives to access the site and to remove certain relevant documents including RA bills, documents related to stores and material purchases, quality control etc. In the alternative, it sought orders from the learned Arbitral Tribunal directing Supertech to produce all the relevant documents. The aforesaid two applications were considered by the learned Arbitral Tribunal on 20.10.2020 and

by an order dated 20.10.2020, the learned Arbitral Tribunal passed the following directions:

“Ad interim directions

1. The Claimant is at liberty to take out its machinery as mentioned in the annexure to the application under section 17 of the Act within a month from today. If necessary, the Claimant may move for extension of time but only if it is absolutely necessary. Respondent No.1 will not cause any hindrance while permitting the Claimant to take back its machinery.
2. The Claimant is at liberty to approach the Chairman or the Secretary of the Institution of Engineers (India), Delhi State Centre, Engineers Bhawan, 2 Bahadur Shah Zafar Marg, New Delhi-110002 with a request to appoint an individual engineer or a team of three engineers (as may be deemed appropriate by the Chairman or the Secretary) to carry out an inspection of the project site and take broad joint measurements within one month of receipt of this order. It is made clear that inch by inch joint measurements, as one would find in a Measurement Book are not required to be taken. Needless to say, the joint measurements be taken with due notice both to the Claimant and Respondent No.1. The charges for the exercise conducted will be borne in equal shares by the Claimant and Respondent No.1.”
8. The hearing of the aforesaid mentioned application was deferred to 26.11.2020.
9. In the meanwhile, Supertech filed an application for modification of the order dated 20.10.2020. Supertech contended that the order dated 20.10.2020 was erroneous inasmuch as the learned Arbitral Tribunal had considered the question whether Supertech

exercised any lien on the Plant and Machinery belonging to Billimoria in the context of the terms and conditions under the initial contract between the parties. However, Supertech claimed lien, not in terms of the initial agreement but in terms of the Addendum Agreement. The list of Plant and Machinery in respect of which Supertech is claiming lien is mentioned in Annexure-C in the Addendum Agreement. Supertech contended that it had released the Bank Guarantees furnished by Billimoria in terms of the Addendum Agreement on the condition that Supertech would exercise lien on Plant and Machinery as that was necessary to secure Supertech. Supertech further contended that the directions passed by the learned Arbitral Tribunal that measurement of the work done be carried out by a third party, was without jurisdiction, as disputes regarding measurements were non-arbitrable.

10. The learned Arbitral Tribunal considered the aforesaid application and passed the impugned order confirming the directions issued on 20.10.2020.

11. Mr. Dewan, learned counsel appearing for Supertech, assailed the impugned order essentially on two fronts. First, he submitted that the Arbitral Tribunal had erred in passing the impugned order as it was contrary to the fundamental principles on which such orders can be passed. He submitted that the impugned order had the effect of altering the *status quo* as existed prior to the disputes and such mandatory injunctions could not be granted without returning firm findings, which could be done only after a trial. He submitted that the

effect of the impugned order is to deprive Supertech of its valuable security and such an order could not be passed at the interim stage. He submitted that the learned Tribunal had erred in not considering that Supertech had also raised counter-claims, which included a claim of ₹14,78,96,598.17/- for return of mobilization advance. In addition, Supertech has also claimed liquidated damages amounting to approximately ₹25 crores. He submitted that although the said claims are pending adjudication and at the interim stage, however, the appellant's security – lien over the Plant and Machinery belonging to Billimoria – could not be diluted. He referred to the decision of the Supreme Court in ***Purshottam Vishandas Raheja & Ors. v. Shrichand Vishandas: 2011 (6) SCC 73***, in support of his contention.

12. Second, he contended that the learned Arbitral Tribunal had erred in relying on the Minutes of the Meeting dated 26.12.2019 and 14.03.2020 in concluding that Supertech admitted that it owed a sum of ₹25 crores to Billimoria and, had agreed to pay the same. He submitted that the Minutes of the Meetings are disputed. Further, the Letter of Commitment dated 30.05.2019 referred to by the Arbitral Tribunal did not refer to any such amount. He submitted that the impugned order is, thus, *ex-facie* contrary to the record.

13. Mr Deshpande, learned counsel for Billimoria has countered the aforesaid submission. He submitted that the documents in record clearly established that Supertech admittedly owed a large sum of money to Billimoria.

14. I have heard the learned counsel for the parties.

It is important to note that the challenge to the directions issued by the Arbitral Tribunal for measurement of the work done has not been pressed. In any view, the contention that such a direction is outside the scope of arbitration is unmerited as the said direction is in aid of considering Bilimoria's claim for work done.

15. A bare reading of the impugned order indicates that the Arbitral Tribunal had examined the material on record and was of the view that it was, *prima facie*, established that Supertech owed a significant sum to Billimoria. The Tribunal had also noted that assurances had been made by Mr Arora, Chairman of Supertech, on various occasions for clearing the dues, however, the same had not been cleared. In the aforesaid circumstances, the Arbitral Tribunal observed that even if it is accepted that Supertech had a lien over the Plant and Machinery and Miyan Framework; Supertech is sufficiently secured in view of the amounts that were *prima facie* admitted to be payable to Billimoria. Paragraphs 15 and 16 of the impugned order are relevant and set out below:

“15. Consequently, even assuming Mr Salman Khurshid is right in submitting that Respondent No. 1 has a lien over the Plant and Machinery and Miyan framework, the amount that is *prima facie* due from Respondent No. 1 to the Claimant is more than adequate security sought by Mr Salman Khurshid. That being the position, without going into the question of the existence or otherwise of any lien, Respondent No. 1 has, *prima facie*, adequate security in terms of money and the Plant and Machinery and Miyan

framework can be released to the Claimant without any detriment to Respondent No.1 or to interests of Respondent No. 1 who is sufficiently protected.

16. That apart, even assuming that the *prima facie* case made out by the Claimant is incorrect, the dispute is really one of money and Respondent No. 1 can certainly raise a counter claim in this regard at an appropriate stage in the arbitration proceedings. Therefore, even the balance of convenience is not such as would cause any detriment to Respondent No. 1. On the other hand, if the Plant and Machinery and Miyan framework is left idle at the project site, it will not serve anybody's purpose and in fact with the passage of time the machinery, some of which is believed to be sophisticated, will get damaged thereby causing prejudice to the Claimant (should the Claimant succeed in proving its claims) or to Respondent No. 1 (should Respondent No. 1 succeed in proving its counter-claims). Therefore, whichever way the issue is looked at, there is no reason for Respondent No. 1 to retain the Plant and Machinery and Miyan framework and it must be released to the Claimant."

16. Supertech asserts lien over the assets of Billimoria in terms of Clause 4 of the Addendum Agreement, which reads as under:

"The entire Cash Retention Money withheld till date with respect to this Contract through various up to date RA Bills shall be refunded to the Contractor by the Employer along with the next payment. There shall be "No" Cash Retention for all works executed from 1st May 2016 onwards with respect to the said Contract. The Contractor shall provide a temporary lien over the Plant and Machinery and Miyan framework (as detailed in the list given as Annexure "C") deployed at the North Eye Project Site in favour of the Employer till the North Eye Project is virtually completed."

17. It is contended on behalf of Supertech that in terms of Clause 4 of the Addendum Agreement, Supertech was entitled to exercise its lien over the machinery in question till its virtual completion. The term ‘virtual completion’ has been defined in Clause 5.1.1.21 of the Invitation to Tenders. The said Clause reads as under:

“5.1.1.21 “Virtual Completion” means that the work, according to the Owner and Project Management Consultants, have been completed in every respect in conformity with the Contract Documents and are ready and fit for the intended purpose/occupation, complete with all systems and services having been tested and commissioned and has also satisfactorily passed any final test that may be prescribed by the contract. Virtual completion will *be* deemed to have been achieved upon a Virtual Completion Certificate being issued by the PMC/Owner.”

18. It is material to note that Supertech has terminated the Agreement with Billimoria. Thus, there is no question of Billimoria completing the balance of the project and achieving the virtual completion as contemplated under Clause 5.1.1.21 of the Invitation to Tenders. A careful examination of the contentions advanced on behalf of Supertech also indicates that Supertech is not reading Clause 4 of the Addendum Agreement as a commitment on the part of Billimoria to continue to retain the equipment at site for completing the works. According to Supertech, it merely seeks to exercise lien on the equipment to secure its claims, which are essentially in the nature of damages. This is also amply clear from the application filed by Supertech before the Arbitral Tribunal for modification/clarification of

the order dated 20.10.2020 passed by the Arbitral Tribunal. Supertech had *inter alia* prayed that the order dated 20.10.2020 passed by the Arbitral Tribunal be modified to the extent that Billimoria may be permitted to remove the Plant and Machinery subject to deposit of a sum of ₹36.50 crores, which was released/waived by Supertech pursuant to the Addendum Agreement. Thus, the question of whether Supertech is entitled to exercise any lien at this stage must be considered in light of Supertech's contention that it is exercising lien only with a view to secure its claims.

19. It is apparent from a plain reading of Clause 4 of the Addendum Agreement that Billimoria had agreed to provide a temporary lien as Supertech had agreed to release the entire retention money withheld by it and, had further agreed not to retain any money from the payments for the work done. Thus, in view of the *prima facie* finding that Supertech admittedly owed substantial funds to Billimoria, it would follow that Supertech could not be permitted to retain the possession of Billimoria's machinery.

20. The contention that the Arbitral Tribunal's finding that *prima facie* Supertech owed substantial amounts to Billimoria is erroneous, is also unmerited. Mr Dewan had drawn the attention of this Court to the Minutes of Meeting dated 26.12.2019 as annexed with Supertech's application for producing additional documents (IA 4496/2021). He pointed out that although Billimoria had drawn and forwarded the Minutes of the Meeting, Supertech had not agreed with the same and effected certain changes in the said Minutes, which were marked in

red. He submitted that the Arbitral Tribunal had not considered the same. The relevant extract of the said Minutes (as altered by Supertech) is set out below:-

“Point No.2: Mr. DLK pointed out that inspite of repeated assurance M/s Supertech has still not deposited the Govt. dues like Labour Cess, TDS, VAT etc. (amounting to more than Rs.10 Crore + penalties + interest) which are pending for more than Two Years. All these Govt. dues have already been deducted from the BEBL previous monthly RA Bills.
Mr. Arora replied that M/S Supertech was in touch with both the Financers namely M/s L & T Finance and M/s ALTICO Ltd. and the payment shall be released shortly (In due course of time).

Point No.3: Mr. DLK said that as per the “Letter of Commitment” dated 30.05.2019 from the Director, M/s Supertech Ltd Rs. 25.14 Crore (The mentioned payment in the letter) was to be released upto 30.11.2019 positively.

Mr. Arora replied that he will do the needful for the early release of the said amount”

21. The learned counsel had pointed out that the words mentioned in brackets under Point no. 2, ‘in due course of time’, and as mentioned under Point no. 3 ‘mentioned payments in the letter’ were marked in red. He stated that although the document filed along with the application is in black and white but the original document indicates that the aforesaid notations in parenthesis under Point nos. 2 and 3 are in red colour. He submitted that it was apparent that Supertech had not accepted or admitted that a sum of ₹25.14 crores

would be released to Billimoria by 30.11.2019 as no such amount had been mentioned in the Letter of Commitment dated 30.05.2019. He also pointed out that there were notations under various other points recorded in the minutes, which indicated that according to Supertech, the same had not been discussed.

22. He also referred to the Letter of Commitment dated 30.05.2019. The said letter is reproduced below:

“To Date-30.05.2019
The Managing Director,
B.E. Billimoria & Co. Ltd.
Shiv Sagar Estate, “A” Block
2nd Floor, Dr. A.B. Road
Worli, Mumbai-400018

Kind Attn: Mr. Digant L. Kapadia (MD)

Sub. Construction of 66 Storeyed High Rise Apartment (North Eye) at Capetown, Sec-74, Noida (UP) Construction of 3 Towers along with Extended Basement 47 to 50 Storeyed High Rise Apartment Pending Payment Schedule (North Eye and ORB)

Dear Sir,

During the meeting with you on 22-04-2019 and in the subsequent discussions and related correspondences’ for restart of work as requested by you, the balance payments due shall be released as under:

Sr. No.	Description	Date by which the payment will be made to BEBL/Govt.
1	Balance of RA Bills of North Eye as certified	Fifteen days from the date of restart of

	till 30 th April 2019	work/progress
2	Release of the Retention Money of Tower ORB site (amounting to approx Rs.2.22 Cr.)	Up to 30 th Nov 2019
3	Release of the balance payment as certified till date in respect of “R” Tower	Up to 30 th Nov 2019
4	Balance Taxes and Duties as jointly verified	Up to 30 th Nov 2019

Thanking You,

S/d

Anil Sharma

Director, Supertech Limited

S/d

cc: Mr. R. K. Arora (CMD, Supertech Limited)

Mr. D.K. Gupta (CFO, Supertech Limited)

Mr A.K. Goyal (MD, ATTCPL)”

23. Mr Dewan submitted that in terms of the said letter, Supertech had agreed to release the balance of the RA Bills of North Eye project as certified till 30.04.2019. He submitted that the certified bills as on that date were for sums aggregating approximately ₹5 crores. He stated that against the said amount, Supertech had released ₹5.33 crores after 30.05.2019 and even according to Billimoria, only a sum of ₹2.67 crores was due against the work done and, it had made a claim against the aforesaid amount in its Statement of Claims as claim no.1.

24. It is to be noted that the Minutes of the Meeting dated 26.12.2019 not only mentioned the amount payable under the Letter of Commitment but also the amounts deducted under Labour Cess, TDS, VAT etc. and, it was also specifically mentioned that those amounts exceeded more than ₹10 crores without considering the penalties and interest. It cannot be disputed that the same was accepted by Supertech as the only note made by Supertech in the said Minutes against the said point (Point no.2) was that it would be released “*in due course of time*”.

25. There is no material on record to show that the said amounts had been released or deposited with the Government. The Letter of Commitment dated 30.05.2019 also mentioned that the said amount would be released. Mr Dewan had contended that the amount mentioned under Point no.3 also included the amounts payable for Labour Cess, TDS, VAT and other statutory dues. However, the same cannot be readily accepted as even according to the notations made by Supertech, the proceedings recorded under Point no.2 of the Minutes of the Meeting dated 26.12.2019, are not disputed.

26. It is also admitted that another meeting was held between the representatives of the parties on 14.03.2020. The Minutes of the said Meeting also indicate that the amounts as agreed to be paid by Supertech had not been paid. The relevant extract of the said Minutes is set out below:

“Minutes of Meeting held on 14.03.2020 (16:00 hrs.) at CMD office, M/s Supertech Ltd, E Square, Sector-96, Noida.

Following were present :

Mr. R.K.Arora	Chairman, M/s Supertech Limited, Noida.
Mr. Anil Sharma	Director, M/s Supertech Limited, Noida.
Mr. Piyush Garg	Sr. GM, M/s AT Technolegal Combine Pvt. Ltd.
Mr. D.L. Kapadia	MD, M/s B.E. Billimoria & Co. Ltd., Mumbai
Mr. P.P. Saha	GM, M/s B.E. Billimoria & Co. Ltd.
Mr. Nitin Kumar Goel	AGM, M/s B.E. Billimoria & Co. Ltd.

After the usual exchange of pleasantries, the following points with respect to North Eye and ORB Projects were discussed in the meeting:

Point No. 1

Mr. DLK said that in spite of commitment to pay the entire old, certified & agreed amount of Rs.25.14 Crore in the last meeting (held on 26.12.2019), M/s Supertech Ltd. had only paid Rs.38.92 Lacs till date. M/s BEBL had written several reminders to Supertech regarding the said overdue payment, in the past few months.

Mr. DLK said that BEBL was bleeding very heavily due to these stoppage & delays and once again requested Mr. Arora to stick to his commitment and pay the entire old outstanding basic certified amount of

Rs.25.14 Crore immediately so that BEBL can restart the work at site.

Mr. Arora replied that M/s Supertech Ltd. was also in deep financial crunch, but he assured that BEBL will be paid Rs.06 Crore within a week i.e. upto 21.03.2020 and thereafter the balance amount of Rs.19.14 Crore will be paid in four equal monthly installments from April 2020 onwards + certified monthly work done of current month.

Mr DLK said that as per the Letter of Commitment dated 30.05.2019 from the Director, Supertech Ltd., Rs.25.14 Crore was to be released up to 30.11.2019 positively, but considering the financial crunch faced by M/s Supertech Ltd. and to maintain cordial relations with Mr. Arora and also with M/s Supertech Ltd, he will agree to Mr. Arora's request.

Point No. 2

Mr. DLK further said that due to the continuous payment default on the part of M/s Supertech Ltd, electricity at our site has been disconnected by the Government since last four months due to non-payment. All Vendors, Sub Contractors, Labour, Staff etc are chasing us continuously for non-payment, since last so many months. Some of them have even gone to the court also.

Mr. Arora said that he was aware of this and would do the needful.

Point No.3

Mr. DLK also pointed out that in spite of repeated assurances, M/s Supertech has still not deposited the Govt. dues like Labour Cess, TDS, VAT etc. (amounting to more than Rs. 10 Crore + penalties + interest) which are pending for more than two years. All

these Govt. dues have already been deducted from the BEBL's previous monthly RA Bills.

Also the GST Department is chasing us very badly due to continuous default in depositing the GST.

Mr. Arora replied that he will do the needful at the earliest."

27. Mr Dewan had contended that the contents of the said Minutes are also disputed. In support of his contention, he had relied upon an email dated 30.06.2020, *inter alia*, stating that the figure of ₹25 crores mentioned was without any details and was incorrect. Supertech had further stated that as per the accounts, only an amount of ₹2,48,89,694/- was found due as per the work done till that date. Sueprtech acknowledged that a sum of ₹84,07,874/- was due and payable and the same would be paid on activation at work site.

28. *Prima facie*, the disputes sought to be raised by Supertech appears to be an afterthought as prior to 30.06.2020, Supertech had sent an email on 18.05.2020 but not disputed the Minutes of the Meeting dated 14.03.2020. It had merely stated that sending everyday email without any base was not justified but it had also confirmed that Supertech would make due payment once the work was resumed at site. The subject line of the said email clearly mentions Billimoria's demand of ₹25 crores for North Eye and ORB.

29. In view of the above, it is clear that Billimoria had established a strong *prima facie* case, that a substantial sum was owed by Supertech to Billimoria. Substantial sums had been deducted from payments

made to Billimoria and were required to be deposited with the statutory authorities. The Arbitral Tribunal had evaluated the material on a *prima facie* basis and had after evaluating the same, passed the impugned order.

30. The decision in the case of ***Purshottam Vishandas Raheja & Ors vs Shrichand Vishandas*** (*supra*) is little assistance to Supertech. In the said decision, the Supreme Court had referred to the decision in the case of ***Films Rover International Ltd. v. Cannon Film Sales Ltd.: (1986) 3 All E.R. 772***, wherein the Court had set out the following principles on which such injunctions can be issued:

“16. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are:

(1) The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a *prima facie* case that is normally required for a prohibitory injunction.

(2) It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.

(3) The balance of convenience is in favour of the one seeking such relief.

17. Being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest in the sound judicial discretion of the court to be exercised in the light of the facts and circumstances in each case. Though the above guidelines are neither exhaustive nor complete or absolute rules, and there may be exceptional circumstances needing action, applying them as prerequisite for the grant or refusal of such injunctions would be a sound exercise of a judicial discretion.”

31. In the facts of the present case, Billimoria had undoubtedly established a strong case. Its case stands on higher footing than a *prima facie* case as is evidenced from undisputed documents on record.

32. Insofar as irreparable and serious injury is concerned, no irreparable loss would be caused to Supertech if Billimoria is permitted to remove the said machinery as concededly, Supertech is only seeking to exercise its lien over the machinery to secure its claim. There is no provision under the contract which entitles Supertech to use the machinery for its purposes and Supertech cannot use the machinery without the owner’s consent. On the other hand, significant loss would be caused to Billimoria, if it is deprived the use of its valuable machinery.

33. The balance of convenience is also clearly in favour of Billimoria. No effective purpose would be met if valuable productive machinery is directed to be remained unused. As stated above,

Supertech cannot be permitted to use the said machinery. At best, Supertech can simply retain possession of the same. While, on the other hand, Billimoria could utilize the said machinery for carrying on its business.

34. It is also not disputed that Supertech had engaged another contractor at the site. The said contractor cannot be permitted to use the said machinery and the fact that Supertech has been using the said machinery, is clearly, unauthorized and illegal.

35. The contention that mandatory injunction cannot be granted except to maintain *status quo* is also unmerited. Clause (e) of Section 17(1)(ii) is set out below:

“17(1)(ii)(e) such other interim measure of protection as may appear to the arbitral tribunal to be just and convenient, and the arbitral tribunal shall have the same power for making orders, as the court has for the purpose of, and in relation to, any proceedings before it.”

36. It is apparent from the plain language of Clause (e) of Section 17(1)(ii) of the A&C Act that it is of a wide import. The said provision enables the Arbitral Tribunal to pass such orders as may be passed by the Court for the purposes of and in relation to the proceedings before it. Section 17(1)(ii)(e) cannot be read in a restricted manner as is suggested on behalf of Supertech. Mr Dewan is correct that the Arbitral Tribunal must follow settled principles while passing any order of mandatory injunction. However, as noticed above, *prima*

facie the said principles appear to be duly satisfied in the present case and the decision of the Arbitral Tribunal cannot be faulted.

37. As noted above, the limited grievance of Supertech is that, it is no longer secured in respect of its claims. This Court is of the view that the said grievance can be addressed by directing Billimoria to not sell, transfer or in any manner encumber its subject machinery till the conclusion of the arbitral proceedings.

38. Mr Deshpande, learned counsel appearing for Billimoria fairly stated that Billimoria would not sell, transfer or in any manner alienate the equipment and machinery (as listed in the statement annexed to the Addendum Agreement) and would submit quarterly reports to the Arbitral Tribunal indicating the location of the equipment and machinery. Billimoria is bound down to the said statement.

39. The appeal is dismissed in the aforesaid terms. The pending applications are also disposed of.

VIBHU BAKHRU, J

APRIL 23, 2021

RK/nn