

\$~18(2021)

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

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Date of decision: 16.07.2021

+ **FAO(OS) (COMM) 92/2021 & CM Nos.20954-56/2021**

CEMENT CORPORATION OF INDIA

.....Appellant

Through : Ms. Aishwarya Bhati, ASG with Mr.
Shankar K, Jha, Mr.Manu Monga
and Mr.Ameyavikrama Thanvi, Advs.

versus

PROMAC ENGINEERING INDUSTRIES LIMITED

.... Respondent

Through : Mr. Trideep Pais, Senior Advocate
with Ms. Manvi Priya and Sanya
Kumar, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

RAJIV SHAKDHER, J.: (ORAL)

CM No.20956/2021

1. Allowed, subject to just exceptions.

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**CM No.20954/2021 [Application filed on behalf of the appellant seeking
condonation of delay]**

**CM No.20955/2021 [Application filed on behalf of the appellant seeking
stay on the operation of the impugned orders]**

2. This is an appeal filed against the order of the learned single judge
dated 02.02.2021, and the orders passed by the Arbitral Tribunal (in short
'the Tribunal') dated 20.02.2020 and 07.08.2020.

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2.1. Briefly, the issue, which arises for consideration, in the present appeal concerns the tenability of the application filed under Section 9 of the Arbitration and Conciliation Act, 1996 (in short ‘1996 Act’) by the appellant in respect of the aforementioned orders passed by the Tribunal. The Tribunal via the impugned orders has fixed its fee based on an interpretation placed by it on the provisions of Schedule IV of the 1996 Act. It is these orders which were assailed by the appellant before the learned single judge.

2.2. The learned single judge, via the impugned order i.e. order dated 02.02.2021, has dismissed the petition filed by the appellant under Section 9 of the 1996 Act. The learned single judge has concluded that an application under Section 9 of the 1996 Act would not lie against the aforementioned orders passed by the Tribunal.

3. Ms. Aishwarya Bhati, learned ASG, who appears on behalf of the appellant, says that the order of the learned single judge is flawed. In support of her plea, Ms. Bhati seeks to place reliance on Section 9(1)(ii)(e) of the 1996 Act. For the sake of convenience, the relevant parts of the said provision is extracted hereafter:

“9. Interim measures, etc. by Court.—(1) A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court—

(i) for the appointment of a guardian for a minor or a person of unsound mind for the purposes of arbitral proceedings; or
(ii) for an interim measure of protection in respect of any of the following matters, namely:—

(a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;
(b) securing the amount in dispute in the arbitration;

(c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;
(d) interim injunction or the appointment of a receiver;
(e) such other interim measure of protection as may appear to the court to be just and convenient, and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.”

3.1. A careful perusal of the aforementioned provision would show that clause (ii) of subsection (1) of Section 9 sets out the interim measures that can be directed to be taken by the Court, concerning the matters detailed out in sub-clauses (a) to (d). Sub-clauses (a) to (d), essentially, allude to matters that concern aspects, which veer around the subject matter dispute and arbitration agreement obtaining between the parties. Sub-clause (e) of Section 9(1)(ii) of the 1996 Act, is, in substance, residuary clause which allows the court to issue such other interim directions, that are not covered by sub-clauses (a) to (d).

3.2. To our minds, the residuary clause would not cover the impugned orders passed by the Tribunal concerning the calculation of fee that is based on the interpretation of the provisions of the IV Schedule of the 1996 Act. Therefore, in our opinion, the impugned order passed by the learned single judge does not call for any interference.

4. The appeal is, accordingly, dismissed. Consequently, the interlocutory application and the application for condonation of delay shall stand closed.

RAJIV SHAKDHER, J

TALWANT SINGH, J

JULY 16, 2021/aj [Click here to check corrigendum, if any](#)
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