

\$~19(2021)

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

%

Date of Decision: 20.12.2021

+

O.M.P.(I) (COMM.) 410/2021

CEMENT CORPORATION OF INDIA

..... Petitioner

Through: Mr. Shankar K. Jha & Ms. Manu
Monga, Advs.

Versus

PROMAC ENGINEERING INDUSTRIES LTD Respondents

Through: Mr. Trideep Pais, Sr. Adv. with Ms.
Manvi Priya & Ms. Sanya Kumar,
Advs.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

VIBHU BAKHRU, J. (ORAL)

1. The petitioner has filed the present petition under Section 9 of the Arbitration and Conciliation Act, 1996 (hereafter the 'A&C Act'), *inter alia*, praying as under:

- “a) set aside the impugned order dated 17.12.2018 and 24.08.2021, in the interest of justice;
- b) Declare Petitioner's calculation for Rs. 15,00,000/- as an arbitration fees payable to each of the arbitrators as just and correct calculation in terms of Schedule IV of the Act;”

2. The orders impugned by the petitioner (that are, orders dated 17.12.2018 and 24.08.2021) are procedural orders passed by the Arbitral Tribunal fixing the fee payable by the parties. The petitioner's grievance is that the Arbitral Tribunal has fixed a separate fee for

counter-claims, which according to the petitioner, is not permissible as the total fee payable thereafter, would exceed the maximum fee fixed under Schedule IV of the A&C Act.

3. It is at once clear that the reliefs sought by the petitioner do not fall within the scope of interim measures of protection as under Section 9 of the A&C Act.

4. The learned counsel appearing for the respondent submits that a similar petition was filed by the petitioner, *albeit*, pertaining to another arbitration agreement and the same was dismissed by an order dated 02.02.2021 (***Cement Corporation of India vs. Promac Engineering Industries Ltd. & Anr.: OMP(I)(COMM) No.362/2020***). He further submits that the petitioner had appealed against the said decision before the Division Bench of this Court, being FAO(OS)(COMM) No.92/2021 captioned ***Cement Corporation of India vs. Promac Engineering Industries Ltd.***, and the same was also dismissed.

5. The petitioner's contention that the relief sought falls within the residual clause of Section 9(1)(ii)(e) of the A&C Act, was rejected.

6. In terms of Section 5 of the A&C Act, recourse to courts in arbitration is limited to the extent as provided under the A&C Act. Section 9 of the A&C Act empowers the Court to issue orders regarding interim measures of protection. Clearly, a challenge to the procedural order passed by the Arbitral Tribunal regarding arbitral fees does not fall within the ambit of Section 9 of the A&C Act.

7. The petition is, accordingly, dismissed.

8. It is clarified that all rights and contentions of the parties are reserved and nothing stated in this order shall be construed as foreclosing the rights and contentions of the parties with regard to the question relating to the arbitral fees.

VIBHU BAKHRU, J

DECEMBER 20, 2021

‘gsr’/v

[Click here to check corrigendum, if any](#)

