

**OD-2**

**IN THE HIGH COURT OF JUDICATURE AT CALCUTTA  
CIVIL APPELLATE JURISDICTION  
ORIGINAL SIDE**

HEARD ON : 15.06.2022  
DELIVERED ON: 15.06.2022

**CORAM:**

**THE HON'BLE MR. JUSTICE T.S. SIVAGNANAM  
AND  
THE HON'BLE MR. JUSTICE HIRANMAY BHATTACHARYYA**

**APOT/101/2022  
WITH  
AP/254/2022  
IA No.GA/1/2022**

**ADITYA BIRLA FINANCE LTD.**

**VERSUS**

**MCLEOD RUSSEL INDIA LTD. AND ORS.**

**Appearance:**

*Mr. S. N. Mookherjee, Sr. Adv.  
Mr. Tilok Bose, Sr. Adv.  
Mr. Mainak Bose, Adv.  
Mr. Rudraman Bhattacharyya, Adv.  
Mr. Dwaipan Basu Mullick, Adv.  
Ms. Suchismita Ghosh Chatterjee, Adv.  
Mr. Abhishek Kisku, Adv.  
Mr. Subhankar Das, Adv.*

*...for the appellant.*

*Mr. Abhrajit Mitra, Sr. Adv.  
Mr. Jishnu Chowdhury, Adv.  
Mr. Ritoban Sarkar, Adv.*

**Mr. Deepak Agarwal, Adv.**

**...for the respondent.**

**Mr. Ratnanko Banerji, Sr. Adv.**

**Mr. Rishav Medora, Adv.**

**Ms. R. Hariharan, Adv.**

**Mr. Soumava Mukherjee, Adv.**

**...for IL & FS Infrastructure Debt Fund.**

**(Judgment of the Court was delivered by T.S. Sivagnanam, J.)**

1. This intra-court appeal filed under Section 37 of the Arbitration and Conciliation Act, 1996 (Act for brevity) is directed against the order dated may 17, 2022 in AP/254/2022. The petitioner in AP/254/2022 is the appellant before us in this appeal. Before the learned Single Bench, the appellant prayed for a direction upon the respondents to forthwith tender 16,63,289 shares of Eveready Industries India Ltd. in the Open Offer in respect of a take-over bid of Eveready by three Acquirer companies (known as Burman Group) as indicated in a public announcement dated 28<sup>th</sup> February, 2022. The learned Single Bench, while considering this application filed under Section 9 of the Act framed two questions; firstly, whether the appellant can claim the relief for sale of the shares/monetising the shares under Section 9 of the 1996 Act, and, secondly, whether the appellant is entitled to the relief on merits.
2. So far as the first question, the learned Single Bench was of the opinion that the appropriate route that the appellant should have chosen is to seek for enforcement of the award under Section 36 of the Act. In respect of the second question, the learned single Bench was of the opinion that the relief sought for by the appellant to forthwith tender those shares of Eveready Industries in the Open

Offer cannot be acceded to in the nature of interim relief. Ultimately, the learned Single Bench concluded that the balance of convenience is not in favour of the appellant. Questioning the correctness of the said order, the appellant is before us by way of this appeal under Section 37 of the Act.

3. Mr. Tilak Bose, learned senior Advocate appearing for the appellant would vehemently contend that several observations are in the nature of a finding rendered by the learned Single Bench which was nobody's case and such observations and findings would definitely have an impact on the rights of the appellants which they have set forth in their petition. In this regard, the learned senior Advocate has taken us through the observations/findings rendered by the learned Single Judge from paragraphs 14 of the impugned order. Further, it is submitted that the application under Section 9 was maintainable if the same was filed within three months from the date of passing of the interim award and referred to the order passed by the Hon'ble Supreme Court wherein the time period for setting aside of the award was said to commence after 90 days from 1<sup>st</sup> March, 2022 and the application filed by the appellant under Section 9 of the Act was well within the said period. Further, the learned senior counsel would submit that it was never the case of the appellant that they are the 'pledgee' nor 'mortgagee' but they are the 'chargee' under a contractual charge created in favour of the appellant. Further it is submitted that the reference to the various provisions of the Code of Civil Procedure and the decision which were relied on by the respondent before the learned single Bench are absolutely irrelevant and the same could not have been taken into consideration while declining to grant the

relief sought for by the appellant. The learned senior counsel has drawn our attention to Form No.CHG-1 which is a statutory format for registration of charge. It is submitted that the learned single Judge had taken note of column-8 of the said form and has observed there is a tick mark in the option “immovable property or any interest therein” and there is no tick mark in the option “movable property”. However, there is a tick mark in the column “others” and it has been specifically stated that such option was exercised by the appellant as stated in the memorandum of entry (MOE) dated 23<sup>rd</sup> July, 2019, copy of which was appended along with the form. It is submitted that this vital fact had not been taken note of by the learned Single Bench. Furthermore, it is submitted that the order of injunction obtained by the IL & FS Infrastructure Debt Funds & Anr. in CS/85/2020 dated February 23, 2021 clearly preserves the right of the appellant who was impleaded as the 7<sup>th</sup> defendant in the said suit wherein the learned single Bench clarified that the injunction order dated February 23, 2021 will in no manner affect the rights of the appellant/defendant no.7 to pursue its remedies as against the defendant no.1 therein and other legal entities in the pending arbitration or otherwise. Emphasis is on the word “otherwise” and it is submitted that the appellant may not be required to file an appeal against the order dated February 23, 2021 as the order clearly protects the rights of the appellant.

4. We have heard Mr. Abhrajit Mitra, learned Senior Counsel assisted by Mr. Jishnu Chowdhury, Mr. Ritoban Sarkar and Mr. Deepak Agarwal, learned

Advocates and Mr. Ratnanko Banerji, learned Senior Counsel assisted by Mr. Rishav Medora, Advocate on the above submission.

5. The urgency which has been pleaded by Mr. Bose, learned senior Advocate, is that the cut off date for the 'Open Offer' was initially fixed on 10<sup>th</sup> May, 2022, thereafter extended to 23<sup>rd</sup> May, 2022 and finally it has been extended till 16<sup>th</sup> June, 2022 and, if no interim order is granted, then considering the present position of the first respondent company, the rights of the appellant would be grossly affected. Therefore, adequate protection may be granted to the appellant by way of interim relief.
6. After elaborately hearing the submission of the either side, and bearing in mind the legal principle laid down by the Hon'ble Supreme Court in ***Wander Ltd and Another Versus Antox India P. Ltd.***<sup>1</sup> qua the power of an appellate Court, we are of the considered view that the interim order sought for by the appellant before the learned Single Bench under Section 9 of the Act was in the nature of a mandatory relief. Seldom Courts grant ex parte mandatory relief except in the extreme circumstances where restitution or putting back the parties in the position they were originally before being disturbed, as the purpose of granting interim relief is to preserve status quo and ensure that the estate or the property is preserved till the ultimate result in the main proceedings and the ultimately order or decree that may be passed is not reduced into a paper degree/order.
7. Undoubtedly, the reliefs sought for by the appellant under Section 9 of the Act is mandatory in character and, therefore, we agree with the ultimate

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<sup>1</sup> (1990) Suppl. SCC 727

conclusion of the learned Single Bench directing the affidavits to be filed by the parties so that the petition can be heard and decided on merits.

8. In ***Fourie Versus Le Roux***<sup>2</sup> the House of Lords held:

*“An interlocutory injunction, like any other interim order, is intended to be of temporary duration, dependent on the institution and progress of some proceedings for substantive relief.”*

*“33. Whenever an interlocutory injunction is applied for, the Judge, if otherwise minded to make the order, should, as a matter of good practice, pay careful attention to the substantive relief that is, or will be sought. The interlocutory injunction in aid of the substantive relief should not place a greater burden on the respondent than is necessary. The yardstick in Section 37(1) of the 1981 Act, ‘just and convenient’, must be applied having regard to the interests not only of the claimant but also of the defendant.”*

9. In ***Adhunik Steels Ltd. Versus Orrisa Manganese and Minerals (P) Ltd.***<sup>3</sup> the Hon’ble Supreme Court while explaining as to how the power to grant injunction under Section 9 of the Act held as follows:

*Whether an interim mandatory injunction could be granted directing the continuance of the working of the contract, had to be considered in the light of the well-settled principles in that behalf. Similarly, whether the attempted termination could be restrained leaving the consequences thereof vague would also be a question that might have to be considered in the context of well-settled principles for the grant of an injunction. Therefore, on the whole,*

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<sup>2</sup> (2007) 1 WLR 320

*we feel that it would not be correct to say that the power under Section 9 of the Act is totally independent of the well-known principles governing the grant of an interim injunction that generally govern the courts in this connection.*

10. In **Arcelor Mittal Nippon Steel India Ltd. Versus Essar Bulk Terminal Ltd.**<sup>4</sup>, the Hon'ble Supreme Court held as follows:

*88. Applications for interim relief are inherently applications which are required to be disposed of urgently. Interim relief is granted in aid of final relief. The object is to ensure protection of the property being the subject-matter of arbitration and/or otherwise ensure that the arbitration proceedings do not become infructuous and the arbitral award does not become an award on paper, of no real value.*

*89. The principles for grant of interim relief are (i) good prima facie case, (ii) balance of convenience in favour of grant of interim relief and (iii) irreparable injury or loss to the applicant for interim relief. Unless applications for interim measures are decided expeditiously, irreparable injury or prejudice may be caused to the party seeking interim relief.*

11. While on this issue we need to point out that certain observations which have been made in the impugned order has a colour of rendering a finding which, according to the learned senior counsel for the appellant, would have a serious impact on the case of the appellant not only before the learned single Bench but in the other proceedings as well. In our view, the appellant need not have any

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<sup>3</sup> (2007) 7 SCC 125

such apprehension as the opinion rendered by the learned Single Bench in the impugned order can, at best, be construed to be an opinion to justify the ultimate conclusion that interim relief cannot be granted. The observations can never be construed to be a finding which will bind the Court when the main petition is taken up for disposal. In fact, the suit Court while granting an interim order on February 23, 2021 had made it clear that the findings in respect of the “pledge” as claimed by the plaintiff therein was only *prima facie* for the purpose of considering grant of order of injunction. This observation stems out of the settled legal principle that any observation made by a Court while deciding an interlocutory application can have no impact on the order or judgment that may be passed after full-fledged trial or adjudication. By applying the said principles, we can safely observe that whatever observations which have been made by the learned Single Bench in the impugned order cannot be construed to be a finding against the appellant so as to, in any manner, impinge upon their rights which they are to canvas before the learned Single Bench in the main petition. This observation, in our view, would sufficiently safeguard the interest of the appellant and the appellant would be free to canvas all issues when the final adjudication takes place. Equally so, the respondents before us also cannot take advantage of the observation/findings rendered by the learned Single Bench while declining to grant interim relief in favour of the appellant, because those are all observations which, in the opinion of the learned Single Bench, were required to justify the ultimate conclusion while denying interim relief. We have also noted that the

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<sup>4</sup> (2022) 1 SCC 712

learned Single Bench had directed affidavits to be filed and assigned a shortest possible date for the matter i.e., 30<sup>th</sup> June, 2022.

12. Therefore, we are not inclined to interfere with the impugned order subject to the observations which we have made in the preceding paragraphs.

13. In the light of the above, the appeal (APOT/101/2022) stands dismissed.

14. Consequently, the connected application for stay (IA No.GA/1/2022) also stands closed.

**(T.S. SIVAGNANAM, J.)**

I agree.

**(HIRANMAY BHATTACHARYYA, J.)**