MEERA MAHESH JADHAV
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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO.960 OF 2022
IN
ARBITRATION PETITION NO.239 OF 2018

Gasesonline India Pvt Ltd. ..Applicant/Org. Respondent

In the matter of
Hrim Finance & Securities Pvt Ltd. ….Petitioner

V/s.
Gasesonline India Pvt Ltd. …Respondent

Mr. Shanay Shah a/w Mr. Aaditya Mapava i/b Dhruve Liladhar & Co. for Applicant/Original Respondent
Mr. Karl Shroff a/w Mr. Feroze Patel and Ms Rucha Jog Raheja i/b Mansukhlal Hiralal & Co. for Respondent (original Petitioner)

CORAM : K.R. SHRIRAM, J.
DATED : 20th AUGUST 2022

P.C. :

1 This interim application is taken out in a disposed Arbitration Petition No.239 of 2018, which petition was filed by respondent in this interim application. That petition was under Section 34 of the Arbitration and Conciliation Act 1996 (the Act), impugning an award dated 19th September 2013.

2 On 26th February 2021, parties tendered consent terms, which was taken on record and order in terms of said consent terms came to be passed. By the said consent terms, parties agreed for setting aside the award dated 25th November 2016 (corrected by order dated 26th December 2016 and 19th January 2017) under Section 33 of the Act. Parties agreed that the

matter be referred once again to arbitration before a sole arbitrator and nominated Mr. Gautam Ankad, an advocate practising in this court. This consent terms was signed by one Narsinghdas Daga on behalf of respondent herein (petitioner in arbitration petition) and one Ghanshyam Sharma for applicant herein (respondent in arbitration petition) and their respective advocates. Accordingly, Mr. Ankad entered into reference.

3 During the hearing before Mr. Ankad, on 20th September 2021, applicant raised an objection stating that respondent in this application has played a fraud on this court by misrepresenting to the court that Narsinghdas Daga was a Director of respondent on the date the consent terms were signed. A declaration was sought to the effect that the consent minutes were secured by misrepresentation to this court and, therefore, should be declared voidable at the option of applicant. It was applicant's case , which is applicant's case even today that, the consent minutes dated 26th February 2021 could not have been signed by Mr. Narsinghdas Daga as a Director, since he was disqualified from the post of Director under Section 164(2)(a) of the Companies Act 2013. Other grounds were raised but this was the primary ground on which the objections was based.

4 The Sole Arbitrator gave a hearing and passed a detailed order dated 20th September 2021 and terminated the proceedings. Since that order is not challenged before this court, I am not going into details of that order. At the same time, one thing is clear that Narsinghdas Daga was aware or in any event must be deemed to be aware that he could not have signed the

consent minutes of order as Director of respondent. He had misrepresented to the court that he was a Director of petitioner and he was so authorised to sign. Mr. Shah states that since Mr. Narsinghdas Daga had misrepresented to the court, this court should revive the original arbitration petition and dismiss the same. In my view, if this fact had been brought to the notice of the court on the date the consent minutes of order was signed, the court perhaps would have asked respondent-original petitioner to get some other Director to sign on its behalf. Mr. Shah states that there is only one Director in the company, who is one Mr. Sushil Daga and since 2012 respondent had not even filed the annual returns. Mr. Shroff submits that it does not mean the company has stopped being active or not carrying on business and the company can certainly call for Special General Body Meeting or Extraordinary General Body Meeting, as the law may require, to appoint another Director in the company so that the technical defect of company not having two Directors is overcome. In my view, respondent should be given an opportunity to cure the defect because it is not applicant's case that it signed the consent terms relying on the misrepresentation made by the said Narsinghdas Daga.

5 Respondent herein (petitioner in arbitration petition) is given time upto and including 23rd September 2022 to cure the defect and hold a board meeting and ratify in the board meeting the consent terms dated 26th February 2021. No extension on any ground whatsoever will be granted to respondent and if this deadline is not strictly and meticulously complied

with, the order dated 26th February 2021 will stand recalled and the petition will stand dismissed without further reference to this court. If the defect is rectified and the petition does not get dismissed as mentioned earlier, the matter will be referred to sole Arbitrator Dr. Abhinav Chandrachud, Advocate practicing in this court. In other words, in the consent terms dated 26th February 2021, wherever name of Mr. Gautam Ankad is mentioned, that will in effect stand substituted by Dr. Abhinav Chandrachud.

6 The fees to be fixed by the Arbitrator, administrative expenses, typing charges and venue charges to be shared equally between the parties, i.e., 50% by petitioner and 50% by respondent and the same shall be subject to cost in the arbitratral proceedings. Within two weeks of receiving a copy of this order, the Arbitrator shall file his disclosures as required under Section 11(8) read with Section 12(1) of the Act directly with the parties.

7 For this Interim application, respondent to pay a sum of Rs.25,000/- as cost to petitioner, which amount shall be paid within two weeks from today, failing which the petition will be revived and stand dismissed without further reference to this court.

8 A compliance affidavit with respect to paragraphs 5 and 7 above shall be filed and copy served upon applicant herein on or before 23rd September 2022.

9 This order has been passed with the consent of the parties.

10 Interim application disposed.

(K.R. SHRIRAM, J.)