

Shephali

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
INTERIM APPLICATION NO. 3380 OF 2021
IN
WRIT PETITION (L) NO. 5298 OF 2020**

Kunvarji Commodities Brokers Pvt Ltd	...Applicant/ Respondent No.4
<i>In the matter between</i>	
JMC Metals Pvt Ltd & Ors	...Petitioners
<i>Versus</i>	
Securities And Exchange Board of India & Ors	...Respondents

Mr Arif Doctor, *with Sushmita Gandhi and Prapti Kedia, i/b IndusLaw, for the Applicant/Respondent No.4.*
Ms Aishwarya Reddy, *i/b Amir Arsiwala, for the Petitioners.*
Mr Sameer Pandit, *with Sarrah Khambati, i/b Wadia Ghandy & Co, for Respondent No.2.*

**CORAM G.S. Patel &
 Madhav J. Jamdar, JJ.**
DATED: 8th February 2022

PC:-

SHEPHALI
SANJAY
MORMARE

Digitally signed by
SHEPHALI SANJAY
MORMARE
Date: 2022.02.08
17:24:35 +0530

1. We have before us an Interim Application filed by the 4th Respondent to the Petition. This is a commodities broker company on the 2nd Respondent, multi commodity exchange. The prayers in the IA are as follows:

“a. Grant leave to the Applicant to execute the Award dated 1 November 2021 and to take all the necessary steps for the purpose of the execution;

b. Pending the hearing and final disposal of the present Application, restrain Petitioner Nos. 1 and 2 along with directors, officers, servants and agents of the Petitioner No. 1 or any other person claiming by, through or under the Petitioners, from in any manner dealing with, disposing of, alienating, encumbering, transferring, selling, parting with possession of or creating any third party right, title or interest of any nature whatsoever in respect of assets of the Petitioner No. 1 or any part or portion thereof;

c. Pending the hearing and final disposal of the present Application, direct the Petitioner No. 1 to deposit Rs. 2,02,90,086.74 (Rupees Two Crore Two Lakh Ninety Thousand Eighty Six and Seventy Four Paise Only) with the Hon’ble Court in an interest bearing fixed deposit account.”

2. The short background to the matter is that there was an arbitration between the 4th Respondent Applicant, Kunvarji Commodities Brokers Pvt Ltd (“**Kunvarji Commodities**”) and Petitioners in regard to the amounts claimed by the former from the later.

3. By an order dated 2nd September 2020, a Division Bench of this Court said:

“We have heard the learned counsel for the parties.

2. The counsel inform us that the Supreme Court in a Transfer Petition has stayed proceedings in different High Courts in respect of the same circular. The Petitioner has placed on record an order passed by the Supreme Court on 27 August 2020 in a matter arising from the interim order

passed in this petition. Because of this order we have taken the matter on board for consideration of interim relief.

3. having heard the learned counsel for the parties, we are of the opinion that the equities can be balanced by permitting the arbitration proceedings to continue, however, directing the Respondent No. 4 to apply for leave of this Court to execute the award, in case the award is rendered in favour of Respondent No. 4.

4. Order accordingly.

5. Interim application is disposed of in the above terms.

6. Place the petition under the caption “for Directions” after six weeks. The parties shall place on record the order passed by the Supreme Court in respect of grant or otherwise of the Transfer Petition.”

4. Thereafter, there came to be made an Award dated 1st November 2021 in favour of Kunvarji Commodities against the Petitioners.

5. As far as the main Writ Petition is concerned, we believe it has been tagged with the group of matters that are subject of some transfer petitions before the Supreme Court. This relates to a plea for transfer of the main Writ Petition. We are making no order on the Writ Petition itself today.

6. As regards the IA, we are quite unable to accept the request by the Petitioners to file a short Affidavit in reply to this IA. We do not see what purpose will be served by it. If the Petitioners are aggrieved by an arbitral award, their remedies lie elsewhere. Whether this is under the provisions of the Arbitration and

Conciliation Act 1996 or in enforcement or execution of the resultant award is not our concern.

7. This entire IA is in fact necessitated only because of the directions in the order of 2nd September 2020.

8. We certainly do not propose to allow the Petitioners a sort of back-door entry to assail the award or to raise any defences in enforcement or execution thereof. We are not addressing any question of enforcement or execution on merits. We are not exercising any powers under the Arbitration and Conciliation Act 1996, because clearly we cannot. At the cost of repetition, the IA is required only because of the directions of the Division Bench of this Court and for no other reason. There is no reason to refuse relief.

9. The IA is made absolute in terms of prayer clauses (a) and is disposed of with no order as to costs.

10. The Writ Petition will come up in the normal course.

11. All concerned will act on production of a digitally signed copy of this order.

(Madhav J. Jamdar, J)

(G. S. Patel, J)