

123+300

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CR No. 4003 of 2022 (O&M)
Date of Decision: 12.10.2022

Fia Technology Services Pvt. Ltd. and others

-Petitioners

Versus

Sameer Kumar Mathur

-Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Akshay Bhan, Sr. Advocate, with
Mr. Sushant Kareer, Advocate,
for the petitioners.

Mr. Sumeet Goel, Sr. Advocate, with
Mr. Jasdev Singh Mehndiratta, Advocate, and
Mr. Siddhant Bajaj, Advocate, and
Mr. Aarush Neeraj Vaid, Advocate,
for the respondent.

RAJ MOHAN SINGH, J. (Oral)

Petitioners have assailed the order dated 15.09.2021 passed by Additional District Judge-cum-Presiding Judge, Exclusive Commercial Court at Gurugram vide which interim order has been passed thereby keeping the proceedings before the Arbitral Tribunal in abeyance. The said order is still in operation.

Learned senior counsel for the petitioners submits that on reference to the Arbitral Tribunal, an interim award was

passed on 12.06.2021. The observations in respect of dispositive read as under:-

Dispositive

Re. Prayer/Claim (a) [various facets thereof] and Prayer/claim (1)

- i. The Respondent joined ROINET on June 15, 2015 before submitting his resignation as Director of the Claimant Company (Member of the Board as Directors of the Claimant Company).*
- ii. The Respondent has no right to be a shareholder of the Claimant Company having breached Articles 9(1) and 14(1) of the Shareholder Agreement. The aforesaid disability applies to the Respondent with effect from June 15, 2015.*
- iii. Respondent was not found to be behind the incorporation of ROINET through Mr. Dhiraj Kumar and Mr. Rajeev Ranjan.*
- iv. Respondent is not found to be behind the takeover of ROINET by Ms Pooja Gupta and Ms Ankita Gupta from Mr. Dhiraj Kumar and Mr. Rajeev Ranjan.*
- v. ROINET was activated even before the Respondent joined as its CEO.*
- vi. The report of M/s SPA Capital Advisor Ltd. cannot be utilised for determining the value of the shares of the claimant held by the Respondent.*

vii. Valuer/ Assessor shall be appointed to determine the value of the shares of the claimant held by the Respondent.

viii. The Tribunal determines June 30, 2017 as the date with reference to which the fair market value of the share of the Claimant Company shall be determined by the valuer/ assessor, who shall be appointed by the Tribunal for the said purpose by a separate order.

ix. the Respondent shall handover the Shares to the Registrar General of the High Court, who shall hold the shares on behalf of the Respondent and keep them in his custody pending the determination of value of shares by the assessor/valuer and pending sale of the shares. Procedure as delineated in Articles 8(3) read with Article 8(2) of the Shareholder Agreement shall be followed for determination of their fair market value. On receipt of the report of the valuer, the Tribunal will take up the Claim for further necessary directions. The rooster for the sittings shall be prepared separately in consultation with learned counsel for the parties.

x. Once the shares are purchased by the Claimants or third parties, as the case may be, at fair market value arrived at by the valuer/assessor, and the amount is deposited by them with the Registrar

General, the same will be disbursed to the Defendant.

Re-Prayers/Claims (b & c)

Prayers/Claims (b & c) do not survive. Decided accordingly.

Re-Prayer/Claim (d)

Prayer/Claim (d) is rejected.

Re-Prayers/Claims (e), (f) and (g)

Prayers/Claims (e), (f) and (g) are rejected.

Re-prayers/claims (h), (i) and (j)

The Prayers/Claims (h), (i) and (j) are not within the purview of the Tribunal. Re-course is open to the Claimants to seek remedies under the criminal justice system.

Re-Prayer/claim (k)

Prayer/claim (k) is rejected

Re-Prayer/claim (m)

Prayer/claim (m) is rejected

Counter Claim 1

Counter Claim 1 is rejected.

Counter Claim 2

Counter Claim 2 is rejected.

Counter Claim 3

Counter Claim 3 is rejected

Counter Claim 4

Counter Claim 4 is rejected

Counter Claim 6

It is not open to the Counter Claimant to challenge the rights issue which has already been subscribed. The prayer is accordingly rejected. However, order dated September 06,

2016 protects Counter Claimant's present shareholding from being further diluted. This order shall continue.

Counter Claim 5

Counter Claim no.5 for costs is rejected.

The parties shall bear their own costs.

Interim Award made on this 12th day of June, 2021 at new Delhi.”

Learned senior counsel for the petitioners submits that the interim award in respect of determination of issues decided vide the interim award have attained finality for which the respondent has already filed objections under Section 34 of Arbitration and Conciliation Act, 1996. Learned senior counsel further submits that only issue of valuation has to be decided by the Arbitral Tribunal. Vide the interim stay, even issue regarding valuation has been stayed by the Additional District Judge-cum-Presiding Judge by ordering the Arbitral proceedings to be kept in abeyance.

Learned senior counsel by placing reliance upon provisions of Section 36 of the Arbitration and Conciliation Act, 1996 submits that the impugned order is not legally sustainable.

Per contra, learned senior counsel for the respondent submits that the impugned order is only an interim order and the main case is fixed for 14.10.2022.

At this stage, without meaning anything on the merits of the case, it would be just and appropriate to direct the Additional District Judge-cum-Presiding Judge, Exclusive Commercial Court at Gurugram to decide the application under Section 36 of the Act finally in accordance with law.

Needless to say that an endeavour shall be made to decide the application under Section 36 of the Act in view of consensus arrived at between the parties on the date fixed or soon thereafter, preferably within a week in case of any impediment.

This Court has not expressed any opinion on the merits of the case. The Court shall dispose of the application without being influenced by any statement of fact recorded hereinabove.

In view of the order passed above, all other applications are disposed of as such.

12.10.2022

Jyoti Sharma

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No