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

% **Date of decision: 16 December 2022**

+ **ARB. A. (COMM.) 73/2022 & I.A. 17549/2022(Stay)**

**INDIAN RAILWAY CATERING AND TOURISM
CORPORATION LIMITED**

..... Appellant

Through: Mr. Chetan Sharma, ASG with
Mr. Harshit Aggarwal, Mr.
Amit Gupta, Mr. Rishav Dubey,
Mr. Saurabh Tripathi and Mr.
Sahaj Garg, Advs. for IRCTC.

versus

SUJATA HOTEL PRIVATE LIMITED Respondent

Through: Ms. Malvika Trivedi, Sr. Adv.
with Mr. Akshat Bajpai, Ms.
Ishanee Sharma, Mr. Sujal
Gupta and Mr. Shallendra
Slaria, Advs.

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+ **OMP (ENF.) (COMM.) 206/2022 & EX.APPL.(OS)
3585/2022(Direction)**

M/S SUJATA HOTEL PVT LTD Decree Holder

Through: Ms. Malvika Trivedi, Sr. Adv.
with Mr. Akshat Bajpai, Ms.
Ishanee Sharma, Mr. Sujal
Gupta and Mr. Shallendra
Slaria, Advs.

versus

**INDIAN RAILWAY CATERING AND TOURISM
CORPORATION PVT LTD**

..... Judgement Debtor

Through: Mr. Chetan Sharma, ASG with
Mr. Harshit Aggarwal, Mr.
Amit Gupta, Mr. Rishav Dubey,
Mr. Saurabh Tripathi and Mr.
Sahaj Garg, Advs. for IRCTC.

CORAM:

HON'BLE MR. JUSTICE YASHWANT VARMA

YASHWANT VARMA, J. (ORAL)

1. These matters with the consent of parties were heard together and are being disposed of by this common order.

2. ARB. A. (COMM.) 73/2022 is an appeal preferred by the appellant Corporation under Section 37 (2) (b) of the **Arbitration and Conciliation Act, 1996¹** and assails the validity of the order dated 14 October 2022 passed by the Arbitral Tribunal. OMP (ENF.) (COMM.) 206/2022 is a petition preferred by the claimant seeking enforcement of the aforesaid order passed by the Arbitral Tribunal. The order of 14 October 2022 has undisputedly been passed on an application made by the claimant/respondent purporting to be under Section 17 of the Act. That application was preferred by the claimant seeking the following reliefs:-

“i) Issue directions that the Respondent should maintain a status quo with respect to the subject matter of the instant arbitration between the two parties and not issue a letter of award pursuant to the fresh tender No. 2022/IRCTC/BNR/RANCHI floated for the BNR Ranchi Hotel.

ii) Pass any other or further consequential order(s) as this Hon’ble Tribunal deems fit and proper in the facts and circumstances of the aforesaid case in favour of the Applicant and against the Respondent.”

3. As would be evident from a perusal of the reliefs which were claimed, the respondent had sought the issuance of a direction commanding the appellant Corporation to maintain status quo with

¹ the Act

respect to the subject matter of arbitration and to not issue a letter of award pursuant to the fresh tender notice which had been published for running and administering the **BNR Hotel**² at Ranchi. The claimant had also prayed for orders consequential to the above and as may have been deemed fit and proper by the Arbitral Tribunal in the facts of the case. In order to appreciate the challenge which stands laid at the behest of the appellant Corporation, it would be pertinent to notice the following undisputed facts.

4. By a letter of 27 December 2006, the appellant Corporation is stated to have awarded a sub-license to the respondent for the purposes of redeveloping, operating, maintaining and transferring the Hotel. On 12 May 2007, a sub-license / concession agreement came to be executed between the parties for and in connection with the aforesaid purposes. The Hotel premises are stated to have been handed over to the claimant on 14 May 2007. As per the concession, the sub-license was granted for a period of fifteen years and was to thus expire on 13 May 2022. The claimant is stated to have made a representation on 10 June 2020 for extension of the period of contract on account of the outbreak of the COVID-19 pandemic. It was asserted that the pandemic had adversely impacted the business of the claimant and caused huge losses and therefore the requirement of the term of the sub-license being extended proportionately.

5. By a letter of 06 April 2022, the appellant Corporation granted the claimant the benefit of the residual period of 163 days beyond the

² the Hotel

expiry date of the sub-license of 13 May 2022. The sub-license agreement consequently stood extended up to 23 October 2022. The claimant, however, questioned the computation of the residual period. In the meanwhile, the appellant Corporation is stated to have floated a fresh tender for operation and maintenance of the Hotel on expiry of the concession period on 23 October 2022. It was, in the aforesaid backdrop that disputes appear to have arisen between the parties and led to the reference of the same to arbitration.

6. On constitution of the Arbitral Tribunal, the respondent claimant submitted its **Statement of Claim**³. The claims were essentially placed under the following heads:-

“Claim 1: Extension of License Period by granting Residual period for non/under-utilization of Hotel after 31.08.2020.

Claim 2: Extension of License Period to account for the time spent in refurbishing/renovating the Hotel.

Claim 3: Refund of expenditure incurred in construction of Boundary Wall.

Claim 4: Compensation for the revenue lost by the Claimant when the Railways did not hand over the Hoardings to the Claimant.

Claim 5: Compensation for the requisite land area required for construction of land area in Block D of the proposed building plan not being built as the boundary wall could not be straightened at the rear of the Hotel.

Claim 6: Compensation for loss of earning from Banquet Hall due to delays in its construction due to lack of clarity regarding position of Boundary Wall.

Claim 7: Compensation for Loss of Revenue due to delay in revision of Tariffs to be charged at the Hotel.”

³ SOC

7. As per the summary of claims which was set out in the SOC, the claimant had sought extension of the license period for the residual period by 191 days. A further extension of license period was claimed under the head of time spent in refurbishment and renovation of the Hotel. That extension was claimed for a period of three years and thirty days.

8. Admittedly, at the time when the application preferred under Section 17 of the Act came to be filed and taken up for consideration, the appellant Corporation was yet to submit a Statement of Defence. As the impugned order itself records, the first hearing by the Arbitral Tribunal took place on 10 August 2022. The impugned order further records that the claimant had sought expeditious hearing of the prayers as made in the application preferred under Section 17 of the Act and which is stated to have been conceded to by the appellant Corporation. The Tribunal appears to have heard and considered the aforementioned application on 01 October 2022. Upon conclusion of hearing on the aforesaid application, the following note of proceedings came to be recorded:-

“

ORDER SHEET NO.-02

(Dated 01.10.2022)

Proceedings of the third arbitration hearing held on 01.10.2022 at 17:30 hrs held through video conference.

Arbitration between M/S Sujata Hotel Pvt. Ltd, Patna and IRCTC in the matter of:

Redeveloping, Operating, Maintaining and transferring of BNR Hotel at Ranchi as per agreement between IRCTC and Sujata Hotel Private Limited Patna,

1. ATTENDED BY

- | | | |
|-----|-----------------|---|
| i) | CLAIMANT SIDE | Sh Akshat Bajpai- Counsel
for claimant |
| ii) | RESPONDENT SIDE | Sh. Jagdish Goyal- Law
officer/IRCTC
Sh. Harshit Agarwal-
Counsel for respondent |

1.2 It was directed that as far as possible all should follow the system of trailing mail while sending any mail. This will help in better management of correspondence.

1.3 Both the Claimant as well as the Respondent have not correctly followed the system of numbering of pages/documents submitted. Though it was clearly mentioned in para 7 of Arbitration notification no.1. It should be properly followed in future as discussed in today's meeting.

1.4 As explained in today's meeting, Claimant shall resubmit (only soft copy) of their already submitted documents to be clearly marked at top as CD-1, CD-2 etc., in order of their submission. Similarly Respondent shall also resubmit their documents (only soft copy) marked as RD-1, RD-2 etc... Same markings in Hard copies shall be done by all concerned at their respected end. No resubmission of hard copy is required.

1.5 As directed vide para 5 of order sheet no 1. both the parties have submitted their calculations /assessment for residual period. Respondent have also replied to claimant's letter dated 13.09.2022 to CMD/IRCTC regarding extension of residual period.

1.6 Claimant submitted their arguments/plea for additional residual period beyond 163 days already granted by IRCTC as reasons for continuation of their present contract beyond present expiry date of 23.10.2022.

1.7. Respondent also submitted their arguments/reasons for no justification for additional residual period beyond 163 days already granted by IRCTC.

1.8 Claimant and Respondent, both agreed that they have no further submissions/arguments to make. Accordingly AT proceedings are concluded in respect of claimant's request for early decision in respect of their application filed under section 17 of Arbitration and Conciliation Act. Both Claimant and Respondent shall submit a brief of their today's arguments for record.

1.9 AT will now proceed to declare the award ONLY in respect of Claimant's application under section 17 of Arbitration and Conciliation Act seeking directions to the Respondent that a status quo be maintained w.r.t. the subject matter of the present arbitration and fresh letter of award should not be issued for the new tender no. 2022/IRCTC/BNR/RANCHI floated for the subject matter property that will open on 07.09.2022.

1.10 Claimant shall now submit their SOC, with item wise breakup of each claim, in terms of Arbitral notification no.-1 dated 10.08.2022, without waiting for publication of interim award (award in respect to their application filed under section 17 of A & C Act).

(Naveen Chopra)
Sole Arbitrator

Address: Flat-28, Palm grove apartment, Plot No. F-5, Selor-50, NOIDA-201304, (U.P.)

Mobile-9871460200

E-mail: nchopra.irse@gmail.com”

9. A reading of the note of proceedings as drawn by the Tribunal and more particularly Para 1.9 thereof appears to suggest that the Arbitral Tribunal had heard and concluded arguments on the application preferred under Section 17 of the Act which had sought directions for status quo being maintained with respect to the subject matter of the arbitration and for reliefs in respect of the action of the appellant Corporation relating to a fresh letter of award as a consequence to the tender notice which had come to be issued.

10. While it was the said application under Section 17 of the Act which was to be taken up for consideration and on which alone submissions of respective parties had been heard, the Arbitral Tribunal chose to describe and understand the scope of those proceedings by observing “AT will now proceed to declare the award ONLY in

respect of Claimant's application under Section 17....". The Arbitral Tribunal also called upon the Claimant to file its SOC without awaiting the pronouncement of "publication of interim award (award in respect to their application filed under section 17 of A & C Act)."

11. As would be evident from a reading of the ultimate order which was passed on that application, the Arbitral Tribunal rejected relief 'i' as was claimed in the application preferred under Section 17. It, however, proceeded to declare and direct that the concession period or the contract shall stand extended by providing for an additional residual period of 104 days beyond the present expiry date of 23 October 2022. The aforesaid direction came to be passed by the Arbitral Tribunal based on its assessment of the relief liable to be granted to the claimant on account of the impact of the pandemic during the contract period. It is the aforesaid direction which has led to the filing of the appeal under Section 37 of the Act.

12. Assailing the impugned order, Mr. Sharma, the learned ASG, submitted that the Arbitral Tribunal has clearly transgressed the jurisdiction conferred upon it by Section 17 of the Act. Mr. Sharma pointed out that Section 17 envisages the grant of interim measures that may be made by the Tribunal during the pendency of proceedings. It was submitted that the aforesaid provision essentially enables the Arbitral Tribunal to pass interim orders preserving and balancing the rights of parties till such time an award is ultimately rendered. However, learned ASG submitted that the Tribunal had clearly lost sight of the extent of the proceedings contemplated under Section 17 and the orders that could possibly be made at the interim stage and has

virtually allowed one of the principal claims which had been laid by the respondent. In view of the aforesaid, learned ASG submitted that the impugned order clearly suffers from a manifest and patent illegality and merits being set aside by the Court.

13. Appearing for the respondent, Ms. Trivedi, learned Senior Counsel, submitted that the order essentially amounts to an interim award having been rendered by the Arbitral Tribunal with respect to one of the claims which stood raised. It was submitted that the Arbitral Tribunal stands statutorily empowered to render such an interim award by virtue of the provisions contained in Section 31(6) of the Act. Ms. Trivedi further submitted that since the order impugned would amount to an interim award, the appeal preferred under Section 37 of the Act is clearly not maintainable. It was then contended that although the application was filed as being one under Section 17, a perusal of the proceedings drawn by the Arbitral Tribunal prior to the aforesaid application being heard would clearly establish that parties were agreed for arguments being heard and considered in respect of the substantive claim that stood raised and embodied in the SOC. In view of the aforesaid, Ms. Trivedi would urge that the order impugned merits no interference and in any case the appeal itself is liable to be dismissed on the ground of maintainability as was noticed above.

14. It was further submitted that on earlier occasions when the instant appeal and petition had been called for hearing, the objection on identical lines had been urged and in response to which the appellant had, in fact, conceded and submitted that it may be treated as being one falling under Section 34 of the Act. According to Ms.

Trivedi, in light of the aforesaid concession also, the instant appeal is liable to be dismissed. It was her submission that in any case and once the concession had been made, the grounds of challenge as have been urged before the Court today would not be available to be canvassed.

15. The Court at the outset deems it apposite to record that the concession which is alluded to by Ms. Trivedi, neither stands recorded nor does it stand reflected in any of the earlier orders passed in these proceedings. The initial orders passed also do not record any concession having been made on behalf of the appellant in this respect. In absence thereof, the Court finds itself unable to accept the argument that the present petition must be held to be one which would fall within the ambit of Section 34 of the Act. The true nature of the petition would, in any case, have to be examined and understood by the Court based upon its own evaluation of the nature of the challenge which stands raised. It would in any case not be guided by any oral submission or statement that may have been allegedly made before the Court and of which no cognizance appears to have been taken.

16. In view of the aforesaid, the Court finds itself unable to countenance the objection as taken on this score or to reject the appeal based on an objection or a concession which is stated to have been allegedly voiced by learned counsels appearing for respective parties on earlier occasions.

17. Reverting then to the merits of the challenge, the Court deems it apposite to note that a careful reading of the application which was

moved under Section 17 would reveal that paragraphs 1 to 51 were essentially a reiteration of the contents of the SOC. However, and as would be evident from a reading of paragraph 52 onwards of the said application, the claimant was clearly conscious of the scope of the proceedings before the Arbitral Tribunal. This would be evident from a reading of paragraphs 52 to 55 of the application preferred under Section 17 of the Act which are extracted hereinbelow:-

“52. That Section 17 of the Arbitration and Conciliation Act, 1996 as amended in 2015 states that,

*“(1) A party may, during the arbitral proceedings 2***, apply to the arbitral tribunal— (i) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or (ii) for an interim measure of protection in respect of any of the following matters, namely:— (a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement; (b) securing the amount in dispute in the arbitration; (c) the detention, preservation or inspection of any property or thing which is the subject matter of the dispute in arbitration, or as to which any question may arise therein and authorizing for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken, or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence; (d) interim injunction or the appointment of a receiver; (e) such other interim measure of protection as may appear to the arbitral tribunal to be just and convenient, and the arbitral tribunal shall have the same power for making orders, as the court has for the purpose of, and in relation to, any proceedings before it.) ...”*

53. As such, the powers granted to an arbitrator are *pari materia* with those granted to the relevant court under Section 9 of the Act. In this context, the observations of the Hon’ble Supreme Court in *Adhunik Steels Ltd. v. Orissa Manganese Mining (2007 AIR SC 2563)* are pertinent:

“10. It is true that Section 9 of the Act speaks of the court by way of an interim measure passing an order for protection, for the preservation, interim custody or sale of any goods, which

are the subject matter of the arbitration agreement and such interim measure of protection as may appear to the court to be just and convenient. The grant of an interim prohibitory injunction or an interim mandatory injunction are governed by well known rules and it is difficult to imagine that the legislature while enacting Section 9 of the Act intended to make a provision which was *de hors* the accepted principles that governed the grant of an interim injunction. Same is the position regarding the appointment of a receiver since the Section itself brings in, the concept of 'just and convenient' while speaking of passing any interim measure of protection. The concluding words of the Section, "and the court shall have the same power for making orders as it has for the purpose and in relation to any proceedings before it" also suggest that the normal rules that govern the court in the grant of interim orders is not sought to be jettisoned by the provision. Moreover, when a party is given a right to approach an ordinary court of the country without providing a special procedure or a special set of rules in that behalf, the ordinary rules followed by that court would govern the exercise of power conferred by the Act. **On that basis also, it is not possible to keep out the concept of balance of convenience, prima facie case, irreparable injury and the concept of just and convenient while passing interim measures under Section 9 of the Act.**"

54. It is submitted that a similar approach needs to be adopted in considering any applications made under Section 17 of the Act.

55. The Claimant/Applicant satisfies the requirements of the three-factor test for grant of interim relief. **In Dorab Cawasji Warden v. Coomi Sorab Warden, (1990) 2 SCC 117**, the Apex Court, while holding that **interlocutory mandatory injunction are usually granted to preserve the last uncontested status quo until the final hearing**, in para held as under:

"16. The relief of interlocutory mandatory injunctions are thus granted generally to preserve or restore the status quo of the last non-contested status which preceded the pending controversy until the final hearing when full relief may be granted or to compel the undoing of those acts that have been illegally done or the restoration of that which was wrongfully taken from the party complaining. But since the granting of such an injunction to a party who fails or would fail to establish his right at the trial may cause great injustice or irreparable harm to the party against whom it was granted or alternatively not granting of it to a party who succeeds or would succeed may

equally cause great injustice or irreparable harm, courts have evolved certain guidelines. Generally stated these guidelines are: (1) The Plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction. (2) It is necessary to prevent irreparable or serious injury, which normally cannot be compensated in terms of money. (3) The balance of convenience is in favour of the one seeking such relief.””

18. The claimant thereafter alludes to the factors which govern the grant of an interim injunction by asserting that it had a good prima facie case, the balance of convenience lay in its favour and that if an order of status quo were to be refused, it would suffer irreparable injury and harm. It was these factors which govern the grant of a temporary injunction which were then elaborated upon by the claimant itself. The fact that the claimant was essentially seeking interim directions is also manifest from the prayers which were made in the application preferred under Section 17 itself and which have been extracted hereinabove. Those prayers were *ex facie* restricted to the grant of an order of status quo in respect of the letter proposed to be issued by the petitioner as a consequence to the fresh tender that had been floated by them. The prayer for consequential orders cannot also be construed as having expanded the nature of the relief which the respondent had sought in the interim.

19. The Court further bears in mind that the application preferred under Section 17 was itself being taken up for consideration at a time when the appellant was yet to file or furnish a Statement of Defense. In fact as the minutes of proceedings of 01 October 2022 drawn by the Arbitral Tribunal would itself bear out, it had called upon the

respondent to submit a revised SOC awaiting orders being passed upon the application moved on its behalf. The order, which the respondents choose to describe as an interim award, thus evidently came to be made even before the principal pleadings of parties had come to be placed on the record.

20. Section 17 of the Act confers powers on the Arbitral Tribunal to pass interim orders during the course of the Arbitral proceedings.

That provision reads thus: -

“**[17. Interim Measures ordered by arbitral tribunal]**—(1) A party may, during the arbitral proceedings [* * *], apply to the arbitral tribunal—

(i) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or

(ii) for an interim measure of protection in respect of any of the following matters, namely:—

(a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;

(b) securing the amount in dispute in the arbitration;

(c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken, or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

(d) interim injunction or the appointment of a receiver;

(e) such other interim measure of protection as may appear to the arbitral tribunal to be just and convenient,

and the arbitral tribunal shall have the same power for making orders, as the court has for the purpose of, and in relation to, any proceedings before it.

(2) Subject to any orders passed in an appeal under Section 37, any order issued by the arbitral tribunal under this section shall be deemed to be an order of the court for all purposes and shall be enforceable under the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were an order of the Court.]”

21. The aforesaid provision confers powers akin to those vested upon the Court by virtue of Section 9 except that in case of the latter, the Court stands vested with the authority to direct interim measures being taken before, during or for that matter even after the Arbitral proceedings have come to a close and culminated in the making of an award. As would be evident from a reading of Section 17, the interim measures are concerned with the preservation of goods which may form the subject matter of arbitration, securing any amounts which may be in dispute, the detention, preservation or inspection of property, the appointment of a receiver and directing such other interim measures of protection as may appear to the Arbitral Tribunal to be just and convenient.

22. As would be evident from the decisions on which reliance was placed by the claimant itself, the power conferred by Section 17 upon the Arbitral Tribunal is essentially akin to the powers vesting in a court to grant an interim prohibitory or mandatory injunction. Section 17 in any case cannot be construed as either conferring a power on the Arbitral Tribunal to either render an interim award or to grant one of the final reliefs which may be sought by a claimant. One of the principal considerations which courts and tribunals weigh in mind while considering the question of grant of interim protection, is to be wary of passing orders which amount to the grant of final reliefs that may be claimed by parties. However, and as would be manifest from

the aforesaid recital of facts as well as the direction which was ultimately framed by the Arbitral Tribunal in the present case, it is exactly that basic and underlying principle governing the grant of interim injunction which has been evidently ignored and violated by the Arbitral Tribunal.

23. As this Court peruses the notes of proceedings as well as the ultimate order which came to be passed by the Arbitral Tribunal, it is of the firm opinion that it has clearly misdirected itself and manifestly transgressed the jurisdiction which it was entitled to exercise while considering an application under Section 17 of the Act. The Arbitral Tribunal has essentially proceeded to render a final opinion with respect to one of the major claims which was sought by the respondent.

24. The Court further notes that Para 1.9 of the Minutes of Proceeding dated 01 October 2022 would also not salvage the ultimate order which came to be passed by the Arbitral Tribunal and stands impugned in the present appeal. In fact a reading thereof would clearly establish that the Arbitral Tribunal not only misconstrued the scope and extent of proceedings that could have been taken under Section 17, but it has clearly committed a gross illegality while passing the orders impugned.

25. Before closing, the Court deems it necessary to observe that an Arbitral Tribunal though not strictly bound by the rules of procedure as prescribed under the Civil Procedure Code, 1908, it is yet obliged to adhere to the fundamental principles of a fair and just adjudication

as embodied in the Act. While the Court cannot possibly doubt the authority of an arbitrator to make an interim award, the rendering of such a decision must necessarily be preceded by adherence to a procedure which can be countenanced in law. In the course of proceedings which ensued before the arbitrator in the present case, it appears to have clearly lost sight of the fact that it was called upon to merely decide an interlocutory application. The petitioner while responding to the contents of the application under Section 17 was bound to traverse the various assertions which were made therein and which, as was noted above, to a large extent pertained to and was an iteration on the principal claims laid by the respondent. However, that by itself could not have conferred jurisdiction or authority upon the Arbitral Tribunal to render an interim award.

26. Accordingly, and for all the aforesaid reasons, ARB. A. (COMM.) 73/2022 shall stand allowed. The order of 14 October 2022 of the Arbitral Tribunal shall stand set aside.

27. OMP (ENF.) (COMM.) 206/2022 shall, as a consequence to the above, stand dismissed.

YASHWANT VARMA, J.

DECEMBER 16, 2022/bh