

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

% **Date of order : 24th April, 2023**

+ **ARB. A. (COMM.) 13/2023**

**JAYANTA KUMAR GHOSH OUTDOOR CATERING PVT LTD
NOW KNOWN AS ARAHA HOSPITALITY PVT LTD**

..... Appellant

Through: Mr. Sandeep Sethi and Mr. Arvind
Varma, Sr. Advocates with Mr.
Ashutosh Dubey, Mr. Abhishek
Chauhan, Mr. Amit P. Shahi, Ms.
Smridhi and Mr. Amit Kumar,
Advocates

versus

THE STATE OF MAHARASHTRA THROUGH ITS

ADDITIONAL CHIEF SECRETAR & ORS. Respondents

Through: Mr. Balbir Singh, ASG with Mr.
Siddharth Dharmadhikari, Mr.
Shrirang Varma, Mr. Naman
Tandon, Mr. Aaditya A. Pande and
Ms. Palak Arora, Advocates

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

I.A. 7318/2023 & I.A. 7595/2023 (Exemptions)

Exemptions allowed subject to just exceptions.

The applications stand disposed of.

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ARB. A. (COMM.) 13/2023, I.A. 7317/2023 (Stay) & I.A. 7594/2023 (Stay)

1. The instant appeal under Section 37(2)(b) of the Arbitration and Conciliation Act, 1996 (hereinafter “Arbitration Act”) has been filed on behalf of appellant seeking the following reliefs:-

"(a) Pass an order or direction quashing and setting aside the impugned order dated 17.4.2023 passed by the Ld. Arbitrator; and

(b) Continue the interim order dated 6.10.2022 passed by this Hon'ble Court in OMP (I)(Comm) No. 285/2022 till disposal of the Arbitration Claim petition before the Ld. Arbitrator.

(c) Stay the operation and implementation of notice/ order dated 04.10.2022 issued by the Resident Commissioner, Maharashtra Sadan, New Delhi;

(d) Restrain the respondent Nos 1 to 4 from causing any disturbance or hindrance in peaceful running of the Maharashtra Sadan Canteen (Old and New) by the appellant during the pendency of the present petition;

(e) Ad-interim orders in terms of prayer (b) and (c)

(f) Cost of the petition;

(g) Pass such further order or orders as this Hon'ble Court deem fit and proper in the facts and circumstances of the case."

2. Mr. Sandeep Sethi, the learned senior counsel for the appellant submitted that the appellant is involved in catering business. One Jayanta Kumar Ghosh started running a proprietorship firm in the year 1989.

Thereafter, the appellant company was incorporated by the name of M/s Jayant Kumar Ghosh Outdoor Catering Pvt. Ltd. on 19th November 2014 and since then it has been running successfully as an independent legal entity. The appellant company had taken over the business of the proprietorship firm on 20th April 2017 by a deed of Agreement and has been running independently as a separate distinct legal entity.

3. The respondent issued an e-tender notice bearing tender no. RC/MMS/Canteen/2020 dated 3rd December 2020 and in pursuance thereof had awarded the Contract dated 14th September 2021 in favour of the appellant to run *Maharashtra Sadan* Canteen vide communication dated 27th August 2021.

4. It is submitted that at the time of the tender, Jayanta Kumar Ghosh was only an executive director in the appellant company and did not have any role in the conducting the affairs of the appellant. The majority of the shareholding of the appellant company is held by Amar Thakkar and Preeti Thakkar in the ratio of 51% and 23.75%. Remaining 25.79% is with Beauty Ghosh.

5. It is submitted that vide communication/order dated 4th October 2022 the respondent illegally, arbitrarily, and unjustly terminated the Contract awarded to the appellant, without furnishing any prior Notice, on a representation of one M/s Cuisine Caterers & Hospitality Services (hereinafter “M/s Cuisine Caterers”). Apprehending an action on behalf of the respondent, the appellant moved an application under Section 9 of the Arbitration Act before this Court in OMP (I) COMM 285/2022, whereby, a Coordinate Bench of this Court granted interim restraint order

vide order dated 6th October 2022 against the respondent seeking implementation of the Termination Order dated 4th October 2022.

6. Learned senior counsel stated that the arbitration clause was invoked, by way of a Notice dated 13th December 2022 and thereafter, by way of a petition under Section 11 of the Arbitration Act, and ultimately the learned Arbitrator concerned was appointed to adjudge the legality of the Termination Order assailed by the appellant herein.

7. During the course of the arbitration proceedings, the appellant moved an application under Section 17 of the Arbitration Act for an interim measure, which came to be dismissed on 17th April 2023, which has been impugned by the appellant in the instant appeal. Vide the Order dated 17th April 2023, the learned Arbitrator also vacated the interim order passed by this Court on 6th October 2022.

8. The learned senior counsel submitted that immediately upon passing of the impugned Order dated 17th April 2023, the respondent issued a communication on the same day directing the appellant to vacate the *Maharashtra Sadan* canteen within 24 hrs. It is submitted that the impugned Order as well as the communication, both dated 17th April 2023, are erroneous, cryptic, arbitrary and without any basis.

9. The learned senior counsel for the appellant submitted that the impugned Order is perverse, illegal, bad in law and passed without due appreciation of complete conspectus of the case. The reasoning given by the learned Arbitrator is erroneous and unrelated to the issue in question. The learned Arbitrator had proceeded on the tangent which is beyond the

scope of the contract and not even stated so in the Contract.

10. It has been alleged on behalf of M/s Cuisine Caterers that one of the directors of the appellant, Jayanta Kumar Ghosh, was convicted in a criminal case, which came to be the reason for terminating the services of the appellant. It is submitted that the said ground was taken by M/s Cuisine Caterers in their earlier representations as well which were not considered by the respondent, however, without any change in circumstances, the respondent issued the Termination Notice. It is further submitted that the appellant, being a corporate entity, is a legal entity separate from its directors.

11. It is submitted that the appellant was granted the Contract upon compliance of the tender requirements and conditions without any deviations since the appellant in its declaration form, at the time of tender, filled the queries *qua* the appellant itself as a company and not its directors, employees, shareholders etc. The appellant disclosed all the relevant information regarding the company and the involvement of one of the directors in a case did not have any bearing on the company's record, competency or eligibility. It is submitted that the appellant has not committed any breach of terms and conditions of the tender giving rise to the Termination Order.

12. It is further submitted that impugned Order also noted in paragraph no. 58 as under:-

“58. The Tender Conditions required a prospective bidder to make a declaration as per Clause 10, declaring that:

“There is no vigilance / CBI or court case pending

against the firm.”

The Tribunal is of the view that the object of Clause 10 of the Declaration Form was that the State should not be seen to be associated with an entity/person who has criminal proceedings pending against it.”

It is submitted that despite the said finding, the learned Arbitrator failed to appreciate that the bidder, i.e., the appellant made the correct declaration since it did not have any criminal antecedents in its name.

13. It is also stated that Jayanta Kumar Ghosh was the proprietor of the firm Jayanta Kumar Ghosh and the appellant company, Jayanta Kumar Ghosh Outdoor Catering Pvt. Ltd. was incorporated only in 19th November 2014. The company took over the assets and liabilities of the proprietorship firm vide Agreement dated 20th April 2017. Jayanta Kumar Ghosh is not a shareholder in the appellant company and had no say in the affairs of the company. He was a director in the company but resigned on 22nd September 2022. Reliance has been placed upon the judgment of ***New Horizons Ltd. & Anr. Vs. Union of India (1995) 1 SCC 478.***

14. It is submitted that M/s Cuisine Caterers was an H2 Bidder that failed to procure the Contract which was awarded to the appellant herein by the respondent. Thereafter, it approached the Courts assailing the Contract awarded to the appellant, however, failed to get any relief before this Court as well as the Hon'ble Supreme Court on the ground that M/s Cuisine Caterers has no *locus standi* to challenge the same. After failing to get any relief from the two rounds of litigation, M/s Cuisine Caterers made several representations to the respondent on 9th January 2021, 26th March 2021, 15th July 2021, 4th August 2021, 14th August 2021 and 26th

November 2021 against the appellant making certain allegations. The said allegations had no truth in them yet the respondent entertained the representations/complaints made by M/s Cuisine Caterers and terminated the Contract awarded to the appellant.

15. It is submitted that even the Termination Order dated 4th October 2022 is per se illegal, arbitrary, unjust and is issued against the principles of natural justice and without any hearing and the same is violative of Articles 14, 19 and 21 of the Constitution of India. It is submitted that Clause 9 of Tender Documents provided for the terms and conditions for termination of the Contract, however, none of the conditions were fulfilled by the respondent at the time of issuance of the Termination Notice/Order dated 4th October 2022.

16. It is submitted that the respondents issued the Termination Notice without affording a hearing opportunity to the appellant and hence, the same is in complete violation of the principles of natural justice. Reliance has been placed upon the judgments passed in *Gorkha Security Services vs. Govt. of NCT of Delhi & Ors.* (2014) 9 SCC 105, *UMC Technologies Pvt. Ltd. vs. FCI & Anr.* (2021) 2 SCC 551, *Hindustan Petroleum Corporation Ltd. & Ors vs. Super Highway Services & Anr.* (2010) 3 SCC 321 to submit that there is impediment on the authority concerned to issue a proper show cause notice with a clear intention of the authority calling upon the party for explanation before an action is taken. However, the learned Arbitrator did not consider the same.

17. It is submitted that the purported termination is itself illegal and in violation of Clause 13 of the Tender Documents as the respondents have

sought to give effect to the termination with immediate effect upon service, whereas the clause categorically states that the termination shall take effect 90 days after the mandatory opportunity of 30 days. In the present case, there is no opportunity given of 30 days neither there is implementation of 90 days' period after expiry of mandatory 30 days' period.

18. It is submitted by virtue of the impugned Interim Order, the learned Arbitrator has decided the issue of legality of the claim of Termination Order as valid even without there being claim proceedings before the learned Arbitrator. It is submitted that by virtue of the impugned Order the learned Tribunal had already pronounced the final verdict on the illegal termination and left the appellant to claim damages without any evidence and without any proof.

19. It is submitted that the appellant has been running the canteen successfully from September 2021 without any complaint. The Governor of Maharashtra had also issued an appreciation letter dated 21st July 2022 to the appellant. It is strongly urged that if the Termination Notice and the impugned Order are sustained, the same will cause great prejudice to the appellant as there are raw materials, perishable goods and items which the appellant uses for canteen purposes and the livelihood of the appellant, as well as the persons and dignitaries who are residing at *Maharashtra Sadan* will be directly affected. The Termination Order and the impugned Order have a cascading and serious repercussion on the appellants.

20. Therefore, it is prayed that the impugned Order dated 17th April 2023 may be set aside.

21. *Per Contra*, Mr. Balbir Singh, the learned ASG appearing on behalf of the respondents vehemently opposed the instant petition, the averments made therein and the submissions made on behalf of the petitioner.

22. It is submitted that the learned Arbitrator has passed the impugned Order after due consideration and appreciation of the facts and circumstances. There is no error or illegality on the face of record in the impugned Order which warrants the interference of this Court.

23. It is further submitted that various notices were issued to the petitioner prior to the Termination Order viz. notices dated 2nd September 2021, 20th December 2021 and 24th December 2021, as mentioned in the Termination Letter dated 4th October 2022.

24. It is submitted that after the proprietorship firm of Jayanta Kumar Ghosh converted into a private limited company, he continued to be a Director of the appellant company. The respondents received representation from authorized representative of M/s Cuisines Caterers and Hospitality Services, by which it was informed that Jayanta Kumar Ghosh had been convicted by the Special NIA Court for charges under Sections 120 B, 121, 121-A of the Indian Penal Code, 1860 read with Sections 16, 17, 18 and 20 of the Unlawful Activities (Prevention) Act, 1967 along with offences under Section 25(1)(B) of the Arms Act by the Special Judge, NIA Court Assam, Guwahati and that he has been sentenced to rigorous imprisonment for 10 years under Section 120(B) of Indian Penal Code, 1860 and further rigorous imprisonment for 10 years under Section 17 of the Unlawful Activities (Prevention) Act, 1967.

25. It is submitted that the present contract was taken by the appellant by submitting a false declaration. As per the tendered document declaration was to be given that there was no pending case against the firm. However, the fact regarding cases against one of the Directors, i.e. Jayanta Kumar Ghosh or his conviction thereof was never disclosed by the appellant. It was further submitted that in terms of Clause 13 of the General Conditions of Contract and Clause 9 of Special Conditions of Contract the respondent had the right to terminate the contract. It was submitted that Clause 9(a) of the SCC specifically provides in sub-clause VIII that if the contractor brings in bad name to *Maharashtra Sadan* by his/her acts and deeds, the contract shall be liable for termination. It is further submitted that extensive inquiry was carried out for almost one year and thereafter, after due process the Contract was terminated by the respondent.

26. It is submitted that on one hand the appellant has submitted that Jayanta Kumar Ghosh was not linked to the company and had no say in handling of affairs and day-to-day business and on the other hand, the appellant requested that experience of Jayanta Kumar Ghosh as a sole proprietor may be considered for fulfilment of the requirement of thirty years plus experience as per the tender invitation. It is submitted that without taking benefit of Jayanta Kumar Ghosh's experience, the appellant would not have been entitled *per se* for the tender. The learned ASG made reference to the letter dated 11th March 2021 issued by the appellant to give force to the said argument.

27. The learned ASG submitted that after the passing of the impugned

Order dated 17th April 2023, the respondents have already taken action and issued the notice of vacation as well as awarded the contract to another bidder. It has also been strongly urged on behalf of the respondent that the scope of adjudication under Section 37 of the Arbitration Act is narrow and limited. In the instant petition, this Court shall not conduct a roving inquiry into the evidence and facts, but the powers are limited to adjudicating upon the impugned Order.

28. Therefore, it is submitted by the learned ASG that the instant petition being devoid of merit is liable to be dismissed.

29. Upon hearing the learned ASG for the respondent, on a specific query of this Court, whether a Court exercising its jurisdiction under Section 37 of the Arbitration Act can adjudicate and pass an order regarding a contract which already stands terminated and awarded to someone else, the learned senior counsel for the appellant submitted that in such cases, the principle of *lis pendens* would apply.

30. The learned senior counsel appearing for the appellant submitted that the principle arising from Section 52 of the Transfer of Property Act, 1882, provides that a conclusive and final order on the subject matter may not be passed when the *lis* is pending for consideration. In such cases the subject matter may not be transferred or alienated except under the authority of the court concerned. Reliance has been placed upon the judgment of *Sanjay Verma vs. Manik Roy & Ors.*, (2006) 13 SCC 608 to give force to the arguments.

31. Reliance has further has been placed upon the judgment passed in

the case of *Jagan Singh vs. Dhanwanti & Ors.*, (2012) 2 SCC 628 wherein it was held as under:-

“32. The broad principle underlying Section 52 of the TP Act is to maintain the status quo unaffected by the act of any party to the litigation pending its determination. Even after the dismissal of a suit, a purchaser is subject to lis pendens, if an appeal is afterwards filed, as held in Krishanaji Pandharinath v. Anusayabai [AIR 1959 Bom 475] . In that matter the respondent (original plaintiff) had filed a suit for maintenance against her husband and claimed a charge on his house. The suit was dismissed on 15-7-1952 under Order 9 Rule 2, of the Code of Civil Procedure, 1908 for non-payment of process fee. The husband sold the house immediately on 17-7-1952. The respondent applied for restoration on 29-7-1952, and the suit was restored leading to a decree for maintenance and a charge was declared on the house. The plaintiff impleaded the appellant to the darkhast as purchaser. The appellant resisted the same by contending that the sale was affected when the suit was dismissed. Rejecting the contention the High Court held in para 4 as follows:

“... In Section 52 of the Transfer of Property Act, as it stood before it was amended by Act 20 of 1929, the expression ‘active prosecution of any suit or proceeding’ was used. That expression has now been omitted, and the Explanation makes it abundantly clear that the ‘lis’ continues so long as a final decree or order has not been obtained and complete satisfaction thereof has not been rendered. At p. 228 in Sir Dinshah Mulla's ‘Transfer of Property Act’, 4th Edn., after referring to several authorities, the law is stated thus:

‘Even after the dismissal of a suit a purchaser is subject to “lis pendens”, if an appeal is afterwards filed.’

If after the dismissal of a suit and before an appeal is presented, the ‘lis’ continues so as to prevent the defendant from transferring the property to the prejudice

of the plaintiff, I fail to see any reason for holding that between the date of dismissal of the suit under Order 9 Rule 2 of the Civil Procedure Code and the date of its restoration, the 'lis' does not continue."

33. It is relevant to note that even when Section 52 of the TP Act was not so amended, a Division Bench of the Allahabad High Court had following to say in Moti Chand v. British India Corpn. Ltd. [AIR 1932 All 210] : (AIR p. 212)

"... The provision of law which has been relied upon by the appellants is contained in Section 52, TP Act. The active prosecution in this section must be deemed to continue so long as the suit is pending in appeal, since the proceedings in the appellate court are merely continuation of those in the suit (see Gobind Chunder Roy v. Guru Churn Kurmoker [ILR (1988) 15 Cal 94])."

34. If such a view is not taken, it would plainly be impossible that any action or suit could be brought to a successful termination if alienations pendente lite were permitted to prevail. The Explanation to this section lays down that the pendency of a suit or a proceeding shall be deemed to continue until the suit or a proceeding is disposed of by a final decree or order, and complete satisfaction or discharge of such decree or order has been obtained or has become unobtainable by reason of the expiration of any period of limitation prescribed for the execution thereof by any law for the time being in force."

32. It is submitted that the respondent cannot frustrate the appeal which the appellant was entitled to seek by taking a consequential action. The learned senior counsel by relying upon the principle of *lis pendens* submitted that until the final conclusion of the *lis* the respondent could not have awarded a contract to a third party. Any consequential order of alienation by giving the contract to a third party was subject to orders passed in the *lis*. The appellant is unaffected by such alienation, and is the

appellant is to succeed in the *lis*, which was prior to the alienation, this Court need not take cognizance of the consequential order. Hence, the alienation is of no consequence.

33. The learned senior counsel further relied upon the judgment of *Old World Hospitality Pvt. Ltd. vs. Indian Habitat Centre*, (1996) SCC OnLine Del 580. The relevant paragraphs of the same are reproduced hereunder:-

148. What is done by the defendant by issuing this letter is in effect and in substance a termination of the contract. In the present case, the plaintiff had to the best of his ability and resources had placed before the Court all facts which would go to show its rights under the contract which would constitute an interest in the services undertaken by it as per the terms of the contract. It is well-settled that when we deal with principles of contract the Court has to remember two basic principles, first is the principle of sanctity of contract. Sometimes expressed in the Latin maxim PACTA SUNT SERVANA. This speaks of purpose of the contract in accordance with the terms of the contract. The other principle is REBUS SIC STANTIBUS. This speaks of discharge of contractual obligations owing to events which had occurred destroying the basic assumption which the parties had made at the time of entering into the contract.

152. Before I go to the other arguments of Dr. Singhvi one principal point very much pressed by him was that the plaintiff is seeking to enforce the contract which requires supervision and therefore, by virtue of Section 14 of the Specific Relief Act, 1963, the plaintiff would not be entitled to the relief of specific performance and therefore, the plaintiff is not entitled to an order of interim injunction. The ancillary argument to this is, that the proper remedy of the plaintiff is to sue for damages and therefore, the plaintiff is not entitled to the specific relief. In Chitty on Contracts 27th Edition

1994 Vol. I in paragraph 27.003 the statement of law is as follows:

“The question is not simply whether damages are an ‘adequate’ remedy, but whether specific performance will “do more perfect and complete justice than an award of damages”.”

154. *In the Law of Contract by Hugh Collins 2nd Ed. 1993 the learned Author has posited as under:*

“Although the Courts still repeat the rule that damages must be inadequate before they will award an order for compulsory performance, the rule has been subtly modified in recent years. In Beswick v. Beswick, (1968 AC 58), an elderly and ailing coal merchant sold his business to his nephew in return for various promises including a promise to pay his widow Pond 5 per week after his death. When the nephew refused to pay, the widow in her capacity as administratrix of her husband's estate claimed specific performance of the contract. Since the estate had lost nothing by the nephew's breach of contract, because the payments were owed to the widow personally, it was likely that the measure of damages would be nominal. The House of Lords ordered specific performance of the contract even though an award of nominal damages would have covered all the losses of the estate. The Court made the award of compulsory performance because they thought that it achieved a just result, for otherwise the nephew would have been unjustly enriched by being entitled to hold onto his uncle's business without paying his aunt a penny. The modern judicial test asks the question: is it just in all the circumstances that the plaintiff should be confined to his remedy in damages?”

155. *This test squarely raises the issue of describing the circumstances which induce a Court to find the award of the remedy of specific performance more just than damages.*

156. The key to the law of compulsory performance lies in recognizing that such a remedy is not designed to compensate the injured party for the losses, but to force performance of the contract. Normally a Court declines to order performance because damages provide a sufficient incentive to complete most contracts except where the defendant hopes to achieve unusual economic benefits from breach, in which case to compel performance would only serve to discourage contracts and to reduce the combined wealth of the contracting parties. A remedy of compulsory performance, therefore, deliberately overrides these normal considerations concerning remedies in order to serve different policies. Courts use orders of compulsory performance to resist exploitation of relations of domination and to prevent unfair outcomes arising from break of contract.

222. There shall be an injunction restraining the defendant, its officers, servants and agents from in any manner whatsoever giving effect to or acting in pursuance of the letter of the defendant dated 16th October, 1995 and from in any manner whatsoever creating any obstruction or hindrance in the functioning of the plaintiff from the portion of the premises/property in the possession of the plaintiff or permitting any other agency to operate in the property and facility awarded to the plaintiff and from in any manner whatsoever dispossessing the plaintiff therefrom and from taking possession of any capital goods, equipment and supplies in the possession of the plaintiff till the disposal of the suit.”

34. It is submitted in view of the aforesaid that damages of any kind would not be able to compensate the appellant and the remedy lies beyond damages.

35. In reply to the stand taken on behalf of the appellant, the learned ASG for the respondent submitted that the principle of *lis pendens* as

provided for under Section 52 of the Transfer of Property Act, 1882, does not apply to a service contract which is before this Court for consideration.

36. Heard the learned counsel for the parties at length and perused the record, including the impugned Order.

37. The sum and substance of the matter in the instant case, as per the case of the appellant, is that the appellant company was awarded a contract by the respondent upon fulfilment of conditions of tender so invited by the respondent, however, upon a representation of a third party, i.e., M/s Cuisine Caterers, the respondent terminated the contract on the ground that one of the Director's of the appellant company was convicted in a criminal case, which fact, according to the respondent, was not disclosed by the appellant at the time of the declaration. The appellant approached the learned Arbitrator by way of filing an application under Section 17 of the Arbitration Act seeking setting aside of the Termination Order and, in the interregnum, a stay on operation of the said Order dated 4th October 2022. The application came to be dismissed vide the impugned Order dated 17th April 2023 and thereafter, the respondent acted upon the Termination Order and even awarded the contract to a third party. The learned senior counsel for the appellant has *inter alia* sought to the invoke the ground of *lis pendens* stating that the respondent should not have alienated the contract by awarding it to a third party when the *lis* on the same issue was pending.

38. The appellant has sought a remedy under Section 37 of the Arbitration Act. The said provision provides for orders that are arising out

of arbitration proceedings and may be appealed against. Section 37 of the Arbitration Act provides as under:-

“37. Appealable orders.—(1) [Notwithstanding anything contained in any other law for the time being in force, an appeal] shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:—

[(a) refusing to refer the parties to arbitration under section 8;

(b) granting or refusing to grant any measure under section 9;

(c) setting aside or refusing to set aside an arbitral award under section 34.]

(2) Appeal shall also lie to a court from an order of the arbitral tribunal—

(a) accepting the plea referred to in sub-section (2) or sub-section (3) of section 16; or

(b) granting or refusing to grant an interim measure under section 17.

(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or takeaway any right to appeal to the Supreme Court.”

39. In the instant matter, the appellant has invoked Section 37(2)(b) of the Arbitration Act since the application preferred by the appellant under Section 17 of the Arbitration Act before the learned Arbitrator was dismissed vide the impugned Order dated 17th April 2023.

40. At this juncture, it is pertinent to examine the scope of powers which may be exercised by this Court while adjudicating upon a

challenge under Section 37 to an impugned Interim Order.

41. The principle of limited intervention by the Court in arbitration proceedings has been time and again reiterated by this Court as well as by the Hon'ble Supreme Court. The law to that effect is no more *res integra*. The limited grounds available with the Court for intervention in an impugned award, interim or final, were discussed by the Hon'ble Supreme Court in ***Haryana Tourism Ltd. vs. Kandhari Beverages Ltd., (2022) 3 SCC 237***, as follows:-

“8. So far as the impugned judgment and order [Kandhari Beverages Ltd. v. Haryana Tourism Ltd., 2018 SCC OnLine P&H 3233] passed by the High Court quashing and setting aside the award and the order passed by the Additional District Judge under Section 34 of the Arbitration Act are concerned, it is required to be noted that in an appeal under Section 37 of the Arbitration Act, the High Court has entered into the merits of the claim, which is not permissible in exercise of powers under Section 37 of the Arbitration Act.

9. As per settled position of law laid down by this Court in a catena of decisions, an award can be set aside only if the award is against the public policy of India. The award can be set aside under Sections 34/37 of the Arbitration Act, if the award is found to be contrary to: (a) fundamental policy of Indian law; or (b) the interest of India; or (c) justice or morality; or (d) if it is patently illegal. None of the aforesaid exceptions shall be applicable to the facts of the case on hand. The High Court has entered into the merits of the claim and has decided the appeal under Section 37 of the Arbitration Act as if the High Court was deciding the appeal against the judgment and decree passed by the learned trial court. Thus, the High Court has exercised the jurisdiction not vested in it under Section 37 of the Arbitration Act. The impugned judgment and order [Kandhari Beverages Ltd. v. Haryana Tourism Ltd., 2018 SCC OnLine P&H 3233]

passed by the High Court is hence not sustainable.”

42. There is no dispute to the position that a Court adjudicating a challenge under Section 37 of the Arbitration Act shall not conduct a roving inquiry into the facts of the case on merits and re-examine evidence or other material before the arbitrator.

43. A Division Bench of this Court in the judgment of ***Union of India vs. Sikka Engineering Company***, 2019 SCC OnLine Del 8788 held as under:-

“17. Moreover, the law stands crystallized that the scope of interference in an appeal under Section 37 of the Arbitration and Conciliation Act is narrower. The Division bench of this Court in the case of MTNL v. Fujitsu India Private Limited reported at 2015 SCC OnLine Del 7437, held in para 19 as under:

“19. The extent of judicial scrutiny under section 34 of the Act is limited and scope of interference is narrow. Under section 37, the extent of judicial scrutiny and scope of interference is further narrower. An appeal under section 37 is like a second appeal, the first appeal being to the court by way of objections under section 34. Where there are concurrent findings of facts and law, first by the Arbitral Tribunal which are then confirmed by the court while dealing with objections under section 34, in an appeal under section 37, the Appellate Court would be very cautious and reluctant to interfere in the findings returned in the award by the Arbitral Tribunal and confirmed by the court under section 34.”

18. Furthermore, this court time and again in its earlier judgments titled as L.G. Electronics India Pvt. Ltd. v. Dinesh Kalra reported at 2018 SCC OnLine Del 8367, FAO (OS)(COMM) 55/2018 titled as M.L. Lakhanpal v. Darshan

Lal and ADTV Communication Pvt. Ltd. v. Vibha Goel, reported at 2018 SCC OnLine Del 8843 reiterated the limited scope of intervention in an appeal under Section 37 of the Arbitration and Conciliation Act and held as under:—

“It has been repeatedly held that while entertaining appeals under Section 37 of the Act, the Court is not actually sitting as a Court of appeal over the award of the Arbitral Tribunal and therefore, the Court would not re-appreciate or re-assess the evidence. In the case of State Trading Corporation of India Ltd. v. Toepfer International Asia Pte. Ltd., reported at 2014 (144) DRJ 220 (DB), in para 16 it has been held as under:

“16. The senior counsel for the respondent has in this regard rightly argued that the scope of appeal under Section 37 is even more restricted. It has been so held by the Division Benches of this Court in Thyssen Krupp Werkstoffe v. Steel Authority of India 2011 SCC OnLine Del 1747 and Shree Vinayaka Cement Clearing Agency v. Cement Corporation of India 147 (2007) DLT 385. It is also the contention of the senior counsel for the respondent that the argument made by the appellant before the learned Single Judge and being made before this Court, that the particular clause in the contract is a contract of indemnification, was not even raised before the Arbitral Tribunal and did not form the ground in the OMP filed under Section 34 of the Act and was raised for the first time in the arguments.”

In the case of Steel Authority of India v. Gupta Brothers Steel Tubes Limited, (2009) 10 SCC 63, the Supreme Court has laid down that an error relatable to interpretations of the contract by an Arbitrator is an error within his jurisdiction and such error is not amenable to correction by Courts as such error is not an error on the face of the award. The Supreme Court has further laid down that the Arbitrator having been made the final arbiter of resolution of disputes between the parties, the award is not open to challenge on

the ground that the Arbitrator has reached a wrong conclusion. The courts do not interfere with the conclusion of the Arbitrator even with regard to the construction of contract, if it is a plausible view of the matter.

The Apex Court in J.G. Engineers (P) Ltd. v. Union of India, reported at (2011) 5 SCC 758, demarcated the boundary while explaining the ambit of section 34(2) of the Act. The Court in the aforesaid judgement relied upon the pronouncement of ONGC Ltd. v. Saw Pipes, in paragraph 19, held as under:—

“27. Interpreting the said provisions, this Court in ONGC Ltd. v. Saw Pipes Ltd. [(2003) 5 SCC 705] held that a court can set aside an award Under Section 34(2)(b)(ii) of the Act, as being in conflict with the public policy of India, if it is (a) contrary to the fundamental policy of Indian law; or (b) contrary to the interests of India; or (c) contrary to justice or morality; or (d) patently illegal. This Court explained that to hold an award to be opposed to public policy, the patent illegality should go to the very root of the matter and not a trivial illegality. It is also observed that an award could be set aside if it is so unfair and unreasonable that it shocks the conscience of the court, as then it would be opposed to public policy.””

19. Thus, in view of the law under Section 37 of the Act, we find no ground to entertain this appeal.”

44. Reference is also made to the judgment passed by this Court in **Dinesh Gupta vs. Anand Gupta, 2020 SCC OnLine Del 2099**, while emphasizing on the restricted intervention of Courts over arbitral awards. The relevant portion of the judgment is reproduced hereunder:-

“64. There can be no gainsaying the proposition, therefore, that, while exercising any kind of jurisdiction, over arbitral orders, or arbitral awards, whether interim or final, or with the arbitral process itself, the Court is required to maintain

an extremely circumspect approach. It is always required to be borne, in mind, that arbitration is intended to be an avenue for “alternative dispute resolution”, and not a means to multiply, or foster, further disputes. Where, therefore, the arbitrator resolves the dispute, that resolution is entitled to due respect and, save and except for the reasons explicitly set out in the body of the 1996 Act, is, ordinarily, immune from judicial interference.

65. Interestingly, while examining, in *Snehadeep Structures (P) Ltd. v. Maharashtra Small Scale Industries Development Corporation Ltd.*, the scope of the expression “appeal” as employed in Section 7 of the Interest on Delayed Payments to Small Scale and Ancillary Undertakings Act, 1993, the Supreme Court held that, “if ... the meaning of “appeal” is ambiguous, the interpretation that advances the object and purpose of the legislation, shall be accepted.” Purposive interpretation, as has been noticed in *Shailesh Dhairyawan v. Mohan Balkrishna Lulla and Richa Mishra v. State of Chhattisgarh*, has, over time, replaced the principle of “plain reading” as the golden rule, for interpreting statutory instruments.

66. In my opinion, this principle has to guide, strongly, the approach of this Court, while dealing with a challenge such as the present, which is directed against an order which, at an interlocutory stage, merely directing furnishing of security, by one of the parties to the dispute. The power, of the learned Sole Arbitrator, to direct furnishing of security, is not under question; indeed, in view of sub-clause (b) of Section 17(1)(ii) of the 1996 Act, it cannot. The arbitrator is, under the said sub-clause, entirely within his jurisdiction in securing the amount in dispute in the arbitration. Whether, in exercising such jurisdiction, the arbitrator has acted in accordance with law, or not, can, of course, always be questioned. While examining such a challenge, however, the Court has to be mindful of its limitations, in interfering with the decision of the arbitrator, especially a decision taken at the discretionary level, and at an interlocutory stage.”

(emphasis supplied)

45. It is hence settled that the scope of interference in an appeal under Section 37 of the Arbitration and Conciliation Act is narrow. The Courts shall neither enter into the merits of the facts and case of the parties nor enter into the merits of the findings made by the arbitrator.

46. This Court has time and again reiterated the spirit of the Arbitration Act. There is no doubt on the fact that the Arbitration Act was enacted for providing a mechanism to the public to resolve their disputes in a process less rigorous, technical and formal than that of a litigation. It has proven to be easier, more accessible, efficient and even cost effective for the parties involved, whether at an individual level or at the level of a business or corporation. The alternative dispute mechanism is not only advantageous for the people involved in disputes but has also been aiding the effective disposal and release of burden on the Courts of the Country. The parties have a more hands-on involvement in an Arbitration process and play an active role in the adjudication process. Therefore, expeditious and effective disposal of matters are most certainly considered the primary objectives of the enactment of the Arbitration Act. To fulfil the objective of introducing the Arbitration Act, it has been deemed necessary by the legislature as well as the Hon'ble Supreme Court to limit interference by the Courts in the process of arbitration, whether before, during or after the conclusion of the proceedings.

47. It is, thus, clear that in the instant petition under Section 37(2)(b) of the Arbitration Act, the impugned Order passed by the learned Arbitrator dated 17th April 2023 and the findings therein are in consideration before

this Court and not the Termination Order dated 4th October 2022 passed by the respondent. Further, the vacation notice or even the notice awarding the contract to a third party are no extension of interpretation under consideration before this Court. This Court, hence, shall limit itself to the contents of the impugned Order.

48. The appellant had moved the application under Section 17 of the Arbitration Act, on which the impugned Order was passed, seeking the following reliefs:-

“(a) Pass an order or direction quashing and setting aside the impugned termination notice/ order dated 04.10. 2022 issued by the Resident Commissioner, Maharashtra Sadan, New Delhi; and

(b) Stay the operation and implementation of notice/order dated 04.10.2022 issued by the Resident Commissioner, Maharashtra Sadan, New Delhi;

(c) Restrain the respondent Nos. 1 to 4 from causing any disturbance or hindrance in peaceful running of the Maharashtra Sadan Canteen (Old and New) by the petitioner during the pendency of the present petition;

(d) Ad-interim orders in terms of prayer (b) and (c) (e) Cost of the petition;

(f) Pass such further order or orders as this Hon'ble Court deem fit and proper in the facts and circumstances of the case.”

49. The grounds which were raised before the learned Arbitrator were to some extent also reiterated before this Court. One of the primary grounds raised is that the appellant company is a separate legal entity from its employees, directors etc. and hence, a criminal proceedings or conviction of concerned ex-Director of the appellant company, Jayanta

Kumar Ghosh, had no bearing on the record of the company. The appellant submitted that the declaration at the time of the tender was made *qua* the company itself and not *qua* any one person. On the argument, the learned Arbitrator noted as under:-

“59. It is now important to examine the Claimant's submission that the Claimant Company is a separate legal and corporate entity, and that Mr. Jayanta Kumar Ghosh had resigned from the Company w.e.f. 15.09.2021, as mentioned in the Additional Reply dated 11.01.2022. The Respondent, on the other hand, has pointed out several instances that Mr. Jayanta Kumar Ghosh exercised substantial control over the Claimant Company, and has relied upon the doctrine of alter ego.

To determine this issue, it would be necessary to consider the following facts and circumstances which have emerged from the documents and oral submissions made by the Parties:

(a) The Claimant company is a Private Limited Company, closely held by Mr. Jayanta Kumar Ghosh, who has a key and controlling interest in the Company. Prior to the incorporation of the Company in 2014, the business was being run by Mr. Jayanta Kumar Ghosh as a Sole Proprietorship from 1989 to 2014.

(b) On 20.04.2017, the Claimant Company through a Director viz. Mrs. Beauty Ghosh (w/o Mr. Jayanta Kumar Ghosh) entered into an agreement with Mr. Jayanta Kumar Ghosh, whereby the Company offered 9,17,299 shares of IN R 10 per share, as the consideration for taking over the entire business of Mr. Jayanta Kumar Ghosh w.e.f. 20.04.2017. The said Agreement records that the business of the Company is valued at INR 91,72,990 as on 31.03.2017. By the said Agreement, Mr. Jayanta Kumar Ghosh would be free to gift the said shares to one or some of his relatives/

friends, for which no consent of the Company will be necessary.

(c) The Claimant Company was being run in the name of Mr. Jayanta Kumar Ghosh, who has played a key and controlling role in the said Company. which would be evident from the following chart, which shows that he stepped in and out of the Claimant Company, at his own will:

<i>S.No.</i>	<i>Date</i>	<i>Particulars</i>
<i>1.</i>	<i>01.11.2014</i>	<i>Jayanta Kumar Ghosh was a Director at the time of incorporation of the Claimant Company.</i>
<i>2.</i>	<i>23.05.2018</i>	<i>Jayanta Kumar Ghosh was appointed as a member of the Board of Directors.</i>
<i>3.</i>	<i>05.07.2019</i>	<i>Jayanta Kumar Ghosh resigned as Director.</i>
<i>4.</i>	<i>05.07.2019</i>	<i>Jayanta Kumar Ghosh was re-appointed as Director in the Claimant Company on the same date.</i>
<i>5.</i>	<i>31.03.2021</i>	<i>Jayanta Kumar Ghosh resigned as Director.</i>
<i>6.</i>	<i>31.07.2021</i>	<i>Jayanta Kumar Ghosh was re-appointed as Director.</i>
<i>7.</i>	<i>15.09.2021</i>	<i>Jayanta Kumar Ghosh resigned from Directorship.</i>
<i>8.</i>	<i>15.10.2021</i>	<i>Jayanta Kumar Ghosh was re-appointed as Additional Director in the Claimant Company.</i>

9.	22.09.2022	<i>Jayanta Kumar Ghosh resigned as Director.</i>
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From the aforesaid chart, it would be evident that Mr. Jayanta Kumar Ghosh has resigned, and been re-inducted as Director in the Claimant Company on at least 9 occasions between 2014 to 2022, which itself reveals that he was controlling the management of the Claimant Company, either overtly or covertly.

(d) It is further pertinent to note that even though the Claimant had submitted in its Additional Reply dated 11.01.2022, that Mr. Jayanta Kumar Ghosh had resigned from the Claimant Company w.e.f. 15.09.2021, and that he was neither working for the Company, nor associated with it in any manner, the said submission is belied by subsequent facts. Even after 15.09.2021, Mr. Jayanta Kumar Ghosh was re-appointed as an Additional Director in the Claimant Company on 15.10.2021.

(e) The Tribunal notes the submission of the Respondent that Ms. Beauty Ghosh, wife of Jayanta Kumar Ghosh, has also been holding a substantial shareholding in the Claimant Company, which is evident from the fact that as on 31.03.2021 the shareholding of Mrs. Beauty Ghosh in the Claimant Company was 25.79% and as on 31.03.2022, her shareholding was 21.10%.

(f) Mr. Jayanta Kumar Ghosh was the Director of the Claimant Company when the bid was submitted, and the Contract was awarded.

(g) Upon receiving the representation dated 26.11.2021 from M/s Cuisine regarding the criminal antecedents of Mr. Jayanta Kumar Ghosh, and learning about his conviction under the IPC and UAPA, the Respondent State sought clarifications by

issuance of various notices to the Claimant Company dated 02.12.2021, 20.12.2021 and 24.12.2021.

(h) The Claimant Company then sought to distance itself from Mr. Jayanta Kumar Ghosh by stating that Mr. Ghosh had resigned from the Company on 15.09.2021; and that the name of the Claimant Company was changed to Araha Hospitality Private Ltd. on 14.07.2022.

(i) It was further brought to the attention of the Tribunal that the registered address of M/s Araha Hospitality Private Ltd. continues to be the residential address of Mr. Jayanta Kumar Ghosh.

60. The aforesaid facts would reveal that Mr. Jayanta Kumar Ghosh has played a key and controlling role in the Claimant Company. Consequently, his conviction was a crucial fact which ought to have been disclosed under Clause 10 of the Declaration Form.”

50. Therefore, before arriving at the conclusion that the conviction of Jayanta Kumar Ghosh had a direct and substantial affect on the eligibility of the company, the learned Arbitrator considered the material submissions as well as the record before her. The learned Arbitrator considered the fact that the appellant was not the highest bidder before the experience of thirty plus years of Jayanta Kumar Ghosh was not considered. To this effect, reference was also made to the letter dated 11th March 2021 furnished by the appellant to the respondent in paragraph 59(f) of the impugned Order, which is reproduced as under:-

“The Claimant was initially the second highest bidder in the tender. In order to avail higher marks in the Technical bid evaluation, the Claimant requested that the individual 30 years+ experience of Mr. Jayanta Kumar Ghosh as a Sole

proprietor from 1989 onwards till 2014, should be included in the prior experience of the Claimant Company. This is evident from the Claimant's letter dated 11.03.2021 to the Respondent which inter alia reads as under:

1. Experience: We have already submitted relevant document regarding the same in the tender filled by us. Please refer to page no 6 of documents submitted by us. Issuing Authority: Northeast Frontier Railways. No. C 56 / CD / Pt. VIII, dated April 11, 1989. Subject: CATERING SERVICES on 57 Up I 58 On Guwahati-Howrah Kanchanjungha Express (BG). This was the first Catering Services order by Ministry of Railways, Govt. of India issued to our parent company M/s Jayanta Kumar Ghosh. We are in regular Catering business from then onwards, hence we have 30+ years of experience. Also, we have submitted copy of couple of orders from page no. 123 to 201, details of which we have already mentioned in page no. 3 of tender documents. These documents are also submitted to show that the transfer of business from a proprietorship company to Pvt. Ltd. company, which has been approved and accepted by Indian Railways and IRCTC. Moreover, in our reply to your letter no. RC / MMS / NMS / Canteen / 95-V / 3073 dated 11.02.2020, we have submitted Empanelment for provision of onboard Catering Services in various types of trains on Indian Railways by IRCTC, dated 23.12.2020 which shows that we are still in business of Catering Services. As the tender requires 10 years plus experience for 25 marks, we are attaching some of our Govt. Catering Services orders from 2010 onwards.”

51. Hence, it cannot be said that the material aspects of the severability and separability of the Director and appellant company was not considered by the learned Arbitrator.

52. Further, the learned Arbitrator noted that the contract between the

parties was determinable and hence, could be terminated in terms of and in accordance with the provisions of the contract. The relevant portion referring to this point is reproduced hereunder:-

“64. The Contract was awarded to the Claimant Company with a specific rider contained in Clause IX(2), which provides that if the objections raised by H -2 bidder are found to be true, then the Contract shall be terminated. Clause IX(2) of the Contract reads as under:

"If the objection taken by the H-2 bidder against the Contractor comes true in future or if any person gives any proof of the objections taken by the H-2 bidder against the Contractor, the Contract shall be treated as terminated. as per provision under Point No. E) Two) of Para No. 5. 5 of Purchase Policy issued by Govt of Maharashtra vide GR dated 01.12.2016. The decision of the Resident Commissioner, Govt. of Maharashtra, New Delhi in this regard shall be final."
(emphasis supplied)

65. Para 5.5 of the Purchase Policy issued by the Government of Maharashtra vide Government Resolution dated 01.12.2016, provides that if the Tenderer is convicted of an offence, then the Procuring Entity may rescind the Contract:

"5. 5 Cancellation of purchase process:

A. The procuring office may, for reasons to be recorded in writing: cancel the process of procurement initiated by it at any time prior to the acceptance of the successful tender or even after the successful tender is accepted.

B. The procuring office shall not open any tenders or proposals after taking a decision to cancel the procurement and shall return such un-opened tenders or proposals.

C. The decision of the procuring office to cancel the procurement and reasons for such decision shall be immediately communicated to all tenderers that participated in the procurement process.

D. If the tenderer whose Tender has been accepted as successful fails to sign any written procurement contract as required, or fails to provide any required security for the performance of the contract, the procuring entity may cancel the procurement process.

E. If a tenderer is convicted of any offence, the procuring entity may-

3) Cancel the relevant procurement process if the Tender of the convicted tenderer has been declared as successful but no procurement contract has been entered into;

4) Rescind the relevant contract of forfeit the payment of all or a part of the contract value if the procurement contract has been entered into between the procuring entity and the convicted tenderer."

66. The Claimant Company had accepted the Contract subject to the condition contained in Clause IX(2). Having accepted the same, the Claimant Company cannot now contend to the contrary. Since now a decision has been taken by the Resident Commissioner, Government of Maharashtra, vide Termination Order dated 04.10.2022, the Claimant cannot seek an injunction on that decision of the Resident Commissioner, Government of Maharashtra. Furthermore, the Claimant has not been able to demonstrate at this stage, that the termination is not in accordance with Clause IX(2) of the Contract dated 25.08.2021."

53. A perusal of this portion reveals that after appreciating the relevant provisions of the contract, it was found that the contract by nature was determinable and hence, the termination was possible upon fulfilment of the conditions laid therein. The respondent had terminated the contract

after finding that the appellant had concealed information in its declaration.

54. The learned Arbitrator also discussed the issue of specific performance at length while considering the submissions of the parties, the judicial precedents, the fact that the contract was determinable, law laid down and the interpretation and analysis thereof and thereafter passed the following findings:-

“73. From a conjoint reading of the aforesaid clauses, particularly Clause 13.2.1 of the GCC which inter alia states that "the Competent Authority of the Client shall have the right to cancel the Contract without assigning any reason thereof.", the Tribunal is prima facie of the view that the Contract entered between the Parties is determinable in nature, particularly when the competent authority had specifically reserved the right to terminate the Contract, if the information regarding the criminal antecedents was found to be true.

74. The other test for ascertaining if a particular contract is not specifically enforceable is to examine whether the subject contract requires "performance of which involves the performance of a continuous duty which the Court cannot supervise." The nature of the Contract requires the Claimant to provide catering services at the Old and New Maharashtra Sadan, where the senior functionaries of the State Government frequent and stay for official purposes.

The contract involves amongst other responsibilities, to provide food and beverage services of 3 star norms. Given the nature of the responsibilities under the Contract, it is imperative that the work is of a continuous nature and requires continuous supervision. In the event of restoration of the terminated contract, which the Claimant seeks from this Tribunal, it would not be possible for this Tribunal to supervise the performance of the Claimant. Thus, the test of

Section 14(c) of the Specific Relief Act, 1963 is not prima facie met by the Claimant, which would disentitle the Claimant from seeking the interim relief prayed for.

75. The House of Lords in the case of Co-Operative Insurance Society Ltd. vs. Argyll Stores had held that "constant supervision" meant the possibility of the court having to give an indefinite succession of rulings in order to ensure that the order is carried out, which would prove undesirable. In the Indian context, in the case of Vinod Seth vs. Devinder Bajaj and Ors., the test applied by the Supreme Court was will it be practical or possible for the court to ensure that the appellant will perform his part of the obligations. In the case of B.E. Billimoria and Company Limited vs. Mahindra Bebanco Developers Ltd., it was held "the Court or an arbitrator is not expected to supervise whether the parties to the agreement have complied with their respective obligations".

The Delhi High Court in MMS Steel and Power Private Limited vs. Oil and Natural Gas Corporation Limited held that where, by grant of injunction, the contract is being specifically performed, it would entail continuous supervision by the Court. In law, by virtue of S. 14(1)(b) and (d) r.w. S. 41(e) of the Specific Relief Act, 1963 no injunction can be granted as the Court cannot supervise the continuous duty with its minute or numerous details and keep on resolving day to day issues which are bound to crop up from the myriad clauses of the contract.

76. It is seen from the responses of the Respondent that they have raised concerns regarding security, if the Claimant is allowed to continue to provide catering services at the Old and New Maharashtra Sadan, particularly since in a place like the Maharashtra Sadan, the senior most officials and the public servants of the State Government would be visiting / staying regularly. A contractor, like the Claimant, would get access to several places inside the Sadan including the close quarters of the officials and public servants staying therein. The security aspect was one of the primary conditions for the

bidders to satisfy. The Respondent has raised concerns regarding security which cannot be brushed aside. No compromise can be made on this aspect of the security. In the event, any security breach take place, then the issue of responsibility would be difficult to fix. Issues of security may at any stage.

78. Prima facie, the conduct of the Claimant is also required to be considered for granting of any interim relief, since it is a remedy in equity. It seems from the pleadings filed that the Claimant had suppressed crucial information regarding the criminal conviction of the promoter of the Claimant Company. In fact, the Claimant Company was incorporated in the name of Mr. Jayanta Kumar Ghosh.

79. By the present Application, the Claimant Company has sought an order of injunction on the operation of the Termination Letter dated 04.10.2022, and further restraining the Respondent from giving effect to the same.

The Claimant Company has sought an order to enable it to continue the Contract, even though it has been terminated by the Respondent vide Termination Order dated 04.10.2022.

80. In view of the decision in NHAI vs. Panipat Jalandhar (supra), as well as Bharat Catering Corporation (supra), the Tribunal is not empowered to restore a terminated contract. If the termination is found to be illegal, then the aggrieved party can always make a claim for damages in accordance with law.

85. If the Termination Order dated 04.10.2022, is found to be illegal, then the Claimant would be entitled to seek damages in accordance with law. However, grave and irreparable prejudice would be occasioned to the Respondents, if the State authorities are made to transact / or seen to be associated with a Company whose Director was convicted of

serious offences viz. raising funds for terrorist activities, particularly in view of the fact that the Maharashtra Sadan is visited by State dignitaries and officials whose security cannot be compromised under any circumstances. Mr. Ghosh has been in and out of the post of Director of the Claimant Company on at least 9 occasions, which is indicative of his key role and controlling interest in the Claimant Company.

86. Since the Contract dated 25.08.2021 is determinable in nature and requires performance of a continuous duty which the Tribunal cannot supervise, an injunction cannot be granted due to the bar under Section 41(e) of the Specific Relief Act, 1963. The grant of injunction would tantamount to granting final relief at the interim stage.”

55. As discussed above, the limitation of this Court is to examine whether the learned Arbitrator, while passing the impugned Order, had considered the relevant material and thereafter arrived at a finding supported by reasoning. The validity or merit of the reasons or the findings/observations thereto are not for this Court to enter into and adjudicate upon. Neither the bare provisions of the Arbitration Act, nor its interpretation by the Hon’ble Supreme Court and other Courts permits the same. Upon a perusal of the entire Order, it is evident that all of the findings of the learned Arbitrator were supported by facts, material, relevant documents, and provisions of the contract between the parties.

56. The learned senior counsel for the petitioner also argued that the instant case falls under the scope of the principle of *lis pendens*, to aver that the respondent did not have the authority to terminate the contract of the appellant and award it to a third party when the subject matter was pending. As stated above, the Termination Order is not before this Court under the instant petition. Further, it has been settled that the principle of

lis pendens as provided for under Section 52 of the Transfer of Property Act, 1882, is applicable only where the requisites of its applicability are met. The Hon'ble Supreme Court in ***Amit Kumar Shaw vs. Farida Khatoon, (2005) 11 SCC 403***, on the question of *lis pendens* held as under:-

“15. Section 52 of the Transfer of Property Act is an expression of the principle “pending a litigation nothing new should be introduced”. It provides that pendente lite, neither party to the litigation, in which any right to immovable property is in question, can alienate or otherwise deal with such property so as to affect his appointment. This section is based on equity and good conscience and is intended to protect the parties to litigation against alienations by their opponent during the pendency of the suit. In order to constitute a lis pendens, the following elements must be present:

- 1. There must be a suit or proceeding pending in a court of competent jurisdiction.*
- 2. The suit or proceeding must not be collusive.*
- 3. The litigation must be one in which right to immovable property is directly and specifically in question.*
- 4. There must be a transfer of or otherwise dealing with the property in dispute by any party to the litigation.*
- 5. Such transfer must affect the rights of the other party that may ultimately accrue under the terms of the decree or order.”*

57. The aforesaid makes it clear that for applicability of the doctrine/principle, stemming from Section 52 of the Transfer of Property Act, 1882, the subject matter of the *lis* must be one in which a right to an

immoveable property is in question, directly and substantially. Moreover, the transfer that is alleged to have been taken place must also be regarding the said immoveable property. On behalf of the appellant, an attempt has been made to give a wider interpretation to the principle which the provision and Hon'ble Supreme Court itself has narrowed down.

58. Further, in **Jayaram Mudaliar v. Ayyaswami**, (1972) 2 SCC 200, the Hon'ble Supreme Court had earlier interpreted the principle and held as under:-

“44. In the Corpus Juris Secundum (Vol. 54, p. 570), we find the following definition:

“Lis pendens literally means a pending suit; and the doctrine of lis pendens has been defined as the jurisdiction, power, or control which a court acquires over property involved in a suit pending the continuance of the action, and until final judgment therein.”

45. Expositions of the doctrine indicate that the need for it arises from the very nature of the jurisdiction of Courts and their control over the subject-matter of litigation so that parties litigating before it may not remove any part of the subject-matter outside the power of the court to deal with it and thus make the proceedings infructuous.”

59. In **Rajender Singh vs. Santa Singh**, (1973) 2 SCC 705, the Hon'ble Supreme Court held as under:-

“15. The doctrine of lis pendens was intended to strike at attempts by parties to a litigation to circumvent the jurisdiction of a court, in which a dispute on rights or interests in immovable property is pending, by private dealings which may remove the subject-matter of litigation

from the ambit of the Court's power to decide a pending dispute or frustrate its decree. Alienees acquiring any immovable property during a litigation over it are held to be bound, by an application of the doctrine, by the decree passed in the suit even though they may not have been impleaded in it. The whole object of the doctrine of lis pendens is to subject parties to the litigation as well as others, who seek to acquire rights in immovable property, which are the subject-matter of a litigation, to the power and jurisdiction of the Court so as to prevent the object of a pending action from being defeated."

60. It is apparent that the principle which was introduced and is applicable where the matter sub-judice before the Court pertains to immoveable property, whereas, in the instant case, the subject matter is a service contract. Further, it is also seen that the doctrine where the court acquires jurisdiction, power or control over property involved in a suit pending the continuance of the action, however, in the instant proceedings, the Termination Order dated 4th October 2022, which is subject matter raised for the applicability of the principle is admittedly not before this Court. Hence, the appellant has failed to show that the principle/doctrine of *lis pendens*, which in itself is a discretionary remedy, will apply in the instant case.

61. In view of the aforesaid circumstances, the submissions and averments on behalf of the parties as recorded, the observations of the learned Arbitrator, and the discussion and analysis thereto, this Court is of the considered view that the instant matter does not warrant interference of this Court.

62. The appellant has failed to show that the findings of the learned

Arbitrator were patently illegal, erroneous based on no evidence or reached any conclusion which a rational person could not arrive at. The appellant has further failed to show any illegality on the face of record so as to shock the conscience of the Court. The limited and narrow scope of Section 37 of the Arbitration Act does attract any interference in the facts and circumstances of the instant case. This Court finds that the learned Arbitrator considered all relevant material before her and only subsequent to consideration and appreciation of the same passed the impugned Order.

63. Accordingly, in view of the aforesaid, the instant petition stands dismissed.

64. Pending applications also stand dismissed.

65. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

APRIL 24, 2023

dy/ms

Click here to check corrigendum, if any