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C.M.P.No.15373 of 2024

C.M.P.No.15373 of 2024
in
C.M.A.SR.No.83406 of 2024
(Filing Number)

M.SUNDAR,J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,

(Order of the Court was made by **M.SUNDAR, J.**)

Captioned 'Civil Miscellaneous Petition' {hereinafter 'CMP' for the sake of brevity} has been filed with a innocuous prayer i.e., a prayer for dispensing with production of what has been described as 'original certified copy' of an order dated 24.04.2024 made by a Hon'ble 'Arbitral Tribunal' {hereinafter 'AT' for the sake of brevity} constituted by three Hon'ble Arbitrators. To be noted, an order dated 24.04.2024 made by Hon'ble AT in exercise of powers under Section 17 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' [hereinafter 'A and C Act' for the sake of brevity, convenience and clarity] has been called in question by a third party vide captioned C.M.A.SR.No.83406 of 2024 and this Court in a third party leave application being CMP No.14237 of 2024 in captioned C.M.A.SR.No.83406 of 2024 made an order on 10.07.2024



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and the same reads as follows:

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'C.M.P.No.14237 of 2024

in

C.M.A.SR.No.83406 of 2024

M.SUNDAR, J.,

and

K.GOVINDARAJAN THILAKAVADI, J.,

[Order of this Court was made by M.SUNDAR,J.,]

Captioned 'Civil Miscellaneous Petition' ['CMP' for the sake of brevity] has been filed with a prayer to grant leave to the petitioner - 'LIC Housing Finance Ltd.,' [hereinafter 'LIC HFL' for the sake of brevity and convenience] to file an appeal under Section 37 of 'The Arbitration and Conciliation Act, 1996 (Act No.26 of 1996)' [hereinafter 'A and C Act' for the sake of brevity] assailing an 'interim order dated 24.04.2024 made by a three Member Hon'ble 'Arbitral Tribunal' {hereinafter 'impugned interim order' and 'AT' denoting 'Arbitral Tribunal' for the sake of brevity, convenience and clarity}.

2. Mr.M.S.Krishnan, learned Senior counsel instructed by Mr.V.Adith Narayan for the CMP petitioner submits that the captioned proposed appeal by LIC HFL will be under Section 37(2)(b) of A and C Act.

3. Learned Senior counsel submitted that the epicenter of the issue is a 'Joint Venture Agreement' [hereinafter 'said JVA' for the sake of brevity] dated 22.02.2018 between R1 ['SPR Construction Private Limited'] and R2 ['Binny Limited']. To be noted, R1 shall be referred to as 'SPR' and R2 shall be referred to as 'Binny', both for the sake of brevity and convenience.



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4. It was submitted that R1 and R2 sought financial assistance from LIC HFL for putting up a housing project in the name and style 'SPR High Living' and financial assistance to the tune of Rs.250 Crores was given, is learned Senior counsel's say.

5. Thereafter, the arbitration clause in said JVA was triggered resulting in constitution of 3 member AT which made the impugned interim order. Adverting to the impugned interim order, learned Senior counsel submitted that Rs.52.57 Crores from and out of Rs.250 Crores disbursed by LIC HFL as loan remains unpaid and LIC HFL is under imminent threat of being left high and dry as SPR would now be depositing Rs.100 Crores with Binny without prejudice with a further directive that SPR shall continue to discharge its revenue sharing obligation qua Binny as per the said JVA from 01.04.2024.

6. In support of third party leave to appeal plea, learned Senior counsel pressed into service an order made by a Hon'ble single Judge of Bombay High Court in **Prabhat Steel** case [**Prabhat Steel Traders Pvt. Ltd., Vs. Excel Metal Processors Pvt. Ltd.**, reported in 2018 SCC OnLine Bom 2547]. In **Prabhat Steel** case, Section 37 of A and C Act petitions were filed by third parties which had supplied steel and other material but arbitral proceedings were kick started ignoring the appellants thereat. In this context, Bombay High Court in **Prabhat Steel** case held that Section 2(1)(h) of A and C Act defines 'party' but Section 37 does not say that an appeal under the said provision can be filed only by a party. Relevant paragraphs are Paragraphs 38 to 40 and the same read as



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follows:

'38. Section 2(1)(h) defines "party" means a party to an arbitration agreement. Sections 2(1)(h) to 36 refers the "party" for different purposes. However, section 37 does not provide that an appeal under the said provision can be filed only by the parties to the arbitration agreement. By virtue of the amendment inserted by the Act 2 of 2016 with effect from 23rd October, 2015 thereby amending section 17 of the Arbitration & Conciliation Act, 1996, powers which are available with the Court under section 9 for grant of interim measures, identical powers are now also granted to the arbitral tribunal.

39. A perusal of section 17(1)(ii) clearly indicates that though such interim measures under section 17 can be applied only by a party to the arbitration agreement and more particularly specified in section 17(1)(ii)(a) to (e), such reliefs may in some of the cases affect even third parties.

40. The said provision clearly indicates that a party to the arbitration agreement who is permitted to apply for interim measures to the arbitral tribunal under the said provision and seek interim measures of protection in respect of any goods which are subject matter of the arbitration



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agreement or even to enter upon any land or building in possession of any party. Under section 17(1)(d) such party to the arbitration agreement can even apply for interim measures for appointment of a Court Receiver or for such interim measures or protection as may be appeared to the arbitral tribunal to be just and convenient. There may be a situation that a property or goods may belong to a third party who is not a party to the arbitration agreement but still a relief may be applied in respect of such goods or properties belonging to a third party and more particularly if a party to the arbitration agreement is either in possession or custody thereof claiming any right therein in any manner whatsoever.

41. In such a situation, where third party who is the owner of such goods or properties or claiming any right, title or interest in respect of such goods or properties but may not be in physical possession thereof and such goods or properties being in possession arbp619-17g.doc of one of the party to the arbitration agreement, such a third party is obviously going to be affected if any order is passed by the arbitral tribunal for interim measures under section 17 of the Act. There is no dispute about the proposition of law that a third party cannot appear before the arbitral tribunal



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and seek any interim measures under section 17 of the Arbitration & Conciliation Act, 1996 or seek any modification or variation of the interim measures if granted by the arbitral tribunal against such third party though he may be aggrieved by such interim measures granted by the arbitral tribunal.'

7. As regards the LIC HFL, we went into the website and noticed that share holding pattern is as follows:

<i>LIC</i>	<i>-</i>	<i>45.25%</i>
<i>FII (Foreign Institutional Investors)</i>	<i>-</i>	<i>22.60%</i>
<i>DII (Domestic Institutional Investors)</i>	<i>-</i>	<i>22%</i>
<i>Public</i>	<i>-</i>	<i>10%</i>

*8. Therefore, the submission of learned Senior counsel that public money is at peril and risk cannot be brushed aside lightly. We also find that **Prabhat Steel** has been followed by another Hon'ble single Judge of Delhi High Court in **Edelweiss Asset Reconstruction Company Limited and Others Vs. GTL Infrastructure Limited and Another** reported in 2022 SCC OnLine Del 346.*

9. In the light of narrative thus far, we are inclined to accede to the third party leave to appeal prayer but with a rider that the rights of the respondents in the captioned CMP are preserved to seek revocation of leave, if so advised and if so desired. Therefore, while granting leave i.e., acceding to the



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prayer, we preserve the rights of R1 and R2 to seek revocation when the main CMA comes up.

10. Captioned CMP is disposed of granting leave in the aforesaid manner albeit preserving the rights of R1 and R2 to seek revocation of this in the CMA or by way of an appropriate petition in the CMP, if so desired and so advised. If such a scenario unfurls, the revocation plea will be considered on its own merits and in accordance with law.'

2. Aforementioned order in the third party leave application captures essential facts, kernel of issue or in other words, the crux and gravamen of the matter. Therefore, we are not setting out the same again in this order and we deem it appropriate to write that it will suffice if the aforementioned order dated 10.07.2024 in CMP No.14237 of 2024 in C.M.A.SR.No.83406 of 2024 is now read as an integral part and parcel of this order.

3. Reverting to the captioned CMP, as already alluded to supra, it is a innocuous prayer and we have no difficulty in acceding to the same as a photocopy of the order made by Hon'ble AT (order dated 24.04.2024) has been filed as part of the case file.



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4. Before we write the operative part of this order, it has become necessary to record that Mr.N.Ramakrishnan, learned counsel of M/s.ARK Law Associates (Law Firm) and Ms.Narmadha Sampath, learned counsel, who are present in Court submitted that they have instructions from their respective clients to accept notice for R1 [SPR Construction Private Limited] and R2 [Binny Limited] respectively. Though the captioned CMP is one with a innocuous dispense with prayer, considering the peculiar facts and circumstances of the case and taking into account the interest of all concerned, we permit the two learned counsel to accept notice for R1 and R2. As regards R1, learned counsel is led by Mr.P.S.Raman, learned Senior Counsel and counsel on record for CMP petitioner i.e., LIC Housing Finance Limited is led by Mr.M.S.Krishnan, learned Senior Counsel.

5. It was brought to our notice that next sitting of Hon'ble AT is on Monday i.e., 22.07.2024 at half past four and it is a virtual hearing. Considering the leave granted vide aforementioned 10.07.2024 order and contents of the same, learned Senior Counsel for R1, on instructions and learned counsel for R2, very fairly submit that the petitioner [LIC



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Housing Finance Limited] can join the hearing before Hon'ble AT on Monday, both R1 and R2 would not oppose or object to the petitioner [LIC Housing Finance Limited] intervening in the arbitration proceedings. This submission is recorded but with a rider that acceding to the request of petitioner [LIC Housing Finance Limited] to intervene in arbitration proceedings will be at the discretion of Hon'ble AT.

6. It was submitted by learned Senior Counsel for petitioner, on instructions, that the petitioner company will also consider the possibility of agreeing to become a party to Arbitration i.e., 'party' within the meaning of Section 2(1)(h) of A and C Act by making arbitration agreement alone tripartite but we refrain from expressing any opinion on the same, as learned Senior Counsel submits that the counsel on record for petitioner will have to take instructions before taking a stand on this aspect of the matter. We have recorded this only for the convenience of Hon'ble AT in ensuing sitting on Monday at half past four. Further hearing in captioned matter will depend on the trajectory the matter takes before the Hon'ble AT on Monday. Therefore depending on the scenario that unfurls, we make it clear that all the rights and contentions of the all



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three parties before us namely, petitioner [LIC Housing Finance Limited], R1 [SPR Construction Private Limited] and R2 [Binny Limited] are left open for being raised in the possible legal drill which may ensue before us and this will include the rights of R1 and R2 to seek revocation of leave granted on 10.07.2024 vide CMP No.14237 of 2024 in C.M.A.SR.No.83406 of 2024. Though obvious, we also make it clear that this includes the rights of the petitioner to pursue the appeal before us subject of course to outcome of leave revocation prayer before us. We deem it appropriate to record that in the *interregnum*, an appeal filed by R1 [SPR Construction Private Limited] assailing the same impugned order vide CMA SR.No.81178 of 2024 was unconditionally withdrawn on 08.07.2024.

7. As regards innocuous prayer in captioned CMP, R1 and R2 submit that they really don't have a say as it is a matter of absolute and unconditional discretion of this Court.

8. Ergo, the sequitur is, captioned CMP is ordered as prayed for albeit with aforementioned observations and recording of stated positions



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of the parties before us. There shall be no order as to costs.

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(M.S.J.) (K.G.T.J.)
19.07.2024

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P.S. I: *Upload forthwith*

P.S.II : *All concerned to act forthwith on the uploaded soft copy of this proceedings as uploaded in the official website of this Court. To be noted, the soft copies uploaded in the official website of this Court are water marked, besides being QR Coded.*

M.SUNDAR, J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,

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