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C.M.P.No.14237 of 2024 in C.M.A.SR.No.83406 of 2024

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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.



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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.

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 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 arbitral tribunal 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 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 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



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proposition of law that a third party cannot appear before the arbitral tribunal 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:

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

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



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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 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.

gpa

[M.S.,J.] [K.G.T.,J.]
10.07.2024



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