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

+ **O.M.P.(I) 1/2024**

ASAD MUEED & ANR.

..... Petitioners

Through: Mr. Rajiv Nayar, Senior Advocate
with Mr. Saket Sikri, Mr. Vikalp
Mudgal, Mr. Ajay Pal Singh Kullar
and Mr. K. V. Sriwas Narayaman,
Advocates.

versus

HAMMAD AHMED & ORS.

..... Respondents

Through: Mr. Sudhir Nandrajog, Senior
Advocate with Mr. Shreyans Singhvi
and Ms. Tanuja Singh, Advocates for
R-1.

Mr. Kailash Vasdev, Senior Advocate
with Mr. Shreyans Singhvi and Ms.
Tanuja Singh, Advocates for R-2.

Ms. Vibha Datta Makhija, Senior
Advocate with Dr. Amit George with
Dr. Swaroop George, Standing
Counsel with Mr. M. Sarwar, Mr.
Karan, Advocates for R-4 with Dr.
M.A. Sikander, Registrar.

Mr. Rajinder Wali, Advocate for R-5.

CORAM:

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

10.01.2024

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I.A. No. 604/2024

Exemption granted, subject to just exceptions.

Let requisite compliances be made within 01 week.

Application stands disposed of.



O.M.P.(I) 1/2024

By way of the present petition filed under section 9 of the Arbitration & Conciliation Act 1996 ('A&C Act'), the petitioners seek interim measures of relief against the respondents in the context of certain disputes which already stand referred to arbitration before the learned Sole Arbitrator. The disputes pivot around a Deed of Family Settlement dated 22.10.2019 as amended *vide* Amendment dated 21.02.2022 to the Deed of Family Settlement (together 'FSD') signed between the parties in relation to several businesses, ventures, institutions and assets which belong to the family to the parties belong. The institution that is the subject matter of the present proceedings is the Hamdard Institute of Medical Sciences & Research ('HIMSR'), which has fallen to the share of the petitioners under the FSD.

2. Briefly, the provocation for filing the present petition seeking urgent orders is a notification dated 05.01.2024 issued by Hamdard University/Jamia Hamdard (Deemed University) ('Hamdard University') directing the students of HIMSR to deposit all fees for undergraduate and post-graduate medical programs in an account held by Hamdard University instead of the account of HIMSR. Interim relief is also sought in relation to Advertisement dated 05.01.2024 issued by Hamdard University inviting applications for appointment of key managerial personnel at HIMSR.
3. In addition, the petitioners also impugn notification dated 03.01.2024 whereby the present Dean of HIMSR is sought to be replaced; as well as complaint dated 03.01.2024 issued to the respondent No.5/J & K



Bank, Jamia Hamdard Branch, New Delhi, asking the bank not to allow any transfer and/or withdrawal of any amount from the J&K Bank accounts of HIMSR.

4. J&K Bank has subsequently frozen the accounts of HIMSR, though on the ground that HIMSR has not fulfilled the KYC requirements for operating the bank accounts. The petitioners have also therefore sought a direction to the J&K Bank to de-freeze the accounts of HIMSR, the details of which accounts are given in the petition.
5. This court has heard Mr. Rajiv Nayar, learned senior counsel appearing for the petitioners; Mr. Sudhir Nandrajog, learned senior counsel appearing for respondent No. 1 and Ms. Vibha Datta Makhija, learned senior counsel appearing for Hamdard University.
6. Considering the order proposed to be passed, and the fact that arbitration proceedings between the parties are already pending before the learned Sole Arbitrator, this court does not deem it necessary to set-out the detailed submissions made by learned counsel for the parties, though they have been heard at considerable length.
7. Upon a conspectus of the submissions made, it transpires that :
 - 7.1. Prior to the present petition, 03 earlier petitions were filed by the petitioners under section 9 of the A&C Act, which have been disposed-of by Co-ordinate Benches of this court, with the following details :

Srl. No.	Section 9 Petition	Order
1.	O.M.P.(I) No. 7/2022	Order dated 20.09.2022
2.	O.M.P.(I) No. 14/2022	Order dated 23.12.2022
3.	O.M.P.(I) No. 1/2023	Order dated 14.02.2023



Order dated 20.09.2022 passed in O.M.P.(I) No. 7/2022 :

- 7.2. In O.M.P.(I) No. 7/2022 the allegation was that the respondents had taken steps to disturb the independent status of HIMSR and were attempting to interfere in its functioning. On these allegations, *vide* order dated 20.09.2022, recording the submissions of learned senior counsel appearing for the parties, and with consent of parties, the Co-ordinate Bench had referred the petitioners and respondents Nos. 1 to 3 to arbitration; and had appointed a learned Sole Arbitrator *with liberty to seek interim measures of protection from the learned Sole Arbitrator*; also recording the assurance given by Hamdard University that it would facilitate the implementation of the FSD *in accordance with law and subject to the regulations by which it was bound even though it was not a party to the FSD*.
- 7.3. It was also directed in that order that though, at request of learned senior counsel appearing for it, Hamdard University was not being made a party to the arbitral proceedings at that stage; however it was open to the parties to make an application before the learned Sole Arbitrator for that purpose, if so advised; and also that Hamdard University would facilitate the implementation of the directions given by the learned Sole Arbitrator in that regard.
- 7.4. In particular, it was recorded in para 13(c)(iv) of order dated 20.09.2022 that learned senior counsel appearing for them had stated that respondents Nos. 1 to 3 have not interfered at any stage in the independent functioning of HIMSR under the



Hamdard National Foundation – Medical Relief & Education Committee ('HNF-MREC'), and that they would continue to cooperate in maintaining the independent status of HIMSR under its aegis and would not take any steps inconsistent therewith.

- 7.5. The order further recorded that the parties would be at liberty to approach the learned Sole Arbitrator for further directions under section 17 of the A&C Act.

Order dated 23.12.2022 in O.M.P. (I) No. 14/2022 :

- 7.6. Then came a second petition bearing O.M.P. (I) No. 14/2022 under section 9 of the A&C Act, alleging that despite categorical directions contained in order dated 20.09.2022 passed in O.M.P.(I) No. 7/2022, Hamdard University had passed a resolution that would violate those directions. The said petition was also disposed-of by a Co-ordinate Bench *vide* order dated 23.12.2022, observing as under :

“5. Since the arbitrator has already taken cognizance of the disputes which have arisen in light of the Resolution of 05 December 2022, the Court finds no justification to continue the present petition under Section 9 of the Act. It shall consequently stand disposed of.

“6. All contentions of respective parties, on merits, are kept open.”

Order/Judgment dated 14.02.2023 in O.M.P. (I) 1/2023 :

- 7.7. Thereafter, the petitioners filed a third petition under section 9, praying *inter-alia* for restraining the respondents from changing the legal status of HIMSR from a 'constituent institution' to a 'school'.



7.8. In the said proceedings, the principal contention raised on behalf of the petitioners was that since Hamdard University was not a party before the learned Sole Arbitrator, the petitioners have no efficacious remedy before the arbitral tribunal and were therefore constrained to approach the court under section 9 of the A&C Act. It was further argued in that matter that the learned Sole Arbitrator did not have the power to issue orders of restraint against non-parties.

7.9. However, the said petition was dismissed *vide* order dated 14.02.2023, with the court observing as follows :

“26. In any case, a Tribunal, by virtue of the powers conferred upon it under the Act would, in the considered opinion of this Court, have the requisite authority and jurisdiction to formulate such interim measures as may be warranted to preserve and protect the subject matter and corpus of the arbitration. The perception of the petitioners that the Tribunal does not stand vested with the authority and the power to preserve and protect the subject matter of the arbitration or for such injunctions not obliging third parties to take those restraints into consideration, is clearly misconceived. This more so in light of Section 17(2) which now ordains that the order of the Tribunal is comparable to and commensurate with that of a court and is enforceable under the Code in like manner.”

8. The record shows that thereafter the petitioners have approached the learned Sole Arbitrator with their grievances by way of applications under section 17 of the A&C Act; and it transpires that the learned Sole Arbitrator has, in fact, passed an order dated 02.03.2023 in their applications, directing that the parties “..... *shall maintain status quo as on 20.09.2022 with regard to the status of HIMSR.*”



9. Most importantly, the petitioners have also moved before the learned Sole Arbitrator applications under section 27(5) of the A&C Act against the Vice-Chancellor and Registrar of Hamdard University, seeking action in contempt for alleged violation of order dated 20.09.2022 passed in O.M.P. (I) No. 7/22 and order/judgment dated 14.02.023 passed in O.M.P. (I) No. 1/2023, as also for contempt of order dated 02.03.2023 passed by the learned Sole Arbitrator.
10. The said applications allege that the contemnors have violated multiple orders and direction, *inter-alia* by issuing notification dated 03.01.2024 seeking to replace the Dean of HIMSR, which is also one of the notifications that has been challenged before this court by way of prayer (c) in the present petition.
11. The prayers in the contempt applications pending before the learned Sole Arbitrator, in essence and substance, proceed on the basis that the status of HIMSR is being sought to be changed and that the respondents are interfering in the functioning of that institution.
12. In the above backdrop, a brief reference may be made to the law as enunciated by the Supreme Court in ***Arcelormittal Nippon Steel (India) Ltd. vs. Essar Bulk Terminal Ltd.***¹ :

“62. Sub-section (3) of Section 9 has two limbs. The first limb prohibits an application under sub-section (1) from being entertained once an Arbitral Tribunal has been constituted. The second limb carves out an exception to that prohibition, if the Court finds that circumstances exist, which may not render the remedy provided under Section 17 efficacious.

¹ (2022) 1 SCC 712



*“63. To discourage the filing of applications for interim measures in courts under Section 9(1) of the Arbitration Act, **Section 17 has also been amended to clothe the Arbitral Tribunal with the same powers to grant interim measures, as the Court under Section 9(1).** The 2015 Amendment also introduces a deeming fiction, whereby an order passed by the Arbitral Tribunal under Section 17 is deemed to be an order of court for all purposes and is enforceable as an order of court.*

*“64. **With the law as it stands today, the Arbitral Tribunal has the same power to grant interim relief as the Court and the remedy under Section 17 is as efficacious as the remedy under Section 9(1).** There is, therefore, no reason why the Court should continue to take up applications for interim relief, once the Arbitral Tribunal is constituted and is in seisin of the dispute between the parties, unless there is some impediment in approaching the Arbitral Tribunal, or the interim relief sought cannot expeditiously be obtained from the Arbitral Tribunal.”*

(emphasis supplied)

13. For the above-referred verdict it is clear that though there is no cavil that section 9(3) of the A&C Act *does not completely oust* the jurisdiction of the court to entertain an application under section 9 even when the arbitration proceedings have commenced, under section 9(3) that power is *carved-out as an exception to the bar* on the court to entertain such an application once an arbitral tribunal has been constituted. This power is to be employed (only) if the court finds that circumstances exist which may render the remedy under section 17 inefficacious².
14. Furthermore, the Supreme Court has clarified that in order to discourage the filing of the applications seeking interim measures of

² cf. para 62 of *Arcelormittal* (supra)



relief under section 9 of the A&C Act before court, the Legislature has amended section 17 to clothe the arbitral tribunal *with the same powers* to grant interim measures as the court has under section 9; and orders passed by arbitral tribunal under section 17 are deemed to be orders of the court for all purposes and are enforceable as such³.

15. In view of the clear legal position as articulated by the Supreme Court in *Arcelormittal* (supra), namely that the power of arbitral tribunal under section 17 of the A&C Act is now co-extensive with the power of section under section 9, the very basis on which the petitioners have approached this court - *i.e.* to say that they need interim relief against entities that are not parties to the arbitral proceedings which only the court can grant and not the arbitral tribunal - is belied. In view of what has been held by the Supreme Court, insofar as interim measures of protection and relief are concerned, the arbitral tribunal can now do under section 17 whatever the court can do under section 9.
16. In the present case, concededly, an application seeking to implead Hamdard University is pending before the learned Sole Arbitrator. Furthermore, a contempt application under section 27(5) of the A&C Act alleging breach of *status quoin* relation to HIMSR is also pending before the learned Sole Arbitrator.
17. In the circumstances, this court is not persuaded to entertain the present petition under section 9 of the A&C Act, which is accordingly disposed-of, granting to the petitioners liberty to pursue the interim

³ cf. para 63 of *Arcelormittal* (supra)



relief sought-for before the learned Sole Arbitrator, in accordance with law.

18. Pending applications, if any, also stand disposed-of.

ANUP JAIRAM BHAMBHANI, J

JANUARY 10, 2024/uj