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

\+ O.M.P.(I) (COMM.) 121/2024

M/S GAIL (INDIA) LTD .....Petitioner

Through: Mr. Vivek Kohli, Sr. Adv. with Mr. Samiran Sharma, Ms. Bhavya Bhatia, Advs.

versus

GUJARAT STATE FERTILIZERS AND CHEMICALS LTD .....Respondent

Through: Mr. Dayan Krishnan, Sr. Adv. with Mr. Shamik Sanjanwala, Mr. Kunal Vyas, Mr. Prabhakar Yadav, Ms. Shubhangi Agarwal, Mr. Abhishek Jamalpur, Advs.

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\+ O.M.P.(I) (COMM.) 138/2024

MS GAIL INDIA LTD .....Petitioner

Through: Mr. Vivek Kohli, Sr. Adv. with Mr. Samiran Sharma, Ms. Bhavya Bhatia, Advs.

versus

GUJARAT STATE FERTILIZERS CHEMICALS LTD. .....Respondent

Through: Mr. Dayan Krishnan, Sr. Adv. with Mr. Shamik Sanjanwala, Mr. Kunal Vyas, Mr. Prabhakar Yadav, Ms. Shubhangi Agarwal, Mr. Abhishek Jamalpur, Advs.

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\+ O.M.P.(I) (COMM.) 139/2024

MS GAIL INDIA LTD .....Petitioner

Through: Mr. Vivek Kohli, Sr. Adv. with Mr. Samiran Sharma, Ms. Bhavya Bhatia, Advs.

versus

GUJARAT STATE FERTILIZERS CHEMICALS LTD .....Respondent

Through: Mr. Dayan Krishnan, Sr. Adv. with Mr. Shamik Sanjanwala, Mr. Kunal Vyas, Mr. Prabhakar Yadav, Ms. Shubhangi Agarwal, Mr. Abhishek Jamalpur, Advs.

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\+ O.M.P.(I) (COMM.) 140/2024

MS GAIL INDIA LTD .....Petitioner

Through: Mr. Vivek Kohli, Sr. Adv. with Mr. Samiran Sharma, Ms. Bhavya Bhatia, Advs.

versus

GUJARAT STATE FERTILIZERS CHEMICALS LTD .....Respondent

Through: Mr. Dayan Krishnan, Sr. Adv. with Mr. Shamik Sanjanwala, Mr. Kunal Vyas, Mr. Prabhakar Yadav, Ms. Shubhangi Agarwal, Mr. Abhishek Jamalpur, Advs.

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\+ O.M.P.(I) (COMM.) 141/2024

MS GAIL INDIA LTD .....Petitioner

Through: Mr. Vivek Kohli, Sr. Adv. with Mr. Samiran Sharma, Ms. Bhavya Bhatia, Advs.

versus

GUJARAT STATE FERTILIZERS CHEMICALS LTD

.....Respondent

Through: Mr. Dayan Krishnan, Sr. Adv. with Mr. Shamik Sanjanwala, Mr. Kunal Vyas, Mr. Prabhakar Yadav, Ms. Shubhangi Agarwal, Mr. Abhishek Jamalpur, Advs.

CORAM:
HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

% **12.08.2024**

1. These are petitions under section 9 of the Arbitration and Conciliation Act, 1996 primarily seeking direction to the respondent to deposit the entire amount awarded as per the Arbitral Award dated 29.07.2023 passed by the learned Sole Arbitrator. The details of the awarded amount sought in the petitions are as under:

O.M.P.(I) (COMM.) 121/2024	Rs. 2,27,72,28,917/-
O.M.P.(I) (COMM.) 138/2024	Rs. 10,40,16,813/-
O.M.P.(I) (COMM.) 139/2024	Rs. 11,59,74,197/-
O.M.P.(I) (COMM.) 140/2024	Rs. 64,27,48,458/-
O.M.P.(I) (COMM.) 141/2024	Rs. 76,70,39,749/-

2. As per the Arbitral Award, the counter-claim of the petitioner for the aforesaid amount was allowed.

3. The respondent challenged the Arbitral Award dated by filing O.M.P.(COMM.) 305/2023, O.M.P.(COMM.) 302/2023, O.M.P.(COMM.) 304/2023, O.M.P.(COMM.) 301/2023, O.M.P.(COMM.) 303/2023 which is

pending adjudication and there is no stay of the Arbitral Award.

4. Learned senior counsel for the petitioner places reliance on the judgment of "***Dirk India Private Limited vs. Maharashtra State Electricity Generation Company Limited***" 2013 SCC Online Bom 481 and more particularly para 14 which reads as under:

> "*14. Two facets of Section 9 merit emphasis. The first relates to the nature of the orders that can be passed under clauses (i) and (ii). Clause (i) contemplates an order appointing a guardian for a minor or a person of unsound mind for the purposes of arbitral proceedings. Clause (ii) contemplates an interim measure of protection for: (a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement; (b) securing the amount in dispute in the arbitration; and (c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration; (d) an interim Injunction or the appointment of a receiver; and (e) such other interim measure of protection as may appear to the Court to be just and convenient. The underlying theme of each one of the sub-clauses of clause (ii) is the immediate and proximate nexus between the interim measure of protection and the preservation, protection and securing of the subject-matter of the dispute in the arbitral proceedings. In other words, the orders that are contemplated under clause (ii) are regarded as interim measures of protection intended to protect the claim in arbitration from being frustrated. The interim measure is intended to safeguard the subject-matter of the dispute in the course of the arbitral proceedings. The second facet of Section 9 is the proximate nexus between the orders that are sought and the arbitral proceedings. When an Interim measure of protection is sought before or during arbitral proceedings, such a measure is a step in aid to the fruition of the arbitral proceedings. When sought after an arbitral award is made but before it is enforced, the measure of protection is intended to safeguard the fruit of the proceedings until the eventual enforcement of the award. Here again the measure of protection is a step in aid of enforcement. It is intended to ensure that enforcement of the award results in a realisable claim and that the award is not rendered*

Illusory by dealings that would put the subject of the award beyond the pale of enforcement. Now it is In this background that it is necessary for the Court to impart a purposive interpretation to the meaning of the expression "at any time after the making of the arbitral award but before it is enforced in accordance with section 36". Under Section 36, an arbitral award can be enforced under the Code of Civil Procedure in the same manner as if it were a decree of the Court. The arbitral award can be enforced where the time for making an application to set aside the arbitral award under Section 34 has expired or in the event of such an application having been made, it has been refused. The enforcement of an award enures to the benefit of the party who has secured an award in the arbitral proceedings. That is why the enforceability of an award under Section 36 is juxtaposed in the context of two time frames, the first being where an application for setting aside an arbitral award has expired and the second where an application for setting aside an arbitral award was made but was refused. The enforceability of an award, in other words, is defined with reference to the failure of the other side to file an application for setting aside the award within the stipulated time limit or having filed such an application has failed to establish a case for setting aside the arbitral award. Once a challenge to the arbitral award has either failed under Section 34 having been made within the stipulated period or when no application for setting aside the arbitral award has been made within time, the arbitral award becomes enforceable at the behest of the party for whose benefit the award enures. Contextually, therefore, the scheme of Section 9 postulates an application for the grant of an interim measure of protection after the making of an arbitral award and before it is enforced for the benefit of the party which seeks enforcement of the award. An interim measure of protection within the meaning of Section 9(ii) is intended to protect through the measure, the fruits of a successful conclusion of the arbitral proceedings. A party whose claim has been rejected in the course of the arbitral proceedings cannot obviously have an arbitral award enforced in accordance with Section 36. The object and purpose of an interim measure after the passing of the arbitral award but before it is enforced is to secure the property, goods or amount for the benefit of the party which seeks enforcement"

5. In this regard, learned senior counsel for the respondent places reliance on "***Centrient Pharmaceuticals India Pvt. Ltd. vs. Hindustan Antibiotics Ltd.***" 2019 SCC Online Bom 1614 and more particularly paras 26 and 27 which read as under:

> "*26. In this context the legislative scheme under the amended provisions of Section 36 of the Act, which provides for enforcement of an award, is required to be noted. Section 36 provides that where the time for making an application to set aside the arbitral award under section 34 has expired, then, subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908 in the same manner as if it were a decree of the Court. Sub-section (2) of Section 36 provides that where an application to set aside the arbitral award has been filed in the Court under section 34, the filing of such an application shall not by itself render that award unenforceable, unless the Court grants an order of stay to the operation of the said arbitral award in accordance with the provisions of sub-section (3), on a separate application made for that purpose. Sub-section (3) categorically provides that upon filing of an application under sub-section (2) for stay of the operation of the arbitral award, the Court may, subject to such conditions as it may deem fit, grant stay of the operation of such award for reasons to be recorded in writing. The proviso to sub-section (3) stipulates that the Court shall, while considering the application for grant of stay in case of an arbitral award for payment of money, have due regard to the provisions for grant of stay of a money decree under the provisions of the Code of Civil Procedure, 1908.*
>
> *27. Thus, from a cumulative reading of the amended provisions of Section 9 and Section 36, it is quite clear that the jurisdiction of the Court can be called upon to be exercised under Section 9 of the Act by an award creditor, only in the circumstances sub-section (1) of Section 9 would postulate. In the present case on the filing of the application under Section 34 of the Act challenging the arbitral award, there was no stay to the execution of the award. HAL was in fact pursuing the execution proceedings. Thus the obvious consequence was that once the award had become enforceable the*

only remedy available to the award creditor was to execute the award and a recourse to Section 9 of the Act was not available. This is clearly derived from a plain reading of section 36 of the Act as it stands after the amendment, when it clearly provides that there would not be an automatic stay to the award on mere filing of section 34 proceedings. A party seeking a stay of the award would be required to file a separate application as provided under sub-section (2) of section 36. Such application would fall for adjudication of the Court and the Court in the facts of the case would exercise its jurisdiction to stay the operation of the award for the reasons to be recorded in writing and subject to such terms and conditions as it may think appropriate. Further the proviso to sub-section (3) would stipulate that the Court would be required to take into consideration the rules/principles under the provisions of the Code of Civil Procedure when an applicant is seeking stay on the money award namely the provisions of Order 41 Rule 1 of the CPC."

6. I am of the view that the relief as sought for by the petitioner in the present petition cannot be granted and for the said relief, the petitioner will have to invoke provisions of Section 36 of the Arbitration and Conciliation Act, 1996 seeking enforcement of the award.

7. In ***Dirk India Private Limited (supra)***, the Hon'ble Court has held that the objective of Section 9 of the Arbitration and Conciliation Act, 1996 is to safeguard the awarded amount during the pendency of the proceedings, however in the present case, there is nothing to show on behalf of the petitioner that there is any apprehension that the enforcement of the award will be rendered illusory or that the petitioner would be unable to recover any amount on account of some financial difficulty/problems of the respondent.

8. As regards the Letters of Credit are concerned, the order dated 09.08.2023 passed in O.M.P.(I) (COMM) 241/2023, O.M.P.(I) (COMM)

242/2023, O.M.P.(I) (COMM) 243/2023, O.M.P.(I) (COMM) 244/2023, O.M.P.(I) (COMM) 245/2023 is clear in this regard whereby this Court had directed that subject to the respondent paying the amount covered under the Letter of Credits to the petitioner, the petitioner shall not take any steps to encash the said Letter of Credits. In addition, the order dated 17.08.2023 passed in O.M.P.(COMM.) 305/2023, O.M.P.(COMM.) 302/2023, O.M.P.(COMM.) 304/2023, O.M.P.(COMM.) 301/2023, O.M.P.(COMM.) 303/2023 clearly indicates that there is no stay on the operation of the Arbitral Award.

9. For the said reasons, the petition is dismissed granting liberty to the petitioner to file enforcement petition in accordance with law.

JASMEET SINGH, J

AUGUST 12, 2024/DM

Click here to check corrigendum, if any