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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **ARB. A. (COMM.) 32/2024 and I.A. 30666/2024**
ACCORD ADVERTISING PVT LTD AND ANR Appellants
Through: Mr. Rahul Kumar and Mr. Debmalya
Ganguli, Advocates.

versus
SM FINLEASE LTD Respondent
Through: Mr. Manish Kaushik with Mr. Ajit
Singh Johar, Advocates.

CORAM:
HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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28.05.2024

I.A. 30667/2024

Exemption granted, subject to just exceptions.

Application stands disposed-of.

ARB. A. (COMM.) 32/2024

By way of the present appeal filed under section 37(2)(b) of the Arbitration & Conciliation Act 1996 ('A&C Act'), the appellants (non-claimants in the arbitral proceedings) impugn order dated 30.04.2024 made by the learned Sole Arbitrator, by which the learned Arbitrator has granted an *ad-interim* restraint order in respect of certain properties belonging to appellant No.2 on an application under section 17 of the A&C Act.

2. At the outset, in response to an office objection raised as to the pecuniary jurisdiction in relation to the appeal, Mr. Rahul Kumar, learned counsel appearing for the appellants submits, that since the amount in dispute in the arbitral proceedings is about Rs.1.76 crores, for the purpose of an appeal under section 37 of the A&C Act, 'court'



within the meaning of section 2(1)(e) of the A&C Act, would be the court of the learned District Judge; and therefore, an appeal against an order made by that court would lie before the High Court. Counsel submits therefore, that the learned Arbitral Tribunal in the present case would be treated equivalent to the court of the learned District Judge; by reason whereof, the present appeal is maintainable before this court.

3. Proceeding therefrom, Mr. Kumar submits, that the disputes in the matter arise from a financial facility extended by the respondent, a Non-Banking Financial Company, to appellant No.1 by way of a Business Loan Agreement dated 18.01.2021 *inter-alia* against a Guarantee Deed (Personal Guarantee) dated 18.01.2021 executed by appellant No.2.
4. Counsel submits that by way of the impugned order, the learned Arbitrator has granted an *ad-interim* restraint order with respect to certain properties belonging to appellant No.2 (guarantor in the transaction), though the said properties were neither a part of the loan transaction nor were they ever placed by way of collateral in any form or manner whatsoever.
5. Mr. Kumar however argues that despite this being the case, the learned Arbitrator has proceeded to grant *ad-interim* restraint order in respect of the properties belonging to appellant No.2, as recorded in para (c) of impugned order dated 30.04.2024 (running page 61 of the paper-book), observing as follows :

“c) Now coming to Application under Section 17, this Tribunal is inclined to give an opportunity to the Respondent to file reply, however, the Tribunal notes that when the Respondent could make reply and file application under Section 13(2), reply to this



Application should also have been filed, however, to balance equities, while the Tribunal is giving an opportunity to the Respondent to file reply and is also not deciding the application finally as is being sought to be urged by the Claimant, the Tribunal is granting ad-interim reliefs as sought in para (a) of the prayer, thus, the Respondent is restrained from dealing or creating third party rights of the properties of the Respondent detailed in para 14 of the said application, till the next date of hearing. The Claimant is a Non-Banking Financial Company, it is not the case of the Respondent that the Business Loan Agreement is forged and admittedly the Claimant extended financial facilities to the Respondent, thus, this protection would be necessary to secure ends of justice. It is made clear that the interim order passed and the reasons given for passing the interim order are not expression on merits of the matter.”

(emphasis supplied)

6. Issue notice.
7. Mr. Manish Kaushik, learned counsel appears on behalf of the respondent on advance copy; accepts notice; and submits, that other things apart, the learned Arbitrator has passed the impugned order only by way of an *ad-interim* measure; and that arguments on the section 17 application of the A&C Act have since been heard in detail and order thereon has been reserved on 22.05.2024.
8. Mr. Kaushik accordingly submits, that the present appeal is premature; and that this court may not interfere with the impugned order made by the learned Arbitrator in keeping with the mandate of section 5 of the A&C Act.
9. Mr. Kaushik further points-out that an order to the effect contained in para (c) above may be warranted if the Guarantee Deed (Personal Guarantee) furnished by appellant No.2 so permits.



10. Though this court is of the view that *if* the properties in question were never placed as collateral in the context of Business Loan Agreement, then an order in terms of what has been directed in para (c) above *may* amount to attachment before judgment, however considering that the learned Arbitrator is still seized of the application under section 17 of the A&C Act and orders thereon have been reserved, this court is not inclined to entertain the present appeal.
11. Needless to add, that the appellants shall be at liberty to impugn the final order to be made by the learned Arbitrator on the application under section 17 of the A&C Act, as may be permissible, in accordance with law.
12. The appeal is disposed-of in the above terms.
13. Pending applications, if any, also stand disposed-of.
14. It is made clear that nothing in this order should be taken as an expression of opinion on the merits of the matter.

ANUP JAIRAM BHAMBHANI, J

MAY 28, 2024

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