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

Date of decision: 05th NOVEMBER, 2024

IN THE MATTER OF:

+ O.M.P. (COMM) 335/2023

COSLIGHT INFRA COMPANY PVT. LTDPetitioner

Through: Mr. Atul Sharma, Mr. Sanjay Gupta
& Ms. Abhilasha Sharma, Advocates

versus

CONCEPT ENGINEERS & ORS.Respondents

Through: Ms. Radhika Goel, Advocate for
Respondents No.1,2,3
Mr. Ashutosh Kumar Mishra,
Advocate for Respondent No.4

+ O.M.P.(MISC.)(COMM.) 564/2024

M/S COSLIGHT INFRA COMPANY PVT. LTD.Petitioner

Through: Mr. Atul Sharma, Mr. Sanjay Gupta
& Ms. Abhilasha Sharma, Advocates

versus

M/S CONCEPT ENGINEERS & ORS.Respondents

Through: Ms. Radhika Goel, Advocate for
Respondents No.1,2,3

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT (ORAL)

1. Petitioner has approached this Court under Section 34 of the Arbitration and Conciliation Act, 1996 ('A&C Act') challenging the Order



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dated 13.05.2023, by which an application under Order I Rule 10 CPC filed on behalf of the Claimant (Petitioner-herein) seeking impleadment of Mr. Rajesh Kumar Srivastava as Respondent No.4 in the arbitration proceedings has been dismissed.

2. Shorn of unnecessary details, the facts leading to the filing of the present petitions are as under:-

- a. It is stated that on 25.09.2019, Service Contract Agreement was executed by the Petitioner in favour of the Respondent No.1 herein. It is the case of the Petitioner that one Rajesh Kumar Srivastava was the Director in the Petitioner was authorized to act on behalf of the Petitioner and the said Rajesh Kumar Srivastava, without any authority of the Board of Directors, had entered into a Service Contract Agreement dated 25.07.2019 with the Respondent No.1 herein. It is stated that amount of Rs.5,77,44,000/- was debited from the Bank Account of the Petitioner and was credited to the account of Respondent No.1.
- b. It is stated that on 12.08.2019, the said Rajesh Kumar Srivastava outsourced 120 field service staff of the Petitioner to the Respondent. It is further stated that before implementing the Service Contract Agreement, Respondent No.1 had executed a forged and fabricated agreement with M/s CTECH India Private Limited ("CTECH") on 17.08.2019 and transferred huge amounts of money to CTECH.
- c. It is stated that on coming to know of the transactions, the authorities of Rajesh Kumar Srivastava were revoked by the Petitioner and its parent company and the Service Contract



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Agreement with the Respondent No.1 herein was also terminated by the Petitioner vide e-mail dated 30.09.2019. Since the dispute has arisen between the parties under the Service Contract Agreement, the Petitioner filed a petition under Section 9 of the A&C Act, being OMP (I) (Comm.) No. 18/2020. In the said Petition, a Co-ordinate Bench of this Court vide order dated 24.03.2021, appointed former Judge of this Court as an Arbitrator to adjudicate upon the disputes which have arisen between the parties.

- d. It is stated that an application under Order I Rule 10 CPC was filed by the Petitioner before the learned Arbitrator to implead Rajesh Kumar Srivastava, who was a Director in Petitioner, as Respondent No.4 in the Arbitration proceedings on the ground that he is a necessary and proper party for adjudication of the disputes. In the application, it was stated that the Service Contract Agreement was executed by Rajesh Kumar Srivastava in favour of Respondent No.1 without any authority of the Board of Directors of the Petitioner and a sum of Rs.5,77,44,000/- has been transferred by Respondent No.1 to CTECH. It was stated that the agreement was entered into by Rajesh Kumar Srivastava with the intention to derive personal benefits. It was further stated that Rajesh Kumar Srivastava is a Director in CTECH and held controlling interest in CTECH during the Financial Year 2017-18. It was stated that the son of Rajesh Kumar Srivastava is the Additional Director of CTECH. It was also stated that there are several other sister concerns of CTECH which are being controlled



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by Rajesh Kumar Srivastava and his son. It is stated that the wife of Mr. Rajesh Kumar Srivastava and one Santosh Kapoor were the founding partners of Respondent No.1/Firm. It is stated that the persons very close to Rajesh Kumar Srivastava were also partners in Respondent No.1/Firm and also a Directors in CTECH and other sister concerns. It was, therefore, stated that Rajesh Kumar Srivastava must be impleaded as a party to the arbitration proceedings and no effective order may be passed without impleading him as a necessary party.

- e. It is stated that the said application of the Petitioner herein was rejected by the Arbitral Tribunal *vide* order dated 13.10.2021. The learned Arbitrator held that issue as to whether Rajesh Kumar Srivastava was authorized to entire into the Service Contract Agreement or not could not be decided at the stage when the application under Order I Rule 10 has been decided and only on the basis of accusations made by the Petitioner, as it is a pure question of fact. The learned Tribunal was also of the opinion that whether Rajesh Kumar Srivastava has exercised the said power rightly or wrongly or whether he exceeded his authority also could not be decided at that stage in the absence of any evidence. The learned Arbitrator, after considering various judgments, rejected the application of the Petitioner by observing as under:-

“49. In view of above discussion, the claimant has failed to make out any case for impleadment of Mr. Rajesh Kumar Srivastava, at this stage, as there is no material on record which reveals that he was controlling the affairs of respondent no.1 company or had interest in CTECH when the



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amount was transferred by respondent no. 1 to 3 to the said company. The application is, therefore, dismissed. However, nothing expressed herein shall tantamount to expression of opinion on the merits of the case.”

f. The following issues have been framed by the learned Tribunal in its proceedings held on 21.12.2021:-

“1. Whether the SCA dated 25.07.2019 is null and void for the reasons stated in the Statement of Claim? If the answer is in negative, whether the SCA dated 25.07.2019 stood terminated with effect from 30.08.2019. (OPC).

2. Whether Respondent Nos. 1 to 3 conspired with one Mr. Rajcsh Shrivastava, ex-director of Claimant (and signatory to SCA) for the execution of SCA dated 25.07.2019 to completely strip the Claimant of its operations? (OPC)

3. Whether the Respondent Nos. 1 to 3 along with Mr. Rajesh Shrivastava have diverted the funds received from the Claimant under the garb of SCA into benami shell firms and companies namely CTECH and EMS Management Services Pvt Ltd. owned and controlled by Respondent Nos. 1 to 3 and Mr. Rajesh Shrivastava, ex director of the Claimant? (OPC)

4. Whether Mr. Rajesh Shrivastava had valid authority to execute the SCA dated 25.07.2019 on behalf of the Claimant as alleged in paragraph 8 and 9 of the Statement of Defence? (OPC)

5. Whether the SCA dated 25.07.2019 was completely lopsided in favour Respondent No.1? (OPC)

6. Whether any valid invoice was issued by the Respondent Nos. 1 to 3 under the SCA dated 25.07.2019? (OPR)

7. Whether Mr. Rajcsh Shrivastava, ex-director of the Claimant



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acted in breach of its fiduciary duties in signing the SCA dated 25.07.2019? (OPC)

8. Whether Mr. Rajesh Shrivastava, ex-director of the Claimant (signatory to the SCA dated 25.07.209) is a proper and necessary party? (OPC)

9. Whether the Respondent Nos. 1 to 3 alongwith Mr. Rajesh Shrivastava are jointly and severally liable to the Claimant for a sum of Rs. 5,77,44,000/-? (OPC)

10. Whether the Claimant is also entitled for interest on the amount of Rs. 5,77,44,000/-. If yes, at what rate and for what period? (OPC)

11. Whether invoice dated 01.08.2019 and 02.08.2011 issued under the SCA dated 25.07.2019 by the Respondent Nos. 1 to 3 are fabricated document? (OPC)

12. Whether the Respondent Nos. 1 to 3 are entitled to counter claim of Rs. 1,04,64,000 / - towards compensation? (OPR)

13. Whether the Respondent Nos. 1 to 3 are entitled to counter claim of Rs. 2,88,00,000/- towards alleged unpaid invoices under the SCA? (OPR)

14. Whether the termination of the SCA on 30.08.2019, immediately by the claimant unilaterally on account of continuance of alleged "lack of authority", if any, is arbitrary and illegal and is in violation of the terms of the SCA? (OPR)

15. Whether the Arbitral Tribunal has jurisdiction to decide the issue relating to allegation relating to fraud and fabrication of documents and whether the claim founded on the agreement containing arbitration clause alleging fraud, vitiates the contract and thus the jurisdiction of the arbitral tribunal claimed on the basis of such agreement is nullity? (OPR)

16. Whether the mobilization advance of RS. 5,77,44,000 / - was to be set off against the total loss of RS. 6,82,08,000/-



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incurred by the respondents? (OPR)

17. Whether the respondents are entitled to total cost of arbitration? (OPR)

18. Whether the parties are entitled to compensation as put forward in their statement of claim/ counter claim respectively with interest, cost of arbitration and other incidental expenses?”

3. A perusal of the above indicates that there is a specific issue as to whether Rajesh Kumar Srivastava is a proper and a necessary party or not. The second attempt has been made by the Petitioner herein by filing yet another application dated 11.05.2021 under Order I Rule 10 simply impleadment of Rajesh Kumar Srivastava which has been rejected by the order impugned herein by holding as under:-

“36. I have considered the above contention of learned Counsel for the claimant. Even if the issues have been framed qua Sh. Rajesh Kumar Srivastava on the basis of the pleadings of the claimant, it is for him to prove the same and Mr. Rajesh Kumar Srivastava cannot be added on the basis of pleadings or framing of issues. In the opinion of this Tribunal, there is no cogent evidence on record to summon Sh. Rajesh Kumar Srivastava and CTEC who are not parties to the present dispute referred to this Tribunal by the Hon'ble High Court and, therefore, they cannot be impleaded as respondents in the present proceedings.

37. In view of the above discussion, this Tribunal is of the opinion that except the vague and bald allegations, there is nothing on record to suggest that Sh. Rajesh Kumar Srivastava had any interest in CTEC after 02.08.201 and Sh. Rajesh Kumar Srivastava, in fact, was participating or controlling the affairs of CTEC and CTEC to whom the amount was transferred



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by respondent no. 1 on 19.08.2019 and 20.08.2019 was working under the control or supervision of Sh. Rajesh Kumar Srivastava on the said date as he had already resigned as Director CTEC on 02.08.2019. There is also nothing on record to suggest that Sh. Rajesh Kumar Srivastava has derived any monetary benefit from respondent no. 1 or for that matter from CTEC after his resignation. In these circumstances, the application moved by the Ld. Counsel for the claimant to implead Sh. Rajesh Kumar Srivastava as respondent No.4 and CTEC as respondent No.5 is dismissed.”

4. Heard the learned Counsels for the Parties and perused the material on record.
5. The learned Counsel for the Petitioner has reiterated submissions made by him in the application, pointing out the various acts as to how Rajesh Kumar Srivastava had exceeded his authority or rather acted without authority in entering into the Service Contract Agreement with the Respondent No.1. He also contends that the money has been siphoned off from Respondent No.1 to other entities in which Rajesh Kumar Srivastava and his family members, his associates, hold/held substantial interest. Learned Counsel for the Petitioner also draws attention to the various issues stating that a reading of various issues indicates that no effective adjudication can be made without impleading Rajesh Kumar Srivastava as a party to the arbitration proceedings.
6. In the present case, the first issue which arises for consideration is as to whether an order rejecting an application for impleadment of a party can be termed as an interim award or not?
7. It is a settled law that procedural orders passed by Tribunal will not construe an Award.



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8. Section 31 of the A&C Act provides that an Arbitral Tribunal may make an interim award in any manner in respect of which it may make a final award. It is settled law that for an order to qualify as an arbitral award, it must be such which would settle a matter at which the parties are at issue. As stated earlier, there is a specific issue i.e. Issue No.8 under which it is to be decided as to whether Rajesh Kumar Srivastava is a necessary or proper party. That issue has not been decided by the Arbitrator in the impugned Order.

9. Evidence is yet to be led. Arguments are yet to be advanced on Issue No.8 and only when a final finding is arrived at Issue No.8 it cannot be called as an interim award.

10. The Apex Court in Shyam Telecom Ltd. v. Icomm Ltd., **2010 SCC OnLine Del 1234**, has observed as under:-

“2.

Clearly an interim Award has to be on a matter with respect to which a final Award can be made i.e. the interim Award is also the subject matter of a final Award. Putting it differently therefore an interim Award has to take the colour of a final Award. An interim Award is a final Award at the interim stage viz. a stage earlier than at the stage of final arguments. It is a part final Award because there would remain pending other points and reliefs for adjudication. It is therefore, that I feel that an interim Award has to be in the nature of a part judgment and decree as envisaged under Section 2(2) of CPC and the same must be such that it conclusively determines the rights of the parties on a matter in controversy in the suit as done in a final judgment. An interim order thus cannot be said to be an interim Award when the order is not in the nature of a part decree. In my opinion the impugned order in view of what I have said hereinabove, is not an interim Award as it is not in the nature of a part decree being only an interim order.”



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11. The Co-ordinate Bench of this Court in Rhiti Sports Management Pvt. Ltd., v. Power Play Sports & Events Ltd., **2018 SCC OnLine Del 8678**, has observed as under:-

“16. A plain reading of Section 32 of the Act indicates the fact that the final award would embody the terms of the final settlement of disputes (either by adjudication process or otherwise) and would be a final culmination of the disputes referred to arbitration. Section 31(6) of the Act expressly provides that an Arbitral Tribunal may make an interim arbitral award in any matter in respect of which it may make a final award. Thus, plainly, before an order or a decision can be termed as interim award', it is necessary that it qualifies the condition as specified under Section 31(6) of the Act: that is, it is in respect of which the arbitral tribunal may make an arbitral award.

17. As indicated above, a final award would necessarily entail of (i) all disputes in case no other award has been rendered earlier in respect of any of the disputes referred to the arbitral tribunal, or (ii) all the remaining disputes in case a partial or interim award(s) have been entered prior to entering the final award. In either event, the final award would necessarily (either through adjudication or otherwise) entail the settlement of the dispute at which the parties are at issue. It, thus, necessarily follows that for an order to qualify as an arbitral award either as final or interim, it must settle a matter at which the parties are at issue. Further, it would require to be in the form as specified under Section 31 of the Act.

18. To put it in the negative, any procedural order or an order that does not finally settle a matter at which the parties are at issue, would not qualify to be termed as —arbitral award.

19. In an arbitral proceeding, there may be several



procedural orders that may be passed by an arbitral tribunal. Such orders may include a decision on whether to hold oral hearings for the presentation of evidence or for oral argument, or whether the arbitral proceedings are to be conducted on the basis of documents and other materials as required to be decided - unless otherwise agreed between the parties - in terms of Section 24(1) of the Act. There are also other matters that the arbitral tribunal may require to determine such as time period for filing statement of claims, statement of defence, counter claims, appointment of an expert witness etc. The arbitral tribunal may also be required to address any of the procedural objections that may be raised by any party from time to time. However, none of those orders would qualify to be termed as an arbitral award since the same do not decide any matter at which the parties are at issue in respect of the disputes referred to the arbitral tribunal.

22. In Centrotrade Minerals and Metal Inc. v. Hindustan Copper Ltd.: (2017) 2 SCC 228, the Supreme Court had, inter alia, referred to the passages from Comparative International Commercial Arbitration Kluwer Law International, 2003 and Redfern and Hunter on International Arbitration (sixth edition) and observed as under:-

—9....The distinction between an award and a decision of an Arbitral Tribunal is summarized in Para 24-13 [Chapter 24: Arbitration Award in Julian D.M. Lew, Loukas A. Mistelis, et al., Comparative international Commercial arbitration] . It is observed that an award:

(i) concludes the dispute as to the specific issue determined in the award so that it has res judicata effect between the parties; if it is a final award, it terminates the tribunal's jurisdiction;

(ii) disposes of parties' respective claims;



(iii) may be confirmed by recognition and enforcement;

(iv) may be challenged in the courts of the place of arbitration.

10. In International Arbitration [Chapter 9. Award in Nigel Blackaby, Constantine Partasides, et al., Redfern and Hunter on International Arbitration (Sixth Edition), 6th edition: Kluwer Law International, Oxford University Press 2015 pp. 501-568] a similar distinction is drawn between an award and decisions such as procedural orders and directions. It is observed that an award has finality attached to a decision on a substantive issue. Paragraph 9.08 in this context reads as follows:

—9.08 The term "award" should generally be reserved for decisions that finally determine the substantive issues with which they deal. This involves distinguishing between awards, which are concerned with substantive issues, and procedural orders and directions, which are concerned with the conduct of the arbitration. Procedural orders and directions help to move the arbitration forward; they deal with such matters as the exchange of written evidence, the production of documents, and the arrangements for the conduct of the hearing. They do not have the status of awards and they may perhaps be called into question after the final award has been made (for example as evidence of —bias, or —lack of due process)."

12. The said judgment has been followed by this Court in National Highway Authority of India Vs. Lucknow Sitapur Expressway Ltd, 2022 SCC OnLine Del 4527, wherein this Court has held that an order rejecting an application made for impleadment of a party is only a procedural order.

13. In view of the above, this Court is of the opinion that present order must be confined to the decision of the Ld. Tribunal while considering an application under Order I Rule 10.



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14. In the considered opinion of this Court, the Ld. Tribunal has not dealt with Issue No.8. It is open for the parties to lead evidence on Issue No.8 and the Ld. Tribunal, after evidence is led by the parties on Issue No.8, would adjudicate on Issue No.8 to render its finding as to whether Rakesh Kumar Srivastava is a necessary party or not. Further, issue No.2, 3, 4, 7 & 9 also concern with Rakesh Kumar Srivastava and the decision on these issues will have a vital effect on issue No.8. This Court is of the opinion that the dismissal of this application cannot be treated as conclusive adjudication of issue No.8 as evidence is yet to be lead on several issues concerning Rakesh Kumar Srivastava before a final conclusion can be arrived at on issue No.8.

15. In view of the fact that a specific issue has been framed which has to be decided by the Arbitrator, this Court is not inclined to entertain these Petitions only on the ground that the impugned order cannot be constituted as an interim award which can be challenged under Section 34 of the A&C Act.

16. Accordingly, the petitions are disposed of, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J

NOVEMBER 05, 2024

RJ