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

% ***Date of decision: 04th November, 2024***

+ CM(M) 3552/2024 & CM APPL. 58893-58894/2024
AMR-BBB CONSORTIUM THROUGH LEAD PARTNER, AMR
INDIA LIMITED

.....Petitioner

Through: Mr. Sudhir Nandrajog, Sr. Advocate
with Mr. Mayank Jain, Mr. P. Singh,
Mr. Adhur Jain and Mr. Arpit Goel,
Advocates.

versus

BHARAT COKING COAL LTD

.....Respondent

Through: Mr. Anupam Lal Das, Sr. Advocate
with Mr. Amit Sharma and Mr.
Dipesh Sinha, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. The petitioner is claimant before the learned Arbitral Tribunal.
2. The challenge is to the order dated 14th August, 2024 passed by the learned Arbitral Tribunal whereby twin request made by non-claimant i.e. seeking *amendment in the Statement of Defence (SoD)* and for *framing of additional issues* has been allowed. The claimant had sought review of the above said order by moving an application but such application has also been dismissed vide order dated 10th September, 2024. Such order is also under challenge.
3. There is no dispute with respect to the settled legal position that the



judicial interference in such kind of matters has to be least and minimal.

4. Reference be made to *Kelvin Air Conditioning And Ventilation System Private Limited vs Triumph Reality Private Limited*: 2024 SCC OnLine Del 7137 wherein this Court considered the scope of intervention in a petition filed under a petition filed under Article 227 of Constitution of India in context of challenge made to the interim order passed by learned Arbitral Tribunal and declined to interfere, while observing as under:-

“10. Reference be made to IDFC First Bank Limited Vs. Hitachi MGRM Net Limited: 2023 SCC OnLine Del 4052 whereby Co-ordinate Bench of this Court has enumerated certain circumstances wherein such type of petition can be entertained. Though, in that case, the challenge was in context of dismissal of application filed under Section 16 of Arbitration and Conciliation Act but the observations are equally important in the present context. Relevant portion of aforesaid judgment reads as under: -

“24. While there is no doubt that a remedy under Articles 226 and 227 are available against the orders passed by the Arbitral Tribunal, such challenges are not to be entertained in each and every case and the court has to be “extremely circumspect”.

25. Recently, in Surender Kumar Singhal v. Arun Kumar Bhalotia [Surender Kumar Singhal v. Arun Kumar Bhalotia, 2021 SCC OnLine Del 3708] , this Court, after considering all the decisions, of the Supreme Court [Deep Industries Ltd. v. ONGC Ltd., (2020) 15 SCC 706; Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd., (2022) 1 SCC 75 : (2022) 1 SCC (Civ) 374; Punjab State Power Corpn. Ltd. v. EMTA Coal Ltd., (2020) 17 SCC 93 : (2021) 4 SCC (Civ) 341; Virtual Perception OPC (P) Ltd. v. Panasonic India (P) Ltd., 2022 SCC OnLine Del 566 and Ambience Projects & Infrastructure (P) Ltd. v. Neeraj Bindal, 2021 SCC OnLine Del 4023] has laid down



circumstances in which such petitions ought to be entertained. The relevant portion of the said judgment reads as under:

“24. A perusal of the abovementioned decisions, shows that the following principles are well settled, in respect of the scope of interference under Articles 226/227 in challenges to orders by an Arbitral Tribunal including orders passed under Section 16 of the Act:

(i) An Arbitral Tribunal is a tribunal against which a petition under Articles 226/227 would be maintainable.

(ii) The non obstante clause in Section 5 of the Act does not apply in respect of exercise of powers under Article 227 which is a constitutional provision.

(iii) For interference under Articles 226/227, there have to be ‘exceptional circumstances’.

(iv) Though interference is permissible, unless and until the order is so perverse that it is patently lacking in inherent jurisdiction, the writ court would not interfere.

(v) Interference is permissible only if the order is completely perverse i.e. that the perversity must stare in the face.

(vi) High Courts ought to discourage litigation which necessarily interfere with the arbitral process.

(vii) Excessive judicial interference in the arbitral process is not encouraged.

(viii) It is prudent not to exercise jurisdiction under Articles 226/227.

(ix) The power should be exercised in ‘exceptional rarity’ or if there is ‘bad faith’ which is shown.

(x) Efficiency of the arbitral process ought not to be allowed to diminish and hence interdicting the arbitral process should be completely avoided.”

26. A perusal of the above would show that it is only under exceptional circumstances or when there is bad faith or perversity that writ petitions ought to be entertained.”

11. This Court is very much conscious of the fact that the present petition has been filed under Article 227 of the Constitution of India whereby the Court is required to exercise its supervisory powers.



The duty of the supervisory Court is to interdict if it finds that the findings are perverse i.e. (i) Erroneous on account of non-consideration of material evidence, or (ii) Being conclusions which are contrary to the evidence, or (iii) Based on inferences that are impermissible in law. Reference be made to Puri Investments Versus Young Friends and Co. and Others: 2022 SCC OnLine SC 283.”

5. The case was at the stage of final arguments when the above said two applications were moved by the respondents.
6. According to Mr. Sudhir Nandrajog, learned Senior Counsel for the claimant, the applications, even otherwise, were highly belated and, therefore, these should not have been entertained even. It is contended that respondent knew about factum of winding up, all along, and despite knowing the same, it did not incorporate all such details in *SoD*, when it was originally filed and, therefore, the request seeking amendment should have been dismissed, outrightly. It is also argued that the learned Tribunal has even foreclosed the rights of the parties to lead any evidence which has also resulted in serious prejudice as merely on the basis of the documents available on record, the learned Tribunal cannot, eventually, appreciate that it was rather the claimant who had, well in advance, informed the respondent about the factum of winding up. It is also stated that the Respondent ought to have raised the question of maintainability in the original *SoD* and should have itself diligently pursued regarding the status of the consortium. It is also contended that BBB had fully discharged its obligations under the Consortium Agreement and that its winding up did not have any impact whatsoever over the rights of the lead partner to file and continue the claim.
7. Admittedly, the claim has been lodged before the learned Tribunal by



AMR-BBB Consortium *albeit* through Lead Partner AMR India Limited.

8. Such Consortium is stated to be comprising of M/s AMR Constructions Limited (“AMR”) and M/s Building Business Bridges UK Limited (“BBB”).

9. There is no dispute that AMR is an Indian Company whereas BBB is a British Company and there is already a winding up order dated 9th June, 2016 against BBB and the liquidators have also been appointed in relation to such winding up order.

10. When the *Statement of Defence* was initially filed by the respondent, admittedly, it was mentioned in such *SoD* that BBB had decided to wind up and joint liquidators had been appointed.

11. However, the respondent moved an application seeking amendment in the *Statement of Defence* claiming that the concrete and specific details about winding up came to fore only during the cross-examination of the witness of the claimant. Such cross-examination also, clearly, indicated that there was never any communication by the claimant to the respondent, informing them about winding up. It is submitted by respondent that pursuant to the Cross-examination of the Claimant's witness (CW-1)-Mr. Burla Subbarami Reddy, it emerged and became evident that M/s AMR India Ltd. initiated the present Arbitration proceedings and filed its Statement of Claim on behalf of the Consortium on its own and without seeking the consent of its Consortium Partner, M/s BBB.

12. The reference in this regard has been made, in particular, to question No. 35 and question No. 75 and answers thereto.

13. According to respondent, in view of the fact that one of the members of the Consortium ceased to exist, the claim could not have been invoked in



the manner it has been by the other sole surviving member of the Consortium and that, too, in the name of the Consortium and, therefore, there is a question regarding the maintainability of the claim in its present form and, therefore, it had to move two separate applications before the learned Arbitral Tribunal seeking permission to amend its *SoD* to incorporate the above said vital details and also requested the learned Tribunal to frame additional issues pursuant to such amendment.

14. While allowing both the above said requests, the learned Tribunal observed that the fact of winding up of BBB-UK was never brought to the notice of the respondent and said aspect became clear only during the cross-examination of CW1 Mr. B.S. Reddy and, therefore, it was imperative to examine the above said aspect and also whether AMR, the lead partner of the Consortium could maintain the present proceedings without seeking substitution of its erstwhile member by another technical collaborator. Since the learned Tribunal wanted to comprehend the exact legal implication and import of the above said aspect and the effect of winding up of BBB the other Consortium partner, the above said applications were allowed.

15. The scope of interference in such type of matters, as already noticed above, is least and the Court can only interfere and intervene if it is shown that there is extreme perversity in any such order passed by the learned Tribunal. Allowing any application seeking amendment in *SoD* is purely within the *discretionary domain* of learned Tribunal and there is nothing to indicate that such discretion suggests any perversity, much less of extreme nature.

16. Keeping in mind the overall facts and circumstances of the case and the limited scope of intervention in such type of matters, this Court does not



find any compelling reason to interfere by invoking its power under Article 227 of Constitution of India.

17. The petition is, accordingly, dismissed.

(MANOJ JAIN)
JUDGE

NOVEMBER 4, 2024/ss