IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION

ARBITRATION PETITION NO. 119 OF 2024
WITH
INTERIM APPLICATION (L) NO. 20487 OF 2023
IN
ARBITRATION PETITION NO. 119 OF 2024
WITH
ARBITRATION PETITION NO. 169 OF 2024

Manmohan Kapani ...Petitioner

Versus

Kapani Resorts Pvt. Ltd. ...Respondent

Mr. Rohan Rajadhyaksha, *a/w. Mr. Shlok Chandra, Ms. Pallavi Singh, Mr. Sankalp Sharma, for the Petitioner.*

CORAM : SOMASEKHAR SUNDARESAN, J.
DATE : JANUARY 15, 2025

PC :

1. Heard Learned Counsel for the Petitioner who has explained the context in which protection is necessitated under Section 9 of the Arbitration and Conciliation Act, 1996 (*"**the Act**"*). In a nutshell, the Petitioner has invested a total sum of USD 1 million in two tranches, (USD 3,50,000/- and USD 6,50,000/- on February 11, 2022 and February 22, 2022, respectively). Learned Counsel for the Petitioner fairly states that

proceedings invoking the Insolvency and Bankruptcy Code, 2016 are pending before the National Company Law Tribunal, and in those proceedings, *status quo* on the share capital structure of the Company has been ordered and is continuing as of date. It is also evident from the record that the amounts paid by Respondent No.1, to Small Industries Development Bank of India ("**SIDBI**") under a one-time settlement approved by SIDBI, substantially comprises of the money invested by the Petitioner.

2. It is the Petitioner's case that he had invested in the Company, enabling it to repay SIDBI, and the properties belonging to shareholders of the Company, i.e, Respondent Nos.2 and 3 have been released to them by SIDBI. While they have benefited from the remittance made by him, the equity shares that are required to be allotted to the Petitioner in view of the remittance made by him, giving him a majority stake in the Company, have not been issued to him. In these circumstances, he seeks grant of urgent ad-interim relief in the form of the deposit of the monies invested by him pending conduct of the arbitration proceedings.

3. Learned Counsel for the Petitioner also submits that Arbitration Application No. 169 of 2024 is an Application under Section 11 of the Act. However, Learned Counsel fairly states that he has found that the Petitioner, an individual, is a US National and consequently, the jurisdiction for invoking Section 11 of the Act shall be with the Supreme Court. He therefore, seeks liberty to withdraw the said Application under

Section 11, with leave to take out appropriate proceedings before an appropriate forum as advised. In these circumstances, Arbitration Application No. 169 of 2024 is hereby ***finally disposed of*** as withdrawn with liberty to approach the appropriate forum under Section 11 of the Act.

4. Having heard Learned Counsel for the Petitioner, I note that the matter has been pending before this Court, for a while, and copious pleadings by both sides have been filed. I also note that this matter was listed under a request for circulation, and the fact that the Respondent is not before me today. Suffice it to say, it is evident that a *prima facie* case has been made out to demonstrate that the Petitioner's funds have been utilized by the Respondent and correspondingly he has not been secured for the investment made by him. In these circumstances, the matter is treated as 'Part Heard' and stood over for hearing the Respondent's Counsel to present its say, if any, on January 23, 2025 for further consideration.

5. It is made clear that if the Respondents do not appear on that date, the Court shall consider passing appropriate orders *ex-parte,* should it appear appropriate at that stage. Stand over to ***January 23, 2025*** as a part-heard matter.

6. All actions required to be taken pursuant to this order, shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]

Kishor