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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION PETITION NO. 134 OF 2020
ALONGWITH
INTERIM APPLICATION NO. 76 OF 2021
ALONGWITH
INTERIM APPLICATION NO. 2073 OF 2020
IN
COMMERCIAL ARBITRATION PETITION NO. 134 OF 2020

Greaves Cotton Limited

.. Petitioner

Versus

1. Dee Power Corporation
2. Kaushik Kumar Ghose Partner Dee
Power Corporation
3. Soumik Ghose Partner Dee Power
Corporation

.. Respondents

ALONGWITH
INTERIM APPLICATION NO. 4172 OF 2025
WITH
INTERIM APPLICATION (L) NO. 5779 OF 2020
IN
COMMERCIAL ARBITRATION PETITION NO. 134 OF 2020

Mr. Aseem Naphade *a/w Janhavi Patadia, i/b Khandeparkar Law Office, for the Petitioner.*

Ms. Maya Majumdar *for Respondent Nos.1 and 3.*

Mr. T.V. Louis *i/b KLT Law Associates for Respondent No.2.*

CORAM: SOMASEKHAR SUNDARESAN, J.

Date : November 26, 2025

ORDER:

1. This matter pertains to an order already passed by a Learned Single Judge of this Court under Section 9 of Arbitration and

Conciliation Act, 1996 (“***the Act***”) in the captioned Arbitration Petition for which, the Petitioner has sought issuance of a decree in aid of initiating execution.

2. It was heard on September 15, 2025, before the change of roster, upon the Decree Department in the Registry of this Court having sought a clarification as to whether a decree could at all be issued, considering the jurisdiction involved is Section 9 of the Act, which is meant only to grant limited protective interim reliefs in aid of arbitration proceedings. Protective measures under Section 9 are meant to be temporary and to eventually lead to an arbitral award, which would then be a decree in the eyes of law.

3. At the heart of the issues involved is the order dated January 29, 2020 (“***Subject Order***”). Before that, by an order dated January 28, 2020, a Learned Single Judge of this Court had recorded that there was a more than sufficient *prima facie* case to grant ad-interim reliefs in terms of prayer clauses (a) and (d), which were extracted. The Learned Single Judge directed that detailed disclosures be made in the terms set out in the said order.

4. At the heart of the controversy between the parties was that the Respondents had initially furnished a bank guarantee purported to

have been issued by each of the Indian Overseas Bank and ICICI Bank. The bank guarantee from ICICI Bank was said to have been forwarded and supported by an e-mail from an Officer of the ICICI Bank. The amounts due and owing by the Respondents to the Petitioner exceeded the amount secured under the bank guarantees.

5. By June 25, 2019, the amounts owed by the Respondent No.1 to the Petitioner was in excess of Rs. 9 Crores. It was in that context that the guarantee of ICICI Bank was invoked by the Petitioner, only to discover that the bank guarantee in question had not been issued at all. Startled, the Petitioner invoked the guarantee issued by the Indian Overseas Bank which met with the same outcome – it had never been issued. The guarantees were evidently found to be a product of forgery or fabrication, with physical signatures, rubber stamp and even signatures of witnesses on the purported instruments. The email from ICICI Bank was found to have been issued from the domain name which was evidently not attributable to ICICI Bank. The Learned Single Judge directed the Petitioner to amend the Petition to implead both the banks and called upon the banks to confirm the specific position in the peculiar facts of the case.

6. Thereafter, certain corrections were made by the Subject Order, also recording that the Respondents would be entitled to furnish a fresh bank guarantee for the sum of Rs.9 Crores in favour of the Prothonotary and Senior Master of this Court. Learned Advocate for the Respondents merely confirmed that a bank guarantee would be issued, but the amount of Rs. 9 Crores was an amount directed by the Learned Single Judge as a measure under Section 9 of the Act.

7. The Court recorded an “agreed” default position in view of the special indulgence shown in terms of both time and allowance to provide different bank guarantees on behalf of Respondent No.1 to Respondent No.3. It was also ruled that should the guarantees not be furnished, Respondents Nos. 1 to 3 would be deemed to have submitted to a decree in the amount of Rs.~8.95 Crores with interest @ 12% per annum from the date of the decree to the date of actual payment.

8. It was specifically ruled that any arbitration between the parties would only be in respect of any balance claim that may be raised by the Petitioner and any counter claim, set off or adjustment that may be claimed by the Respondents. The bank guarantees were to be furnished by March 31, 2020 failing which the deemed decree would operate as aforesaid against the Respondents.

9. At first blush, it appeared odd to me that there could be a decree in terms of the Subject Order, passed in exercise of powers under Section 9 of the Act. However, events did not end there. The Subject Order got confirmed by withdrawal of an appeal before the Learned Division Bench and the rejection of a Special Leave Petition by the Supreme Court.

10. Commercial Appeal (L) No. 143 of 2020 was filed by the Respondents against the Petitioner. After the matter was heard by a Learned Division Bench, the Appeal was disposed of as withdrawn. It had been stated to the Learned Division Bench that the Respondents had no funds to provide and they would be unable to furnish the bank guarantee, but they would be able to furnish the same once they raised funds from the market.

11. With the disposal of the Appeal as withdrawn, the challenge to the Subject Order remained undisturbed. Thereafter, an Interim Application was taken by one of the Respondents seeking modification of the order dated January 29, 2020 which came up for consideration before the same Learned Single Judge on August 3, 2020, by which time a Contempt Petition No. 1 of 2020 was also filed. On that date a Learned Single Judge corrected certain typographical errors and dealt

with the submissions by the second Respondent that the first Respondent had no authority to bind the second Respondent to a decree in the manner set out in the order dated January 29, 2020. The Learned Single Judge was pleased to modify the order changing the effect of the order to Respondent Nos. 1 and 3 instead of Respondent Nos. 1 to 3. The rest of the original order dated January 29, 2020 was left undisturbed and the Interim Application was disposed of.

12. Thereafter, the matter came up again before the Learned Single Judge on August 7, 2020, when Respondent No.2 purported to have resigned from Respondent No.1 (the firm) with effect from January or February 2020 although the resignation letter itself had been dated August 16, 2019. The Respondent No.2 agreed to make a disclosure of his assets without prejudice to his rights and contentions. In view of the contentions of the Petitioner that the Respondent No.2 had very much been a partner of the Respondent No.1 during the time when the indebtedness to the Petitioner had accrued, the Learned Single Judge gave a last opportunity to the Respondent Nos. 1 and 3 to file their disclosure affidavits.

13. On September 21, 2020, taking note of certain affidavits of disclosure made by the Respondents, the Learned Single Judge was of a

view that there was no merit in pursuing the Contempt Petition observing that any further reliefs on the basis of the disclosures could always be pursued under Section 9 jurisdiction.

14. The matter was carried to the Supreme Court by the Respondent Nos. 1 and 3. The Respondent No.2 was also made a Respondent in the Special Leave Petition filed before the Supreme Court. The Special Leave Petition essentially challenged the order of the Learned Division Bench which had in fact disposed of the Appeal as withdrawn. The question of law raised in the Special Leave Petition was whether the Learned Division Bench erred in law by not appreciating that by passing an order dated January 29, 2020, the Learned Single Judge had acted wholly without jurisdiction and beyond the powers available to the Section 9 Court, and whether it was at all possible for the Learned Single Judge to fix the quantum of an award and restrict any reference to the Arbitral Tribunal to amounts other than the sum fixed by the Learned Single Judge.

15. The order of the Learned Single Judge and the order of the Learned Division Bench were assailed on the premise that, in the Section 9 jurisdiction, the Court appears to have passed a final award and that this would be grossly contrary to the scheme of the Act.

However, the Supreme Court dismissed the Special Leave Petition No. 11631 of 2020, simply stating in an order dated November 2, 2020 that the Learned Arbitral Tribunal was to “*decide the matter on merits without being influenced by the observations made by the High Court*”.

16. The contention of the Petitioner is that any order passed by the Court is capable of enforcement and to enforce and execute the Subject Order, it would be necessary to have a decree in terms of the Subject Order, a challenge to which has been finally repelled with the Supreme Court order refusing to entertain a Special Leave Petition.

17. The contention of the Respondent is that the Supreme Court has indeed stated that the arbitrator must decide the matter uninfluenced by the observations in the Subject Order. Therefore, it is contended, there is nothing in the Subject Order to enforce and the Supreme Court has recognized that arbitration has to take place.

18. The Decree Department submits that it would abide by any decision of this Court.

19. I have heard the parties. Having examined the record with their assistance, I find that the Supreme Court did not even issue notice in the Special Leave Petition to convert it into a Civil Appeal. The

dismissal appears to be *in limine*, of course with the observation that the Learned Arbitral Tribunal shall not be influenced by the Subject Order. The issue therefore is whether the Subject Order, which creates a decree, should be allowed to be executed or whether it is deemed to have been set aside.

20. It is not for me to second guess and pronounce upon the Subject Order, which is already passed. Moreover, challenges to the Subject Order stand repelled. I am unable to agree with the Respondents' contention that the Supreme Court has set aside the Subject Order without even issuing notice to the Petitioner. On the contrary, the Supreme Court has dismissed the Special Leave Petition without issuing notice to the Petitioner. Therefore, the Subject Order has remained undisturbed. The reference to the arbitral tribunal having to conduct the proceedings uninfluenced by the observations would indicate that such arbitral proceedings were those envisaged in the Subject Order i.e. any residual claim, or set-off, adjustment or counter-claim.

21. The challenge to the Subject Order having been withdrawn in the first instance and further Appeal against such merged orders not being entertained by the Supreme Court without a notice even being

issued, it appears that considering the factual matrix involved, the Supreme Court did not think it necessary to deal with the question of law raised by the Petitioner.

22. Once the Supreme Court has ruled, it would be inappropriate of this Court to reconsider the question of whether the amount decreed in the Subject Order had been validly decreed. The officials of the Decree Department have submitted that they would abide by whatever orders are passed based on this reference. In my opinion, this Court would have no authority to interfere with the Subject Order at this stage of the matter, particularly after the Appeal against the Subject Order was withdrawn and indeed after the Supreme Court did not even issue notice on the Special Leave Petition and simply disposed of the Petition.

23. The Decree Department may issue a decree in terms of the Subject Order to enable enforcement. It is clarified that nothing contained in this decision shall affect the execution court, which would consider all issues in accordance with law.

24. I am refraining from making any further comment about what a Court may do when a litigant is found to have come to a Court with unclean hands or is alleged to have indulged in fabrication. I am unable to accept the contention that without a reasoned order the Supreme

Court should be deemed to have allowed not just the Special Leave Petition but even the Appeal that would have come into being upon leave being granted by allowing the Special Leave Petition – all of which is without even issuing notice to the Petitioner.

25. The reference by the Decree Department is disposed of accordingly. All other Interim Applications that may be pending may be pursued by the Respondents before the bench having roster in the matter.

26. 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.]