



2025:DHC:867



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

% **Date of Decision: 10th February 2025**

+ CM(M) 258/2025

M/S. JANKI MANAGEMENT CONSULTANTS PVT. LTD.

.....Petitioner

Through: Mr. Aakarsh Mishra &
Mr. Arkaj Kumar, Advs.

versus

M/S. SAMSUNG INDIA ELECTRONICS PVT. LTD.

.....Respondent

Through: Mr. Deepak Sabharwal,
Mr. Anurya Sabharwal,
Ms. Isha Dabas & Mr.
Krish Bhatia, Advs

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

J U D G M E N T (O R A L)

RAVINDER DUDEJA, J.

1. The petition under Article 227 of the Constitution of India seeks to set aside the order dated 17.12.2024, passed by the Arbitral Tribunal, whereby, the right of the petitioner to file the Statement of Defence has been closed.
2. Factual background of the case is that petitioner and respondent entered into two overlapping agreements on 16.08.2017.
3. Respondent issued two termination letters dated 27.11.2018, in terms of clauses of the agreements.



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3. Later on, on 18.03.2021, respondent issued notice invoking arbitration clause under the Authorized Service Centre Agreement dated 16.08.2017, claiming Rs. 12,16,769/- as outstanding.
4. On 04.11.2022, respondent filed Section 11 petition before this Court, seeking appointment of Arbitrator and for referring the disputes to Arbitral Tribunal. This Court vide order dated 24.03.2023, directed the parties to approach Delhi High Court Mediation Centre for amicable settlement, if possible, and in case of failure of mediation, the parties were at liberty to proceed before the Delhi International Arbitration Centre [“DIAC”] for conducting arbitration proceedings.
5. The mediation failed on 29.03.2023. Respondent approached DIAC in terms of High Court directions.
6. Learned counsel for the petitioner submits that petitioner came to know about the arbitration proceedings from an employee of the respondent, upon which, petitioner approached DIAC and came to know about the passing of ex-parte order by the Arbitral Tribunal vide order dated 01.05.2024.
7. Petitioner filed an application for recall of order dated 01.05.2024. Such application was allowed vide order dated 30.09.2024 subject to payment of Rs. 10,000/- and petitioner was granted an opportunity to file its Statement of Defence within a period of three weeks.
8. Admittedly, Statement of Defence was not filed within the stipulated period, and therefore, the learned Arbitrator vide order



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dated 17.12.2024, closed the right of the petitioner to file Statement of Defence and admission-denial of documents.

9. Learned counsel for the petitioner submits that Statement of Defence could not be filed due to illness/medical condition of the Director of the petitioner.

10. It is submitted that the valuable right of the petitioner to erect a defence has been foreclosed by the Arbitral Tribunal, thus, causing grave prejudice to the petitioner.

11. Learned counsel for the respondent, at the very outset, takes strong objection to the maintainability of the petition under Article 227 of the Constitution and in this regard, strongly places reliance on the judgment passed by the Single Bench of this Court in the case of **Kelvin Air Conditioning & Ventilation System Private Limited Vs. Triumph Reality Private Limited CM (M) 3592/2024, 2024 DHC 4914.**

12. *Per contra*, learned counsel for the petitioner submits that the challenge to order passed by the Arbitral Tribunal is maintainable under Section 227 of the Constitution and in this regard, the learned counsel places reliance on a recent decision of the Supreme Court in the case **Serosoft Solutions Pvt. Ltd. Vs. Dexter Capital Advisors Pvt. Ltd., 2025 SCC OnLine SC 22.**

13. It is a well settled law that the High Court can exercise power under Article 227 against the orders passed by the Arbitral Tribunal but it is equally well settled that judicial interference in such cases has



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to be minimal and recourse to Article 227 has to be only under exceptional circumstances when it is shown that such order is absolutely perverse.

14. In the case of **IDFC First Bank Limited Vs. Hitachi MGRM Net Limited**, MANU/DE/4418/2023, the Coordinate Bench of this Court has enumerated the circumstances wherein a petition under Article 227 can be entertained. The relevant para of the 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.”

15. In the case of **Surender Kumar Singhal Vs. Arun Kumar Bhalotia**, MANU/DE/0561/2021, after considering the previous decisions, the Supreme Court crystallized the circumstances in which petitions under Article 227 are to be entertained. The relevant para of the 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.



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- (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."

16. The Single Bench of this Court in **Kelvin Air Conditioning & Ventilation System Private Limited** (*supra*), held as under:-

"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 v. Young Friends and Co., 2022 SCC OnLine SC 283.

12. This Court in order dated 03.10.2024 passed in CM(M) 3265/2024 titled as Agarwal Associates (Promoters) Limited v. Sharda Developers has also observed that the remedy available under Article 227 of the Constitution of India does not stand knocked off by the non-obstante clause of Section 5 of Arbitration & Conciliation Act, 1996 which provides that no judicial authority shall intervene except where so provided and, therefore, though the petition would be maintainable but fact remains that the scope of interference is extremely squeezed."

17. A perusal of the order dated 30.09.2024 reveals that while setting aside the ex-parte order, the Court had granted three weeks time to the petitioner to file its Statement of Defence. However, the



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petitioner did not file the Statement of Defence within the time-frame. The learned Arbitrator has observed in the impugned order dated 17.12.2024 that respondent did not file the Statement of Defence even till 17.12.2024, even though, sufficient time of two and a half months had elapsed nor filed any application or document to show any such medical urgency/condition of the respondent.

18. A perusal of the aforesaid order clearly reveals that the same does not suffer from any perversity, and therefore, this Court does not find any reason to interfere with the impugned order. In exercise of power under Article 227, this Court does not sit in appeal over the orders of the Arbitral Tribunal and therefore even if the Court was to take a contrary view, impugned order cannot be set aside while exercising supervisory power under Article 227 of the Constitution , and in particular, in the context of arbitral proceedings where the interference has to be bare minimal.

19. In the considered view of the Court, it is not a fit case for judicial intervention in the exercise of discretion by the learned Arbitral Tribunal.

20. Hence, there is no merit in the present petition. The same is accordingly dismissed.

RAVINDER DUDEJA, J.

February 10, 2025

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