



2025:DHC:1602-DB



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **FAO(OS) (COMM) 33/2025****BELVEDERE RESOURCES DMCC**Appellant

Through: Mr. Gauhar Mirza, Ms. Hiral Gupta, Ms. Amita Katragadda, Advs.

versus

OCL IRON AND STEEL LTD. & ORS.Respondents

Through: Mr. Krishna Raj Thaker, Sr. Adv. with Mr. Anand Sukumar, Mr. S Sukumaran, Mr. Bhupesh Pathak and Mrs. Ruche Anand, Advs.

CORAM:**HON'BLE MR. JUSTICE C. HARI SHANKAR****HON'BLE MR. JUSTICE AJAY DIGPAUL****ORDER (ORAL)**

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10.03.2025**C. HARI SHANKAR, J.**

1. The appellant Belvedere Resources DMCC and S M Niryat Private Limited, purportedly the predecessor of the respondent, entered into a Standard Coal Trading Agreement¹, whereunder the appellant agreed to sell coal to the respondent in bulk. Clause (q) of the SCOTA reads thus:

“Governing Law & Arbitration-

English law to apply

Arbitration as per SIAC and venue to be Singapore”

¹ “SCOTA” hereinafter



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2. It is not in dispute that, apart from Clause (q), there is no clause in the SCOTA identifying any venue or place or seat of arbitration or conferring exclusive jurisdiction, in respect of matters concerning the SCOTA, on any particular court.
3. The SCOTA was terminated in November 2022, whereafter the appellant instituted OMP (I) (Comm) 397/2024, seeking urgent pre-arbitral interim reliefs under Section 9 of the Arbitration & Conciliation Act, 1996².
4. On 19 December 2024 and 3 February 2025, the following orders were passed in the OMP:

Order dated 19 December 2024

“1. At the outset, respective counsel submit that the parties have been unable to mutually agree on the appointment of a Sole Arbitrator to adjudicate the disputes between the parties.

2. Respective counsel for the parties are in agreement that in the circumstances, an Arbitral Tribunal is to be constituted by the Singapore International Arbitration Centre (SIAC). They further submit, on instructions, that the parties are not averse to an Arbitral Tribunal being expeditiously constituted, subject to the respective rights and contentions of the parties being reserved.

3. Respective counsel for the parties submit that they shall follow up with SIAC, to ensure that the Arbitral Tribunal is constituted expeditiously.

4. Learned counsel for the petitioner submits that there is a genuine apprehension that the subject matter of the arbitration may be dissipated and hence urgent interim measures of protection are warranted. He strenuously urges that the respondent be directed to

² “the 1996 Act” hereinafter



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furnish monetary security to the extent of the claims of the petitioner in the arbitration.

5. Let the respondents file a reply within a period of three weeks from today. Let the respondents also file an affidavit of their assets, both moveable and immovable [and also specifically indicating encumbrances, if any] in the format contemplated under Order XXI Rule 41(2) read with Form 16A as set out in Appendix E, Code of Civil Procedure, 1908. Needless to say, the same shall be without prejudice to the objections of the learned counsel for the respondent as regards the maintainability of the present petition, and as regards jurisdiction of this Court to entertain the present petition.

6. List on 29.01.2025.”

5. Following this, on 3 February 2025, the learned Single Judge passed the following order in OMP (I)(Comm) 397/2024:

Order dated 3 February 2025

“1. It is informed by learned counsels for the parties that during the course of present proceedings, the Singapore International Arbitration Centre (‘SIAC’) has appointed Ms. Corina Song as the Sole Arbitrator to adjudicate upon the subject dispute between the parties, vide its letter dated 27.01.2025.

2. Considering that the learned Arbitrator stands already appointed in the matter, the present petition, alongwith pending applications, is disposed of with liberty to the petitioner to approach the learned Arbitrator to seek urgent measures/relief(s).

3. Needless to state that this Court has not expressed any opinion on the merits of the case and all contentions, including that of jurisdiction, shall remain open to be urged before the learned Arbitrator.”

6. The present appeal has been filed by the petitioner in the OMP, challenging the afore-extracted order dated 3 February 2025 passed by the learned Single Judge.



7. On the last date of hearing, it was contended before us by Mr. Gauhar Mirza, learned Counsel for the appellant, that the learned Single Judge had effectively invoked Section 17³ of the 1996 Act, which would not apply, as the arbitration was in the nature of international arbitration, to which Section 17 did not apply by virtue of Section 2(2)⁴ of the 1996 Act.

8. Mr. Thaker, learned Senior Counsel who appears for the respondent today, does not join issue with Mr. Gauhar Mirza regarding inapplicability of Section 17 of the 1996 Act. He, however, submits that the relegation, by the learned Single Judge, of the parties

³ 17. **Interim measures ordered by arbitral tribunal.—**

- (1) A party may, during the arbitral proceedings [* * *], apply to the arbitral tribunal—
- (i) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or
 - (ii) for an interim measure of protection in respect of any of the following matters, namely—
 - (a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;
 - (b) securing the amount in dispute in the arbitration;
 - (c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken, or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;
 - (d) interim injunction or the appointment of a receiver;
 - (e) such other interim measure of protection as may appear to the arbitral tribunal to be just and convenient,
- and the arbitral tribunal shall have the same power for making orders, as the court has for the purpose of, and in relation to, any proceedings before it.
- (2) Subject to any orders passed in an appeal under Section 37, any order issued by the arbitral tribunal under this section shall be deemed to be an order of the Court for all purposes and shall be enforceable under the Code of Civil Procedure, 1908 (5 of 1908), in the same manner as if it were an order of the Court.]

⁴ 2(2) **Scope.**—This Part shall apply where the place of arbitration is in India.

[Provided that subject to an agreement to the contrary, the provisions of Sections 9, 27 and [clause (b)] of sub-section (1) and sub-section (3) of Section 37 shall also apply to international commercial arbitration, even if the place of arbitration is outside India, and an arbitral award made or to be made in such place is enforceable and recognised under the provisions of Part II of this Act.]



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to the alternate remedy before the learned arbitrator, was not relatable to Section 17, but was because there is a provision for interim relief available in the rules of the SIAC.

9. We are unable to express any opinion on this aspect one way or the other, as the order dated 3 February 2025 does not expressly set out the reason for relegating the parties to the Arbitral Tribunal on the aspect of interim relief. Nor does the order purport to be an order passed on consent.

10. In that view of the matter, we deem it appropriate to remit OMP (I) (Comm) 397/2024 to the learned Single Judge, for consideration afresh. It would be open to the parties to urge all contentions before the learned Single Judge, including the aspect of territorial jurisdiction, merits, as well as availability of alternate remedy.

11. Learned Counsel for the parties are agreeable to the order that has been passed today.

12. Accordingly, FAO(OS) (COMM) 33/2025 stands disposed of in the aforesaid terms.

13. We have not expressed any opinion on any aspect of the matter including the aspect of availability of alternate remedy, territorial jurisdiction and merits.



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14. In order to expedite the matters, both sides are directed to appear before the learned Single Judge on 24 March 2025.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

MARCH 10, 2025

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Click here to check corrigendum, if any