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

\+ FAO(OS) (COMM) 20/2025, CM APPLs. 6446/2025, 6447/2025, 6448/2025 & 6449/2025

ANOOP SHARMA .....Appellant

Through: Mr. Upamanyu Sharma, Adv. and Mr. Rajesh Gupta, Adv.

versus

PUKHRAJ SINGH CHUG AND ORS. .....Respondents

Through: Mr. Abhinav Vasisht, Sr. Adv. with Mr. Prashant Pakhiddey, Mr. Manav Gill and Mr. Shivang Gupta, Advs. for R-1 to R-6

Mr. Santosh Kumar and Mr. Kartik Gupta, Advs. for R-7, R-11, R-13, R-15, R-17, R-20-23, R-28-41

Mr. Ashish Mohan, Sr. Adv. with Mr. Abhinav Sharma and Mr. Shreesh Pathak, Advs. for R-12, R-14, R-16, R-18 & R-19, R-24

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR
HON'BLE MR. JUSTICE AJAY DIGPAUL

JUDGMENT (ORAL)

% **03.02.2025**

C. HARI SHANKAR, J.

1. This appeal assails judgment dated 23 August 2024, passed by a learned Single Judge of this Court in OMP (I) (COMM) 273/2024 and order dated 13 November 2024, whereby an application filed by the appellant under Section 9 of the Arbitration and Conciliation Act,

1996[1], has been disallowed by a learned Single Judge of this Court.

2. We agree that the learned Single Judge has erred in passing the impugned order, but only on the side of leniency. The learned Single Judge has visited the appellant with costs of ₹ 50,000/-. In our view, the costs are required to be enhanced.

3. Towards this end, we put it to Mr. Upamanyu Sharma, learned Counsel appearing for the appellant that, given the nature of the present appeal, if we were not in agreement with his submissions, it might invite enhancement of costs. He submits that his instructions are to press the appeal.

4. We have therefore heard Mr. Upamanyu Sharma at great length. We have also heard Mr. Abhinav Vasisht, learned Senior Counsel appearing for Respondent 1 to 6, Mr. Ashish Mohan, learned Senior Counsel and Mr. Santosh Kumar, learned Counsel for other respondents.

5. Mid-dictation, Mr. Sharma, submits that he now has telephonic instructions to withdraw the present appeal. We, however, are not willing to permit this as, in our view, an example needs to be set in a case such as this. Apart from the fact that OMP (I) (COMM) 273/2024 was clearly not even maintainable as filed, the appellant has, in the present appeal, levelled veiled allegations even against the learned Single Judge, castigating his findings, *inter alia*, thus:

[1] "the 1996 Act" hereinafter

> "Instead, without recording the complete facts and circumstances, *unnecessary, unwarranted baseless, and frivolous observations/remarks have been made by the Ld. Single Judge* in the Impugned Order which have no basis in fact or law."
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> "Therefore, the complete facts and circumstances have clearly been omitted by the Ld. Single Judge in the Impugned Order while at the same time the Ld. Single Judge *has arbitrarily recorded selective portions of the Procedural Order dated 18.10.2023 which is inter alia, illegal, and erroneous*."
>
> (Emphasis supplied)

Though the tenor of the appeal, particularly of the grounds urged therein, is *per se* objectionable, a reference to the above observations, we feel, suffice, for the nonce.

6. It is not necessary for us to delve deep into the facts of the case, in view of the limited nature of the controversy. Suffice it to state that, emanating from a shareholders agreement dated 1 April 2000, arbitral proceedings commenced between the appellant and the respondents. Disputes arose, in connection with which the appellant approached this Court under Section 9 of the 1996 Act, by way of OMP (I) (COMM) 165/2021. The said petition was disposed of, by the learned Single Judge of this Court *vide* order dated 2 June 2021, referring the dispute to mediation and directing the respondents to pay ₹40,00,000/- to the appellant in four tranches. The said amount admittedly stands paid.

7. As mediation did not fructify, the disputes was referred to arbitration, before a learned three Member Arbitral Tribunal[2].

[2] "the Arbitral Tribunal", hereinafter

8. Before the Arbitral Tribunal, the appellant filed an application under Section 17 of the 1996 Act seeking certain interim reliefs pending conclusion of the arbitral proceedings. Arguments on the said application were reserved by the Arbitral Tribunal on 10 August 2023.

9. It appears that, on the date when the orders were reserved by the Arbitral Tribunal on the Section 17 application of the appellant, an application by some of the respondents under Section 16 of the 1996 Act was already pending. By order dated 22 September 2023, the Arbitral Tribunal deferred orders on both the applications awaiting the judgment of the Supreme Court in ***Cox and Kings Ltd. v SAP India Pvt. Ltd.***[3] which was, at that time, reserved.

10. The order dated 22 September 2023 was never assailed by any of the parties, including the appellant.

11. Instead, the appellant chose to address an email to the respondents along with copies marked to the learned members of the Arbitral Tribunal, on 13 October 2023, of which we deem it appropriate to reproduce the following paragraphs:

> "1. *Mr. Sharma/the Claimant is shocked and dismayed* that vide Procedural Order dated 22.09.2023 (made available only on the evening of 25.09.2023) the Hon'ble Arbitral Tribunal, has decided that the pronouncement of orders - in the Application filed by the Claimant, more than a year ago (i.e. on 31.08.2022), under Section 17 of the Arbitration & Conciliation Act, 1996 ("Section 17 Application"), which Application has been heard by the Hon'ble Arbitral Tribunal in detail, over a long period of time and

[3] **(2025) 1 SCC 611**

for more than 10 hearings by this Hon'ble Arbitral Tribunal, and for which the arguments were concluded and judgement was reserved on 10.08.2023 and thereafter even the written submissions have also been submitted - shall be pended till after the pronouncement of orders by the Hon'ble Supreme Court of India in Arbitration Petition ***Cox & Kings Ltd. v SAP India Pvt. Ltd. & Anr*** *supra* ("Cox & Kings"), and, not only that, it has been further decided by the Hon'ble Arbitral Tribunal that the pronouncement of orders in the aforesaid Section 17 Application shall also await disposal of Section 16 Revival Applications, when it was consented by the respective Respondents, way back on 13.03.2023, to defer their Section 16 Applications till the stage of final arguments after evidence is concluded.

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17. Further it is also pertinent to mention that the procedural order erroneously records the hearing to be in Hybrid mode whereas the hearing was conducted only by Video Conferencing Mode.

18. *From the aforesaid conduct of the Hon'ble Arbitral Tribunal* it is sufficiently evident that this Hon'ble Tribunal will not be able to pronounce the final award by 15.04.2024, i.e., one year from the completion of pleadings, as it is clearly established, on the face of it, with respect to the undue and inordinate delay in adjudicating the Section 17 application, and, also from the fact that the trial was notified to be started only after 4 months of framing the issues, and even thereafter 3 out of the 4 block dates (i.e., August 7'th 2023, August 9'th 2023 and August 10'th 2023) that were earlier notified for the trial were instead consumed for concluding the Section 17 Application which was filed way back on 31.08.2022, and furthermore as per the last Procedural Order dated 22.09.2023 no order is being passed on the Section 17 Application even after 13 months and more than 10 hearings, it is clear that *the Hon'ble Arbitral Tribunal has already caused an undue, inordinate, uncertain and baseless delay in the present arbitral proceedings*.

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20. That the pending of the pronouncement of Orders in Section 17 Application *is also indicative of the overall inordinate delay in the proceedings being caused by this Hon'ble Tribunal* since if the Judgment in Cox & Kings is not pronounced till April 2024, this Hon'ble Tribunal will also delay the pronouncement of the Final Award in a similar manner as has been done vide Procedural Order dated 22.09.2023. Therefore, this Hon'ble Tribunal has already, in effect, indicated vide the Procedural Order dated 22.09.2023 that the conclusion of the proceedings will be pegged in relation to an event which may even take 2 years, which

in itself shows that the Hon'ble Arbitral Tribunal already have caused an undue delay and will continue to fail to act without undue delay.

21. *It is deeply disheartening and disturbing to the Claimant that the Hon'ble Arbitral Tribunal has decided to take such a course as mentioned above,* without considering the Claimant's pleas in relation to delay and relative circumstances of the parties over the past nearly 3 years, wherein the Claimant has not been released any money [except aforementioned Rs. 40 Lacs vide order dated 02.06.2021 passed by the Hon'ble Delhi High Court in O.M.P. (I) COMM. 165 of 2021] and the Chugs have released to themselves huge, unprecedented sums running into many crores, and *the said action by the Hon'ble Arbitral Tribunal has made the Claimant loose his faith in the Hon'ble Arbitral Tribunal to conduct the proceedings in a timely manner. The above inordinate, unjust and baseless delay* being caused is, in effect, *only to the benefit of the Chugs and the Companies* and is highly prejudicial to the Claimant. Moreover, *such a course being adopted after more than 13 months and 10 hearings on the Section 17 Application & after more than one and a half months of the order in the Section 17 Application being reserved, and that too on the basis of defective and untenable applications filed by the Companies is also a matter of grave concern to the Claimant.*

22. *It is submitted that the Claimant had reposed faith in the Hon'ble Arbitral Tribunal to do timely justice and to carry out their duty with a sense of responsibility and fairness, and expeditiously within timeframes stipulated in the A&C Act, however, the Hon'ble Arbitral Tribunal has due to undue and inordinate delay, in effect, allowed the Chugs and the Group Companies to make a mockery of the instant proceedings* and cause serious prejudice to the Claimant in a matter where the admitted facts and circumstances of - the Respondents paying the Claimant more than Rs. 20 crores over the course of the past 2 decades; making the Claimant a director and 7% shareholder (directly/indirectly) in the major/dominant Group Companies; Companies parroting the line of the Chugs and admittedly being closely held by the Chugs; & the Chugs blatantly draining the Group Companies by drawing out, in recent times, more than Rs. 50 crores from the Group Companies etc., are, in effect, being completely ignored by this Hon'ble Tribunal while passing the order dated 22.09.2023.

23. In the instant case, the Tribunal was duty bound to decide the Section 17 Application expeditiously and also to conduct the proceedings without undue delay, however, the Tribunal has done neither and has, in effect, on the contrary refused to decide the

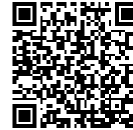
Section 17 Application by pegging it to an uncertain event and in doing so, as per the Procedural Order dated 22.09.2023, appears to have set a precedent for even further delay of the Arbitral Proceedings and the pronouncement of the Final Award.

24. *In the light of the aforesaid conduct of the Hon'ble Arbitral Tribunal, the Claimant states that the abovesaid circumstances clearly show that this Hon'ble Tribunal is taking actions which are causing an inordinate, unjust, undue and baseless delay which is, in effect, only benefitting the Chugs and the Group Companies*. It is pertinent to submit that as on date of the procedural order dated 22.09.2023 there was neither any stay nor was there any statutory embargo operating over the Hon'ble Arbitral Tribunal's ability in deciding the Section 17 Application which has been heard in extenso by the Hon'ble Arbitral Tribunal. Therefore, *due to the aforesaid actions the Hon'ble Arbitral Tribunal has, in effect, become de facto & de jure unable to perform its functions.*

25. That after having heard the Section 17 Application on numerous occasions and being kept pending for more than a year now, *there is no way that the Hon'ble Arbitral Tribunal enthuses any confidence in Claimant*, in being able to adjudicate in a timely manner the instant Arbitral proceedings – be it the Section 17 Application or the main award. It is also amply clear that the Hon'ble Arbitral Tribunal would not be able to pass the final award within a year from the completion of pleadings in this instant matter.

26. Therefore, considering all of the above, the Claimant most earnestly proposes to the Respondent Nos. 1-43, in the interest of timely justice, to consider and consent to the Claimant's request to terminate the mandate of the Hon'ble Arbitral Tribunal, as the proceedings are not being conducted in a timely manner and will not be concluded as per the Act.

27. Further, and in the event of and consequent to the consent of the aforesaid Respondents to Claimant's aforesaid requested termination of mandate of the Hon'ble Arbitral Tribunal, the Claimant also most earnestly proposes to the aforesaid Respondents to consent to continue ahead with this arbitral matter and to jointly endeavor with the Claimant to expeditiously conclude the current arbitral proceedings at the Delhi International Arbitration Centre ("DIAC") before a Sole Arbitrator appointed by the DIAC and that the Arbitration fee for the same should be fixed as per the Fourth Schedule of the Arbitration & Conciliation Act, 1996 with a mandate to the said Sole Arbitrator to pronounce the Final Award within 6 months from the first date of hearing before him/her. The said course will also be significantly more cost



effective for all concerned and would be under the aegis of a reputed Arbitration Centre.

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29. The Claimant also most earnestly requests the Respondents to kindly reply to this email communication, and, in particular to the proposals made above by the Claimant at para 26 and 27 of the instant email communication at the earliest possible, but not later than 7 days from the date of this email (i.e., not later than 20.10.2023), failing which the Claimant reserves his right to seek appropriate remedies in accordance with law.

30. Kindly note that while instant email communication is addressed to the Respondent Nos.1-43, for the sake of good order, the Hon'ble Tribunal members are also being copied on to the instant email communication."

(Emphasis supplied)

12. Mr. Sharma earnestly sought to contend that, in the aforesaid e-mail, no aspersions were cast against the Arbitral Tribunal and that the e-mail was in sync with Sections 14[4] and 15[5] of the 1996 Act. According to him, the e-mail was only intended to seek the consent of the respondents for terminating the mandate of the existing Arbitral

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[4] **14. Failure or impossibility to act**.—

(1) [The mandate of an arbitrator shall terminate and he shall be substituted by another arbitrator, if]—

(*a*) he becomes *de jure* or *de facto* unable to perform his functions or for other reasons fails to act without undue delay; and

(*b*) he withdraws from his office or the parties agree to the termination of his mandate.

(2) If a controversy remains concerning any of the grounds referred to in clause (*a*) of sub-section (1), a party may, unless otherwise agreed by the parties, apply to the Court to decide on the termination of the mandate.

(3) If, under this section or sub-section (3) of Section 13, an arbitrator withdraws from his office or a party agrees to the termination of the mandate of an arbitrator, it shall not imply acceptance of the validity of any ground referred to in this section or sub-section (3) of Section 12.

[5] **15. Termination of mandate and substitution of arbitrator**.—

(1) In addition to the circumstances referred to in Section 13 or Section 14, the mandate of an arbitrator shall terminate—

(*a*) where he withdraws from office for any reason; or

(*b*) by or pursuant to agreement of the parties.

(2) Where the mandate of an arbitrator terminates, a substitute arbitrator shall be appointed according to the rules that were applicable to the appointment of the arbitrator being replaced.

(3) Unless otherwise agreed by the parties, where an arbitrator is replaced under sub-section (2), any hearings previously held may be repeated at the discretion of the arbitral tribunal.

(4) Unless otherwise agreed by the parties, an order or ruling of the arbitral tribunal made prior to the replacement of an arbitrator under this section shall not be invalid solely because there has been a change in the composition of the arbitral tribunal.

Tribunal so that a new Arbitral Tribunal could be re-constituted.

13. The submission, on its face, is unacceptable. The italicised portions of the email, as in the extracts reproduce hereinabove, make it clear that the contents of the e-mail were frankly objectionable. The appellant, in undisguised terms, expressed their misgivings against the Arbitral Tribunal and as well as their lack of faith in the Arbitral Tribunal. Overt insinuations to the effect that the Arbitral Tribual was acting as it did only to favour the respondents have also been made. Though, Mr. Sharma has sought to submit that the lack of faith was only with respect to whether the Arbitral Tribunal would be able to conclude the arbitral proceedings in a timely manner, that, we are afraid, is not the tenor of the aforesaid e-mail.

14. Consequent on the aforesaid e-mail, all the learned members of the Arbitral Tribunal, by order dated 18 October 2023, predictably, recused from continuing with the arbitral proceedings. The said order merits reproduction thus:

> "An email dated 13th October 2023 has been received from Mr. Upmanyu Sharma Ld. Counsel for the Claimant in which the Ld. Counsel has acting for and on behalf of his client proposed termination of the mandate of the Arbitral Tribunal and appointment of a Sole Arbitrator to adjudicate upon the disputes between the parties. Termination of the mandate of the Tribunal is proposed in the light of what according to the Claimant is the inability of the Tribunal to expeditiously conclude the proceedings and its failure to pass orders in the application under section 17 moved by him. These assertions have been denied by counsel for Respondents in their emails dated 14th October 2023 describing the same as motivated, false and frivolous. We do not consider it necessary to go into the correctness of the assertions made in the mail sent on behalf of the claimant. All that we need mention is that the matter has been taken up on several dates for hearing each one of which dates was fixed in consultation with learned counsel

> for the parties and as per their convenience. We also need to mention that there are as many as 43 respondents represented by several lawyers engaged by them. The matter was argued over several dates of hearing not only in the application under section 16 moved by the respondents but even in the application under section 17 moved by the claimant. The question whether the doctrine of Group of Companies applies to Arbitrations under the Indian law and if so subject to what conditions and to what effect currently pending consideration of a larger bench of the supreme court in which the pronouncement of the order is awaited, also arose directly for consideration before us. Suffice it to say that there has been no let up on the part of the Tribunal in disposing of the matter much less any deliberate or contumacious delay. Having said that we cannot help observing that the Claimant has in no uncertain terms expressed his lack of confidence in the Tribunals ability to deal with the present matter in a fair and reasonably expeditious manner. A Sole Arbitrator according to the claimant be more suited to decide the matter and do so in good time.
>
> Having reflected on the matter and considering the fact that the very essence of these proceedings is the confidence of the parties in the fairness, ability and the credibility of the arbitral tribunal, which confidence the claimant appears to have lost, we deem it proper to withdraw from these proceedings. We do not wish to stand between the Claimant and his intention or choice of having a Sole Arbitrator to adjudicate upon the disputes between the parties. We would be happy to facilitate the same by recusing ourselves leaving it open to the parties to either seek substitute appointments or to have a Sole Arbitrator appointed for resolving the conflict.
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> In the light of what is stated by us above we request the parties and their Ld. Counsel to have the record of the proceedings filed before the members of the Arbitral Tribunal collected from their home offices on any working day between 11 to 8 PM."

15. Section 14(1)(a) of the 1996 Act envisages, in a circumstance in which an Arbitrator is acting with undue delay, termination of the mandate of the Arbitrator as having become *de facto* or *de jure* unable to perform his functions. Section 14(1)(b) also envisages termination of the mandate of the Arbitral Tribunal where the Arbitral Tribunal withdraws from the arbitral proceedings.

16. Thus, it is clear that, if the petitioner was of the opinion that the Arbitral Tribunal was not proceeding with due expedition, the relief with the petitioner would have been to move an application under Section 14(1)(a) and not to address an objectionable e-mail to the Arbitral Tribunal.

17. Equally, once the Arbitral Tribunal had, following the said e-mail, gracefully withdrawn from the arbitral proceedings, the petitioner ought to have either addressed a notice to the respondents under Section 21[6] of the 1996 Act for re-initiation of arbitral proceedings and/or moved this Court under Sections 14(1) read with 15(1) and 15(2) of the 1996 Act for appointing a substitute Arbitrator.

18. For reasons apparently recondite, the appellant did not choose to pursue either of the aforesaid remedies. Nor did the appellant choose to address any notice under Section 21 of the 1996 Act to the respondents for re-initiation of arbitral proceedings.

19. Instead, almost ten months later, the Arbitral Tribunal had recused from the proceedings, the appellant moved a fresh petition under Section 9 of the 1996 Act before this Court.

20. It is from the order dated 23 August 2024, by which the learned Single Judge has disposed of the aforesaid OMP(I)(COMM) 273/2024

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[6] **21. Commencement of arbitral proceedings**.—
Unless otherwise agreed by the parties, the arbitral proceedings in respect of a particular dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent.

that the petitioner in the said petition has preferred the present appeal before us.

21. A reading of the impugned order reveals that the learned Single Judge specifically put a query to the appellant regarding as to whether the appellant was interested in fresh arbitral proceedings. In this regard, para 14 of the impugned judgment of the learned Single Judge records thus:

> "14. In fact, upon the specific query of the Court, Mr. Sharma states that *he has no instructions to seek constitution of an arbitral tribunal or even to consent to constitution of a new arbitral tribunal in these proceedings*. It thus appears that the petitioner's objective is not to secure interim measures of protection, in aid of arbitral -proceedings, but to treat Section 9 as a parallel proceeding in which interim relief will be decided, leaving it open to the petitioner to decide if and when he will actually seek constitution of an arbitral tribunal. This approach does not commend to me."
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> (Emphasis supplied)

22. In juxtaposition with para 14, it is also relevant to reproduce paras 7 to 10 of the impugned judgment, thus:

> "7. The petitioner was dissatisfied with this order. However, no legal proceedings were taken against any of the orders of the Tribunal. Indeed, even after the order dated 22.09.2022, the petitioner did not challenge the order, but instead addressed an email dated 13.01.2023, through its counsel, to the respondents, also copied to the members of the Tribunal. The detailed contents of the said communication need not be adverted to here; suffice it to say that the petitioner, through his counsel, cast aspersions upon the manner in which the Tribunal had conducted the proceedings, suggesting that the Tribunal had *"already caused an undue, inordinate, uncertain and baseless delay in the present arbitral proceedings"*, and made it clear, in no uncertain terms, that the petitioner had lost faith in the Tribunal. It was also stated that the effect of the decisions of the Tribunal was to benefit the respondents, and that the Tribunal had become de facto and de Jure unable to perform its functions. It was, therefore, proposed that the parties consent to terminate the mandate of the Tribunal, and to

> conclude the arbitral proceedings before a sole arbitrator to be appointed by the Delhi International Arbitration Center.
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> 8. The respondent, through their counsel, rejected the proposal, but the Tribunal, which was also copied on the email dated 13.10.2022, recused from the proceedings by an order dated 18.10.2023. The order of the Tribunal notes that the proceedings have been extended due to the large number of parties, and the complex issues raised with regard to impleadment of non-parties to the Agreement. However, in view of the express loss of confidence of the petitioner, the Tribunal considered it appropriate to recuse from the matter, "leaving it open to the parties to either seek substitute appointments or to have a Sole Arbitrator appointed for resolving the conflict".”
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> 9. I am informed that some part of the arbitral fees, which had been paid to the members of the Tribunal, in advance, has also been returned to the petitioner.
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> 10. No proposal for appointment of a substitute arbitrator has been made by the petitioner to the respondents, despite a passage of approximately ten months since the aforesaid order dated 18.10.2022. The petitioner has also not approached the Court under Section 15 of the Act, for termination of the mandate of the Tribunal and constitution of a new arbitral tribunal. Instead, almost ten months after the aforesaid order, the petitioner has filed this petition under Section 9 of the Act.”

23. Thus, before the learned Single Judge, *the appellant made a categorical statement that it was not interested in constitution of an Arbitral Tribunal and was not willing to consent to constitute a new Arbitral Tribunal in the Section 9 proceedings*.

24. On this being put to him, Mr. Sharma submits that the statement was not incorrect, as a new Arbitral Tribunal could not have been constituted in the Section 9 proceedings.

25. This, in our view, reflects an incorrect understanding of the law. A Section 9 Court is well within its jurisdiction, in an appropriate

case, to constitute an Arbitral Tribunal and, thereafter, to take a decision as to whether to continue with the Section 9 proceedings or to refer the proceedings to the Arbitral Tribunal to be decided under Section 17.

26. We, therefore, are in complete agreement with the learned Single Judge that the appellant was merely taking a chance at obtaining an interim measure of protection without any intent to recommence arbitral proceedings.

27. The learned Single Judge has, thereafter, proceeded to dismiss the appellant's petition in the following terms:

> "13. In the present case, the petitioner also recognises this position; several of the prayers specifically seek relief *"until the pronouncement of the final award in the subject matter arbitral proceedings"*. However, he suggests that the remedy before the tribunal is unviable. I am of the view that this is a disingenuous plea - there was an arbitral tribunal in place, it has recused because the petitioner expressed loss of confidence, and he has taken no steps thereafter, despite the passage of almost ten months since. To that extent, the inefficacy of the Section 17 remedy is a consequence of his own inaction.
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> 15. It is also inappropriate to grant equitable relief at this stage, when the petitioner's cause of action admittedly arose in the year 2021, when he first applied for interim measures of protection. An interim arrangement was made by this Court and the matter was referred to mediation. Upon constitution of the Tribunal also, an application under Section 17 of the Act was moved. Whatever the petitioner's grievance with the procedural orders passed by the Tribunal, he took no remedies available in law, against any of those orders, and he is not being diligent in having his claims adjudicated in accordance with law.
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> 16. For the aforesaid reasons, the petition is dismissed, with costs of ₹ 50,000/- to be deposited by the petitioner, with the Delhi High Court Legal Services Committee [UCO Bank, Delhi High

Court, Shershah Road, New Delhi, Account No. 15530110008386, IFSC Code UCBA000l553], within one week from today."

28. Mr. Vasisht, learned Senior Counsel for respondents has pointed out that, even in the present appeal, the appellant has resorted to unjustified and frankly objectionable allegations even against the learned Single Judge who passed the impugned order. He has drawn our attention to grounds U and BB in the present appeal which read thus:

> "U. BECAUSE the Ld. Single Judge has erroneously and arbitrarily decided that the detailed contents of the Email dated 13.10.2023 need not be adverted to in the Impugned Order. It is submitted that the said course taken by the Ld. Single Judge is manifestly arbitrary and is also a grave and material error since the detailed contents of the Email dated 13.10.2023 would clearly demonstrate the manner in which the Appellant had taken recourse to oppose/protest/challenge, inter alia, the illegal, unreasonable and arbitrary Order dated 22.09.2023 passed by the erstwhile Arbitral Tribunal. Therefore, the said course, i.e., to erroneously and arbitrarily decide that the detailed contents of the Email dated 13.10.2023 need not be adverted to in the Impugned Order, taken by the Ld. Single Judge itself vitiates the Impugned Order which has been passed without consideration of the complete facts and circumstances as also without recording the complete facts and circumstances which go to the root of the matter. Instead, without recording the complete facts and circumstances, unnecessary, unwarranted baseless, and frivolous observations/remarks have been made by the Ld. Single Judge in the Impugned Order which have no basis in fact or law. It is submitted that on this ground alone, inter alia, the Impugned Order is liable to be set aside.
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> BB. BECAUSE the Ld. Single Judge has committed a grave and material error by omitting to advert to the material and the complete facts and circumstances in relation to the Procedural Order dated 18.10.2023 whereby it has been stated that- "However, in view of the express loss of confidence of the petitioner, the Tribunal considered it appropriate to recuse from the matter, "leaving it open to the parties to either seek substitute appointments or to have a Sole Arbitrator appointed for resolving the conflict"'. In this regard, it is pertinent to mention that it is wrongly recorded in the Impugned Order that the reason for the Tribunal members for withdrawing from their mandate was 'loss of confidence of the

petitioner', when in fact the correct fact position is that in light of the Chugs and Group Companies not being in agreement with the Appellant for termination of mandate by consent, the Appellant was going to initiate termination proceedings against the Tribunal members, in pursuance of his Email dated 13.10.2023. That it is submitted that the erstwhile Tribunal members, had an option to face the Appellant's termination proceedings/ challenge, in accordance with law, however, they chose to withdraw from their mandate; and while in spite of making the aforesaid choice of withdrawing, the Tribunal tried to portray as if the same was due to 'loss of confidence of the petitioner'. Therefore, the complete facts and circumstances have clearly been omitted by the Ld. Single Judge in the Impugned Order while at the same time the Ld. Single Judge has arbitrarily recorded selective portions of the Procedural Order dated 18.10.2023 which is inter alia, illegal, and erroneous. It is submitted that on this ground alone, inter alia, the Impugned Order is liable to be set aside."

29. In the backdrop of these facts, we have heard Mr. Sharma.

30. Mr. Sharma sought to contend that the email dated 13 October 2023 never chose to question the integrity of the Arbitral Tribunal and was only expressing lack of confidence, if at all, owing to the delay in the proceedings.

31. We have already observed that this submission is unacceptable. The email dated 13 October 2023, especially the italicized and underscored portions thereof in the extract reproduced in para 11 *supra*, clearly expressed lack of confidence in the Arbitral Tribunal and, worse, impugns motives to the Arbitral Tribunal in seeking to favour the respondents by delaying the proceedings without taking a decision on the Section 17 petition. To say the least, the email was objectionable in terms.

32. Mr. Sharma further sought to contend that there was no delay in moving the Section 9 petition before the learned Single Judge and that the appellant was only exhausting Section 38 (3)[7] of the 1996 Act.

33. Mr. Sharma further sought to contend that there was not delay in moving the Section 9 petition before the Learned Single Judge and that the appellant was only exhausting Section 38 (3) of the 1996 Act.

34. This submission, too, merely has to be stated to be rejected. Even if there was some clarification that the appellant required with respect to the deposit of fees before the Arbitral Tribunal, that was in no way an impediment from the appellant addressing a Section 21 notice to the respondents and/or moving an appropriate application before the court under Section 14(1) read with Section 15(1) and 15(2) of the 1996 Act.

35. Nonetheless, as delay is the least of the appellant's transgressions, we do not wish to state anything more in this regard.

36. Mr. Sharma also sought to contend, apropos this submission made by him before the learned Single Judge as recorded in para 14 of the impugned judgment, that the instructions conveyed by the appellant to the Counsel, to which the said paragraph alludes, were only not to consent to constitution of a new Arbitral Tribunal in the Section 9 proceedings. We have already rejected this argument as well. Besides, if the appellant had any intent to restart arbitration, it

[7] **38(3):** Upon termination of the arbitral proceedings, the arbitral tribunal shall render an accounting to the parties of the deposits received and shall return any unexpended balance to the party or parties, as the case

ought to have either addressed the Section 21 notice to the respondents or move the Court under Sections 14 and 15 of the 1996 Act. It did neither.

37. Mr. Sharma also sought to place reliance on paras 69 and 70 of the judgment of the Supreme Court in ***Acelor Mittal Nippon Steel India Ltd. v Essar Bulk Terminal Ltd***[8]**.** For ready reference, we reproduce the said paragraphs:

> "69. In this case, there are no materials on record to show that there were any lapses or laches on the part of the respondent, which delayed the constitution of an Arbitral Tribunal. The allegation that the respondent had disabled itself from availing the remedy under Section 17, is unsubstantiated. Moreover, mere delay in agreeing to an arbitrator does not disentitle a party from relief under Section 9 of the Arbitration Act. Section 11 of the Arbitration Act itself provides a remedy in case of delay of any party to the arbitration agreement to appoint an arbitrator.
>
> 70. Mr Khambata rightly submitted that a party invoking Section 9 of the Act must be ready and willing to go to arbitration. The law enunciated in ***Ashok Traders v Gurumukh Das Saluja***[9] is well settled. In this case, both the appellant and the respondent have invoked the jurisdiction of the Commercial Court under Section 9 of the Arbitration Act."

38. The law laid down in the afore-extracted paragraphs, from ***Acelor Mittal***, in our view, has no application to this case. That case, and this, are as alike as chalk and cheese. The Supreme Court, in the aforesaid paragraphs, was dealing with the question of whether, in the event of a Section 11(6) application being decided and an Arbitral Tribunal being constituted, even while a Section 9 petition which was pending before the High Court on the date when, under Section 11(6),

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may be.

[8] **(2022) 1 SCC 712**

[9] **(2004) 3 SCC 155**

the High Court constituted the Arbitral Tribunal, the Court was proscribed from hearing the Section 9 petition. The Supreme Court has clarified that, in such a case, the High Court was not bound to relegate the Section 9 proceedings to the Arbitral Tribunal to be decided as a Section 17 application, but could take a call based on the merits of the case as to whether to decide the Section 9 petition on its own or to relegate it to the Tribunal.

39. We fail to understand the principles enunciated in these paragraphs have any relevance to the case at hand.

40. To our mind, the appellant has acted in a clearly objectionable manner. In fact, the assertions contained in grounds U and BB of the present appeal perilously teeter on the edge of criminal contempt, as they seek to lower the dignity of the Court and go to the extent of alleging that the learned Single Judge made "unnecessary, unwarranted, baseless and frivolous objections/remarks".

41. In the above circumstances, while, needless to say, we find no reason to disturb the ultimate decision of the learned Single Judge in the impugned judgment, we deem it appropriate to enhance the costs awarded.

42. The costs imposed by the learned Single Judge, shall stand therefore enhanced to ₹ 5 lakhs, to be paid by the appellant to the Delhi High Court Legal Services Committee within a period of two weeks from today. Compliance of such payment be also filed before the Registry of this Court thereafter.

43. The appeal stands dismissed in the aforesaid terms in *limine*.

C. HARI SHANKAR, J.

AJAY DIGPAUL, J.

FEBRUARY 3, 2025/*aky*

Click here to check corrigendum, if any