



2025:DHC:1571



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

% Reserved on : 23.01.2025
Pronounced on : 10.03.2025

+ **ARB. A. (COMM.) 67/2024, IA 48911/2024**

BLUEFIRE INFOTAX CONSULTANCY
PVT LTD & ORS.

.....Petitioners

Through: Mr. Praveen Kumar, Mr. Sarthak
Gupta, Mr. Amolak Singh, Ms.
Chahat Gupta and Mr. Nishil
Kaushik, Advocates(M:9999099325)

versus

ANS INFRATECH PVT LTD

.....Respondent

Through: Mr. Sandeep Agarwal, Senior
Advocate with Mr. Sushil Aggarwal,
Mr. Siddhant Jain and Ms. Tanya
Chanda, Advocates.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

1. The present appeal filed under Section 37(2)(b) of the Arbitration & Conciliation Act, 1996 (hereafter, "A&C Act"), read with Section 13 of the Commercial Courts Act, 2015, impugns order dated 14.11.2024 passed by the Arbitral Tribunal (hereafter, "AT") allowing application filed under Section 17 of the A&C Act by the Respondent/Claimant.
2. Appellant No 1 is a Company of which Appellant Nos. 2 and 3 are shareholders, holding 99 % and 1% equity shares therein, respectively.



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3. Apparently, the disputes pertain to a Share Purchase Agreement dated 16.04.2024 (hereafter, 'SPA') executed by the Appellants and Respondent, whereby Appellant Nos. 2 and 3 had agreed to sell their entire (100%) shareholding in the Appellant No.1 Company to the Respondent.

4 Appellant Nos. 2 and 3 terminated the SPA, before the consummation of the sale of shares in favour of the Respondent, which was challenged by the Respondent by invoking arbitration. In the interim, the Respondent moved court, under Section 9 of the A&C Act, seeking interim protection restraining the Appellant Nos. 2 and 3 from selling their shares to any third party pending arbitration.

5. By way of an order dated 24.07.2024, passed in O.M.P. (I) Comm. No.233/2024, the court referred the disputes to the Arbitrator appointed by the court with the consent of the parties, and enabled them to approach the Learned Arbitrator under Section 17, to seek interim protection sought for from the court under Section 9 of the A&C Act.

6. Subsequently, the AT, vide impugned order dated 14.11.2024, restrained the Appellant Nos. 2 and 3 from alienating their shareholding in Appellant No.1, pending conclusion of arbitration.

7. Aggrieved by the AT's order, the present appeal has been preferred.

8. In order to appreciate the circumstances under which the interim order was passed by the AT, it is necessary to examine the nature of transaction that the parties undertook under the SPA.

9. As the facts reveal, Appellant No 1 was in the process of acquisition of a residential plot measuring 20,071 square meters with a partially built building located at Gh-P4 situated at Sector 25, Jaypee Green Sports City,



SDZ, Yamuna Express Industrial Development Authority Area, District Gautam Budh Nagar, Uttar Pradesh, owned by one M/s VGA Developers Pvt. Ltd, a company under liquidation, undertaken by NCLT, Delhi.

10. Official Liquidator (OL) appointed by the NCLT in the insolvency proceedings against the VGA Developers, took control of the assets of VGA, including the aforesaid Plot, and had put up the said Plot for sale and issued a Sale Notice against which the Appellant No.1 is trying to purchase the plot.

11. The Appellant No 1 deposited a sum of Rs 3,49,10,000/- with the OL, as Earnest Money Deposit (EMD). It appears, the total sale consideration payable for the plot was Rs 34,91,00,000/-.

12. Pending conclusion of sale, the Appellant No 1 agreed to sell the Plot to the Respondent, towards which the SPA was executed. In effect-and intent, the SPA was not a simpliciter agreement to sell shares, but an agreement to sell the Plot, styled as an SPA. By acquiring the entire shareholding from the Appellant No 2 and 3, the Respondent would acquire the only asset owned by Appellant No 1 i.e., the Plot.

13. The way the SPA was structured, it clearly indicated the intent of the parties. The total sale consideration of Rs. 40,66,90,000/-, payable under the SPA, was divided in three parts. Out of the said consideration a sum of Rs. 8,63,00,000/- was payable to the Appellants in the manner provided in Clause 1 (iii)(A) of the SPA towards the sale consideration for the purchase of shares and a sum of Rs. 31,41,90,000/-, alongwith any interest on the balance amount subject to a maximum Rs. 62 lacs, was payable towards the sale consideration for the Plot to the OL.



14. The SPA further provided that the Respondent would pay the next instalment of the sale consideration for the share purchase, after the sale of Plot was approved by the NCLT in favour of Appellant no.1 and a demand letter was issued by the Official Liquidator ('OL') for payment of balance 90% of the auction value. In other words, the amount to be paid by the Respondent was to be used for paying the balance 90% of the auction value of the Plot to the OL.

15. Appellants have alleged breach of Clause 1(iv)(d) and Clause 8 (iv) of the SPA by the Respondent, by failing to pay the balance sale consideration, which constrained the Appellant Nos. 2 and 3 to issue a termination notice dated 05.07.2024 consequent upon which they entered upon an agreement dated 15.07.2024 with one *M/s Radha Rani Infra Projects* for the sale of its shareholding in the Appellant No. 1.

16. Respondent have disputed the termination and denied having received any communication from the Appellants for making the balance payment. Respondent has claimed it has always been ready and willing to perform its part of the bargain in the SPA by paying the remaining sale consideration, both for the shares and the Plot.

17. Appellants disputed the Respondent's ability to seek specific performance of the SPA on the ground that SPA is a contingent contract. Appellant's obligation to transfer shares and the Plot was contingent upon it acquiring the Plot in its name with the confirmation of sale by the OL, which could not be achieved. In the absence of occurrence of contingent event, there cannot be a specific performance of the SPA.

18. It is further contended by the Appellant, that the SPA was



determinable in nature hence not capable of being enforced by virtue of Section 41(e) of the Specific Relief Act. Appellants have drawn on the decisions in Indian Oil Corpn. Ltd. v. Amritsar Gas Service,¹ and Rajasthan Breweries Ltd. v. Stroh Brewery Co.² in support of this contention.

19. Learned counsel for the Respondent submits that the dispute arose as the Appellant had failed to take steps in proceedings before NCLT. In this context, reference is also made to proceedings dated 16.06.2023 before the NCLT vide which the NCLT had directed the OL to complete the liquidation process and the time for which was extended from 01.09.2022 to 01.09.2023. It is submitted that Appellant's failure to take steps had adverse impact on the interest component which is to be discharged only by Appellant as in terms of Clause 8 (4) of SPA, the Respondent's exposure is confined to maximum of Rs.62,00,000/-. It is also submitted that the claimant has always shown his readiness and willingness to complete the transaction subject to appellants bearing the interest burden.

Insofar as Appellants entering into an agreement with *M/s Radha Rani Infra Projects* is concerned, it is contended that the same was only to overcome the present SPA as *M/s Radha Rani Infra Projects* is appellant's own concern. Further, the pay orders mentioned in the Agreement with *M/s Radha Rani Infra Projects* are even prior to the issuance of the termination notice in the present case.

20. Appellants have further contended that the Respondent has not sought specific performance of the SPA before the AT, which disentitles it from seeking interim relief pertaining to the SPA. Respondent has sought a

¹ Indian Oil Corpn. Ltd. v. Amritsar Gas Service, reported as (1991) 1 SCC 533



declaration to declare the termination of SPA as null and void, which is not the same as seeking specific performance of the SPA. In support, the Appellant has relied upon Padhiyar Prahladji Chenaji v. Maniben Jagmalbhai.³

21. Appellant has contended that the AT erred in ignoring the fact that the SPA being a contingent contract, could not have been enforced by way of an injunctive relief staying the termination of the SPA by the Respondent. By passing the impugned order, AT failed to follow the parameters to be kept in mind while hearing an application for grant of injunctions, as enumerated in Colgate Palmolive (India) Ltd. v. Hindustan Lever Ltd.⁴

22. I have heard learned counsel for the parties and gone through the records.

23. This Court while dealing with an appeal under Section 37(2) of the A&C Act, especially one arising from discretionary orders passed at an interlocutory stage, has to be circumspect in its approach, keeping in view the principle of least intervention. The A&C Act is intended to provide an alternative avenue for dispute resolution and any interpretation of the act which tends to multiply disputes must be avoided. An appellate court will ordinarily not interfere with the discretion exercised by the AT in the first instance, unless the said discretion is proved to have been exercised arbitrarily, capriciously, perversely or ignoring the settled principles of law regulating grant or refusal of interlocutory injunctions. It is also pertinent to note that Section 5 of the A&C Act crystallizes the legislative philosophy

² Rajasthan Breweries Ltd. v. Stroh Brewery Co., reported as **2000 SCC OnLine Del 481**

³ Padhiyar Prahladji Chenaji v. Maniben Jagmalbhai, reported as **(2022) 12 SCC 128**.

⁴ Colgate Palmolive (India) Ltd. v. Hindustan Lever Ltd., reported as **(1999) 7 SCC 1**.



permeating throughout the Act, which is that there should be minimal judicial interference with arbitral proceedings. At this stage, it is deemed apposite to refer to a few decisions of Co-ordinate Benches of this Court dealing with the issue at hand.

24. In Bakshi Speedways v. Hindustan Petroleum Corpn.,⁵ this Court imported the principles governing appeals arising from interim injunctions given under Order 39 Rules 1 and 2 CPC to the appeals under Section 37(2)(b) A&C Act, holding that :-

“4. The principles applicable to an appeal under Section 37(2)(b) in my view ought to be the same as the principles in an appeal against an order under Order 39 Rules 1 and 2, CPC i.e., unless the discretion exercised by the Court against whose order the appeal is preferred is found to have been exercised perversely and contrary to law, the appellate Court ought not to interfere with the order merely because the appellate Court in the exercise of its discretion would have exercised so otherwise...”

25. In Dinesh Gupta v. Anand Gupta,⁶ the approach of the Court while dealing with appeals arising of the A&C Act with respect to interlocutory orders was extensively discussed in the following manner:-

64. There can be no gainsaying the proposition, therefore, that, while exercising any kind of jurisdiction, over arbitral orders, or arbitral awards, whether interim or final, or with the arbitral process itself, the Court is required to maintain an extremely circumspect approach. It is always required to be borne, in mind, that arbitration is intended to be an avenue for “alternative dispute resolution”, and not a means to multiply, or foster, further disputes. Where, therefore, the arbitrator resolves the dispute, that resolution is entitled to due respect and, save and except for the reasons explicitly set out in the body of the 1996 Act, is, ordinarily, immune from judicial interference.

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⁵ Bakshi Speedways v. Hindustan Petroleum Corpn., reported as **2009 SCC OnLine Del 2476**

⁶ Dinesh Gupta v. Anand Gupta, reported as **2020 SCC OnLine Del 2099**



66. *In my opinion, this principle has to guide, strongly, the approach of this Court, while dealing with a challenge such as the present, which is directed against an order which, at an interlocutory stage, merely directing furnishing of security, by one of the parties to the dispute. The power, of the learned Sole Arbitrator, to direct furnishing of security, is not under question; indeed, in view of sub-clause (b) of Section 17(1)(ii) of the 1996 Act, it cannot. The arbitrator is, under the said sub-clause, entirely within his jurisdiction in securing the amount in dispute in the arbitration. Whether, in exercising such jurisdiction, the arbitrator has acted in accordance with law, or not, can, of course, always be questioned. While examining such a challenge, however, the Court has to be mindful of its limitations, in interfering with the decision of the arbitrator, especially a decision taken at the discretionary level, and at an interlocutory stage.*

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68. *It is, no doubt, possible to argue that the intent, of Section 5, is to restrict judicial intervention, with arbitral proceedings, and orders passed therein, to the avenues for such interference, as provided by Part I of the 1996 Act, and not to restrict the scope of the Sections and the provisions contained in Part I. Perhaps. Section 5 remains, however, a clear pointer to the legislative intent, permeating the 1996 Act, that judicial interference, with arbitral proceedings, is to be kept at a minimum. Significantly, in *Venture Global Engineering v. Satyam Computer Services Ltd.*, (2008) 4 SCC 190, it was opined that the scheme of the 1996 Act was “such that the general provisions of Part I, including Section 5, will apply to all Chapters or Parts of the Act”. In *State of Kerala v. Somdatt Builders Ltd.*, (2012) 3 Arb LR 151 (Ker) (DB), a Division Bench of the Kerala High Court held that the jurisdiction of the Court, under Section 37 of the 1996 Act, was also required to be interpreted in the light of the legislative policy contained in Section 5. I entirely agree.*

26. A Co-ordinate Bench of this Court in *Handicraft & Handlooms Exports Co. of India v. SMC Comtrade Ltd.*,⁷ highlighted the importance of the Court maintaining a circumspect approach while exercising power under Section 37(2)(b) of the Act, holding that:-

⁷ *Handicraft & Handlooms Exports Co. of India v. SMC Comtrade Ltd.*, reported as **2023 SCC OnLine Del 3981**



“30. From a reading of the observations of the Supreme Court, it is clear that an Appellate Court shall not interfere in exercise of discretion by the Court of first instance and substitute its views except where the discretion is exercised arbitrarily, capriciously or where the decision impugned is perverse and Court has ignored the settled principles of law governing grant or refusal of interim orders. It is not open to re-assess the material and if the view taken by the Court below is a reasonable or a plausible view and all relevant material has been considered, no interference is warranted solely on the ground that the Appellate Court may have taken a different view on the same set of facts and circumstances.

31. Reference may also be made in this regard to the judgment of a Co-ordinate Bench of this Court in *Green Infra Wind Energy Limited v. Regen Powertech Private Limited*, 2018 SCC OnLine Del 8273, relevant paras of which are as follows:

“16. In my view, the Arbitral Tribunal has balanced the equity between the parties and has considered the submissions made by the parties before the Arbitral Tribunal. This Court in exercise of its power under Section 37 of the Act cannot interfere with the order passed by the Arbitral Tribunal under Section 17 of the Act unless the discretion exercised by the Tribunal is found to be perverse or contrary to law. As an Appellate Court, the interference is not warranted merely because the Appellate Court in exercise of its discretion would have exercised the same otherwise.

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20. In view of the above, the Arbitral Tribunal having exercised its discretion and found a balance of equity between the parties, this Court in exercise of its power under Section 37(2)(b) of the Act would not interfere with the same unless it is shown that the discretion so exercised is perverse in any manner or contrary to the law. In the present case, no such exception has been made out by the appellant.”

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35. From a conspectus of the aforesaid judgments, it is explicitly and luminously clear that while exercising power under Section 37(2)(b), the Court is required to maintain an extremely circumspect approach keeping in mind the object and purpose of the legislation and Section 5 of the 1996 Act which is a clear pointer to the legislative intent of keeping the Court's interference at the minimum.”

27. A similar view has been taken by Co-ordinate Benches of this Court



in World Window Infrastructure (P) Ltd. v. Central Warehousing Corpn.,⁸, GLS Foils Products (P) Ltd. v. FWS Turnit Logistic Park,⁹ and Dinesh Gupta v. Anand Gupta.¹⁰

28. Keeping in view, the import of the decisions discussed hereinabove, I would now make an endeavour to see whether the impugned order suffers from any infirmity or arbitrariness.

29. The Appellants have contended that the Contract is inherently determinable in nature, even in the absence of a provision for termination therein, and hence, not capable of specific performance on account of bar of Section 14(d) read with Section 41(e) of the Specific Relief Act.

30. Appellants have relied upon Amritsar Gas and Rajasthan Breweries to labor upon their contention that even if the SPA does not provide for a termination clause, yet the same by its very nature, can be a determinable contract. The AT dealt with the said contention with disapproval and rightly distinguished the applicability of the aforesaid two cited precedents, which were pronounced in the context of a service contract.

31. The SPA in question pertains to an ostensible sale of shares, though, for all intent and purpose, the underlying Plot, which is the only immovable property, in which Appellant No 1 has interest, is being conveyed, in favour of Respondent, by ceding ownership and control over the Appellant No 1 Company in favor of the Respondent by the Appellant Nos. 2 and 3.

32. There is no provision for termination of SPA until the sale is consummated. Appellant's have alleged breach of SPA by the Respondent

⁸ World Window Infrastructure (P) Ltd. v. Central Warehousing Corpn., reported as (2021) 3 HCC (Del) 731

⁹ GLS Foils Products (P) Ltd. v. FWS Turnit Logistic Park, reported as 2023 SCC OnLine Del 3904

¹⁰ Dinesh Gupta v. Anand Gupta, reported as 2020 SCC OnLine Del 2099.



and resorted to termination, which is disputed by the Respondent. The adjudication of underlying dispute is pending before the AT and pending the adjudication, the AT has passed the impugned order to ensure that the subject matter of the SPA i.e. the shares, are not lost by way of sale to a third party by the Appellant Nos. 2 and 3.

33. According to this court, the impugned order passed by AT does not suffer from any legal vice for this court to overturn the same in this appeal.

34. Objections raised by the Appellants regarding the nature of contract and the bar under Section 14(d) read with Section 41(e) of the Specific Relief Act, are prima facie, untenable, as it would require a final adjudication by the AT if the SPA was determinable in nature for the cause alleged by the Appellant.

35. Prima facie, it does appear that the Respondent has part performed its obligations under the SPA by paying Rs. 50,00,000/-. Respondent has acquired rights under the SPA to conclude the sale. Respondent is ready and willing to consummate the sale by paying the balance sale consideration. The Respondent's readiness and willingness is demonstrated from the deposit of Rs.79,45,000/- in the form of an FDR after passing of the impugned order. Therefore, the Respondent has paid in total Rs. 1,29,45,000/-.

36. Appellant has contended that since the Respondent has not sought for specific performance of the SPA and has chosen only to seek declaration against the termination, the interim injunction granted by the AT staying the SPA, amounts to a granting specific performance of the SPA, which the Respondent itself has not claimed.



37. This contention is specious. The Respondent by seeking to get the termination of SPA declared as null and void is in effect claiming that the SPA is valid and subsisting and binding on it. This shows Respondent's willingness to conclude the sale by making the payments payable under the SPA and pending the conclusion of sale it sought to preserve the shares from being sold to a third party, for which consequential relief of injunction was sought.

38. If the Respondent had asked for a simpliciter injunction, without seeking any other substantive prayer to declare the purported termination of SPA bad in law, the Appellant may have been correct in opposing the interim injunction in the ground, that without showing any willingness to abide by the SPA, the Respondent could not injunct the Appellant from dealing with the shares in question.

39. AT has dealt with the objection raised by the Appellant in the impugned order by relying on clause 12 to hold that the appellant had authorized Mr. *Arvind Kumar* for holding communications on its behalf regarding the SPA. It was further noted that clause 12(iv) and (vi) bar reference to any previous communication or any term or understanding outside the contract. AT distinguished the decisions in Amritsar Gas (Supra) and Rajasthan Breweries (Supra) by stating that the same dealt with contracts for service and license agreements subsisting for a specific period of time and in the present SPA, there is no clause which provides for "no-fault" termination. Lastly, AT held that whether the agreement is incapable of specific performance despite not having a termination clause would be something which would be looked at by the AT at the time of final



determination.

40. In view of the aforesaid reasons, there is nothing wrong with the AT's observations on the objection raised by the Appellant.

41. In the similar vein, the Appellant's objection that the SPA being a contingent contract and not capable of being enforced because the contingent event of sale of the Plot in favor of the Appellant by the OL, did not occur, is without any merit. The Appellant is alleging breach of the SPA by the Respondent to terminate the SPA and not on the ground that the Plot in question is no longer capable of being acquired by the Appellant No 1 for reasons, beyond its control, thereby frustrating the objective of the SPA. On the contrary the Appellant No 2 and 3 themselves claim to have already entered into an agreement with one *M/s Radha Rani Infra Projects* for the sale of shares after the purported termination of the SPA.

42. I have gone through the impugned order and the AT cannot be said to have exercised its discretion arbitrarily, capriciously, perversely or ignoring settled principles of law. In view of the facts and circumstances of the case and the catena of decisions discussed hereinabove, I find no ground to interfere with the impugned order.

43. In view of the above, the appeal stands dismissed alongwith pending application.

MANOJ KUMAR OHRI
(JUDGE)

MARCH 10, 2025/ry