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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ ARB. A. (COMM.) 87/2022, I.A. 20442/2022 (Interim Relief)
GENESTORE INDIA PVT. LTD. Appellant

Through: Mr. Aman Nandrajog, Mr.
Dhruv Wadhwa, Ms. Tanya
Verma, Advs.

versus

MR. VINEET SINGH CHAUHAN & ORS..... Respondents

Through: Mr. Zafar Khurshid, Mr. Amit
Singh, Mr. Sidharth Agarwal,
Advs. for R-1 and 2.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA

ORDER
19.12.2022

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1. This appeal under Section 37(2)(b) of the **Arbitration and Conciliation Act, 1996**¹ impugns an order dated 28 October 2022 passed by the sole arbitrator refusing an application made by the appellant for modification of an order dated 15 May 2021 passed by the Arbitral Tribunal with reference to Section 17 of the Act. For the purposes of appreciating the challenge which stands raised, the following essential facts may be noticed.

2. On 17 December 2020, this Court entertained **OMP (Comm.) (I) No. 422/2020**², a petition under Section 9 of the Act, moved by the claimant respondent seeking grant of various injunctive reliefs. One of the reliefs which was sought was for the petitioner (the respondent before the Tribunal) being called upon to deposit a sum of Rs. 2,51,50,000/- as representing the amount towards promised benefits.

¹ the Act

² Section 9 petition



Upon noticing the contentions which were addressed on behalf of respective parties, the Court provided that till the next date, the petitioner would stand restrained from creating any third party rights in its assets to the tune of Rs. 2,51,50,000/-. In the meanwhile, and on 25 January 2021, the Court on an arbitration petition being **Arb. Pet. No. 769/2020**³ filed under Section 11 of the Act proceeded to constitute the Arbitral Tribunal. The Section 9 petition which was taken up on the same date also came to be disposed of with the Court observing as follows:-

“Both the parties are at liberty to move appropriate interim application(s) before the learned sole Arbitrator for modification of the order dated 17th December, 2020 or for further reliefs as per law. Interim order dated 17.12.2020 shall remain effective only till such modification/fresh orders to be passed by learned sole Arbitrator on the said interim application(s) to be filed by the parties.

The petition is disposed of in these terms.”

3. Upon commencement of proceedings before the Tribunal, the issue of further reliefs referable to Section 17 of the Act came to be taken up for consideration on 15 May 2021.

4. While dealing with the aforesaid application, the Arbitral Tribunal provided that the appellant would be obliged to continue to comply and abide by the orders dated 17 December 2020 and 25 January 2021 passed by this Court on the Section 9 petition. It further, and as a consequence of the above, proceeded to record that the appellant would stand restrained from creating any third party interest on its current account maintained with the ICICI Bank at its Sub City, Sector 54, Gurugram, Haryana Branch and ensure that a balance of Rs. 2,51,50,000/- is maintained in that account at all times. The said order of the Arbitral Tribunal came to be assailed by the appellant by way of Arb. A. (Comm) 27/2021. The said petition came to be ultimately disposed of on 06 October 2021. While dealing with

³ Section 11 petition



the issue of the interim arrangement made by the Tribunal on the application filed under Section 17 of the Act, the Court observed as follows:-

“4. In view of the above the impugned order is modified to the extent of the directions contained in the order dated 04.06.2021. Insofar as the direction for the respondents not to create third party rights in respect of assets to the extent of Rs.6,08,04,320/- is concerned, this court considers it apposite to set the same aside as, the Arbitral Tribunal has not examined the relevancy of material including the bank accounts and other materials as collected by the Local Commissioner. It would be apposite if the question whether any further interim orders of protection are required, be considered, thereafter. It is, accordingly, so directed.

5. It is also clarified that all rights and contentions of the parties are reserved and nothing stated in this order shall preclude the parties from seeking further orders or any variation and/or vacation of the orders already passed.”

5. The appellant thereafter appears to have moved an application for modification of the original interim order of 15 May 2021 seeking recall of the direction requiring it to maintain a balance equivalent to the sum aforesaid in its current account. That application was premised on an assertion that the current account was offered as an asset since at that time, the appellant did not have any notable immovable assets to offer as security. The appellant had contended that the aforesaid direction of the Tribunal clearly amounted to an order of attachment before judgment and would thus not be sustainable. It was further asserted that the appellant had since the passing of the order of 15 May 2021 become a profitable company which had returned profits of Rs. 16,72,24,282/- in Financial Year 2021 and in view of the above there was no justification for the claimant harbouring any apprehension of it being unable to satisfy any award that may be ultimately made against it. It is the aforesaid application which has come to be rejected by the Tribunal in terms of the order impugned.

6. The Court notes that the Arbitral Tribunal while dealing with



the aforesaid application has come to record the following conclusions:

“41. Having heard the learned counsels for the parties, I tend to agree with the claimants. Once have already passed the order dated 15.05.2021, I do not have the power to review or change that order. There cannot be denying of the fact that the arbitrator does not have the power to review its own order. Therefore, I cannot grant the relief that the respondent No. 1 is asking for.

42. However, I agree with the respondent No. 1 that the order dated 15.05.2021 is an extension of the order dated 25.01.2021 passed by the Hon'ble Delhi High Court. I also agree that the Hon'ble Delhi High Court only directed the respondent No. 1 to not to alienate its assets to the tune of INR 2,51,50,000/-. I have seen the audited balance sheet of the respondent No. 1 as well as the Auditor's certificate dated 06.05.2022. As per the same, the respondent No. 1 has assets of INR 18,24,34,125/- as on 31.03.2021. The Hon'ble Delhi High Court had also directed that the respondent No. 1 is only restrained from disposing of its assets to the tune of INR 2,51,50,000/-. However, since it was the Hon'ble Delhi High Court that had directed the respondent No. 1 from disposing of its assets to the tune of INR 2,51,50,000/- and in compliance thereof, the respondent No. 1 had filed an affidavit that it would maintain this balance in its bank account, I think it would be proper if the respondent No. 1 approaches the Hon'ble Delhi High Court for an appropriate orders/directions.

With the above observation, this application is disposed of.

Ordered accordingly on all the applications.”

7. In the considered opinion of this Court, the Tribunal clearly committed a manifest error in proceeding to reject the application for variation and recall of the order of 15 May 2021 for reasons recorded by it and which have been noticed hereinabove. The Court notes that the Tribunal appears to have proceeded on the assumption that its order of 15 May 2021 was an extension of the order passed by this Court on the Section 9 petition and that, consequently, any modification thereof could be made only by way of the appellant applying to this Court for appropriate orders and directions. The Tribunal clearly appears to have lost sight of the fact that when the Section 9 petition was ultimately disposed of by this Court on 25



January 2021, the Court had clearly provided that the initial interim order would remain effective till such time as fresh orders are passed by the Arbitral Tribunal. The continuance of the original interim order passed on the Section 9 petition was thus neither contemplated nor mandated to operate in perpetuity. In fact, the order of this Court clearly left it open to the Arbitral Tribunal to consider the question of further interim measures which may be required to be formulated upon a due consideration of the facts and circumstances of the case. It would also be worthwhile to note that while disposing of the appeal which was preferred by the appellant against the order of 15 May 2021, the Court in its order of 6 October 2021 had categorically and in unequivocal terms clarified that all rights and contentions of parties would stand reserved to be urged before the Arbitral Tribunal and that the aforesaid order would not preclude parties from seeking fresh orders or even “variation and/or vacation of the orders already passed”. In view of the above, and in the considered opinion of this Court, the Tribunal clearly committed a manifest error in rejecting the application moved by the appellant seeking recall and variation of the order of 15 May 2021.

8. The Court also takes on board the statement made by learned counsel for the petitioner in these proceedings and who submitted that it was ready and willing to substitute security to the extent of the amount which stood reserved under the order of 15 May 2021. In view of the aforesaid, it was the submission of the learned counsel that it would have been clearly open for the Tribunal to modify/vary the order of 15 May 2021 by permitting the appellant to provide adequate security insofar as the amount of Rs. 2,51,50,000/- was concerned and that the insistence of the Tribunal requiring the appellant to maintain a credit balance equivalent to the aforesaid sum in its current account was wholly unwarranted and in many ways was causing great



prejudice to it. This aspect is one which could have always been considered by the Arbitral Tribunal unfettered by the terms of its order of 15 May 2021 for reasons which stand recorded hereinabove.

9. The second ground which appears to have weighed with the Tribunal in refusing to grant the prayers made by the appellant was its understanding that the entertainment of the said application would have amounted to it reviewing its original order of 15 May 2021. The Court finds itself unable to sustain the aforesaid reasoning since, and as was noticed hereinabove, both the orders of 25 January 2021 as well as 06 October 2021 passed by this Court had clearly left it open to the Arbitral Tribunal to consider a prayer that may be made by respective parties for modification/variation of any order that may have been passed by it. In any case and on a more fundamental plane, this Court notes that an order under Section 17 of the Act is in essence one which is made by an arbitrator by way of an interim measure of protection. Injunctions that may be passed by a court, tribunal or authority can always be modified or varied, if circumstances so warrant. The examination of such a plea cannot possibly be termed as an exercise of a power of review.

10. Accordingly, and for all the aforesaid reasons, the present appeal shall stand allowed. The impugned order of 28 October 2022 shall stand set aside. It shall be open to the appellant to apply to the Arbitral Tribunal for modification/variation of the order of 15 May 2021 in accordance with law. All contentions of respective parties on merits in that respect are kept open.

YASHWANT VARMA, J.

DECEMBER 19, 2022
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