

(2022) 03 DEL CK 0242

In the Delhi High Court

Case No : First Appeal From Order (OS)(COMM) No. 44 Of 2022

Cement Corporation Of India

APPELLANT

Vs

Promac Engineering Industries Limited

RESPONDENT

Date of Decision : 29-03-2022

Acts Referred:

Arbitration And Conciliation Act, 1996 — Section 9, 9(1)(ii)(e)

Citation : (2022) 03 DEL CK 0242

Hon'ble Judges : Mukta Gupta, J; Neena Bansal Krishna, J

Bench : Division Bench

Advocate : Shankar K.Jha, Manu Monga, Trideep Pais, Sanya Kumar, Rakshandu Deka

Final Decision : Dismissed

Judgement

Mukta Gupta, J

CM APPL. 9237/2022 (for exemption)

1. Exemption allowed subject to just exceptions.
2. Application is disposed of.

CM APPL. 9235/2022 (for condonation of delay of 29 days in filing appeal)

1. For the reasons stated in the application and in view of the period of limitation having been extended by the Hon'ble Supreme Court in Suo Motu W.P.(C) 3/2020 Re:Cognizance for Extension of Limitation, delay of 29 days in filing the appeal is condoned.
2. Application is disposed of.

FAO (OS)(COMM) 44/2022

1. In the present appeal, the appellant challenges the impugned orders dated 20th December 2021, 17th December 2018 and 24th August 2021.

2. By the order dated 20th December 2021, the learned Single Judge dismissed OMP(I)(COMM) 410/2021 filed by the appellant under Section 9 of the Arbitration and Conciliation Act, 1996 (in short, the 'A&C Act'), wherein, it was inter alia prayed that the orders of the arbitral award dated 17th December 2018 and 24th August 2021 be set aside as also a declaration of the petitioner's calculation to be the arbitration fees payable to each of the Arbitrators as just and correct calculation in terms of Schedule IV of the A&C Act.

3. The learned Single Judge vide the impugned order dated 20th December 2021 noted that both the orders of the Arbitral Tribunal dated 17th December 2018 and 24th August 2021 were procedural orders passed by the Arbitral Tribunal fixing the fees payable by the parties and a challenge thereto under Section 9 of the A&C Act is not maintainable. The learned Single Judge noted that Section 9 of the A&C Act empowers the Court to issue orders regarding interim measures of protection. Clearly, the challenge to the procedural orders passed by the Arbitral Tribunal regarding arbitration fees does not fall within the ambit of Section 9 of the A&C Act.

4. Section 9 of the A&C Act reads as under:-

"9. Interim measures, etc. by Court.— [(1)] A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with Section 36, apply to a Court:—

(i) for the appointment of a guardian for a minor or a 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 Court to be just and convenient, and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.

[(2) Where, before the commencement of the arbitral proceedings, a court

passes an order for any interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the court may determine.

(3) Once the arbitral tribunal has been constituted, the court shall not entertain an application under sub-section (1), unless the court finds that circumstances exist which may not render the remedy provided under Section 17 efficacious.”

5. From a bare reading of Section 9 of the A&C Act, it is evident that the same empowers the Court to grant reliefs which are in the nature of interim measures till the Arbitral Tribunal is constituted or unless the Court finds that circumstances exist which may not render the remedy provided under Section 17 efficaciously.

6. Contention of the learned counsel for the appellant that the petition challenging the interim procedural orders of the Arbitral Tribunal was maintainable under the residuary clause of Section 9(1)(ii)(e) of the A&C Act is totally unfounded. The petition under Section 9 of the A&C Act not being maintainable before the learned Single Judge as was rightly held, this Court is not required to go into the merits of the procedural orders as sought to be canvassed by the learned counsel for the appellant who relies upon the decision of this Court in OMP(MISC) 5/2018 titled Delhi State Industrial Infrastructure Development Corporation Ltd. (DSIIDC) Vs. Bawana Infra Development (P) Ltd. and the decision of the Division Bench of this Court in FAO (OS) (COMM) 70/2017 Jivanlal Joitaram Patel Vs. National Highways Authority of India relied upon by the learned counsel for the respondent.

7. Appeal is accordingly dismissed.

8. Order be uploaded on the website of this Court.

CM APPLN. 9236/2022 (for stay of orders dated 20.12.2021, 17.12.2018 & 24.08.2021)

In view of the order passed in the appeal, the application is disposed of as infructuous.