

(2021) 07 DEL CK 0120

In the Delhi High Court

Case No : First Appeal From Order (OS) (COMM) No. 92 Of 2021, Civil
Miscellaneous No. 20954-20956 Of 2021

Cement Corporation Of India

APPELLANT

Vs

Promac Engineering Industries Limited

RESPONDENT

Date of Decision : 16-07-2021

Acts Referred:

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

Citation : (2021) 07 DEL CK 0120

Hon'ble Judges : Rajiv Shakdher, J; Talwant Singh, J

Bench : Division Bench

Advocate : Aishwarya Bhati, Shankar K, Jha, Manu Monga, Ameyavikrama
Thanvi, Trideep Pais, Manvi Priya, Sanya Kumar

Final Decision : Dismissed

Judgement

Rajiv Shakdher, J

CM No.20956/2021

1. Allowed, subject to just exceptions.

FAO(OS) (COMM) 92/2021 &

CM No.20954/2021 [Application filed on behalf of the appellant seeking condonation of delay]

CM No.20955/2021 [Application filed on behalf of the appellant seeking stay on the operation of the impugned orders]

2. This is an appeal filed against the order of the learned single judge dated 02.02.2021, and the orders passed by the Arbitral Tribunal (in short the Tribunal) dated 20.02.2020 and 07.08.2020.

2.1. Briefly, the issue, which arises for consideration, in the present appeal

concerns the tenability of the application filed under Section 9 of the Arbitration and Conciliation Act, 1996 (in short "1996 Act") by the appellant in respect of the aforementioned orders passed by the Tribunal.

The Tribunal via the impugned orders has fixed its fee based on an interpretation placed by it on the provisions of Schedule IV of the 1996 Act. It is

these orders which were assailed by the appellant before the learned single judge.

2.2. The learned single judge, via the impugned order i.e. order dated 02.02.2021, has dismissed the petition filed by the appellant under Section 9 of the 1996 Act. The learned single judge has concluded that an application under Section 9 of the 1996 Act would not lie against the aforementioned orders passed by the Tribunal.

3. Ms. Aishwarya Bhati, learned ASG, who appears on behalf of the appellant, says that the order of the learned single judge is flawed. In support of

her plea, Ms. Bhati seeks to place reliance on Section 9(1)(ii)(e) of the 1996 Act. For the sake of convenience, the relevant parts of the said provision

is extracted hereafter:

"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.â??

3.1. A careful perusal of the aforementioned provision would show that clause (ii) of subsection (1) of Section 9 sets out the interim measures that can

be directed to be taken by the Court, concerning the matters detailed out in sub-clauses (a) to (d). Sub-clauses (a) to (d), essentially, allude to

matters that concern aspects, which veer around the subject matter dispute and arbitration agreement obtaining between the parties. Sub-clause (e) of

Section 9(1)(ii) of the 1996 Act, is, in substance, residuary clause which allows the court to issue such other interim directions, that are not covered by

sub-clauses (a) to (d).

3.2. To our minds, the residuary clause would not cover the impugned orders passed by the Tribunal concerning the calculation of fee that is based on

the interpretation of the provisions of the IV Schedule of the 1996 Act. Therefore, in our opinion, the impugned order passed by the learned single

judge does not call for any interference.

4. The appeal is, accordingly, dismissed. Consequently, the interlocutory application and the application for condonation of delay shall stand closed.