
(2017) 04 MAD CK 0147

In the Madras High Court

Case No : CMA Nos. 2823 to 2825 of 2016 and CMP Nos. 20470 to 20472 of 2016 and CMP Nos. 269 to 272 of 2017

Shri Chaudhary Avadhesh Kumar

APPELLANT

Vs

Volleyball Federation of India

RESPONDENT

Date of Decision : 06-04-2017

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 16(2), Section 4 (10), Section 9, Section 9, Section 9(2), Section 9(3)

Citation : (2017) 3 CTC 1 : (2017) 2 LW 910

Hon'ble Judges : Mr. N. Seshasay, J.

Bench : Single Bench

Advocate : Mr. V. Ayyadurai Additional Advocate General- II, for the Appellant in CMA No. 2823 of 2016; Mr. A. Swaminathan, Advocates, for the Appellant in CMA No. 2825 of 2016; Mr. J. Sivanandaraj for Mr. V. Sankaranarayan, Advocates, for the Respondent in CMA No. 2823 of 2016 & For Respondent No. 1 in CMANos. 2824 and 2825 of 2016; Mr. P. Veena Suresh, Advocate, for the Respondent No. 2 in CMA No. 2824 of 2016

Final Decision : Disposed Off

Judgement

Mr. N. Seshasay, J.—These triple CMAs arise out of three separate interim orders of Arbitrator passed under Section 17 of the Arbitration & Conciliation Act (hereinafter A& C Act). The details are as tabulated below.

CMA No.

A. No.

Filed by

Prayer

Decision of Arbitrator

2823/2016

01-01-16

Respondent

Restraining the appellant from interfering with the conduct of volleyball tournaments

1(b) - Allowed

2824/2016

01-01-16

Respondent

To permit the respondent to operate bank account

Allowed

2625/2016

02-01-16

Appellant

Not to conduct any Volley Ball Tournament under the banner of VFI

Dismissed

2. The quintessential points in controversy are pivoted on a challenge to the legality of the aforesaid three interim orders of the arbitrator. Short is its scope yet shorter are not the extent of arguments it invited. Broadly, the arguments advanced can be divided into (a) a prelude part and (b) the controversy per se. The first part will be a brief narrative on the circumstances that led to the appointment of the arbitrator on which there is a great degree of unanimity between the parties, and the second part will deal with the very controversy disputed.

I. The Prelude:

3.1 Volleyball Federation of India (VFI in short) is a registered society. It has a constitution and bye-law which proclaim its cherished objectives inter alia as including promotion, organisation and controlling of volleyball in India. One of its other objectives included conducting National Championship at all levels both for men and women.

3.2 The bye-law of the VFI is in classical format typical of any registered Society that provides for two fundamental governing organs in a General Council of Members (which comprises State Associations, the Union Territories plus the Service Sports Boards and the Railways) and also an Executive Committee. The Executive Committee comprises the President and office bearers that includes the General Secretary. In an election that took place on 14.07.2003, appellant was elected as the President and so were the other office bearers. They were to

hold office till 2017.

3.3 The simple game of volley ball seen played in this country tasted its slice of bitterness when those who administer the game sensed an opportunity to imitate cricket. VFI entertained an idea of conducting a national level tournament called the Indian Volleyball League (IVL) a la IPL, and here sprang the beginning of the disrupting differences in a happy home. Where money becomes the converging objective often suspicion seeps in to separate men and destroy the nobility of their association. In a civilised society it invariably assumes the character of a litigation. The case at hand has all the features to seek a justful place in that group.

4.1 Conducting a tournament of the magnitude of IVL required a sponsor, and the appellant in his capacity as the President has spotted a certain M/s. Sportz Life Entertainment (SEL in short) for the purpose.

4.2 While so, on 02.01.2016, a meeting of the Executive Committee was held in which the appellant disclosed about SEL. The other members of the Executive Committee however, advocated an open and transparent mechanism for awarding sponsorship rights. To take this forward the Executive Committee constituted a Core Committee of five persons to identify a suitable sponsor. This transaction of the Executive Committee was duly minuted.

4.3 On 09.01.2016, the Core committee and some of the office bearers of the Executive Committee met. The appellant too had participated in the meeting in which the appellant was specifically enquired if he had signed any agreement with SLE, a sponsor that he had identified prior to the constitution of the Core Committee. He answered in the negative and this too was duly minuted and is a point not in dispute.

4.4 While things stood thus, Vide a communication dated 19.02.2016, the chairman of the Core Committee called for a meeting on 22.02.2016. The intended agenda for the meeting was to consider fresh proposals received from prospective sponsors and to take a final call on the choice of the sponsor. However, a day later, on 20.02.2016, the appellant e-mailed the members of the Core Committee and the Executive Committee through which,

he informed others that he had already signed an agreement with SLE on 21.01.2016;

that he had dissolved the Core Committee by his purported exercise of power under Article XI(4) the by-law of VFI.

This, he followed it up with (a) depositing a demand draft for Rs.9.0 crores that he had received from M/s.SLE and (b) communicating the bankers two days later (on 25.2.2016) to freeze the account of VFI.

5.1 The Core Committee did meet on 22.02.2016 as scheduled, ignoring the e-mail of the appellant referred to above. It zeroed in on one M/s Baseline

Ventures Pvt. Ltd., as its choice for awarding sponsorship rights of the proposed IVL.

5.2 Responding or reacting to the appellant's move to dissolve the Core Committee unilaterally, on 26-02-2016 the Executive Committee issued a show cause notice on the appellant to explain what was perceived as latter's anti-Federation activities. It also invited the appellant to participate in a meeting of the Executive Committee that was proposed to be held on 03.03.2016 at Chennai.

5.3 The appellant was in no mood to let the other members of the Executive committee to score a point on service. He returned it with a retaliatory decision of provisionally suspending the office bearers of the Executive Committee, and called for a meeting of the Executive Committee himself at Nagpur on the same day on which the Executive Committee was to meet at Chennai: 03.03.2016. As a back-up support for this action, he filed O.S.No.203/2016 before Patiala House Court challenging the show cause notice issued on him and for other declaratory reliefs. He also moved the Court to obtain an interim relief to injunct the convening of Executive Committee meeting on 03.03.2016 at Chennai. This interim relief however was not granted, but the Court directed the appellant to participate in the Chennai meeting.

6. Now, it is respondent's turn. VFI approached this court with O.A.No.123/2016 under Section 9 of the Arbitration and Conciliation Act, 1996, (hereinafter A & C Act) for injuncting the appellant from conducting any meeting on 03.03.2016. It also filed an application in A.No. 1090 of 2016 to stay the operation of the order of the appellant suspending Office bearers. This Court by its order dated 02.03.2016 refused to stay the meeting called for by the appellant and accordingly both the meetings were let to be held.

7.1 On 03-03-2016, the Executive Committee meeting as called for by the respondent was held as scheduled. The appellant did not participate in that, notwithstanding the direction of the Patiala House Court in O.S.No.203./ 2016.

7.2 The Executive Committee unanimously resolved to expel the appellant from the post of the President of VFI. This was followed by a meeting of the General Council of VFI on 11.03.2016. This meeting was convened as per a schedule said to have been drawn long prior to the arising of differences between the parties. In this meeting of the General Council, representatives of the Indian Olympic Association and the Government of India too participated. Appellant however, did not participate in it. The General Council unanimously resolved (a) to remove the appellant from his Presidentship and (b) to go for a fresh election on 11.04.2016.

8.1 The *raison d'être* for a sport is lost if those who manage it denigrate it to a mere pawn in a game of profit. If flinching fists and flexing muscles in confraternity has become the defining edition of administration of Volley ball Federation, then to expect the appellant to concede a middle-game and to plan a

Himalayan retreat will be a fantasy worthy of earning a few pages in Alice in Wonderland. He acted in reaction, and moved the Patiala House Court with Arb.Petition No: 33/2016, Section 9 of the A& C Act challenging his expulsion as the President of the VFI. The Court stayed the operation of the resolutions of the General Council. This blocked the election scheduled for 11.04.2016.

8.2 The respondents too were not short of stamina to fight and litigate. The counter-strategy contrived by the respondent was to challenge this order before the Delhi High Court in FAO146/2016. The Delhi High Court made a modification of the order impugned before it and it allowed the conduct of the election as scheduled, but barred the publication of its results. The election was accordingly held and the results were deposited before the Delhi High Court as directed by it.

8.3 When the matter again came before the Patiala House Court, it now passed an interim order permitting the appellant to continue in the post of the President of VFI till results of the elections are released by the Delhi High Court. This is yet to happen.

9. This is the setting, and in this backdrop on 23.09.2016, O.A. No. 123 of 2016 had filed before this Court came up before Bench. It may be stated now that in the meantime some State Associations have joined together to file O.A. No. 480 of 2016 under Section 9 of Arbitration Act and both these cases have been tagged and heard, where upon the learned single Judge of this Court passed the following order:

" 6. In view of the facts all the parties are represented by counsel, I have put to them whether the matter could be referred to an Arbitrator, appointed by this Court and, consequently, have the application placed before this Court appointed Arbitrator for disposal under Section 17 of the Arbitration and Conciliation Act, 1996 (in short "the 1996 Act).

6.1 Counsel for the parties agreed that in order to bring the main dispute to a quickre solution , this court should proceed to appoint an Arbitrator, as it would in the interest of all parties. Counsels are also agreed that the captioned application s can be placed before the Court appointed Arbitrator, who could then, proceed to dispose of the captioned application by exercising power under Section 17 of the 1996 Act.

7. Accordingly, hon"ble Mr. Justice K. Chandru, former Judge of this Court, is appointed as an Arbitrator."

II. The controversy :

10.1 Almost immediately on the appointment of the arbitrator, on 30.09.2016 (there is some confusion regarding this date with the appellant claiming that it was 01-10-2016) the respondents have moved the arbitrator with I.A. 1/2016 under Section 17 of the A& C Act seeking two interim reliefs:

(a) To set up an interim Committee for administering the affairs of the VFI;

(b) To injunct the appellant or anyone claiming to be acting on his behalf, either directly or indirectly, including anyone claiming to have been elected at any meeting called by him from conducting IVL or other tournaments under the banner of VFI in any manner whatsoever, or from conducting meetings, public announcements, or events in the name of VFI, or from signing any contracts with any player, organisation, sponsors, advertisement agency or any event managers on behalf of VFI.

10.2 On 02.10.2016, the appellant had filed his reply. On 03-10-2016, the arbitrator had passed an order granting relief (b) of I.A.1/2016. In other words, the arbitrator declined to constitute an interim Committee as was sought by the respondents. This order is in challenge in CMA.2823/2016.

11. It has now become an unstoppable volley and appellant matched I.A.1/2016 with his I.A.3/2016. This was in October, 2016. He would seek an order of injunction more along the lines that the respondents had sought in prayer (b) of I.A.1/2016 as has already been extracted above. However, the keenness was to injunct the respondents from going ahead with 19th Youth National Volleyball Championship at Rajasthan on 21 to 26th October, 2016.

12. In between, the respondents through its General Secretary and Treasurer had filed I.A. 2/2016. There was a submission that this is an application that was transferred by the learned Single Judge to the arbitrator, but this has little relevance at this stage. The relief sought was to enable them to operate the bank account that the appellant had caused to freeze.

13. By a common order dated 19.10.2016, the arbitrator had disposed of both I.A.2 and 3/2016. As regards, I.A.3/2016, the arbitrator dismissed the petition chiefly on the ground that all the parties whose presence was necessary for granting the relief sought were not present before him. So far as I.A.2/2016 is concerned, the learned arbitrator has allowed the same and permitted the General Secretary and the Treasurer of the VFI to operate the bank account, and in so doing the arbitrator has reasoned his decision on a comparative assessment of his perceived financial propriety and discipline as between the appellant and the respondent.

The Argument:

14. The learned counsel for the appellant argued:

As per section 9(2) of the A & from the date of passing of the interim order. And, as per Article XVII (b), any dispute/conflict that might arise within the Federation should be resolved through a three member arbitral tribunal. If the order of this court passed in O.A.123/2016 is tested on this plane, two aspects emerging there from impact the competency of the very constitution of the arbitrator:

One, this Court had passed interim orders on 02.03.2016, and therefore VFI should have moved the Indian Olympic Association

for appointing an arbitrator in terms of article XVIII(b) within 90 days b Second, the arbitrator was appointed only by consent of the counsel of the parties, and in the context by the counsel of the appellant, and there is no contract for arbitration signed by the parties for appointing an arbitrator in the manner he was appointed by this Court in OA123/2016.

Where the very constitution of the arbitral tribunal suffers from inherent incompetency, everything that flows from it would be invalid and hence the impugned orders of the arbitrator cannot be sustained.

The transfer of an application under Section 9 to the arbitrator itself was erroneous since the arbitrator himself was yet to be appointed as on the date when the transfer of proceedings was ordered. In other words, there cannot be any transfer of proceedings filed before Court under Section 9 of the A & C Act unless there is already in place an arbitral tribunal. Alternatively, even if it is considered valid, prearbitral reliefs rests exclusive within the Courts" domain and hence the transfer of a pre-arbitral dispute to the arbitrator is bad in law.

Entertaining IA1/2016 and 3/2016 by the Arbitrator is bad in law. It goes beyond what was transferred to him.

15. Arguing specifically on each of the impugned orders, the learned counsel argued:

The interim order dated 03.10.2016 granting (b) prayer in I.A.1/2016 and also granting I.A.2/2016 are in direct conflict with the interim order passed by the District Court, Patiala House Court, in Arb.OP 33/2016 where under the appellant was granted an order to hold the office of the President and therefore the powers that the President has the authority to discharge. Next, the order excluding the appellant from operating the bank account too is contrary to the powers conferred on him as the President of VFI by its Constitution and by-law.

Secondly, as to orders that the Arbitrator has passed, adequate opportunity for effective hearing was not accorded to the appellant. Secondly, the orders ignore the powers conferred on different offices under the by-law of the VFI.

Thirdly, the locus standi of the applicant. He has been suspended by the appellant on 26- 02- 2016. The order of this Court dated 03-03-2016 in OA 123/2016 may have suspended it, but it is still made subject to the outcome of the OA123/2016. As such, his suspension cannot be deemed to have been revoke d.

Fourthly, the Joint Secretary is not competent to represent the VFI. As per by-law, the Secretary General alone can represent it. Further, filing of A.1090/2016 (in OA 123/2016 & before the arbitrator was appointed) by one Natarajan which is against the spirit of the order of the Delhi High Court.

Arguments in response:

16. Accusing the appellant of large scale financial indispline and abuse of judicial

process, the learned counsel for the respondents argued:

The scope of appeal against interim orders of arbitrator passed under Section 17 of the A & C Act, is very limited. The authority of the Delhi High Court in *Subhash Chander Chachra & Others v Ashwini Kumar Chachra & another* [2007(1)ARBLR 288] is a pointer on the aspect.

The appellant has no locus standi to question the manner by which the arbitral tribunal was constituted. At no point of time either during or immediately after passing of the order by this Court in OA 123/2016 dated 23-09-2016, the appellant has objected to the manner of appointment of the arbitrator as contravening the procedure prescribed for the same in Article XVII (b) of the bylaw. Nor has he ever raised it at the earliest possible occasion before the Arbitrator under Section 16 of the A & C Act. Worse, he walked in voluntarily to submit to the jurisdiction of the arbitral tribunal, filed counters to I.A.1 & 2/2016 besides himself filing I.A.3/2016. It does not stop there as he has gone further and filed his statement of defence and also a counter claim before the arbitrator. It was only in December, 2016, the appellant woke up to realise about his missed opportunities and has rushed to this Court with a set of CMAs with no foot-hold in law. Reliance was placed on *Union of India v. M/s P a m Development Pvt. Ltd.*, [2014 (2)ARBLR27(SC)] *Inder Sain Mittal v. Housing Board , Haryana & Others* [(2002) 3 SCC 175] & *Narayan Prasad Lohia v. Nikunj Kumar Lohia & Others* [(2002) 3 SCC 572]. It is not just a case of a party to the arbitration, which in this case the appellant, failing to raise objection about the constitution of the arbitral tribunal within the meaning of Section 16 of the A& C Act, it is a case of appellant acquiescing in the constitution of the arbitral tribunal and waiving his right to object under Section 4 of the A & C Act, as he had opted to participate in arbitral proceedings consciously.

The authority in *Bharat Sanchar Nigam Ltd., v. Motorola India Private Ltd.*, [(2009) 2 SCC 337] was relied on to press home the point.

Each of the interim orders that the arbitrator has passed is reasoned one, and the arbitrator has allowed himself to be led by such principles as would govern the civil court in passing interim orders. Broadly, he has pitted individual interest against the interest of an institution that the VFI is, and has also reckoned the manner in which the appellant changed positions and manoeuvred situations all under the pretext of his presidentship of VFI and how in the process he attempted to compromise the very interest of the VFI which he is under a duty to guard and promote.

Of discussion & decision

17.1 It is an undisputed fact that the appellant was elected as the President of VFI. Its by-law regulates the inter se rights of its members and details the powers and duties of the President, General Secretary and of the Executive Committee. It operates as a contract between those who are governed by it, and Article XVIII thereof provides for a three member arbitral tribunal to be

constituted by the Indian Olympic Association to resolve all the internal disputes within the VFI. That however, did not happen in this case, as the sole arbitrator was constituted by the consent of both sides, to be precise by the consent of their respective counsel. As held in *Y. Sreebachi v. Superintendent Engineer WRO/P W D & another* [2014(9) JT 251 : CDJ 2014 SC 644], where a party consents to the passing of an order he will be estopped from wriggling out of its consequence since the consenting party is considered as acquiescing in the process of appointment as was enunciated in *N. Chellappan v. Secretary, KSEB & another* [(1975) 1 SCC 289 and *Inder Sain Mittal v. Housing Board, Haryana & Others* [(2002) 3 SCC 175].

17.2 Here, the appellant has raised two points, and it is implied in the first among the two that his counsel had no authority to consent on his behalf for the constitution of a sole arbitrator before the learned Single Judge or that he had exceeded the scope of the authority granted, and second, that the Court has substituted the manner of appointing the arbitrator to the one provided in the bylaw of the VFI. The second point would be discussed in subsequent paragraphs.

17.3 As to the appellant's reservation to his counsel consenting to the appointment of a sole arbitrator before the Single Judge of this Court by bypassing the procedure contemplated in Article XVIII(b) of the bylaw of VFI, it must be understood that an advocate is a specialist in his chosen field and his reading of the situation and his authority to take decision for his client must be respected. He has the authority to make concession before the Court without imperilling the interest of his client, and his integrity cannot be suspected when his acts have not compromised the interest of his client. It requires to be reminded that he is an officer of the Court too, and is always presumed to have acted within the scope of his authority and also with responsibility. In the context of the present case, first, what is the specific interest of the appellant which his counsel had compromised when he gave his consent to the learned Single Judge for appointing a sole arbitrator is not demonstrated at any time by the appellant. Second, there is every reason to believe that the appellant's counsel has acted within his authority as was established by the fact that the appellant himself has subsequently participated in the proceedings of the sole arbitrator, a product of such consent which he now challenges. To this must be added the reasoning on allied issues to be discussed later. It is unfortunate that the appellant should take an aim at his previous counsel when he subsequently realigned his strategy to litigate. It is a conduct unbecoming of a responsible litigant and unworthy of appreciation.

18. The conduct of the appellant vis-a-vis the contention he has now raised apart, even if the relevant provisions of A & C Act are carefully read, they guide this Court to reach a conclusion which produces similar effects. Three provisions are relevant here: Section 4, Section 10 and Section 16(2). For a convenient appreciation, they are reproduced.

"4. Waiver of right to object.- A party who knows that-

- (a) any provision of this Part from which the parties may derogate, or
- (b) any requirement under the arbitration agreement, has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time limit is provided for stating that objection, within that period of time, shall be deemed to have waived his right to so object.

10. Number of arbitrators.- (1) The parties are free to determine the number of arbitrators, provided that such number shall not be an even number.

(2) Failing the determination referred to in sub-section (1), the arbitral tribunal shall consist of a sole arbitrator. Section 16. Competence of arbitral tribunal to rule on its jurisdiction

(1)...

(2) A plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defence, however, a party shall not be precluded from raising such a plea merely because that he has appointed, or participated in the appointment of, an arbitrator.

19. The first objection of the appellant was that the mode of appointment of the arbitrator by the learned Single Judge of this Court Vide his order in OA123/2016 was contrary to Article XVII (b) of the by-law of VFI. Here Section 10 steps in to declare that parties are free to decide upon the number of arbitrators who would constitute the arbitration tribunal. The only restriction to the free choice of the parties is that the number they decide upon should be an odd number. This implies, that notwithstanding the strength of the arbitral tribunal that an arbitration clause in a contract might envisage, parties are still have the freedom to agree on a different number that they consider convenient. In other words where an arbitration agreement is in place, the strength merely of the arbitral tribunal cannot be termed as its inviolable term, and parties cannot novate it. This freedom of the parties springs from the party-autonomy doctrine on which arbitration is conceptualised and designed. Accordingly, when the appellant had lent his consent to the appointment of sole arbitrator he in effect had consciously agreed on a novation of a contractual term concerning the strength of the arbitral tribunal, and necessarily he would be estopped from restoring that which he had voluntarily novated.

20.1 If however, the appellant still had any objection to the jurisdiction of the arbitration tribunal as a product of improper constitution to which he has a right in the second part of Section 16(2) where it is made explicit that a party would not forfeit his right to object to the jurisdiction of the arbitrator merely because he has either appointed or participated in the appointment of the arbitrator, such objection to the jurisdiction of the arbitrator should have been exercised not later than the submission of his defence. See *M/s Gas Authority of India Ltd., & another v. M/s Ketu Constructions & others* [(2007) 5 SCC 38], *M/s Pandey & Co.*

Builder Pvt. Ltd., v. State of Bihar & another [CDJ2008 SC 1382]. The appellant, unmindful of the consequence of his inaction, has let the time pass by when he filed his statement of defence. He does not stop there; he has also preferred his counter claim and has also actively participated in the arbitral proceedings. He opposed I.A.1/2016 and 2/2016 that the respondents have filed and also filed I.A.3/2016 himself. Now Section 4 of the Act stares on his face. Having consciously participated in the arbitral proceedings and upon inviting adverse orders, the appellant only attempts to revive his right to object to the jurisdiction of the arbitrator at a belated hour. Time does not run backwards to advance ambitions that vigilance and promptitude refuse to accommodate.

21. In essence the appellant has lost all the opportunities to challenge the legality of the constitution of the arbitral tribunal and should rest content with this reality. And, by opting not to exercise his right under Section 16, there is no order that is now available for him to challenge under Section 37. What the appellant cannot achieve directly he cannot be permitted to achieve indirectly, and any attempt to ride piggyback on an appeal against an interim order under Section 17 is an abuse of judicial process.

22. This takes this discussion to the next stage. Whether any of the orders passed by the arbitrator suffer from any infirmity that they warrant an interference. Here there are a few distractive arguments camouflaged carefully by the craftiness of the counsel that requires to be addressed first.

23. It is argued that reference to arbitration should have taken place before the expiry of ninety days from the date of interim order passed by this court in OA 123/2016. The fallacy of the argument is demonstrable. Section 9 (2) introduced by the Arbitration and Conciliation (Amendment) Act, 2015, reads:

"(1) ----

(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. "

An exercise in interpretation to understand the significance and true import of ninety days time provided for the commencement of arbitration under section 9(2) of the Act has a contextual setting. It should not be disassociated from the evolutionary process of granting interim relief within the scheme of Arbitration Act. Prior to the A& C Act, 1996, jurisdiction of the Court to entertain an application for interim relief is founded in Section 41 (b) read conjointly with Schedule II of the Arbitration Act, 1940. There however, was a precondition attached to it: There should be in place a proceeding pending in Court to

entertain an application for interim relief. There were some divergence of views on this, but its relevance met its vanishing point in the advent of A& C Act, 1996.

24. Section 9 as it originally existed prior to its amendment in 2015, enabled the contracting parties to approach the court to seek pre-arbitral interim relief where the dispute is arbitrable. This, therefore, is an improvement over its predecessor enactment in that pendency of a proceeding before Court such as the one for appointing an arbitrator is no more considered a sine quonon for grant of interim reliefs by Courts.

25. In *M/s Sundaram Finance Ltd., v. M/s NEPC Ltd.*, [(1999) 2 SCC 479], it was argued by one of the parties before the Supreme Court that at the time when the Court passes an interim order under Section 9, an express undertaking should be given by the party before the Court that he/it would invoke the arbitration clause forthwith and within a fixed period. This part of the argument was accepted by the Supreme Court when it held that

"there has to be a manifest intention on the part of the applicant to take recourse to the arbitral proceedings if, at the time when the application under Section 9 is filed, the proceedings have not commenced under Section 21 of the 1996 Act."

While the need for existence of a manifest intention to arbitrate the dispute is not part of Section 9, the Court has read the same into it to counter-balance the tendencies "to keep quiet without referring the matter to Arbitration " and to factor it in as a criterion for assessing the bona fide required to be established for grant of an interim order . This is approved by the Supreme Court in *Firm Ashok Traders & another v. Gurumukh Das Saluja & Others* [(2004) 3 SCC 155 : 2004(2) CTC 208], and it added:

"The word "before" (in section 9) means, inter alia, "ahead of; in the presence or sight of; under the consideration or cognizance of. The two events sought to be interconnected by use of the term "before" must have proximity of relationship by reference to occurrence, the later event proximately following the preceding even as a foreseeable or "within sight" certainly. The party invoking Section 9 may not have actually commenced the arbitral proceedings but must be able to satisfy the Court that the arbitral proceedings are actually contemplated or manifestly intended (as *M/s Sundaram Finance Ltd.*, puts it) and are positively going to commence within a reasonable time. What is a reasonable time will depend on the fact and circumstances of each case and the nature of interim relief sought for would itself give an indication thereof. The distance of time must not be such as would destroy the proximity of relationship of the two events between which it exists and elapses. "

Sec.9(2) is inserted more than a decade after *Firm Ashok Traders* case Vide Arbitration and Conciliation (Amendment) Act, 2015. On a plain reading of Section 9(2) it is immediately noticeable that it does not state what would be the consequence if the arbitral proceedings are not commenced within 90 days.

However, under Section 9(3), once the arbitral tribunal is constituted, except in exceptional circumstances where the Court considers that the remedy provided under Section 17 is not efficacious enough, its jurisdiction to grant interim relief under Section 9 stands ousted. The statute therefore has saved or reserved only a residuary jurisdiction in the Court to grant remedy under Section 9 once arbitration has commenced, and this declares the legislative intent to limit what was hitherto considered as a coexisting power of the Court to entertain applications for interim reliefs. The ninety days stipulation for commencement of arbitration from the date of grant of interim relief is to be read in this background. It is but the legislative manifestation of the "manifest intention" criterion that the Supreme Court has developed and held as essential in *Sundaram Finance case* [(1999) 2 SCC 479], and should not be read otherwise, though it may be stated that the provision could have been phrased better.

26.1 The argument before this Court was however slightly different. According to it since the order in OA 123/2016 constituting an arbitral tribunal is far beyond 90 days from the date of passing of the interim order under Section 9, the very constitution of the tribunal is anti-statute and incompetent. Section 9(2) does not just stop with prescribing 90 days time limit for commencing the arbitral proceeding. It proceeds to provide that arbitral proceedings can also commence "within such further period as the Court may determine," indicating thereby that the 90 days time limit is stretchable in appropriate cases where the Court deems it fit. It therefore flows from this that where in a case the Court is in seisin of the dispute under Section 9 of the A & C Act, but arbitration has not commenced within 90 days of the passing of an interim order, or where the Court has not directed the parties to go for arbitration within 90 days, it should be deemed to have exercised its authority under the latter part of Section 9(2).

26.2. If, however, any other interpretation in substitution of the harmonious interpretation now attempted is resorted to, there is a dangerous possibility of introducing a limitation within the Limitation Act, which will plainly contravene Section 43(1) of the Act. It might also serve as a licence to take a devious route to gain a back door entry to restrain the right to invoke arbitration when no time is contractually provided therefor. There is a specific provision in Section 43(3) to deal with situations such as these and Section 9(2) therefore cannot be interpreted in a manner that expands any situation not legislatively contemplated. With a dispute waiting to be resolved still simmering within, what will happen to the cause of action if the 90 days limit is interpreted otherwise? Should a party revert to common law remedy especially when limitation is on his side? Therefore, any interpretation that produces this consequence is absurd and will be self-destructive of the very foundation of arbitration.

27. Another argument that referring the dispute in OA 123/2016 to arbitration when arbitral tribunal itself was not in place and that arbitrator does not have jurisdiction over matters which are within the jurisdiction of Courts under Section 9 too belong the same variety. First, the jurisdiction of the Court in section 9 is to

provide an ideal status quo or to preserve the rights of the parties until the arbitral proceedings commence. And, the arbitrator has wider powers himself under Section 17 of the Act to pass interim orders which unlike Section 9 is unlimited by time. Therefore there is nothing that can be termed as one falling within the exclusive domain of Courts while interim orders are passed. The moment an arbitral tribunal is constituted Section 9(3) intervenes to take over, and therefore from the time the Court appoints an arbitrator by the consensus of the parties as has happened in this case, it loses its jurisdiction to hear an application for interim reliefs unless case falls within the exception provided in Section 9(3).

28. Turning to merit of the order, first to the order passed in I.A.1/2016 filed by the respondent) whose mirror image is I.A.3/2016 filed by the appellant. They are the subject matter of CMA2823/2016 and 2825/2017 respectively. The order in I.A.1/2016 has in effect restrained the appellant from using the banner name VFI for the meeting he proposed to hold on 04-10-2016 or for other IVL related activities.

29.1 The order passed does not in any way violate the interim order passed by the Patiala House Court that enabled the appellant to continue as President of VFI. However, does that by any token grant the appellant any exclusive right to operate, or run VFI by sidelining the Executive Committee or General Council? At least not in terms of the Constitution and Bylaw of the VFI. Article VIII thereof deals with the Duties and Powers of the Executive Committee. Article VIII(5) enjoins the Executive Committee with the power or duty "to conduct and administer the day to day work of the Federation and to form standing sub-committee and such other sub-committees as may be considered necessary and define and determine their powers, duties, scope and terms of reference unless otherwise provided for ." When compared with the Executive Committee, under Article XI Duties and Powers of the President are chiefly emergency or supreme emergency powers, and Article XI(4) insists that they shall be exercised only in the interest of the Federation (i.e. VFI). Under Article XI(2) and (6) such of the powers that the President exercises should be approved or confirmed by the Executive Committee. In other words, the Office of the President of VFI carries an implied duty to report to the Executive Committee to a substantial extent. It is therefore apparent that the President of VFI within the scheme of its Constitution and Bylaw has no greater authority or power than the Executive Committee, and wherever he is granted independent powers they have to be exercised only in case of emergency or supreme emergency as the case may be, and that too only in circumstances where the interest of the VFI is in peril, and not otherwise.

29.2 Nowhere, and at no time thus far, the appellant has attempted to explain or justify that his actions to which the respondents are taking exceptions to, were done in the best interest of the VFI, nor has he explained the pre-dominant interest of the VFI that he was anxious to secure, and/or alleged that the

arbitrator has faulted in overlooking the bonafides of the action that he had so taken.

29.3 In any democratically run institution, any office created by its constitution or bylaw to preside over its affairs cannot ignore the spirit of the democratic principles that govern it. After all, VFI is not the personal property of its President or any of its other office bearers, or of the Committee created for its governance under its bylaw. It would have been appropriate if the appellant had attempted to convene the Executive Committee or the General Council, mustered support for his views or plan of actions and acted. Between an individual and the institution of which he is a member or an office bearer, the interest of the institution must always be considered paramount. Any position enjoined with duty to any democratically run body such as a Society, or a club, or any association of persons is fiduciary in character, and anyone who holds such position is bound by the obligations arising out of a fiduciary relationship. They are but trustees of the institution in general and of those members who have elected them in particular. They have been granted powers only for performing their duties to the institution whose affairs they manage for the time being. The order of the arbitrator reflects this principle broadly while granting prayer (b) of I.A.1/2016 and it is therefore in order, and it is not inconsistent with any of the principles that govern the grant of interim order by an arbitrator, more particularly in a case of Individual v. Institution.

30. The appellant then complains of lack of opportunity to contest I.A.1/2016. As indicated some where above, according to respondents this I.A. was filed on 30.09.2016 whereas the appellant contends that it was filed on 01-10- 2016. To this the appellant has filed his reply/counter though e-mail, dated 02.10.2016, marking a copy to the respondents' counsel. There is no complaint in this e-mail that time was inadequate for an effective hearing. Even in his 14 paged reply which appears to be an attachment to the aforesaid e-mail, there is no specific allegation or denial of adequate opportunity to contest. As to his objection to one Natarajan moving the application before arbitrator too, no objection has been taken before the arbitrator.

31.1 As to the order passed in I.A.2/2016, permitting the General Secretary and the Treasurer to jointly operate the bank account of the VFI, on the face of it, it is not violative of any of the provisions of the Constitution & Bylaw of the VFI. Article X provides that the bank accounts can be operated by any two among (a) the President (b) General Secretary (c) Hon. Treasurer.

31.2 As to the justification for the aforesaid order of the arbitrator, the reasons discussed in paragraph 29.3 is valid here too. Further, the attitude and conduct of the appellant that was on display prima facie would not inspire confidence in the mind of the right thinking. They hardly reconcile with the responsibility that he owed the VFI by virtue of his office. Otherwise, how to explain why he informed the Executive Committee that he had not signed any contract with SLE, why he suddenly pulled a surprise on the Executive Committee with his announcement

that he had signed the contract at least a month before, why he participated in the decision to form a Core Committee to select a sponsor and why he dissolved it unilaterally without taking the Executive Committee into confidence when the object for which the Core Committee was formed was in the final leg of its fulfilment, what is the emergency or supreme emergency that threatened the interest of VFI which warranted the unilateral exercise of Presidential powers within the scheme of the Constitution of VFI, and what is the manifest interest of VFI that he, in his capacity as the President of VFI, has pursued with his wild swinging patterns?

31.3 There are endless questions. They however, remain and continue to remain as an unresolved plot that the appellant has scripted and put up in exhibition. Now when it has all started? Was it not when the VFI contemplated on a IV Land searched for a sponsor? Why the IVL as an idea should inject faction? What is playing the spoilsport - Is it the sport, or the sponsorship? Why is the appellant hyper anxious to take on the Executive Committee of the Federation on the choice of the sponsor? Why is he hesitant to abide by the views of the majority in the Executive Committee? What is the rationale behind his actions? Not one was explained. It is this failure to explain any of them, and this inability to deny their factual content exposes the key to his cryptic puzzle and unravels the plot within. Why fault the arbitrator, when the appellant himself has unloaded unexplainable deeds of uninspiring quality before the arbitrator? The conduct of the appellant is not beyond blames and lacks bonafides.

32. To conclude the appellant has not been able to convince this Court as to the merit of anyone of the three appeals that he has filed. Consequently he fails in all the three appeals.

33. Before dropping the curtains on this case, it requires to be recorded with immense anguish that those who litigate here appear to betray the interest of thousands of volleyball players in this country, the dreams they carry and the hopes this country holds. Under what authority is the sporting talent the country possesses is paralysed? Are they not the assets of our country, however short its duration might be? Somewhere in the voluminous papers made available it is indicated that the Asian Volleyball Confederation has banned all the international activities of the VFI, and during the pendency of these appeals before me, it is informed that the Sports Ministry of Government of India is said to have derecognised the VFI as it is embroiled in litigation. The factum of volleying litigation between those who avowed to protect and promote the game might be true, but what has the Sports Ministry done to arrest the damage? Rather than de-recognising the Federation, why has it not attempted to involve itself in the mess and put the house in order? After all, in the General Council Meeting of the VFI dated 11.03.2016 in which the appellant was stripped off his office, a representative of Govt. of India was a participant. There is therefore in display irresponsibility of varying degrees and content that appears to control the attitude of all those who have something to do with the governance of this

sporting body. Every sporting body and those who administer it should remember that long away from the comfort of the court halls and meeting rooms, there nurtures our children, men and women, spread across our countryside and cities, a dream of playing for the nation. Dreams such as these bind this nation, keep alive its spirits, and propel it to move to the generation next with energy amidst all the cynicism that we, the people, are constantly fed with.

In the end, this Court dismisses CMA2823 of 2016 to 2825 of 2016 as well as CMP20470 to 20472 of 2016. In view of the orders passed in the CMA no orders are required to be passed in CMP269 to 272 of 2017 and are closed.