

(2016) 03 BOM CK 0209

In the Bombay High Court

Case No : Arbitration Petition (L) No. 374 of 2016

Wind World (India) Limited and Others

APPELLANT

Vs

Enercon GmbH and Others

RESPONDENT

Date of Decision : 29-03-2016

Acts Referred:

Arbitration and Conciliation Act, 1996 — Section 17, Section 19, Section 19(3), Section 27, Section 37, Section 5
Civil Procedure Code, 1908 (CPC) — Order 38 Rule 5, Order 39 Rule 39
Limited Liability Partnership Act, 2008 — Section 3<

Citation : (2016) 03 BOM CK 0209

Hon'ble Judges : R.D. Dhanuka, J.

Bench : Single Bench

Advocate : Atul Rajadhyaksha, Senior Advocate, Zal Andhyarujina, Rohan Rajadhyaksha, Ameet Hariani, Aditya Khandeparkar and Anirudh Hariani i/by Hariani & Co., for the Appellant; Aspi Chinoy, Senior Advocate, Zubin Behramkamdin, Sharan Jagtiani, Jehangir Jejeebh

Final Decision : Disposed Off

Judgement

R.D. Dhanuka, J.—1. By this petition filed under Section 37 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as "the said Act"), the petitioners have impugned the order dated 8th March 2016 passed by the arbitral tribunal (as decided by the majority) directing the petitioners herein to produce various documents to the respondents and also granting various interim measures. The petitioners have also prayed for stay of the operation and implementation of the time-table contained in the order No. 7 dated 3rd February 2016 passed by the arbitral tribunal and also stay of all further proceedings before the arbitral tribunal. By consent of parties, this petition is heard finally at the admission stage. Some of the relevant facts for the purpose of deciding this arbitration petition are as under:--

2. The petitioner No. 1 is a company registered under the Indian Companies Act, 1956 and is a joint venture company between the petitioner Nos. 2 and 3 along

with others currently holding 44% of the share capital of the petitioner No. 1 and the respondent No. 1 which currently holds 56% of the share capital of the petitioner No. 1. The respondent No. 1 and the respondent No. 2 are the companies incorporated under the laws of Germany.

3. The dispute arose between the parties in relation to the Shareholders' Agreement, Technical Know-How Agreement, Supplementary Shareholders' Agreements, Supplementary Technical Know-How Agreement, Agreed Principles and Intellectual Property Licensing Agreement. By an order dated 14 February 2014, Supreme Court referred all the disputes between the parties in relation to aforesaid agreements to arbitral tribunal. The petitioners nominated Mr. Justice R.V. Raveendran, a former Judge of Supreme Court. The respondents nominated Mr. V.V. Veeder, Q.C. as a nominee arbitrator. Supreme Court appointed Lord Hoffmann as a Presiding Arbitrator. Supreme Court clarified that the present arbitration was to be conducted in London and it was an arbitration with its seat in India and governed by Part I of the said Act.

4. Consequent to the said judgment dated 14th February 2014 passed by the Supreme Court, the arbitral proceedings commenced before the arbitral tribunal with a statement of claim filed by the respondents. The petitioners filed statement of defence and a counterclaim. Parties filed three interim applications. The arbitral tribunal gave various directions from time to time.

5. The petitioners are aggrieved by an order dated 8th March 2016 passed by the majority arbitrators i.e. Lord Hoffmann and Mr. V.V. Veeder, Q.C. allowing the application dated 13th December 2015 filed by the respondents purportedly under Section 17 read with Section 19 of the said Act for disclosure of certain documents/information and injunctive reliefs. Mr. Justice R.V. Raveendran, former Judge of the Supreme Court issued a dissenting opinion dismissing the interim application filed by the respondents.

6. The respondents made a claim against the petitioner Nos. 2 and 3 for damages on account of alleged breaches of the shareholders' agreements and/or due to differences arising as a matter of Indian Law quantifiable in terms of money. According to the petitioners, the arbitral record comprises of a Trial Bundle consisting of over 33,000 pages and separate documents produced in the matter in excess of 140,000 pages weighing over 450 kgs.

7. On or about 5th September 2014, the respondents filed an application before the arbitral tribunal under Section 17 of the said Act seeking production of documents which application was opposed by the petitioners setting out various grounds. By an order dated 24th January 2015, the arbitral tribunal disposed of the said application allowing the petitioners to redact the documents produced by them. The arbitral tribunal directed that any document produced by a party or a non-party shall be used only in connection with the arbitral proceedings. On 27th April 2015, both sides made requests for production of further documents. By an order dated 22nd June 2015, the arbitral tribunal allowed the production of some

of the documents. On 29th June 2015, the petitioners filed an application under Section 17 of the said Act seeking leave to produce redacted documents to the respondents and to produce various other documents. The respondent No. 1 opposed the said application stating that un-redacted documents are material to the liability and quantification of loss and also on the ground that the said application did not fall within the ambit of Section 17 of the said Act.

8. The said application filed by the petitioners came to be rejected by the arbitral tribunal by an order dated 11th July 2015 and by a majority of 2:1 by holding that the said application of the petitioners was not within the terms of Section 17 of the said Act as the petitioners were not seeking an order against a party requiring the party to take some measure of protection in respect of subject matter of dispute. Mr. Justice R.V. Raveendran, (retired) passed a dissenting order and held that the application filed by the petitioners was within the ambit of Section 17 of the Act. The petitioners filed an appeal under Section 37 of the said Act before this Court challenging the order dated 11th July 2015. This Court allowed the said appeal vide order dated 9th December 2015.

9. On 13th December 2015, the respondents filed an interim application for reliefs in terms of a draft order attached to the interim application and sought disclosure of documents/information and also sought certain injunctive reliefs. Learned senior counsel along with assisting Counsel representing the petitioners chose to withdraw from the arbitral proceedings due to some reasons. The petitioners informed about withdrawal of those two counsel of the petitioners from the arbitral proceedings to the arbitral tribunal and that the petitioners were endeavouring to engage new lawyers to act for them. In the meanwhile, the arbitral tribunal issued further directions for proceeding with the matter.

10. By an order dated 24th December 2015 passed by the arbitral tribunal, the petitioners were granted an extension of four weeks" time to file their reply to the interim application on the condition that the petitioner Nos. 2 and 3 would furnish to the arbitral tribunal an undertaking that until the interim application was disposed of, the petitioner Nos. 2 and 3 would not take any action or cause or permit any other entity to take action contrary to the directions set out in paragraphs 3.2 to 3.5 of the draft order prepared by the respondents and attached to the interim application of the respondents. The arbitral tribunal also held that there existed circumstances showing a prima facie risk of the dissipation of assets which would justify a grant of temporary injunction in terms of paragraphs 3.2, 3.3 and 3.4 of the said draft order prepared by the respondents. The arbitral tribunal granted the reliefs as prayed by the respondents in the nature of ad-interim reliefs in favour of the respondents by calling upon the petitioner Nos. 2 and 3 to give an undertaking as a condition precedent to grant of extension of four weeks.

11. It is the case of the petitioners that pursuant to the said order dated 24th December 2015 passed as a condition precedent to the extension of time sought by the petitioners, without prejudice to the rights and contentions of the

petitioners, the petitioner Nos. 2 and 3 complied with the said conditions imposed by the arbitral tribunal by furnishing their undertakings in respect of the contents of paragraphs 3.2, 3.3 and 3.4 of the draft order prepared by the respondents and attached to the interim application without any legal advice.

12. On 3rd February 2016, the arbitral tribunal issued its order No. 7 thereby amending the time-table to the order dated 11th December 2015. It is the case of the petitioners that the said time-table set out by the order dated 3rd February 2016 amounted to in violation of principles of natural justice. The arbitral tribunal maintained 27 and 28 April 2016 as the dates for oral hearings in London as earlier stipulated in the time-table. The petitioners requested the arbitral tribunal to grant extension of time in respect of items (6), (7) and (8) of the time-table which application was opposed by the respondents. The arbitral tribunal expressed its unanimous to alter the date of 22nd April 2016 in Item No. 8 of the time-table laid down in the order dated 3rd February 2016.

13. It is the case of the petitioners that the present advocates who are representing the petitioners were appointed in the first week of January 2016 and informed the arbitral tribunal about their appointments. The petitioners thereafter filed a detailed reply dated 27th February 2016 to the application filed by the respondents. The respondents filed a rejoinder in the said reply filed by the petitioners before the arbitral tribunal.

14. On 8th March 2016, the arbitral tribunal passed an order allowing various reliefs claimed by the respondents by majority. Mr. Justice R.V. Raveendran (retired) rendered dissenting opinion dismissing the interim application filed by the respondents. The petitioners herein have impugned the said order dated 8th March 2016 in the present arbitration petition filed under Section 37 of the said Act.

15. Mr. Chinoy learned senior counsel for respondents raises a preliminary objection about maintainability of this petition filed under section 37 of the said Act on the ground that insofar as challenge to the order passed by the arbitral tribunal in this petition against the order of disclosure and furnishing copies of various documents to the petitioner is concerned, the said application was under section 19 and thus that part of the order being distinct and separate order though part of the common order is not appealable under section 37 of the said Act.

16. Mr. Rajadhyaksha, learned senior counsel for the petitioners made his submissions first on the preliminary objections raised by the respondents about maintainability of the appeal and thereafter on merits. Learned senior counsel invited my attention to the application filed by the respondents inter alia praying for disclosure of various documents. He placed reliance on the directions given by the arbitral tribunal vide procedural order No. 5 issued by the arbitral tribunal on 11th December, 2015. He submits that the arbitral tribunal had directed the respondents to file an application under section 17 of the said Act on or before

13th December, 2015 and issued further direction about filing of the reply by the petitioners to such application under section 17 and fixed a date for the arbitral tribunal to make the ruling on the said application under section 17. He submits that pursuant to said directions issued by the arbitral tribunal, the respondents herein filed an application under section 17 on 13th December, 2015.

17. It is submitted that in the introductory paragraph of the said application, the respondents though alleged that the application of the respondents seeking disclosure of certain documents/information was pursuant to section 19 of the said Act and the application for interim measures of protection and preservation pursuant to section 17 of the said Act, the said application was filed pursuant to the liberty granted by the arbitral tribunal under section 17 of the said Act. He also placed reliance on the procedural order No. 7 issued on 3rd February, 2016 passed by the arbitral tribunal in which the arbitral tribunal amended the time table in procedural order No. 5. He submits that even in the said procedural order, the arbitral tribunal amended the date of filing reply given to the petitioners to the application under section 17 of the said Act which order was passed after the respondents had already filed an application on 13th December, 2015 under section 17 of the said Act.

18. Learned senior counsel placed reliance on the draft order filed by the respondents along with an application made by the respondents and would submit that even according to the said draft order submitted by the respondents, it was clear that the disclosure sought by the respondents was relating to the interim reliefs prayed by the respondents and thus that application for disclosure would be an application under section 17 of the said Act and not under section 19. He also placed reliance on the dissenting order passed by Mr. Justice R.V. Raveendran (Retired) in which it is opined that section 19 of the said Act relied upon by the respondents herein had no bearing on the interim reliefs claimed.

19. Learned senior counsel placed reliance on the procedural order No. 8 dated 8th March, 2016 and more particularly page (3) thereof which states that the claim for documentary disclosure was made pursuant to the procedure agreed by the parties at the outset of the arbitration and incorporated by the tribunal in paragraph (9) of the procedural order No. 1 which reads as under:--

"The IBA Rules on the Taking of Evidence in International Arbitrations (2010) ("the IBA Rules") will constitute guidelines for the purpose of these arbitral proceedings, subject to the discretion of the Tribunal."

20. It is submitted that the application made by the respondents for disclosure of the documents along with other reliefs was not under section 19 of the said Act but was a composite application under section 17 of the said Act. It is submitted that in any event since the application made by the respondents was a composite application for seeking disclosure of various documents and also for interim measures, appeal under section 37 of the said Act is maintainable in view of the composite order having been passed by the arbitral tribunal in respect of both

the reliefs granted by the arbitral tribunal. In support of this submission, learned senior counsel placed reliance on the judgment of Supreme Court in case of Arcot Textile Mills Limited v. Regional Provident Fund Commissioner and others, , (2013) 16 SCC 1 and in particular paragraphs 1 to 5, 11, 12, 15, 17, 20 and 21. It is submitted that the disclosure sought by the respondents of various documents was in furtherance of the interim measures prayed under section 17 and the said order of disclosure is thus not severable from the injunctive relief granted by the arbitral tribunal.

21. Insofar as challenge to the impugned order passed by the majority arbitrators on merits is concerned, learned senior counsel for the petitioners invited my attention to the procedural order No. 6 dated 24th December, 2015 and in particular paragraphs 12 and would submit that the arbitral tribunal had agreed to grant an extension of four weeks time to file reply to the application filed by the respondents under section 17 to the petitioners only on the condition that the petitioner Nos. 2 and 3 shall give an undertaking on or before 27th December, 2015 that until an application of the respondents under section 17 was disposed of, they will not take any action or cause or permit any other entity to take action contrary to the orders set out in paragraph 3.2-5 of the draft order attached to the application filed by the respondents. He submits that in view of such conditional order passed by the arbitral tribunal, the petitioners had no other option but to file such undertaking however without prejudice to the rights and contentions of the petitioners. The petitioner Nos. 2 and 3 filed such undertaking on 27th December, 2015 which undertaking were extended till disposal of the said application filed by the respondents under section 17 of the said Act.

22. Learned senior counsel for the petitioners invited my attention to the impugned order passed by the arbitral tribunal on 8th March, 2016 and submits that the arbitral tribunal has granted interim measures against the petitioner Nos. 2 and 3 to do or not to do various acts in respect of preservation of partnership assets of various limited liability partnership (LLPs) and a private limited company or from preventing any distribution of the assets etc. of those LLP's and a private limited company. He submits that the arbitral tribunal could not have passed any orders in respect of those LLPs and a private limited company since none of those LLPs or the private limited company were parties to the arbitral proceedings or to the arbitration agreements. He submits that the arbitral tribunal has thus exceeded its jurisdiction by passing interim measures against the third parties.

23. Learned senior counsel for the petitioners invited my attention to the dissenting order passed by Mr. Justice R.V. Raveendran (Retired), a Co-arbitrator and adopted the reasons recorded by the learned dissenting arbitrator allowing application filed under section 17 by the respondents only in part to the extent agreed by the petitioners herein. It is submitted by the learned senior counsel that the disclosures directed by the arbitral tribunal were related to five limited

liability partnerships viz. Vish Wind Infrastructure LLP, Nirvana Wind Power Infrastructure LLP, Ray Urja Infrastructure LLP, Vaayu Energy LLP and Vaayu Infrastructure LLP which were listed at serial Nos. 12, 13, 14, 19 and 25 in Annexure B to the claim statement. He submits that admittedly there were several other partners in the said five LLPs viz. Radhika Mehra, Minakshi Mehra, Sudarshan Mehra, Sitakshi Khanna, Neha Mehra, Siddharth Mehra and Smriti Mehra. No reliefs were sought against those LLPs in the statement of claim filed by the respondents. He submits that the liability of partnership cannot be equated to or identified for one or two of its partners. He submits that no individual liability of a partner in LLPs can be considered since the LLPs are body corporate and separate legal entities distinct from its partners. The arbitral tribunal could not have passed any order directly or indirectly in respect of assets of those LLPs and a private limited company which would affect the interest of all the partners including petitioner Nos. 2 and 3. He submits that the entire order passed by the arbitral tribunal granting interim measures is thus without jurisdiction and deserves to be set aside.

24. It is submitted by the learned senior counsel for the petitioners that by granting such interim measures in respect of those five LLPs and a private limited company, the arbitral tribunal has proceeded with on the premise that all those LLPs and a private limited company were firms of the petitioner Nos. 2 and 3 only and the arbitral tribunal could have lifted the corporate veil and had jurisdiction to pass such interim measures even in respect of those LLPs and a company who were not parties to the present proceedings or to the arbitration agreement. He submits that the arbitral tribunal had no jurisdiction to lift the corporate veil of the third parties and thus the entire impugned order is without jurisdiction. In support of this submission he placed reliance on the judgment of this court in case of Oil and Natural Gas Corporation Ltd. v. M/s. Jindal Drilling and Industries Limited delivered on 28th April, 2015 in Arbitration Petition No. 587 of 2014 along with other companion company and more particularly paragraphs 42 to 44, 47 and 48. He submits that paragraph 27 of the impugned order passed by the arbitral tribunal is contrary to the view formulated by this court in the judgment of ONGC v. M/s. Jindal Drilling and Industries Limited (supra) and the impugned order thus deserves to be set aside on this ground also.

25. Learned senior counsel for the petitioners placed reliance on the judgment of Supreme Court in case of Md. Army Welfare Housing Organisation v. Sumangal Services (P) Ltd. , (2004) 9 SCC 619 and in particular paragraphs 43 and 58 and would submit that the arbitral tribunal has no jurisdiction to pass any interim measures against a third party. It is submitted that the impugned order passed by the arbitral tribunal directly affects or is against those LLPs and a company and would affect the other partners and the shareholders of the LLPs and a company respectively who are admittedly not the parties to the arbitration agreement and to the proceedings before the arbitral tribunal.

26. It is submitted that two partners of those LLPs cannot be directed to preserve the assets of those third parties or to maintain status quo or to prevent other partners from distribution of assets of those LLPs and a company or from dealing with or diminishing the value of their assets with prior permission of the tribunal or otherwise. He submits that third parties cannot be made bound by such interim measures not to deal with, dispose of or diminishing value of assets or cannot be taken forced to take any prior permission of the tribunal before dealing with the assets of the partnership firm. He submits that it is well settled principles of law that what cannot be done directly cannot be done indirectly. Learned senior counsel placed reliance on the following judgments:--

"(i) Judgment of Supreme Court in case of State of Tamil Nadu and others v. K. Shyam Sunder and others , (2011) 8 SCC 737 (paragraph 40).

(ii) Judgment of Supreme Court in case of Rashmi Rekha Thatoi and another v. State of Orissa and others , (2012) 5 SCC 690 (paragraph 67).

(iii) Judgment of Supreme Court in case of Abdul Basit alias Raju and others v. Mohd. Abdul Kadir Chaudhary and another , (2014) 10 SCC 754 (paragraph 25)."

27. Learned senior counsel for the petitioners invited my attention to the annexure (b) to the statement of claim referred in the dissenting order passed by Mr. Justice R.V. Raveendran (Retired) co-arbitrator showing a list of various LLPs and private limited companies. He submits that even the said list would clearly indicate that in respect of four such LLPs in respect of which the interim measures are granted by the arbitral tribunal consists of 9 to 10 partners including the petitioner Nos. 2 and 3. No such interim measures thus could be granted directly or indirectly against the partners who were third parties.

28. Insofar as disclosure agreed to be made by the petitioners are concerned, it is submitted by the learned senior counsel for the petitioners that those disclosures were agreed without prejudice to the rights and contentions of the petitioners and were the documents/information which were within the public domain and to which any members of public could have an access. He submits that the arbitral tribunal has also directed the petitioner Nos. 2 and 3 to furnish the bank statements and all documents evidencing investments, including, but not limited to, demat accounts, fixed deposits and shareholdings of Vaayu Renewable Energy (Purna) Pvt. Ltd. since incorporation. He submits that though a specific objection was raised pointing out that the said Purna was a private limited company, the arbitral tribunal directed the petitioner Nos. 2 and 3 to produce certain records even of the said company who was also not a party to arbitration agreement or the proceedings.

29. Learned senior counsel for the petitioners invited my attention to paragraph 28 of the impugned order passed by the majority arbitrators and would submit that the order of the arbitral tribunal is based on the principles of constructive trust, in respect of assets under their control, i.e. their interest in the Vaayu Companies representing assets wrongfully extracted from WWIL holding that

even if the remedy was purely personal, a court or tribunal would have power to grant interim relief, equivalent to a Mareva or freezing injunction, to prevent a respondent from taking extraordinary steps, outside the ordinary course of business, to put his assets outside the reach of an enforceable judgment or award. He submits that none of these aspects including mareva or freezing injunction considered by the arbitral tribunal were even pleaded by the respondents in the application for interim relief or any other proceedings. He submits that in the impugned order, the majority arbitrators have considered what was not even submitted by the respondents.

30. Learned senior counsel invited my attention to paragraph 31 of the interim order passed by the majority arbitrators and would submit that majority arbitrators while granting interim measures have even according to the arbitral tribunal have considered only the evidence adduced by the parties at the hearing which was much prior to the date of passing of the said order. He invited my attention to the letter dated 9th February, 2016 addressed by the petitioners through their advocates to the arbitral tribunal seeking clarification from the arbitral tribunal about the observations made in paragraph (10) of the procedural order No. 6 thereby making certain prima facie observations on the alleged breaches of the shareholder agreement by the petitioner Nos. 2 and 3 that those observations of the arbitral tribunal did not bind the arbitral tribunal in any way at the stage of considering an application filed by the respondents under section 17 on merits and that the same were without prejudice to all rights and contentions of the petitioners herein in the matter. He also invited my attention to the clarification issued by the arbitral tribunal vide their e-mail dated 14th February, 2016 clarifying that in the absence of further evidence or explanation from the other party, there was evidence upon which the tribunal could make such a finding. It does not bind the tribunal to make any finding whatsoever.

31. It is submitted that after such clarification issued by the arbitral tribunal, the petitioners herein had filed a detailed affidavit in reply to the application under section 17 on 27th February, 2016 raising various issues on merits of the application filed by the respondents for interim measures and for disclosure of various documents. He submits that though the arbitral tribunal had agreed to consider the evidence relied upon by the parties, the majority arbitrators have granted interim measures without considering the detailed objections and clarification issued by the petitioners in the detailed reply dated 27th February, 2016 and passed interim measures only based on the evidence produced by the respondents upto the stage of hearing. He submits that the impugned order passed by the majority arbitrators is thus ex-facie illegal being in violation of principles of natural justice. He submits that the impugned order while granting interim measures by the majority arbitrators is without disclosing any reasons as to how the respondents had made out a prima facie case.

32. Learned senior counsel also invited my attention to some of the paragraphs from the affidavit in reply filed by the petitioners to the said application filed

under section 17 and would submit that though the petitioners had rendered explanation as to how no prima facie case was made out by the respondents, the arbitral tribunal did not consider those objections and did not disclose as to how prima facie case was made out by the respondents.

33. It is submitted by the learned senior counsel that admittedly the claims made by the respondents before the arbitral tribunal were for damages which claims were seriously disputed by the petitioners and were required to be proved by the respondents by leading oral evidence. He submits that the claims made by the respondents for damages were not secured claims and thus the arbitral tribunal could not have granted any interim measures in respect of the properties and that also of third parties by ignoring the principles of Order 38 Rule 5 of the Code of Civil Procedure, 1908. He submits that the unsecured and disputed claims of the respondents could not have converted into secured claims. In support of this submission, he placed reliance on the judgment of Supreme Court in case of Raman Tech & Process Engg. Co. and another v. Solanki Traders , (2008) 2 SCC 302 and in particular paragraphs 4 to 6. He also invited my attention to paragraph 28 of the application made by the respondents under section 17 and would submit that the averments made by the respondents for seeking interim measures of protection were totally vague and without particulars and did not satisfy the principles of Order 38 Rule 5 of the Code of Civil Procedure, 1908.

34. Learned senior counsel for the petitioners placed reliance on the judgment of Delhi High Court in case of Intertoll Ics Cecons O & M Co. Pvt. Ltd. v. National Highways Authority of India, , ILR (2013) II Delhi 1018 and in particular paragraphs 10, 13 and 18. He also placed reliance on reported judgment of this court in case of Baker Hughes Singapore Pte. v. Shiv-Vani Oil and Gas Exploration Services Ltd. reported in , 2015 (1) Bom.C.R. 377 and in particular paragraphs 35, 43, 44, 55, 57 and 58 and would submit that the arbitral tribunal could have granted interim measures under section 17 in case of money claim only if such claims made by the claimants were admitted which was not the case of the respondents in this case. He submits that in the said matter, there was a provision for payment of undisputed invoices and some of the invoices were admittedly undisputed.

35. It is submitted by the learned senior counsel for the petitioners that the impugned order directing the petitioners to produce and furnish copies of various documents was totally unwarranted and in any event is not in accordance with the IBA Rules applicable to the parties. In support of this submission, learned senior counsel invited my attention to Articles 1, 3, 3(7) and 3(9) of the said IBA Rules. It is submitted that under Article 9, even if parties to the arbitration agreement wish to obtain the production of the documents from the person who was not a party to the arbitration, the party has to follow the steps legally available within the time ordered by the arbitral tribunal to obtain such requested documents or to seek leave from the arbitral tribunal to take such steps etc.

36. It is submitted that Article 9 of IBA Rules is in pari materia with section 27 of

the Arbitration and Conciliation Act, 1996. It is submitted that the arbitral tribunal thus on its own could not have ordered the production of documents relating to third parties or directing the petitioner Nos. 2 and 3 to produce such documents but ought to have directed the respondents to take steps under Article 9 read with section 27 of the Arbitration and Conciliation Act, 1996 after deciding the relevance of such documents. He submits that the impugned order of disclosure is thus in violation of IBA Rules and more particularly Article 9 and also section 27 of the Arbitration and Conciliation Act, 1996.

37. Mr. Chinoy, learned senior counsel for the respondents on the other hand submits that the composite petition filed by the petitioners under section 37 of the said Arbitration and Conciliation Act, 1996 inter alia impugning the order of disclosure passed under section 19 of the Act and interim measures granted under section 17 of the Act is not maintainable. In support of this submission, he invited my attention to various paragraphs of the impugned order and in particular paragraphs 16, 22, 23, 24 to 28 and would submit that the application for disclosure was made by the respondents under section 19 read with IBA Rules. He submits that order of disclosure made by the arbitral tribunal is an independent order and can be segregated from the composite order passed by the majority arbitrators.

38. Insofar as order passed by the majority arbitrators directing the petitioners to disclose and furnish various documents is concerned, it is submitted by the learned senior counsel that Mr. Yogesh Mehra was cross examined at the hearing about the related party transactions in 2011 and 2013 between WWIL and Vish Wind which were recorded in the financial statements of WWIL. He submits that Vish Wind was a partnership firm of members of the Mehra family which was administered by Yogesh and Ajay Mehra, the petitioner Nos. 2 and 3 herein. He submits that during the course of cross examination it appeared from the accounts that Vish Wind had netted a profit of about Euro 124 million from the transactions in question. During the course of the cross examination, the learned counsel for the respondents herein requested for disclosure of the documents relating the Vish Wind transactions.

39. It is submitted that on the 6th day of the hearing, the contracts and valuation reports were disclosed by the petitioners herein which evidenced sales of development rights by Vish Wind to WWII for very substantial sums, supported by valuation certificates based on comparables with other sales of such development rights in other parts of the world. He submits that the respondents herein accordingly asked the petitioners to disclose the financial statements of Vish Wind and they were put before the tribunal by the petitioners on the 7th day of the hearing. He submits that from the accounts showed before the arbitral tribunal, it appeared that Vish Wind had used part of its profit to buy WTGs from WWIL and was now earning income from sale of power. Huge amount of salaries were paid to petitioner Nos. 2 and 3. He submits that it was a clear case of the siphoning of fund by the petitioner Nos. 2 and 3 and about 11000

crores were diverted illegally to themselves or partnership firms controlled by them. He submits that it was a clear case of misfeasance. The production of documents and disclosure of various information pertaining to these illegal transaction was thus necessary for proper adjudication of the dispute before the arbitral tribunal.

40. It is submitted by the learned senior counsel that the petitioner themselves had voluntarily agreed to disclose various documents and agreed to furnish copies of various documents of the LLPs and thus it cannot be allowed to be urged by the petitioners at this stage that no such disclosure in respect of such documents and/or information regarding the transaction in respect of those limited liability partnership firms could have been directed by the arbitral tribunal on the ground that such firms were neither parties to the arbitration agreement nor were parties to the arbitral proceedings.

41. It is submitted that according to the petitioners herein, those four limited liability partnership firms were dormant companies and/or non business firms, however the cross examination of the petitioner No. 2 disclosed the total contrary facts and the diversion of funds was proved. It is submitted that most of these firms and companies were admittedly set up by the petitioner Nos. 2 and 3 only after the dispute between the parties hereto started. The purpose of disclosure of various transactions and documents in the present proceedings was to find out whether the petitioner Nos. 2 and 3 were actually siphoned of and/or diverted the funds of the firms and companies in question by the petitioner Nos. 2 and 3.

42. Insofar as order passed by the majority arbitrators granting various interim measures is concerned, it is submitted by the learned senior counsel that the impugned order was passed by the majority arbitrators in view of the misfeasance and siphoning of the funds of the company in question to the partnership firm and the companies setup by the petitioner Nos. 2 and 3 which was apparent during the course of cross examination of the petitioner No. 2 and thus the arbitral tribunal was fully empowered and justified in passing such interim measures under section 17 of the Arbitration and Conciliation Act, 1996. He invited my attention to the undertaking filed by the petitioner Nos. 2 and 3 on 27th December, 2015 which was extended till the date of the impugned order and would submit that the interim measures granted by the majority arbitrators was exactly in identical terms of such undertaking and thus no prejudice of any nature whatsoever would be caused to the petitioners.

43. It is submitted that if the undertaking could be furnished by the petitioner Nos. 2 and 3 on behalf of various limited liability partnership firms, the petitioners cannot be allowed to urge that the arbitral tribunal which has passed an order in terms of undertaking furnished by the petitioner Nos. 2 and 3 did not have jurisdiction to pass such interim measures against those firms. He submits that all the firms which were started by the petitioner Nos. 2 and 3 after commencement of the disputes between the parties were under the exclusive

control of the petitioner Nos. 2 and 3. It is submitted that in any event the majority arbitrators have not passed any interim measures against those partnership firms or a company but the order has been passed against the petitioner Nos. 2 and 3 who were parties to the arbitration agreement and to the proceedings.

44. It is submitted that the arbitral tribunal has in any event has not prohibited the partnership from dealing with and/or disposing of their assets upto a cumulative value of Rs. 10 million rupees, provided that such dealing or disposal was in the ordinary and proper course of their business and does not entail any distribution of the partnership assets to the partners or others. He submits that majority of the arbitrators have also in the impugned order has made it clear that the said order did not prohibit the partnerships from continuing the payment of interest in relation to any pre-existing loans from independent financial institutions or from making payments towards any costs and expenses of operating any currently held wind farms, provided that such dealing was in the ordinary and proper course of their business. It is submitted that the impugned order passed by the majority arbitrators is thus equitable, fair and just and was warranted in the facts and circumstances of this case and cannot be interfered with in this case under section 37 of the Arbitration and Conciliation Act, 1996.

45. It is submitted by the learned senior counsel for the respondents that by the impugned order passed by the majority arbitrators, the corporate veil of the firms have not been lifted by the majority arbitrators. He submits that those limited liability partnership firms are not made liable to pay any amount at this stage by the impugned order. Learned senior counsel placed reliance on the judgment of Division Bench in case of La-Fin Financial Services Pvt. Ltd. v. IL & FS Financial Services Pvt. Ltd., , 2015 SCC OnLine Bom 4794 and in particular paragraphs 39, 43 and 44. It is submitted that there is a clear distinction between the relief for attachment before judgment, which is governed by the provisions of Order 38 Rule 5 and the grant of temporary injunctions under Order 39 of the Code of Civil Procedure, 1908. It is submitted that majority of the arbitrators have rightly granted interim measures in favour of the respondents.

46. Learned senior counsel for the respondents invited my attention to paragraphs 54 to 59 of the affidavit in reply filed before the arbitral tribunal by the petitioners in which the petitioners themselves had agreed to produce the documents and have not disputed their capacity to produce such documents on behalf of those firms.

47. Learned senior counsel made an attempt to distinguish the judgment of Supreme Court in case of Arcot Textile Mills Limited (supra) on the ground that the said judgment does not apply to the facts of this case. He submits that in this case the order passed by the majority of the arbitrators on the application of disclosure made under section 19 and on the application filed under section 17 for interim measures are clearly severable and thus no composite petition for impugning both the orders is maintainable. In support of this submission,

learned senior counsel placed reliance on the section 5 of the Arbitration and Conciliation Act, 1996. He submits that admittedly, the petitioner Nos. 2 and 3 are parties to the arbitration agreement and thus can be directed to preserve the assets of the firm controlled by them which preservation is within the power and control of the petitioner Nos. 2 and 3.

48. Mr. Chinoy, learned senior counsel for the respondents states that when the erstwhile counsel and the advocate representing for the petitioners realized suppression of their clients of various facts, they did not continue to represent the petitioners. He submits that this fact itself would show that the petitioners had not come to the arbitral forum with clean hands and had suppressed various true and material facts.

49. Learned senior counsel for the petitioners in rejoinder distinguished the judgment of Division Bench in case of La-Fin Financial Services Pvt. Ltd. (supra) on the ground that the said order passed by this court was arising out of the notice of motion in a suit which principles are not applicable to the arbitral proceedings.

50. Insofar as submission of the learned senior counsel about withdrawal of the erstwhile advocates and counsel of the petitioners is concerned, learned senior counsel for the petitioners invited my attention to page 174 i.e. the procedural order No. 7 and in particular paragraph 5 and would submit that even the arbitral tribunal has clearly recorded that no explanation has been given to the tribunal as to why the petitioners previous solicitors withdrew the proceedings and the arbitral tribunal did not suggest any explanation should have been given. It is held that it is a matter of which the petitioners are entitled to maintain privilege and it is not something in which the respondents herein are in anyway responsible and it would cause any prejudice.

51. Insofar undertaking furnished by the petitioners is concerned, it is submitted that the said undertaking was admittedly furnished without prejudice to the rights and contentions of the petitioners and was required to be furnished since the majority of the arbitrators had refused to grant any extension of time to file affidavit in reply to the application filed by the respondents under Section 17 of the Act.

52. Insofar as submission of the learned senior counsel for the respondents on the allegations of defalcation/siphoning of funds of the company in question in the LLPs is concerned, it is submitted that the petitioners herein had disputed such allegations made by the respondents by filing a detailed affidavit in reply and more particularly in paragraphs 6 to 53. It is submitted that the petitioners have explained various transactions in those paragraphs which are not even referred to and/or dealt with by the majority arbitrators in the impugned order while granting interim measures under section 17 of the Arbitration and Conciliation Act, 1996.

53. Insofar as documents agreed to be furnished in respect of some of the

partnership firms before the arbitral tribunal by the petitioners is concerned, it is submitted that all such documents which were agreed to be furnished are within the public domain and any party can obtain such documents. He submits that such statement made by the petitioners cannot be construed as any admission on the part of the petitioners.

REASONS AND CONCLUSIONS:--

54. I shall first deal with the issue as to whether this arbitration petition filed under section 37 of the Arbitration and Conciliation Act, 1996 inter alia, impugning the common order passed by the Arbitral Tribunal on 8th March 2016, thereby directing the petitioners to disclose and deliver various documents of the four LLPs and a private limited company and granting various interim measures is maintainable.

55. A perusal of the Procedural Order No. V dated 11th December 2015 indicates that the arbitral tribunal had fixed a time table for filing various pleadings and applications as agreed between the parties. It was directed that the claimants (respondents herein) shall file an application under section 17 of the said Act by 13th December 2015 and the petitioners herein shall file their reply to the said application under section 17 of the said Act on 19th December 2015. The Arbitral Tribunal agreed to make a ruling on the application if filed under section 17 of the said Act on 23rd December 2015. There was some delay on the part of the petitioners in filing reply to the application filed by the respondents.

56. In the Procedural Order No. VII dated 3rd February 2016, the arbitral tribunal amended the time table and extended the date of filing affidavit in reply by the petitioner to the application under section 17 till 26th February 2016 and the date of giving ruling on the said application by the tribunal till 4th March 2016. There is no dispute that the respondents herein had already filed their application on 13th December 2015 when the Procedural Order No. VII was passed i.e. prior to the arbitral tribunal passing an order dated 3rd February 2016.

57. A perusal of the application dated 13th December 2015, filed by the respondents indicates that in the said application, it was stated by the respondents that in accordance with the Procedural Order No. V, the respondents were seeking a disclosure of certain documents/information pursuant to section 19 of the said Act and were applying for interim measures for protection and preservation pursuant to section 17 of the Act. In para 9 of the said application, it is stated that the respondents ought to be entitled to see various documentations as well, including so as to determine for what purpose the Mauritian Vehicle had been established by the petitioner Nos. 2 and 3 and has to ensure that the ultimate prayer for relief would be framed as closely as possible to individual corporate entities. In para 10 of the said application filed by the respondents clearly indicates that the respondents have applied for disclosure and details of the bank accounts and various other documents which were to be

used in a matter of interim protection/preservation and important for policing the interim relief sought for. It is averred by the respondents in para 10 that the tribunal has powers to order such information pursuant to section 19(3) and/or section 17 of the Arbitration Act.

58. A perusal of the Procedural Order No. I passed by the Arbitral Tribunal which is referred in para 2 of the Impugned order indicates that, according to the arbitral tribunal, the claim for documentary disclosure was made pursuant to the procedure agreed by the parties in the Arbitral Order No. I that the "I.B.A. Rules on Taking of Evidence in International Arbitrations (2010)" ("the IBA Rules") will constitute guidelines for the purposes of these arbitral proceedings subject to the discretion of the Tribunal. The Tribunal also referred to Articles 3.9, 3.10 and 3.2 of the IBA Rules.

59. A perusal of para 38 of the impugned order passed by the majority arbitrators indicates that, according to the majority arbitrators, the documents relating to the bank accounts of various LLPs the bank account in to which drawing of partnership have been paid. Disclosure is resisted on the grounds of lack of relevance, there being no case for relief in support of which disclosure should be ordered and disclosure would involve a breach of confidentiality to the other partners.

60. It is held that the Arbitral tribunal considers that if it should find that assets or value had been wrongfully transferred from WWII to Vaayu Companies, documents which enable it to trace exactly what happened to those assets, would be relevant and that obligation of confidence to other members of Mehta family who have been benefited from such wrong deal would not be a ground for declining other disclosure. The arbitral tribunal accordingly ordered disclosure of the information sought under para 2 of the draft order and granted permission to the respondents herein, if so advised, to apply for similar orders in respect of other entities after the disclosure order in respect of Vish wind. In para 39 of the impugned order, passed by the majority arbitrators, the arbitrators directed the petitioners herein to deliver true copies of various documents of four limited liability partnership firm and also of a private limited company. In para 39(2) of the impugned order, the majority arbitrators granted various interim measures in respect of various assets of the said LLPs and in respect of a private limited company.

61. A perusal of the application made by the respondents for disclosure of documents and also simultaneously seeking interim measures clearly indicates that respondents had applied for disclosure of documents to support the case of the respondents to obtain interim measures in respect of various assets of the said four limited liability partnership firms and a private limited company. All such disclosure sought by the respondents in respect of various assets of the firms and the company were sought with a view to obtain interim measures under section 17 and thus, the relief of disclosure sought by the respondent was connected with and/or intertwined with the relief of interim measures sought by

the respondents.

62. A perusal of the order passed by the majority arbitrators clearly indicates that even, according to the composite order passed by the majority arbitrators, the disclosure was ordered by the majority arbitrators with a view to grant interim measures in favour of the respondents. In my view, the arbitral tribunal though has given a separate direction in the same para i.e. one for the disclosure of documents and to furnish copies thereof to the respondents by the petitioners and another granting measures, in these circumstances, the impugned order of disclosure granted by the majority arbitrators cannot be segregated with the order of interim measures granted by the majority arbitrators, the same being inter-point and inter-dependent on each other.

63. The Supreme Court in the case of Arcot Textiles Mills (*supra*), has held that in a composite order, which comprises of part of the order which is not appealable and comprises of another part of the order which is appealable, in that situation, such composite order will be amenable to appeal. In my view, the judgment of the Supreme Court in the case of Arcot Textiles Mills (*supra*) will squarely apply to the facts of this case. I am respectfully bound by the said judgement of Supreme Court. In the facts of this case, it is not possible to segregate the order of majority arbitrators granting disclosure of documents with the order of interim measures and thus, the petitioners were not bound to adopt any other remedy available, if any, in respect of the order of disclosure directed by the majority arbitrators.

64. In my view, there is no merit in the submission of the learned Senior Counsel for respondents that this composite petition for impugning the order of disclosure as well as the order of granting interim measures by the majority arbitrators under section 37 is not maintainable and the same is accordingly rejected.

65. Insofar as merits of the order of disclosure directed by the majority arbitrators is concerned, there is no dispute that in the Procedural Order No. 1, the arbitral tribunal had recorded that the "IBA Rules of taking evidence in international arbitration (2010)" will constitute guidelines for the purpose of this arbitral proceedings, subject to discretion of the Tribunal.

66. A bare perusal of the IBA Rules referred to aforesaid and more particularly Article 3(9) clearly indicates that if a party wishes to obtain production of documents from a person or organisation, who is not party to the arbitration and from whom, a party to the arbitration cannot obtain the documents on its own, the party may, within the time ordered by the Tribunal ask it to take whatever steps as are legally available to obtain the requisite documents, or seek leave from the arbitral tribunal to take such steps itself. The party has to submit such request to the arbitral tribunal and to the other parties in writing and the request shall contain the particulars set forth in article 3.3 as applicable. The arbitral tribunal, then, has to decide on the said request and to authorise the requesting party to take or order any other party to take such steps as the tribunal

considers appropriate, if in its discretion it determines that the documents would be relevant to the case and material to its outcome, the requirement of article 3.3 have been satisfied and none of the reasons for objection set forth in article 9.2 applies. It is thus clear beyond reasonable doubt that the respondents were seeking disclosure of various documents and information regarding four limited liability partnership firms and a private limited company, who were admittedly not parties to the arbitration agreement and also to the arbitral proceedings and were thus third parties.

67. A reference to section 27 of the Arbitration Act at this stage would be relevant. Under section 27 of the Act, the Arbitral Tribunal or a party with the approval of the arbitral tribunal may apply to the court for assistance in taking evidence. Under the said provision, the party can apply for issuance of witness summons upon the witness including expert witnesses and for production of documents. In my view, the provision in article 3 of the IBA Rules, will have to be read with section 27 of the Arbitration Act and thus, the majority arbitrators could not have directly or indirectly directed the petitioners herein to disclose and produce various documents relating to third parties which were objected to by the petitioners. The majority arbitrators, even if, were satisfied that such documents would be necessary for granting interim measures, the majority arbitrators could have at the most directed the respondents to apply to the court for taking assistance under section 27 of the Arbitration Act. In that situation, this court would have considered whether those third parties shall be directed to produce any such document or to furnish information to the applicants after hearing the parties concerned, including third parties. In my view, the impugned order passed by the arbitral tribunal thus, directing the petitioner Nos. 2 and 3 and indirectly directing third parties to furnish such documents is contrary to Article 3(9) of the IBA Rules and section 27 of the said Arbitration Act.

68. In so far as the directions issued by the majority arbitrators to the petitioners to produce the documents of third parties is concerned, in my view, the majority arbitrators could not have issued such directions which would affect the rights of the third parties i.e. the other partners of those four limited liability partnership firms and a private limited company, who are admittedly not party to the arbitral proceedings or arbitration agreement. In my view, directing two of the partners out of several partners to furnish information pertaining to the assets and accounts of third parties comprising of several other partners, would be outside the jurisdiction of the arbitral tribunal and also contrary to the provisions of those partnership deeds entered into between the petitioner Nos. 2 and 3 along with other partners and the Memorandum and Articles of Association of the private limited company. In my view, the directions to furnish such disclosure of the assets and accounts against the petitioner Nos. 2 and 3 also will be in violation of provisions of Limited Liability Partnership Act, 2008 applicable to the petitioner Nos. 2 and 3 and other partners of those LLPs and also would be in violation of the provisions of Companies Act, 1956 insofar a private limited company is concerned. In my view, the order of disclosure thus issued by the majority

arbitrators is contrary to the law and thus deserves to be set aside.

69. Insofar as the submission of learned Senior Counsel for the respondents that the petitioners themselves had agreed to furnish certain documents to the arbitral tribunal and to the respondents in the arbitral proceedings is concerned, in my view, merely because the petitioners had agreed to disclose certain information regarding assets or accounts of those partnership firm or private limited company, such a voluntary statement made by the petitioners for providing certain information which was available within the public domain cannot be held binding upon the petitioners to disclose all information without consent and permission of the other partners. Even if part of the disclosure was agreed by the petitioners Nos. 2 and 3, the disclosure sought by the respondents being contrary to the provisions of Limited Liability Partnership Act, 2008 and Companies Act, could not have been ordered by the majority arbitrators and that also without following agreed procedure under IBA Rules and contrary to section 27 of the Arbitration Act.

70. In my view, there is no merit in the submission of the learned Senior Counsel for respondents that if part disclosure was agreed by the petitioners voluntarily, the arbitral tribunal could have ordered the remaining disclosure of the assets and accounts of these four limited liability partnership firm and a private limited company.

71. In my view, in the dissenting order passed by the learned Arbitrator Mr. Justice R.V. Raveendran (Retired) the learned Arbitrator has rightly held that such limited liability partnership firm and a private limited company against whom such an order of disclosure is ordered are separate legal entities and the learned arbitrator was right in rejecting the said application for disclosure of documents except the documents which the petitioners had furnished.

72. Insofar as interim measures granted by the majority arbitrators in favour of the respondents is concerned, a perusal of the order passed by the majority arbitrators indicates that the petitioner Nos. 2 and 3 have been directed to preserve the partnership assets of the aforesaid four limited liability partnership firms and of a private limited company, to maintain the status quo, including but not limited to, not changing, altering or dealing in any way with the current interests in the said partnerships or the position of petitioner Nos. 2 and 3 as designated partners. Majority arbitrators have also directed the petitioner Nos. 2 and 3 to prevent any distribution of the partnership assets and to procure that the partnerships do not, in any manner whatsoever, dispose of, deal with or diminish the value of their assets, except with the permission of the tribunal which includes, but not limited to, procuring that the partnerships do not sell, loan, encumber, pledge or otherwise deal with any of the partnerships' assets or create any new indebtedness.

73. The majority arbitrators however in the said order made exception to the interim measures referred to aforesaid and made it clear that (a) the said order

did not prohibit the partnerships from dealing or disposing of their assets upto a cumulative value of Rs. 10 million provided that such dealing or disposal was in the ordinary and proper course of their business and does not entail any distribution of the partnership assets to the partners or others and (b) also did not prohibit the partnerships from continuing the payment of interest in relation to any pre-existing loans from independent financial institutions or from making payments towards any costs and expenses of operating any currently held wind farms, provided that such dealing was in the ordinary and proper course of their business.

74. It is not in dispute that to the agreement entered into between the petitioners and the respondents those four limited liability partnership firms and a private limited company were not parties nor are parties to the present arbitral proceedings ongoing before the arbitral tribunal. The question that arises for consideration of this court is whether the majority arbitrators could have passed any interim measures against the petitioner Nos. 2 and 3 who were two of the partners alongwith several others in those four limited liability partnership firms and were shareholders in a private limited company in respect of the assets and the accounts of those partnership firms and a private limited company in an application under section 17 of the Arbitration and Conciliation Act, 1996.

75. A perusal of Annexure B to the claim statement which is referred in the dissenting order passed by the learned arbitrator Mr. Justice R.V. Raveendran (Retired) which provides a list of 33 limited liability partnerships and companies including those four firms and the private limited company clearly indicates that in addition to the petitioner Nos. 2 and 3 herein, there are about 7 to 8 partners in those firms. The majority arbitrators have also passed an interim measures in respect of Vaayu Renewable Energy (Purna) Pvt. Ltd. in which the petitioner Nos. 2 and 3 had shareholding of 34% and 33% respectively. It is not in dispute that those four partnership firms are limited liability partnerships and are body corporates and are registered under the provisions of Limited Liability Partnerships Act, 2008. It is not dispute that no separate relief is prayed against those four limited liability partnerships or against Vaayu Renewable Energy (Purna) Pvt. Ltd.

76. Under section 3 of the Limited Liability Partnerships Act, 2008 a limited liability partnership is a body corporate incorporated under the provisions of the said Act is a separate legal entity separate from that of its partners and has perpetual succession. Such firms are liable to the full extent of its assets and insofar as liabilities of partners are concerned, it is limited to their agreed contribution in the limited liability partnerships. No partners shall be held liable on account of any independent unauthorized action, wrongful business decisions or misconduct of the other partners. The provisions of Indian Partnership Act, 1932 cannot be extended to such limited liability partnerships. In my view the majority arbitrators thus could not have applied the provisions and/or principles of Indian Partnerships Act, 1932 to those four limited liability partnerships

formed and registered under the provisions of Limited Liability Partnerships Act, 2008 and to a private limited company.

77. In my view, no interim measures as ordered could be granted by the majority arbitrators even against the petitioner Nos. 2 and 3 who had certain shares in those four limited liability partnerships in view of the fact that those four limited liability partnerships were separate legal entities. No interim measures could be passed against those limited liability partnerships and other partners of whatsoever nature against them directly or indirectly which would impose any restriction against them from exercising their rights and powers available to them under the provisions of Limited Liability Partnerships Act, 2008 or as shareholders of the said private limited company. The impugned order passed by the majority arbitrators granting the interim measures directly or indirectly against such limited liability partnerships or a private limited company on the premise that those limited liability partnerships and the said company were under the control of the petitioner Nos. 2 and 3 is totally contrary to the provisions of the said Limited Liability Partnerships Act, 2008 and the Indian Companies Act, 1956. In my view by the impugned interim measures allowed by the majority arbitrators, the majority arbitrators have directed the petitioner Nos. 2 and 3 to prevent those limited liability partnerships and other partners from exercising their rights and powers under the provisions of Limited Liability Partnerships Act, 2008 which is not permissible in law.

78. In my view there is no merit in the submission of the learned senior counsel for the respondents that the petitioners themselves had voluntarily filed an undertaking before the arbitral tribunal to preserve the partnership assets, to maintain status quo, to prevent distribution of the partnership assets etc. and the impugned order passed by the majority arbitrators having been passed in line of the undertakings rendered by the petitioner Nos. 2 and 3 and thus cannot be interfered with by this court. The petitioner Nos. 2 and 3 at the first instance could not have rendered such undertaking on behalf of those limited liability partnerships or on behalf of the other partners at all, contrary to the provisions of the Limited Liability Partnerships Act, 2008. Be that as it may, in my view the majority arbitrators could not have passed such interim orders by which the two partners have been directed to preserve the assets of the limited liability partnerships or to prevent any distribution of assets of such limited liability partnership or to dispose of or deal with or diminishing the value of the assets except with the prior permission of the tribunal or otherwise.

79. In my view, the majority arbitrators could not have subjected the other partners of the limited liability partnership or shareholders of a private limited company to obtain prior permission to deal with or dispose off the assets of those limited liability partnerships which is not permissible in law. The majority arbitrators in my view have directed the petitioner Nos. 2 and 3 to force other partners of those limited liability partnerships not to take any independent decision and to accept whatsoever would be the decision or the order of the

petitioner Nos. 2 and 3. The order passed by the majority arbitrators in my view shows patent illegality and thus deserves to be set aside.

80. In my view the arbitral tribunal has no power to lift the corporate veil but only a court can lift a corporate will of the company if the strongest case is made out. This court in case of ONGC v. M/s. Jindal Drilling and Industries Limited (supra) has held that the arbitral tribunal has no power to lift the corporate veil and the same can be lifted only by the court if the strongest case is made out. The said judgment of this court squarely applies to the facts of this case. I do not propose to take any different view in the matter.

81. Supreme Court in case of MD. Army Welfare Housing Organisation (supra) has held that power of an arbitral tribunal under section 17 are limited one. It is held that the interim measures under section 17 must be related to the protection of the subject matter of the dispute and the order may be addressed only to a party to the arbitration. In my view in this case the assets of those four limited liability partnership and a private limited company were not the subject matter of the dispute before the arbitral tribunal and thus no order under section 17 could be passed in respect of those assets of the limited liability partnerships and of a private limited company. Those four limited liability partnerships and private limited company were not even parties to the arbitration proceedings or to the arbitration proceedings. The judgment of MD. Army Welfare Housing Organisation (supra) squarely applies to the facts of this case. I am respectively bound by the said judgment.

82. A perusal of the prayers in the statement of claim highlighted in the impugned order clearly indicates that the respondents had made a claim for damages. The claims made by the respondents were strongly protested by the petitioners as is apparent in the affidavit in reply in the application under section 17. A perusal of the application filed by the respondents under section 17 clearly indicates that the allegations of the respondents for seeking an interim measures even against the petitioner Nos. 2 and 3 were totally vague and without particulars and on this ground itself the respondents not having made out any prima facie case, the majority arbitrators could not have passed any interim measures.

83. In my view the arbitral tribunal could not have converted an unsecured debt into a secured debt. Neither there was any averments in the application filed under section 17 nor any such case was made out for applying the principles of Order 38 Rule 5 of the Code of Civil Procedure by the respondents. The judgment of Supreme Court in case of Raman Tech & Process Engg. Co. and another (supra) applies to the facts of this case. I am respectively bound by the said judgment.

84. Insofar as judgment of Division Bench of this court in case of La-Fin Financial Services Pvt. Ltd.(supra) relied upon by Mr. Chinoy, learned senior counsel for the respondents is concerned, it is held by the Division Bench that grant of the

relief under Order 38 Rule 5 is on a different situation from the grant of relief in a temporary injunction. In my view the said judgment of Division Bench would not apply to the facts of this case on the ground that the majority arbitrators have granted interim measures in the nature of attachment before judgment against the third party.

85. Insofar as judgment of this court in case of Baker Hughes Singapore Pte. v. Shiv-Vani Oil and Gas Exploration Services Ltd. (supra) relied upon by both the parties is concerned, this court has held that the money claim was a subject matter of the dispute based on the invoices issued by the petitioners upon the respondents. This court considered a provision of the contract between the parties that the respondents had agreed to pay the undisputed invoices to the petitioners within 60 days from the date of the submission of such invoices. The respondents in that case had admittedly not paid the undisputed invoices in terms of the agreement and had asked for several extension. Several winding up proceedings were filed against the respondents and in that context, this court held that the claim of the petitioner therein was admitted and the liability was acknowledged. The arbitral tribunal had power to pass an order for furnishing security to secure the claim in those circumstances. The order for furnishing security was passed against the party to the arbitral tribunal and not against the third parties. In my view the said judgment of this court would not assist the case of the respondents and is clearly distinguishable in the facts of this case. In my view the order passed by the majority arbitrators granting interim measures being contrary to law and thus deserves to be set aside. It is ordered accordingly.

86. Insofar as prayer clauses (c) and (d) of the petition are concerned, those prayers are for interim reliefs. Since this petition is disposed of, the same need not be considered.

87. I, therefore, pass the following order:--

"(a) Impugned order dated 8th March, 2016 passed by the arbitral tribunal is set aside;

(b) The statement made by the learned senior counsel for the petitioners on instructions and without prejudice to their rights and contentions that the petitioners would comply with the statement made before the arbitral tribunal as recorded in the paragraph 26 of the impugned order and would disclose the documents referred in paragraphs 1.1, 1.5, 1.6 and 3.1 to the respondents on or before 23rd March, 2016 is accepted;

(c) The undertakings given by the petitioners as recorded in paragraphs 3 and 4 of the order dated 15th March, 2016 are accepted. No order as to costs."