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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Date of decision: 08th August, 2024***

+ **CM(M) 3059/2024 & CM APPL. 43068-43069/2024**

DD AUTO PVT LTDPetitioner

Through: Mr. Nikhil Kohli, Mr. Kushank Garg
and Ms. Saumya Tiwari, Advocates

versus

PIVOTAL INFRASTRUCTURE PVT LTDRespondent

Through: None

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN
J U D G M E N T (oral)

CM APPL. 43069/2024 (exemption)

Exemption allowed, subject to all just exceptions.

CM(M) 3059/2024 & CM APPL. 43068/2024

1. Petitioner is one of the co-claimants before the learned Sole Arbitrator.
2. Respondents in such arbitration proceedings are Pivotal Infrastructure Pvt. Ltd., Forging Pvt. Ltd. and DD Global Pvt. Ltd.
3. During the arbitral proceedings, M/s Forging Pvt. Ltd. was permitted to be transposed as co-claimant by virtue of order dated 24.04.2024 passed by learned Sole Arbitrator.
4. Pursuant to such transposition of M/s Forging Pvt. Ltd. as claimant no. 4, the claimant no. 4 was permitted to file an affidavit adopting the pleadings and documents of other claimants, for the purpose of quantifying its claim. This was done as transposed claimant has agreed to the above.
5. Simultaneously, respondent no.1 Ms/ Pivotal Infrastructure Pvt. Ltd.

(the sole respondent in the present petition) was also permitted to file response, if any, to the aforesaid affidavit on or before 15.05.2024.

6. The transposed claimant filed an affidavit and in view of the aforesaid opportunity granted by learned Sole Arbitrator, respondent no. 1 filed its response-affidavit.

7. Petitioner herein i.e. claimant no. 2 DD Auto Pvt. Ltd. raised an objection to the aforesaid response-affidavit titled as *statement of defence* contending that the said respondent had changed the defence from the one taken already in the earlier affidavit.

8. Learned Sole Arbitrator considered the aforesaid objection on 03.07.2024 and discarded the same while observing as under: -

“3. I have perused the affidavit (SOD) to which objection is taken and have also heard the Senior Counsels for the Respondent No.1. I do not find any merit in the contention that the Respondent No.1 has changed its defence from that taken earlier. However, the Respondent No.1 has certainly given more meat to the said defence, by giving additional particulars.

4. In arbitration proceedings, not strictly governed by CPC and Evidence Act and with one of the grounds for impugning an arbitral award as denial of requisite opportunity, I am not willing to hold that the Respondent no.1 should not be permitted to furnish additional particulars in the affidavit (SOD) aforesaid. Moreso, when the Claimant No.4, in opposition to whose affidavit the said affidavit (SOD) has been filed, was earlier a Respondent and has now been transposed as Claimant No.4.

5. In my opinion, only apposite course is, that the senior counsel for the Respondent No.1 in the cross-examination today does not cross-examine the witness with respect to the aforesaid additional particulars. No need to give an opportunity to the Claimant Nos. 1 to 3 to file any additional pleading is felt. The witness of the Claimant Nos. 1 to 3 in his cross-examination would be entitled to give the answers to the new particulars, if put to him in cross-examination. Also, opportunity is given to the Claimant Nos. 1 to 3 to if so desire file an additional affidavit by way of examination-in-chief of their witness Mr. Karan Gambir but relating to the said particulars only.

6. The Counsel for the Claimant No.4 states that he has instructions from the liquidator of the Claimant No.4 to, within two weeks, file a response /

*rejoinder, to the affidavit (SOD) of the Respondent No.1.
7. The Claimant No.4 is permitted to do so.”*

9. Said order has been challenged by invoking supervisory powers of this Court in terms of Article 227 of Constitution of India. According to learned counsel for claimant no. 2, there is apparent denial of due opportunity to him.

10. It is contended that despite the fact that even learned Sole Arbitrator was of the view that there were some additional facts which had been mentioned in the aforesaid response-affidavit, it not only permitted the same to be taken on record but also denied opportunity to claimant to file any additional pleading. It is contended that it would be difficult for him to meet new submissions made therein as well as the documents contained with the above said affidavit during the trial and, therefore, it is prayed that above said direction may be set aside.

11. Learned counsel for petitioner has, however, very fairly, admitted that the learned Sole Arbitrator has also permitted the claimant to *file additional affidavit by way of examination-in-chief relating to the above said particulars.*

12. However, contending that these may be beyond the pleadings, apprehension and reservation have been expressed in this regard.

13. I have carefully gone through the entire record and given my thoughtful consideration to the above said contentions.

14. It is manifest that as such there is no denial of opportunity, particularly, in view of the fact that the learned Sole Arbitrator has rather given a very categorical and specific permission to the claimants to file additional affidavit by way of examination-in-chief relating to the aforesaid particulars which, allegedly, surfaced for the first time in the above said response-affidavit filed

by respondent no. 1.

15. In such a situation, the contention that there is any kind of denial of opportunity needs to be rejected outrightly.

16. On the contrary, learned Sole Arbitrator has gone beyond the realm of pleadings by even granting the petitioner herein to lead evidence about the above additional particulars.

17. Viewed thus, it cannot be said to be a case of unequal treatment and, therefore, the order impugned herein does not run contrary to the spirit of Section 18 of Arbitration and Conciliation Act, 1996 either.

18. Moreover, this Court also cannot be oblivious of the fact that judicial inference in such type of matters has to be minimal and recourse to Article 227 of the Constitution of India has to be under exceptional circumstances when it is shown that such order is absolutely perverse.

19. Reference be made to *IDFC First Bank Limited Vs. Hitachi MGRM Net Limited*: 2023 SCC OnLine Del 4052 whereby Co-ordinate Bench of this Court has enumerated certain circumstances wherein such type of petition can be entertained. Though, in that case, the challenge was in context of dismissal of application filed under Section 16 of Arbitration and Conciliation Act but the observations are equally essential and applicable herein as well. Relevant portion of aforesaid judgment reads as under: -

“24. While there is no doubt that a remedy under Articles 226 and 227 are available against the orders passed by the Arbitral Tribunal, such challenges are not to be entertained in each and every case and the court has to be “extremely circumspect”.

25. Recently, in Surender Kumar Singhal v. Arun Kumar Bhalotia [Surender Kumar Singhal v. Arun Kumar Bhalotia, 2021 SCC OnLine Del 3708] , this Court, after considering all the decisions, of the Supreme Court [Deep Industries Ltd. v. ONGC Ltd., (2020) 15 SCC

706; *Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd.*, (2022) 1 SCC 75 : (2022) 1 SCC (Civ) 374; *Punjab State Power Corpn. Ltd. v. EMTA Coal Ltd.*, (2020) 17 SCC 93 : (2021) 4 SCC (Civ) 341; *Virtual Perception OPC (P) Ltd. v. Panasonic India (P) Ltd.*, 2022 SCC OnLine Del 566 and *Ambience Projects & Infrastructure (P) Ltd. v. Neeraj Bindal*, 2021 SCC OnLine Del 4023] has laid down circumstances in which such petitions ought to be entertained. The relevant portion of the said judgment reads as under:

“24. A perusal of the abovementioned decisions, shows that the following principles are well settled, in respect of the scope of interference under Articles 226/227 in challenges to orders by an Arbitral Tribunal including orders passed under Section 16 of the Act:

(i) An Arbitral Tribunal is a tribunal against which a petition under Articles 226/227 would be maintainable.

(ii) The non obstante clause in Section 5 of the Act does not apply in respect of exercise of powers under Article 227 which is a constitutional provision.

(iii) For interference under Articles 226/227, there have to be ‘exceptional circumstances’.

(iv) Though interference is permissible, unless and until the order is so perverse that it is patently lacking in inherent jurisdiction, the writ court would not interfere.

(v) Interference is permissible only if the order is completely perverse i.e. that the perversity must stare in the face.

(vi) High Courts ought to discourage litigation which necessarily interfere with the arbitral process.

(vii) Excessive judicial interference in the arbitral process is not encouraged.

(viii) It is prudent not to exercise jurisdiction under Articles 226/227.

(ix) The power should be exercised in ‘exceptional rarity’ or if there is ‘bad faith’ which is shown.

(x) Efficiency of the arbitral process ought not to be allowed to diminish and hence interdicting the arbitral process should be completely avoided.”

26. A perusal of the above would show that it is only under exceptional circumstances or when there is bad faith or perversity that writ petitions ought to be entertained.”

20. Keeping in mind the facts placed before me, I do not find it to be a fit case where this Court should exercise its supervisory powers as prescribed under Article 227 of the Constitution of India, particularly when there is no denial of due opportunity.

21. Petition is accordingly dismissed *in limine*.

22. Before parting, learned counsel for petitioner contended that he wishes to file additional affidavit in terms of the permission granted by the learned Sole Arbitrator and since he has to meet approximately 1200 pages with respect to the response-affidavit filed by respondent no.1, he would be seeking grant of reasonable time in this regard.

23. All, I can say is that he is at liberty to make appropriate request in this regard before the learned Sole Arbitrator.

MANOJ JAIN, J

AUGUST 8, 2024/dr