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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION**

**COMMERCIAL APPEAL (L) NO.17720 OF 2024
IN**

COMMERCIAL ARBITRATION PETITION (ST) NO.8119 OF 2024

M/s Halliburton India Operations]
Private limited]
Regd. Office at 604, 6th Floor, Satellite]
Gazebo A Wing Guru Hargovindji]
Marg, Andheri East Mumbai,]
Maharashtra, 400093] Appellant.

V/s

Vision Projects Technologies Pvt. Ltd.]
Registered Office at : H. No:1-9-16,]
Sriram Nagar, Kakinada, Andhra]
Pradesh 533003] Respondent.

Mr. Aspi Chinoy, Senior Advocate alongwith Mr. Piyush Sharma,
Mr. Ativ Patel, Mr. Shreyas Patel, Ms. Viloma Shah and Mr.
Harshad Vyas instructed by M/s AVP Partners, Advocates for the
appellant.

Mr. Rahul Narichania, Senior Advocate alongwith Mr. Prathamesh
Kamat, Mr. Kayush Zaiwalla instructed by Ms. Priyanka Patel for
the respondent.

**CORAM : A.S. CHANDURKAR &
RAJESH S. PATIL, JJ.**

DATE : 19th June, 2024

ORDER: (Per A.S. Chandurkar, J.)

- 1] Admit. Heard the learned Senior Advocates for the parties.
- 2] The challenge raised in this Commercial Appeal preferred under Section 37 of the Arbitration and Conciliation Act, 1996 (for short “the Act of 1996”) is to the order dated 06/05/2024 passed by the learned Single Judge in the Commercial Arbitration Petition preferred under Section 9 of the Act of 1996. By that order, the prayer made on behalf of the appellant seeking permission to remove its equipment from the Vessel Lewek Altair- the Vessel presently docked at Ratnagiri Port as an interim measure came to be refused.
- 3] Facts relevant for considering the challenge as raised are that pursuant to a tender issued by the Oil and Natural Gas Corporation (“ONGC”), the bid submitted by the appellant came to be accepted. Contract dated 19/09/2018 for charter hire of a stimulation Vessel for Mumbai Offshore for a period of three years came to be entered into with the ONGC. The appellant is hereinafter referred to as “the contractor”. The contractor entered into a sub-contract with the respondent whereby the respondent agreed to carry out the said operations by using its Vessel by providing necessary services. The respondent is hereinafter

referred to as “the sub-contractor”. The sub-contractor offered the aforesaid Platform Supply Vessel – PSV to the contractor in terms of the requirements of ONGC under the main contract. The said Vessel was required to be converted into a Well Stimulation Vessel – WSV by adding specialized equipment to it. Under the sub-contract, the contractor was to maintain such equipment after installing the same and was to remove that additional equipment at its cost before re-delivering the Vessel to the sub-contractor. According to the contractor, it imported specialized equipment and installed the same on the Vessel so as to convert it from PSV to WSV. On 11/01/2021, the Directorate General of Shipping notified a change in law under which existing Offshore Support Vessels were not permitted to carry Hydrochloric Acid until the Vessels were re-assessed, surveyed and certified under the Offshore Service Vessel Chemical Code. Since the Vessel in question was required to carry Hydrochloric Acid for the purposes of the main contract, it was required to comply with the changed legal requirements. Initially, the Directorate General of Shipping granted exemption to enable use of the Vessel for ONGC. Subsequently, the Vessel was required to install life boats and time to comply with the said requirement was granted till 31/03/2023. Since further extension was not granted, the sub-contractor sought to invoke the Force Majeure clause under the

main contract and informed the ONGC of the same on 03/04/2023. Since further extension was granted by the Directorate General of Shipping till 31/05/2023, the said fact was communicated to ONGC. As no further extension of time was granted, the contractor again invoked the Force Majeure clause on 12/05/2023 in terms of the main contract. The contractor also invoked the Force Majeure clause under the sub-contract on 13/05/2023. However, the sub-contractor on 15/05/2023 rejected invocation of that clause. Since the Directorate General of Shipping refused to grant any further extension of time to comply with the OSV Chemical Code beyond 31/05/2023, the said Vessel was docked at the Port from 01/06/2023. Thereafter, on 07/08/2023 the contractor issued a notice of termination to the sub-contractor giving time of fifteen days in that regard. The ONGC on 02/11/2023 informed the contractor that its invocation of Force Majeure clause on 12/05/2023 was rejected. The sub-contractor on 18/11/2023 reiterated that the contractor's Force Majeure notice had been rejected and that the contractor was liable to pay the charter from June 2023 till the time the equipment was removed from the Vessel.

4] In the aforesaid factual backdrop, the contractor sometime in March 2024 filed the present proceedings under Section 9 of

the Act of 1996 praying that as an interim measure, it be permitted to remove the equipment installed by it on the Vessel and also to restrain the sub-contractor from proceeding to cold lay the Vessel at any Port. The sub-contractor opposed the aforesaid prayer on various counts. The learned Single Judge by the order dated 06/05/2023 proceeded to hold that since the termination of the sub-contract dated 18/09/2018 did not appear to be in accordance with Clause 6.1 of the sub-contract, invocation of the Force Majeure clause by the contractor was not justified and further that granting the interim measure as prayed for by the contractor would amount to grant of final relief in its favour. It is this order that is the subject matter of challenge in the present Commercial Appeal.

5] Shri Aspi Chinoy, the learned Senior Advocate for the contractor submitted that in absence of any extension being granted by the Directorate General of Shipping post 31/05/2023, the contractor was required to invoke Force Majeure clause under the sub-contract with the sub-contractor. Thereafter, on 07/08/2023 the sub-contract had been terminated which action was not challenged by the sub-contractor. In the light of the fact that the sub-contractor had accepted the termination of sub-contract by not challenging the same till today, the contractor was

justified in seeking appropriate interim measures under Section 9 of the Act of 1996. It was submitted that from 01/06/2023, no activities under OSV were being undertaken and it was in the fitness of things that the specialized equipment installed on the Vessel by the contractor was permitted to be removed. Referring to the decision of the Supreme Court in *Indian Oil Corporation Ltd. vs. Amritsar Gas Service and Others*, **(1991) 1 SCC 533**, it was submitted that even if it was found that a shorter period of notice was given by the contractor while terminating the sub-contract, for the period of shortfall, the other party could be monetarily compensated by awarding damages. The entire action of proceeding to terminate the sub-contract would not fall to the ground in such a situation. The learned Single Judge while refusing to grant the interim measure prayed for erred in holding that the reliefs sought by the contractor were in the nature of final reliefs. Similarly, the reliance placed on the aspect of bailment was incorrect since no services were required to be carried out by the sub-contractor except for providing its Vessel. The balance of convenience in favour of the contractor was also not considered especially when it was the contractor who was required to maintain the employees on the Vessel. In absence of there being any right with the sub-contractor to retain and hold the Vessel, there was no justification in refusing to grant the interim measure

as prayed for. No purpose would be served by permitting the said Vessel to be retained with the sub-contractor. The contractual rights of the parties could always be adjudicated in arbitration proceedings that were to be initiated shortly. It was thus urged that considering the strong case made out by the contractor it was entitled to appropriate interim measures under Section 9 of the Act of 1996. It was thus prayed that Commercial Appeal be allowed and the reliefs as prayed for in the Arbitration Petition be granted.

6] On the other hand, Mr. Rahul Narichania, the learned Senior Advocate for the sub-contractor opposed the aforesaid submissions and supported the impugned order. At the outset, it was submitted that the present being an appeal under Section 37(1)(b) of the Act of 1996, the scope for interference was limited to examining whether the impugned order was perverse or illegal. If it was found that the discretion in refusing to grant any interim measure was reasonably exercised and such order took a possible view of the matter, then there was no scope to interfere with the same. The contractor was seeking mandatory relief as an interim measure which aspect was rightly noticed by the learned Single Judge. The same was in the nature of final reliefs as rightly held. It was then submitted that the termination notice issued by the

contractor on 07/08/2023 was defective inasmuch as Clause 6.1 provided for notice of ninety days but the notice issued by the contractor provided only a notice of fifteen days. The sub-contractor had rightly rejected the said notice vide its communications dated 08/08/2023 and 12/08/2023. Referring to the expression “possessory lien” as referred to in the Law Lexicon – P. Ramanatha Aiyar, it was submitted that under the sub-contract, the sub-contractor was entitled to hold the Vessel until its dues were paid by the contractor. Referring to various terms under the contract dated 18/09/2018, it was submitted that the sub-contractor, as a bailee, was entitled to have lien over the Vessel in the context of Section 170 of the Contract Act, 1872.

In case the specialized equipment was permitted to be removed by the contractor, the sub-contractor would be placed in a disadvantageous position since it would be required to pursue the contractor for recovering its dues. Referring to the documents on record it was submitted that the sub-contractor had cleared various dues till 31/03/2023 and had also paid Goods and Service Tax thereon. This tax was required to be paid within thirty days of making such payment. Since the Vessel was not in use from 01/06/2023, no purpose would be served by requiring the sub-contractor to make further payments since the Goods and

Service Tax liability would also have to be satisfied by the sub-contractor. It was further submitted that the nature of reliefs sought by the contractor were beyond what was permissible under Section 9 of the Act of 1996. The interim measures permissible to be granted were for preservation of the subject matter of the arbitration agreement while the contractor was seeking return of its equipment which was rightly denied under the impugned order. It was thus submitted that as the sub-contractor had to recover a huge amount from the contractor, the discretion of refusing to grant any interim measure had been rightly exercised by the learned Single Judge. To support his contentions, the learned Senior Advocate referred to the decision in *Dorab Cawasji Warden vs. Coomi Sorab Warden and others*, **(1990) 2 SCC 117**, *Wander Ltd and another vs. Antox India P. Ltd.*, **1990 (Supp) SCC 727**, *Sanjay Arora and another vs. Rajan Chadha and others*, **(2021) 285 DLT 357** as well as the judgment of the Division Bench in *Kalpataru Limited vs. Middle Class Friends Co-operative Housing Society Ltd.* in Commercial Arbitration Appeal (LDG.) No.194 of 2022 decided on 20th October, 2022. It was thus submitted that there was no case made out to interfere in the present appeal.

7] We have heard the learned Counsel for the parties at length

and with their assistance we have perused the documentary material on record. Having given due consideration to the rival submissions and considering the scope of interference permissible under Section 37(1)(b) of the Act of 1996, we do not find that the contractor is entitled for the reliefs sought under Section 9 of the Act of 1996.

8] At the outset, it must be noted that the present appeal is an appeal filed against exercise of discretionary jurisdiction under Section 9 of the Act of 1996. As per the law laid down in *Wander Ltd.* (supra), the appellate court would not interfere with the exercise of discretion of the Court of first instance and substitute its discretion except where such discretion has been shown to have been exercised arbitrarily or capriciously or perversely or where the Court has ignored the settled principles of law regulating grant or refusal of interlocutory injunctions. It has been further held that the appellate court ought not to re-assess the material and seek to reach conclusion different from the one arrived at by the Court of first instance if the one reached by that Court was reasonably possible on the material. Thus, if the discretion has been exercised reasonably and in a judicial manner, merely on the ground that the appellate Court would have taken different view may not justify interference with the first

court's exercise of discretion. It is also to be kept in mind that the present appeal is an appeal under Section 37(1)(b) of the Act of 1996 and therefore interference would be justified if it is found that the order under challenge suffers from patent illegality or perversity as observed in *Sanjay Arora and another* (supra).

9] According to the contractor, since the Vessel could not be made compliant with the requirements prescribed by the Directorate General of Shipping, it was required to invoke the Force Majeure clause. Similarly, the sub-contract was terminated on 07/08/2023 after giving fifteen days notice to the sub-contractor. According to the sub-contractor, notice of ninety days is required to be given by the contractor before terminating the contract. It is only the ONGC that can give notice of fifteen days while terminating the contract entered into with the contractor. To sustain its notice of termination dated 07/08/2023, it is urged on behalf of the contractor that if a notice of shorter duration is given, the other party can be monetarily compensated by awarding damages for the period that is falling short of requisite notice period. In our view, this is a contentious issue between the parties that would be required to be adjudicated during the course of arbitration.

10] Another aspect having bearing is the stand of the sub-contractor that it has to recover its dues from the contractor from 01/06/2023 onwards. According to the sub-contractor, it has been maintaining its Vessel alongwith the specialized equipment and has also been bearing requisite expenditure in that regard. Since payment of such dues is required to be followed by payment of Goods and Service Tax liability, payments have not been made after 01/06/2023. On the other hand, according to the contractor it is required to bear the expenditure pursuant to the structural and other changes made to the Vessel. The contractor is bearing expenses of maintaining its employees on the Vessel and has done so till May 2023. This again is a matter to be resolved during the course of arbitration.

The sub-contractor claims to exercise rights as bailee by relying upon the provisions of Sections 148 and 170 of the Contract Act, 1872 while on the other hand the contractor contends that as the sub-contractor is not required to carry out any services, it cannot be said that it can exercise any rights of bailment. On this count, it is urged that the sub-contractor has no right to retain specialized equipment. It has to be borne in mind that in proceedings under Section 9 of the Act of 1996, the contractor has sought permission to remove its equipment that

has been installed on the Vessel owned by the sub-contractor. It is on this premise urged that under Section 9(1)(ii) of the Act of 1996, there is no question of preservation or grant of interim custody of the equipment lodged on the Vessel which is the subject matter of the arbitration agreement. In that context, the learned Single Judge has held that the reliefs sought by the contractor are in the nature of final reliefs.

11] Taking an overall view of the matter within the scope permissible under Section 9(1), we find that the learned Single Judge has taken a possible view of the matter which cannot be said to be a perverse view or a view that is totally impossible. The rights of parties arising from the sub-contract would be a matter to be adjudicated during the course of arbitration. Considering the aspect that, prima-facie, the sub-contractor has to recover amounts from the contractor that it has stated to have borne from 01/06/2023, it cannot be said that by refusing to grant interim measure as prayed for, an impossible or perverse view has been taken. It is a fact that the Vessel in question is not in use since 01/06/2023 as it does not comply with the requirements prescribed by the Directorate General of Shipping. The rights of either parties are capable of being worked out in monetary terms. If it is found during the course of arbitration that the termination

of the contract on 07/08/2023 is legal and valid, consequences would follow. Similarly, if it is found that invocation of the Force Majeure clause by the contractor was unjustified, consequences thereof would follow. In that view of the matter, we do not find that any exceptional case has been made out for the Court to interfere in exercise of appellate jurisdiction under Section 37(1)(b) of the Act of 1996.

12] By clarifying that the observations made by the learned Single Judge in the impugned order while refusing to grant any interim measures as prayed for under Section 9 of the Act of 1996 are restricted only for the purposes of considering the prayers made in the said proceedings and that the same would not prejudice either party in the arbitration proceedings, we are not inclined to interfere with the impugned order. The Commercial Appeal thus stands dismissed leaving the parties to bear their own costs.

[RAJESH S. PATIL, J.]

[A.S. CHANDURKAR, J.]