$~53

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

\+ W.P.(C) 10561/2024, CM APPL. 43391-43392/2024

HINDUSTAN ALLOYS PVT. LTD. .....Petitioner

Through: Mr. Hitesh Bhardwaj, Advocate

versus

MAA SHEETLA VENTURES LIMITED .....Respondent

Through: Mr. Ishan Dewan, Mr. V. Siddharth, Ms. Gunjan Arora, Mr. Akshay Gupta, Ms. Ayushi Mishra, Advocates.

**CORAM:**
**HON'BLE MR. JUSTICE SANJEEV NARULA**

**O R D E R**

**% 31.07.2024**

1. The Petitioner has filed a statement of claim before Sole Arbitrator who is conducting the arbitration proceedings under the aegis of the Delhi International Arbitration Centre (DIAC). In the said arbitration proceedings, the Respondent was earlier proceeded *ex-parte* and issues were framed on 20th December, 2023. Subsequently, the *ex-parte* order was set aside by the Sole Arbitrator and the Respondent was allowed to file their statement of defence, which they did on 16th February, 2024.

2. During the course of the proceedings, the Petitioner filed an application under Section 19 read with Section 27 of the Arbitration and Conciliation Act, 1996[1] and Rules 25.3 and 25.4(c) of the DIAC Rules,

[1] "Arbitration Act"

2023[2], seeking reopening of the Petitioner's evidence and summoning of additional witnesses, or for issuance of directions to the Respondent to produce relevant documents from its custody or to give approval to take assistance of the Court in taking evidence. The said application has been decided through order dated 24th July, 2024[3], whereby the Arbitral Tribunal, after considering the facts of the case, has declined this request.

3. By way of the present writ petition under Article 226 and 227 of the Constitution of India, the Petitioner assails this Impugned Order. Mr. Hitesh Bhardwaj, counsel for Petitioner, contends that since there is no alternate remedy available under the Arbitration Act to assail such an order, the present writ petition should be entertained. To support his contentions, reliance is placed on the judgment of this Court in ***'Surender Kumar Singhal & Ors. vs. Arun Kumar Bhalotia & Ors.'***[4].

4. On merits, Mr. Bhardwaj argues that the Arbitral Tribunal has committed an error by ignoring the mandate of Section 27 of the Arbitration Act. The Arbitral Tribunal has failed to appreciate the fact that after the Petitioner had led their evidence, the need arose for examination of additional witnesses and production of certain documents which were in custody of the Respondent and also with the other third parties, such as the GST Department.

5. In the opinion of the Court, while there cannot be any quarrel on the proposition regarding maintainability of a writ petition against an order passed by the Arbitral Tribunal, it is a well-established position of law that the Court's scope of interference under Articles 226 & 227 of the

[2] "DIAC Rules"
[3] "Impugned Order"

Constitution of India is extremely circumspect.

6. This Court has, in ***'Easy Trip Planners Ltd vs One97 Communications Ltd.'***[5], while considering the decision of an arbitral tribunal on an interlocutory application filed by a party under Order VII Rule 14 of the Code of Civil Procedure, 1908[6] to bring on record additional documents, has declined to interfere the said proceedings. In doing so, the Court also referred to the decision of the Supreme Court in ***'Bhaven Construction v. Executive Engineer Sardar Sarovar Narmada Nigam Ltd.'***[7]**,** wherein the Supreme Court has rendered certain observations regarding the scope of jurisdiction under Article 226 of the Constitution of India. The relevant portion of this Court's judgment is extracted hereunder:

> *"14. Mr. Rajshekhar Rao also drew my attention to paras 18, 20 and 22 of the decision in Bhaven Construction v. Executive Engineer Sardar Sarovar Narmada Nigam Ltd., which read thus:*
>
> > *"18. In any case, the hierarchy in our legal framework, mandates that a legislative enactment cannot curtail a constitutional right. In Nivedita Sharma v. COAI, this Court referred to several judgments and held:*
> >
> > > *"11. We have considered the respective arguments/submissions. There cannot be any dispute that the power of the High Courts to issue directions, orders or writs including writs in the nature of habeas corpus, certiorari, mandamus, quo warranto and prohibition under Article 226 of the Constitution is a basic feature of the Constitution and cannot be curtailed by parliamentary legislation — L. Chandra Kumar v. Union of India. However, it is one thing to say that in exercise of the power vested in it under Article 226 of the Constitution, the High Court can entertain a writ petition against any order passed by or action taken by the State and/or its agency/instrumentality or any public authority or order passed by a quasi-judicial body/authority, and it is an altogether different thing to say that each and every petition filed under*

---

[4] MANU/DE/0561/2021; 2021 SCC OnLine Del 3708
[5] 2022 SCC OnLine Del 2186
[6] "CPC"
[7] (2022) 1 SCC 75

*Article 226 of the Constitution must be entertained by the High Court as a matter of course ignoring the fact that the aggrieved person has an effective alternative remedy. Rather, it is settled law that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."*

*It is therefore, prudent for a Judge to not exercise discretion to allow judicial interference beyond the procedure established under the enactment. This power needs to be exercised in exceptional rarity, wherein one party is left remediless under the statute or a clear "bad faith" shown by one of the parties. This high standard set by this Court is in terms of the legislative intention to make the arbitration fair and efficient.*

*****

*20. In the instant case, Respondent 1 has not been able to show exceptional circumstance or "bad faith" on the part of the appellant, to invoke the remedy under Article 227 of the Constitution. No doubt the ambit of Article 227 is broad and pervasive, however, the High Court should not have used its inherent power to interject the arbitral process at this stage. It is brought to our notice that subsequent to the impugned order of the sole arbitrator, a final award was rendered by him on merits, which is challenged by Respondent 1 in a separate Section 34 application, which is pending.*

*****

*22. The High Court did not appreciate the limitations under Articles 226 and 227 of the Constitution and reasoned that the appellant had undertaken to appoint an arbitrator unilaterally, thereby rendering Respondent 1 remediless. However, a plain reading of the arbitration agreement points to the fact that the appellant herein had actually acted in accordance with the procedure laid down without any mala fides."*

*xxx...xxx…xxx*

*16. Bhaven Construction envisages the availability of a remedy under Articles 226 and 227 of the Constitution of India in rare and exceptional cases, which, essentially, are delimited to two exigencies; the first, where the order suffers from "bad faith", and, the second, where, if the challenge is not permitted, the party would not be rendered remediless. Where, therefore, a remedy, against the order under challenge, is otherwise available to the party, in rare and exceptional cases and within the narrow confines of the jurisdiction that the said provisions confer, High Courts could exercise jurisdiction under Articles 226 and 227.*

> *17. The degree of circumspection that Bhaven Construction expects of the writ court is, however, unmistakable even from the said decision. The governing principle is, apparently, that the arbitral litigant should not be left rudderless in the arbitral ocean. It is predicated on the right to legal redress, which is, to all intents and purposes, fundamental. Bhaven Construction, therefore, is more in the nature of a cautionary note, and is not intended to provide a haven for launching a challenge, in writ proceedings, against every interlocutory arbitral order.*
>
> *18. The obvious reason why Bhaven Construction would not help the petitioner is because, even as per SBP, the party is not remediless in ventilating its grievances against the interim order passed by the Arbitral Tribunal. The remedy would, however, lie against the interim award or the final award that the arbitral tribunal would choose to pass. It would always be open to the aggrieved litigant to vent its ire against the interim order as one of the grounds on which it seeks to assail the interim or final arbitral award, under Section 34. Till then, however, SBP requires the litigant to bide his time.*
>
> *19. It is only, therefore, that the remedy available to the litigant is deferred to a later stage of proceedings, so as to ensure that the arbitral stream continues to flow unsullied and undisturbed by any eddies that may impede its path."*

7. Thus, ***Bhaven Construction (supra)***, clearly indicates that while exercising writ jurisdiction, the Court must consider the nature of challenge and also of the nature of the impugned order. Moreover, in the opinion of this Court, this already circumspect scope of interference under Article 226 becomes even narrower when it is an order of the Arbitral Tribunal in relation to the conduct of arbitration proceedings that is called into question. In keeping with the aforenoted observations of this Court in ***Easy Trip Planners Ltd. (supra),*** the Court is of the opinion that a writ petition, cannot be entertained against every interlocutory order dealing with case management. Such orders are within the domain and discretion of the Arbitral Tribunal, and would include orders considering the request of parties to summon witnesses, production on documents, etc. Remedy against

such orders would lie against the interim award or the final award that the Arbitral Tribunal would choose to pass. Needless to say, it is always open to aggrieved litigants to raise a challenge under Section 34 of the Arbitration Act, however, till then, the aggrieved party will have to await the said decision.

8. In view of the above, the Court finds no basis to entertain the present petition, and accordingly, the petition is disposed of, along with pending applications.

**SANJEEV NARULA, J**

**JULY 31, 2024**
**ab**