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

*Date of Decision: 21<sup>st</sup> May, 2024*

+ **O.M.P.(I) (COMM.) 165/2024**

JAGDISH TYRES PVT. LTD.

..... Petitioner

Through: Mr. Prashant Kenjale & Ms. Srishty  
Pande Advs. (M- 9999976127)

versus

INDAG RUBBER LIMITED

..... Respondent

Through: Mr. Kamal Kumar, Mr. Aasheesh  
Gupta, Mr. Gyaltzen Barfungpa and  
Ms. Charu Bansal, Advocates (M-  
9650099833)

**CORAM:  
JUSTICE PRATHIBA M. SINGH**

**Prathiba M. Singh, J. (Oral)**

1. This hearing has been done through hybrid mode.
2. This is a petition on behalf of the Petitioner - Jagdish Tyres Pvt. Ltd. under Section 9 of the Arbitration and Conciliation Act, 1996 (*hereinafter, the 'Act, 1996'*). The Petitioner vide the present petition seeks to challenge the order dated 9<sup>th</sup> April, 2024 (*hereinafter, 'impugned order'*) passed by the Id. Arbitrator in *ARB. P. 664/2023* titled *Indag Rubber Limited v. Jagdish Tyres Pvt. Ltd.*
3. A perusal of the impugned order shows that the Id. Arbitrator has framed issues and further, has directed the matter to be proceeded for evidence.



4. The grievance of the Petitioner is that it had wished to file an amended statement of defence consisting of the bank statements related to the transactions between the Petitioner to the Respondent. However, the Id. Arbitrator without taking the same on record, proceeded to frame issues on 9<sup>th</sup> April, 2024.

5. The case of the Petitioner is that on 22<sup>nd</sup> March, 2024 one week's time was granted to the Respondent by the Id. Arbitrator, for moving the application for amendment of statement of defence. On 6<sup>th</sup> April, 2024 the said application along with the attachments was emailed, however, due to some technical error, the Id. Arbitrator did not receive the same and issues were framed on 9<sup>th</sup> April, 2024. Thus, the Petitioner's opportunity to file the amended statement of defence stood forfeited.

6. Id. Counsel for the Respondent vehemently opposes this petition. He submits that the Petitioner has not shown diligence in appearing before the Id. Arbitrator. The Id. Counsel refers to the Id. Arbitrator's order dated 9<sup>th</sup> April, 2024 which shows that the matter was fixed for 3:00 p.m. and the proxy counsel appeared only at 3:40 p.m. The Id. Counsel further submits that habitually this is happening with this Petitioner who does not attend the proceedings punctually and even the email dated 6<sup>th</sup> April, 2024 which is claimed to be sent by the Petitioner attaching various documents, was never actually sent. It was also not received either by the DIAC or by the Claimant/Respondent before the Id. Arbitrator.

7. A set of emails disclosing the communication of the parties have been handed over to the Court. The same is taken on record.

8. A perusal of the email dated 6<sup>th</sup> April, 2024 which is handed over to the Court reveals that the email dated 6<sup>th</sup> April, 2024 placed at page 26 of



the petition does not reflect the actual reply which was sent by the Id. Counsel.

9. Clearly, the Petitioner is not conducting itself properly and with diligence, before the Id. Arbitrator and the Id. Arbitrator has rightly proceeded in the matter for framing of issues and evidence.

10. The present petition is also not maintainable as the Petitioner cannot be permitted to challenge a procedural order passed by the Ld. Arbitrator under Section 9 of the Act, 1996. The relief sought herein are not interim measures as contemplated under the said provision.

11. Section 37 of the Act, 1996 stipulates the orders passed by the Court or the arbitral tribunal from which an appeal lies. Section 37 of the Act, 1996 is extracted hereinunder for a ready reference:

*“(1) [Notwithstanding anything contained in any other law for the time being in force, an appeal] shall lie from the following orders (and from no others) to the Court authorised by law to hear appeals from original decrees of the Court passing the order, namely:--*

*[(a) refusing to refer the parties to arbitration under section 8;*

*(b) granting or refusing to grant any measure under section 9;*

*(c) setting aside or refusing to set aside an arbitral award under section 34.]*

*(2) Appeal shall also lie to a court from an order of the arbitral tribunal--*

*(a) accepting the plea referred to in sub-section (2) or sub-section (3) of section 16; or*



*(b) granting or refusing to grant an interim measure under section 17.*

*(3) No second appeal shall lie from an order passed in appeal under this section, but nothing in this section shall affect or take away any right to appeal to the Supreme Court.”*

12. Sub-Section (2) of Section 37 of the Act, 1996 provides for an appeal against the order of the arbitral tribunal. Section 37(2)(a) of the Act, 1996 provides for an appeal against an order of the arbitral tribunal accepting lack of jurisdiction, while, Section 37(2)(b) of the Act, 1996 provides for an appeal against the order of the arbitral tribunal granting or refusing to grant an interim measure under Section 17 of the Act, 1996. The provision categorically states that no appeal shall lie from the orders of the Court or the arbitral tribunal other than the orders mentioned in the said provision.

13. Further, Section 5 of the Act, 1996 encapsulates the extent of judicial intervention. It states that the Court can only intervene in situations as provided under Part I of the Act, 1996. Section 5 of the Act, 1996 is extracted hereinunder for a ready reference:

*“5. Extent of judicial intervention.—Notwithstanding anything contained in any other law for the time being in force, in matters governed by this Part, no judicial authority shall intervene except where so provided in this Part.”*

14. The law with this regard is laid down in ***Deep Industries Ltd. v. ONGC [(2020) 15 SCC 706]*** wherein it is held that Section 37 of the Act,



1996 grants a constricted right of first appeal against certain judgments and orders and no others. Relevant portion of the judgment is extracted herein:

*“16. Most significant of all is the non obstante clause contained in Section 5 which states that notwithstanding anything contained in any other law, in matters that arise under Part I of the Arbitration Act, no judicial authority shall intervene except where so provided in this Part. **Section 37 grants a constricted right of first appeal against certain judgments and orders and no others.** Further, the statutory mandate also provides for one bite at the cherry, and interdicts a second appeal being filed [see Section 37(2) of the Act].”*

15. Accordingly, it is observed that by filing a petition under Section 9 of the Act, 1996 the Petitioner is merely attempting to avoid the appellate provision under Section 37 of the Act, 1996 which clearly stipulates as to which orders are appealable. The petition is nothing but a clever attempt to seek relief when the petition itself is not maintainable.

16. The said petition is accordingly dismissed with costs of Rs.10,000/-. The costs shall be paid to the Id. Counsel for the Respondent within two weeks.

17. The present order would not bar the Petitioner from approaching the Id. Arbitrator for appropriate relief.

**PRATHIBA M. SINGH  
JUDGE**

**MAY 21, 2024**

Rahul/rks

(corrected & released on 27<sup>th</sup> May, 2024)