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

Date of decision: 20th MARCH, 2024

IN THE MATTER OF:

+ W.P.(C) 4209/2024

ORIEL FINANCIAL SOLUTIONS PRIVATE LIMITED

..... Petitioner

Through: Mr. Kamal Sehgal, Mr. Satinder Singh Gulati and Mr. Charanjit Lal, Advocates.

versus

BESTECH ADVISORS PRIVATE LIMITED

..... Respondent

Through: Mr. Raghavendra Mohan Bajaj and Mr. Shagun Agarwal, Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

JUDGMENT (ORAL)

CM APPL. 17212/2024 (Exemption)

Allowed, subject to all just exceptions.

W.P.(C) 4209/2024

1. The Petitioner has approached this Court challenging the Order dated 01.02.2024, passed by the Arbitrator rejecting an application under Section 16 of the Arbitration and Conciliation Act, 1996 on the ground that the dispute is not arbitrable for the reason that the contract entered between the parties was *void ab initio*. Relevant portion of the impugned Order reads as under:

“19. In the present case, the Tribunal is of the opinion that evidence has to be led by the parties on the



following aspects:- a) Whether declaration form INC-20A was filed on 01/09/2021 by claimant. b) Whether the agreement dated 19/06/2021 was signed by the competent parties and is a valid agreement. c) Whether the respondent has taken the benefit of this agreement. d) Whether Section 10A of Companies Act is mandatory. e) Whether the agreement requires registration as per the Section 17 of the Registration Act.

20. The issues raised in para 3 to 7 of this application are based on merit of this case and hence require detailed evidence to be led by the parties.

21. As the parties are required to lead evidence on certain issues taken in the present application and its reply by the claimant, the same cannot be decided on the basis of documents filed on record by the parties or by taking limited evidence. Hence, in view of the discussion made above, the present application is dismissed. The Tribunal shall continue with the Arbitral Proceedings as per Section 16(5) of the Arbitration & Conciliation Act, 1996.”

2. A perusal of the abovementioned Order shows that the Arbitrator has yet not fully closed the issue and has decided to adjudicate on the issue after evidence is led on the same issue.

3. The scope of interference while exercising jurisdiction under Article 227 of the Constitution of India under the Arbitration and Conciliation Act is well settled. The power of the High Court for exercising its jurisdiction under Article 227 of the Constitution of India has been succinctly explained by the Apex Court in Estralla Rubber v. Dass Estate Private Limited, **2001 (8) SCC 97**, has observed as under:-

"6. The scope and ambit of exercise of power and jurisdiction by a High Court under Article 227 of the



Constitution of India is examined and explained in a number of decisions of this Court. The exercise of power under this article involves a duty on the High Court to keep inferior courts and tribunals within the bounds of their authority and to see that they do the duty expected or required of them in a legal manner. The High Court is not vested with any unlimited prerogative to correct all kinds of hardship or wrong decisions made within the limits of the jurisdiction of the subordinate courts or tribunals. Exercise of this power and interfering with the orders of the courts or tribunals is restricted to cases of serious dereliction of duty and flagrant violation of fundamental principles of law or justice, where if the High Court does not interfere, a grave injustice remains uncorrected. It is also well settled that the High Court while acting under this article cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record. The High Court can set aside or ignore the findings of facts of an inferior court or tribunal, if there is no evidence at all to justify or the finding is so perverse, that no reasonable person can possibly come to such a conclusion, which the court or tribunal has come to.

7. This Court in Ahmedabad Mfg. & Calico Ptg. Co. Ltd. v. Ram Tahel Ramnand [(1972) 1 SCC 898 : AIR 1972 SC 1598] in AIR para 12 has stated that the power under Article 227 of the Constitution is intended to be used sparingly and only in appropriate cases, for the purpose of keeping the subordinate courts and tribunals within the bounds of their authority and, not for correcting mere errors. Reference also has been made in this regard to the case Waryam Singh v. Amarnath [AIR 1954 SC 215 : 1954 SCR 565] . This Court in Bathutmal Raichand Oswal v. Laxmibai R. Tarte [(1975) 1 SCC 858 : AIR 1975 SC 1297] has observed that the power of superintendence under



Article 227 cannot be invoked to correct an error of fact which only a superior court can do in exercise of its statutory power as a court of appeal and that the High Court in exercising its jurisdiction under Article 227 cannot convert itself into a court of appeal when the legislature has not conferred a right of appeal. Judged by these pronounced principles, the High Court clearly exceeded its jurisdiction under Article 227 in passing the impugned order."

4. While dealing with the scope of a petition under Article 227 of the Constitution of India filed against an order passed by an Arbitral Tribunal the Apex Court in SBP & Company v. Patel Engineering Limited & Anr., **2005 (8) SCC 618**, has observed as under:-

"45. It is seen that some High Courts have proceeded on the basis that any order passed by an Arbitral Tribunal during arbitration, would be capable of being challenged under Article 226 or 227 of the Constitution. We see no warrant for such an approach. Section 37 makes certain orders of the Arbitral Tribunal appealable. Under Section 34, the aggrieved party has an avenue for ventilating its grievances against the award including any in-between orders that might have been passed by the Arbitral Tribunal acting under Section 16 of the Act. The party aggrieved by any order of the Arbitral Tribunal, unless has a right of appeal under Section 37 of the Act, has to wait until the award is passed by the Tribunal. This appears to be the scheme of the Act. The Arbitral Tribunal is, after all, a creature of a contract between the parties, the arbitration agreement, even though, if the occasion arises, the Chief Justice may constitute it based on the contract between the parties. But that would not alter the status of the Arbitral Tribunal. It will still be a forum chosen by the parties by agreement. We, therefore, disapprove of the stand adopted by some of the High Courts that any order passed by the Arbitral



Tribunal is capable of being corrected by the High Court under Article 226 or 227 of the Constitution. Such an intervention by the High Courts is not permissible.

46. The object of minimising judicial intervention while the matter is in the process of being arbitrated upon, will certainly be defeated if the High Court could be approached under Article 227 or under Article 226 of the Constitution against every order made by the Arbitral Tribunal. Therefore, it is necessary to indicate that once the arbitration has commenced in the Arbitral Tribunal, parties have to wait until the award is pronounced unless, of course, a right of appeal is available to them under Section 37 of the Act even at an earlier stage."

5. The said judgment was distinguished by the Apex Court in Punjab Agro Industries Corporation Limited v. Kewal Singh Dhillon, 2008 (10) SCC 128, wherein the Apex Court has observed as under:-

"9. We have already noticed that though the order under Section 11(4) is a judicial order, having regard to Section 11(7) relating to finality of such orders and the absence of any provision for appeal, the order of the Civil Judge was open to challenge in a writ petition under Article 227 of the Constitution. The decision in SBP [(2005) 8 SCC 618] does not bar such a writ petition. The observations of this Court in SBP [(2005) 8 SCC 618] that against an order under Section 11 of the Act, only an appeal under Article 136 of the Constitution would lie, is with reference to the orders made by the Chief Justice of a High Court or by the designate Judge of that High Court. The said observations do not apply to a subordinate court functioning as designate of the Chief Justice."

6. The Apex Court in Deep Industries Limited v. Oil & Natural Gas



Corporation Limited & Anr., 2020 (15) SCC 706, after advertng the above two judgments in Estralla Rubber (supra) and SBP & Company (supra) has observed as under:-

"17. This being the case, there is no doubt whatsoever that if petitions were to be filed under Articles 226/227 of the Constitution against orders passed in appeals under Section 37, the entire arbitral process would be derailed and would not come to fruition for many years. At the same time, we cannot forget that Article 227 is a constitutional provision which remains untouched by the non obstante clause of Section 5 of the Act. In these circumstances, what is important to note is that though petitions can be filed under Article 227 against judgments allowing or dismissing first appeals under Section 37 of the Act, yet the High Court would be extremely circumspect in interfering with the same, taking into account the statutory policy as adumbrated by us hereinabove so that interference is restricted to orders that are passed which are patently lacking in inherent jurisdiction."

(emphasis supplied)

7. In view of the fact that the Order passed by the Arbitrator is no so perverse so as to shock the conscious of this Court, this Court is not inclined to interfere with the impugned Order.

8. Accordingly, the Writ Petition is dismissed along with the pending applications, if any.

SUBRAMONIUM PRASAD, J

MARCH 20, 2024

Rahul