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

% Judgment delivered on: 21st April, 2022

+ O.M.P. (T) (COMM.) 26/2022 & I.A. 2979/2022

MR BHAVANISHANKAR H SHARMA THROUGH HIS POWER
OF ATTORNEY HOLDER SH SATISH KUMAR TIWARI

..... Petitioner

versus

SRS PRIVATE INVESTMENT POWAI LIMITED THROUGH ITS
AUTHORIZED SIGNATORY MR ROHIT DAVE & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner: Mr. Rajat Aneja, Advocate

For the Respondents: Ms. Shyel Trehan and Ms. Bhagua Yadav, Advocates for
R-1.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J

1. Petitioner has filed this petition under Section 14(2) read with Section 15 of the Arbitration and Conciliation Act 1996 (hereinafter referred to as the Arbitration Act), seeking termination of the mandate

of the Arbitral Tribunal and also for expunging the adverse and prejudicial remarks contained in order dated 05.10.2021 of the Arbitral Tribunal.

2. After some arguments, learned counsel appearing for the petitioner seeks to leave to withdraw the petition.

3. However, keeping in view of the averments made in the petition and also the written submissions, this court is not inclined to accede to the request of the petitioner.

4. It would be expedient to refer to the factual matrix which led to the passing of the subject order by the Arbitral Tribunal.

5. Respondent has filed the subject claim before the Arbitral Tribunal on 23.03.2021 of the value of approximately Rs. 248 cores besides interest.

6. In the year another creditor of the petitioners CBRE, South Asia Private Limited had approached the National Company Law Tribunal (NCLT for short) seeking winding up of the Petitioner.under the Insolvency and Bankruptcy Code.

7. By order 23.08.2021, NCLT issued a moratorium and appointed an Interim Resolution Professional (IRP for short).

8. Petitioner settled with the said creditor on 28.08.2021. Thereafter, on 02.09.2021, petitioner approached the National Company Law Appellate Tribunal (NCLAT for short) and informed the NCLAT that the disputes had been settled with the creditor CBRE, South Asia Private Limited and sought stay of the further proceedings by the Interim Resolution Professional. By order dated 02.09.2021, NCLAT stayed the proceedings by the IRP.

9. On 27.09.2021, subject Arbitral Tribunal was informed about the moratorium being in place and the Arbitral Tribunal was requested for suspension of the proceedings.

10. Thereafter, on 04.10.2021, NCLAT was once again informed about the settlement and a statement was made before the NCLAT that proceedings initiated by the said creditor CBRE South Asia Private Limited would be withdrawn pursuant to the settlement.

11. By the subject impugned order dated 05.10.2021, the Arbitral Tribunal, noticing the conduct of the petitioner held and directed as under :-

“14. Thus, this Arbitral Tribunal must stay its hands till the order passed by NCLT on 23.08.2021 continues to remain in force. However, the Tribunal cannot resist noting that the respondents have displayed dilatory tactics in the present proceedings, and the Tribunal finds lack of due diligence on the part of the respondents in not filing

an application before NCLT, if CSRE South Asia Private Limited has not filed an application before NCLT to withdraw its petition despite having received INR. 1,62,62,338.00, the stated debt due to it from respondent No.4. The Tribunal sniffs a sinister motive on the part of the respondents in allowing the proceedings instituted by CSRE South Asia Private Limited to remain on the board of NCLT because the order dated 23.08.2021 passed by the NCLT affords a protective umbrella to respondent No.4 vis-a-vis the present, proceedings, for the reason the order dated 02.09.2021 passed by NCLAT only directs the Interim Resolution Professional not to proceed further in the matter. The order passed by NCLT has not been stayed and hence the moratorium continues.

15. Staying the present proceedings, the Tribunal directs the respondents to file, within 4 days, an application before NCLT, if CSRE South Asia Private Limited does not file an application to withdraw the proceedings initiated by it for insolvency of respondent No.4.”

12. Subject order passed by the Arbitral Tribunal clearly records the conduct of the petitioner and in that light makes certain observations.

13. The factual narration does not end with the subject order. It may be further noticed that though the Arbitral Tribunal by its order dated 05.10.2021 directed the petitioner to approach the NCLT within four days to inform the NCLT about the settlement so that the proceedings

could be withdrawn and the moratorium lifted, however, petitioner did not comply with the said direction order till as late as November, 2021.

14. It may be noticed that there is an award against the Petitioner and in favour of the Respondent emanating from another Arbitral proceedings. Petitioner has filed objections under section 34 of the Arbitration Act impugning the said award.

15. Petitioner attempted to stall those proceedings by submitting before the said Court, where objections under Section 34 of the Arbitration Act are pending, that there was a moratorium in place. The Co-ordinate Bench of this court by order dated 21.10.2021, noticing the conduct of the petitioner, permitted respondent to participate in the NCLT and NCLAT proceedings for the purposes of having the moratorium lifted.

16. Learned counsel appearing for the respondent submits that respondent had to pursue the matter as petitioner was still not cooperating in having the moratorium lifted and ultimately the petition filed by the other creditor was dismissed on 31.01.2022, when the moratorium was finally lifted.

17. Apart from the above conduct of the Petitioner, it may also be observed that petitioner in these proceedings has also made

allegations against the Tribunal of bias and forming a pre conceived notion.

18. This matter Petition was partly heard on 12.04.2022, when learned counsel for the petitioner had sought for time to take instruction and had even indicated that there may be a possibility that a request would be made for unconditional withdrawal of the petition.

19. This court was at that juncture, inclined to accept the request of unconditional withdrawal, however, subsequently on 20.04.2022, written submissions have been filed in these proceedings, though pursuant to order dated 22.02.2022 and allegation against the Arbitral Tribunal are once again reiterated of prejudice and biased mindset.

20. No material has been placed on record before this court to even suggest that there is any bias or prejudice on the part of the Arbitral Tribunal. Petitioner has not been able to substantiate any of the allegations made in the petition against the Arbitral Tribunal.

21. Section 14 of the Arbitration Act based lays down conditions under which the mandate of the Arbitral Tribunal may be terminated.

22. The petition does not satisfy any of the requirements of the conditions contained in Section 14 of the Arbitration Act. Petitioner

has not even laid the factual foundation for establishing any bias,preconceived notion on the part of the Arbitral Tribunal or that they have become de-facto or de-jure unable to perform their functions leave alone substantiate the same.

23. Accordingly, no ground is made out for terminating the mandate of the Arbitral Tribunal.

24. Further, prayer has been made by the petitioner that the remarks made by the Arbitral Tribunal in its order dated 05.10.2021 be expunged.

25. This is a petition under section 14 of the Arbitration Act which does not confer any such power on the Court to expunge any part of the order of the Arbitral Tribunal.

26. Further, as noticed hereinabove, this court finds that the conduct of the petitioner has been such that the observations made by the Arbitral Tribunal, of the petitioner having displayed dilatory tactics in permitting the moratorium to continue, are not unwarranted. Particularly in view of the fact that the petitioner had settled with the said creditor on 28.08.2021 and sought an order of stay of IRP proceedings, which were stayed on 02.09.2021 but the moratorium was permitted to continue till 31.01.2022. This clearly shows that petitioner had attempted to enjoy the benefit of the moratorium for

over four months in excess of what was required in law.

27. Learned counsel for the petitioner submits that the Supreme Court by order dated 18.02.2022 in SLP Civil No. 2133-2136/2022 has directed that the Co-ordinate Bench of this Court shall adjudicate the petition under Section 34 of the Arbitration Act in accordance with law without being influenced by any observation made by it referring to the order of the Tribunal.

28. Said direction of the Supreme Court does not help the case of the petitioner, as petitioner is seeking termination of the mandate of the Arbitral Tribunal which is permissible only if the requirements of Section 14 of the Arbitration Act are satisfied and as noticed hereinabove, in the present facts and circumstances, the requirements are not satisfied and there is no merit in the petition.

29. In view of the above, the petition is dismissed with costs quantified at Rs. 2 lakhs to be deposited by the petitioner in the '*Indigent & Disabled Lawyers Fund*' of Bar Council of Delhi, (A/c No. 010104000183451) within a period of two weeks. Copy of this order be also forwarded to the Bar Council of Delhi for information.

SANJEEV SACHDEVA, J

APRIL 21, 2022/So