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

% *Pronounced on: 28.06.2023*

\+ **FAO (OS) (COMM) 17/2021 & CM APPL. 3583/2021 (stay)**

MORGAN SECURITIES AND CREDITS PVT. LTD ..... Appellant

Through: Mr. Amit Sibal, Sr. Advocate with Mr. Abhishek Puri, Ms. Surbhi Gupta and Mr. Sahil Grewal, Advocates.

versus

GANESH BENZOPLAST LIMITED ..... Respondent

Through: Mr. Arun Kumar Varma, Senior Advocate with Mr. Kuljeet Rawat, Mr. Ashwani Kumar, Ms. Iti Sharma, Mr. Akshay, Mr. Aditya Joshi and Mr.Puneet Sharma, Advocates.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI
HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

J U D G M E N T

NAJMI WAZIRI, J.

1. The present appeal under section 37(1)(b) of the Arbitration & Conciliation Act, 1996 ('the Act') read with Section 13 of the Commercial Courts Act, 2013 seeks to set aside the impugned interim order dated 21.01.2021 passed this section 9 petition by the

learned Single Judge of this Hon'ble Court in OMP (I) (COMM) No. 363 of 2020.

2. The reliefs sought by the appellant were as under:

> *"A. Restraining the Respondent Company from acting in furtherance to the Resolutions passed in the Board meeting dtd. 07.10.2020 and the special resolutions passed by way of Postal ballot on 06.1 1.2020, with respect to the preferential allotment of shares of Respondent Company pursuant to proposed Share Sale and purchase Agreement (SSPA) with Stolt Rail Logistic Systems Limited, in any manner, whatsoever; directly or indirectly.*
> *B. Direct the Respondent Company to make a Full and complete Disclosure of the terms of the proposed Share Sale and purchase Agreement (SSPA) with Stolt Rail Logistic Systems Limited by the Respondent Company to the Claimant, by way of Affidavit.*
> *C. Pass any other orders that this Hon'ble Court may deem fit in the facts of the present case;*
> *D. Pass ex-parte; ad-interim orders, in terms of Prayer A above."*

3. Section 9 of the Act reads as under:-

> ***Section 9: Interim measures, etc., by Court.***
>
> *[(1)] A party may, before or during arbitral proceedings or at any time after the making of the arbitral award but before it is enforced in accordance with section 36, apply to a court—*
> *(i) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or*
>
> *(ii) for an interim measure of protection in respect of any of the following matters, namely:—*
>
> *(a) the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;*

(b) securing the amount in dispute in the arbitration;

(c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

(d) interim injunction or the appointment of a receiver;

(e) such other interim measure of protection as may appear to the Court to be just and convenient,

and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.

[(2) Where, before the commencement of the arbitral proceedings, a Court passes an order for any interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the Court may determine.

(3) Once the arbitral tribunal has been constituted, the Court shall not entertain an application under sub-section (1), unless the Court finds that circumstances exist which may not render the remedy provided under section 17 efficacious.]

4. The learned Senior Advocate for the respondent submits that the maintainability of this scheme is questionable, inasmuch as it seeks this court to virtually monitor the manner in which the section 9 petition and the related section 34 petition are to be considered and/or adjudicated by the learned Single Judge. He further submits

that in terms of the principles of interpretation, each word of the statute has to be given effect to. He submits that this petition is purported to be an appeal under section 37 of the Act, which could be entertained only if the impugned order had granted or refused to grant any measure under section 9 of the Act. The section 37 of the Act reads as under:-

> ***"37. Appealable orders.***—*(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 takeaway any right to appeal to the Supreme Court."*

5. He submits that insofar as section 37(1) clearly provides as to the specific type of cases from which an appeal could be heard and no appeal lies in any other case. This petition insofar as it seeks to impugn an interim order seeking information is not maintainable as

it does not grant or refuse to grant any measure under section 9 of the Act. Furthermore, there is no scheme under the aforesaid Act of supervisory jurisdiction as is contemplated under Article 227 of the Constitution of India.

6. He refers to the decision of this court in *South Delhi Municipal Corporation vs. M/s Tech Mahindra* (2019:DHC:940-DB). It held *inter alia* as under:-

> *"...9. It is quite evident that the legislative or Parliamentary intent, was to confer upon the Commercial Appellate Courts and Commercial appellate Division Bench of a High Court, extremely limited jurisdiction and circumscribe the appellate jurisdiction. Thus, in interlocutory matters, as it were, Commercial Appellate Division possesses jurisdiction in matters enumerated in the Order XLIII Rule 1 – no less no more. Likewise, with respect to the appeals against orders made in the course of proceedings under the Arbitration Act, the Court's power is delineated to what is enumerated in Section 37 of CPC.*
>
> *12. In view of the above discussions, we conclude that the present appeal is not maintainable. The appellant's remedy clearly lies elsewhere. An attempt was made to urge that no litigant can be deprived of remedy if there is a grievance: ubi jus ibi remedium; however, that argument is wholly without substance because an appeal, it has been repeatedly emphasised, is a specific creation of statute and cannot be claimed as a matter of right. This was explained pithily in Ganga Bai v Vijay Kumar, (1974) 2 SCC 393, in the following terms:*
>
> > *"There is a basic distinction between the right of suit and the right of appeal. There is an inherent right in every person to bring suit of a civil nature and unless the suit is barred by statute one may, at one's peril, bring a suit of one's choice. It is no answer to a suit*

> *howsoever frivolous the claim, that the law confers no such right to sue. A suit for its maintainability requires no authority of law and it is enough that no statute bars the suit. But the position in regard to appeals is quite the opposite. The right of appeal inheres in no one and therefore an appeal for its maintainability must have the clear authority of law. That explains why the right of appeal is described as a creature of statute..."*

7. Rebutting the respondent's contentions, Mr.Sibal, the learned Senior Advocate for the appellant submits that the relief sought under section 9 of the Act had not been granted inasmuch as the interim order has been modified to the extent that against the required security of over Rs.90 crores (the awarded amount), a mere deposit of 3 crores has been directed. In effect, it is a case of non-grant of the relief sought. Therefore, the appeal is maintainable.

8. Apropos maintainability of this appeal, the learned Senior Advocate of the appellant places reliance on the dicta of a Division Bench of this court in *Sepco Electric Power Construction Corporation vs. Power Mech Projects Limited,* 2020 SCC OnLine Del 1990, which held as under:-

> *"...13. However on merits, we agree with the senior counsel for the respondent that the order impugned is a discretionary order and there is no perversity in discretion exercised by the Commercial Division, for this Court to interfere in appeal. The scope of interference in appeals under Section 37, in the context of Section 37(1)(c), has been held to be much restricted. As far as*

appeals under Section 37(1)(b) are concerned, since the order appealed is an interim order, which is largely discretionary , in any case the law laid down in Wander Limited Vs. Antox India (P) Ltd. 1990 (Supp) SCC 727 relating to scope and power of Appellate Court in appeals against interim order, would apply and interference with the discretion exercised by the Court of first instance would be only when discretion is shown to have been exercised arbitrarily or capriciously or perversely or where the Court has ignored the settled principles of law regulating the grant or refusal of interim orders. The Commercial Division, in the impugned order, refusing to accede to the relief claimed by the appellant, has merely bound the appellant to its own offer of furnishing a BG of a Scheduled Indian Bank and which offer was accepted by the Commercial Division, and has merely refused to allow the appellant to take advantage of the error which had crept in the order dated 12th February, 2019 and attributable to the Court and not to the respondent…"

9. He further relies upon the judgment in *India Tourism Development Corporation Limited (ITDC) vs. Bouganivillea Multiplex Entertainment Centre Pvt. Ltd. (BMEL)* 2022 SCC Online Del 1830, which reads as under:-

"...8. The dicta of the Supreme Court in Delhi Airport Metro Express Private Limited v. Delhi Metro Rail Corporation Limited, (2022) 1 SCC 131, reads inter-alia as under:

"...26. A cumulative reading of the UNCITRAL Model Law and Rules, the legislative intent with which the 1996 Act is made, Section 5 and Section 34 of the 1996 Act would make it clear that judicial interference with the arbitral awards is limited

to the grounds in Section 34. While deciding applications filed under Section 34 of the Act, Courts are mandated to strictly act in accordance with and within the confines of Section 34, refraining from appreciation or reappreciation of matters of fact as well as law. (See Uttarakhand Purv Sainik Kalyan Nigam Ltd. v. Northern Coal Field Ltd. [Uttarakhand Purv Sainik Kalyan Nigam Ltd. v. Northern Coal Field Ltd., (2020) 2 SCC 455: (2020) 1 SCC (Civ) 570], Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd. [Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd., (2022) 1 SCC 75] and Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran [Rashtriya Ispat Nigam Ltd. v. Dewan Chand Ram Saran, (2012) 5 SCC 306].)..."

(Emphasis supplied)

9. Despite the aforesaid limits and restraint on re-appreciation of evidence, the appellant would rather urge that this court re-appreciate the evidence differently from the way it was understood and adjudicated upon by the learned Tribunal, on the issue whether the licensee had an occasion to inspect the premises fully and freely or that they were fully informed of all issues concerning the premises/structure. The nature and quality of evidence produced before the learned Arbitrator is not for the court to re -appreciate in this appeal under section 37 of the Arbitration and Conciliation Act, 1996. Furthermore, no patent illegality is shown in the Award, warranting interference by this court. Fairness of procedure is in public interest, and full disclosure of relevant facts and developments apropos a property/asset/a commercial entity, is expected for a fair commercial transaction, especially from entities under Article 12 of the Constitution of India. It

is expected that their actions would always be imbued with the spirit of fairness..."

10. The learned Senior Advocate for the appellant submits that the sole issue in this appeal is whether the learned Single Judge could have extended the proceedings under section 9, to gather evidence which was not envisaged in the petition filed under section 9. Furthermore, there is a prohibition in appreciating fresh evidence in the proceedings in the *proviso* to section 34, which reads *inter alia* as under:

> *"**34. Application for setting aside arbitral award**.—*
> *(1) Recourse to a Court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).*
> *(2) An arbitral award may be set aside by the Court only if—*
> *(a) the party making the application 1[establishes on the basis of the record of the arbitral tribunal that]—*
> *(i) a party was under some incapacity, or*
> *(ii) the arbitration agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law for the time being in force; or*
> *(iii) the party making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or*
> *(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration:*
> *Provided that, if the decisions on matters submitted to arbitration can be separated from those not so*

submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the Court finds that—

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

[Explanation 1.—For the avoidance of any doubt, it is clarified that an award is in conflict with the public policy of India, only if,—

(i) the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81; or

(ii) it is in contravention with the fundamental policy of Indian law; or

(iii) it is in conflict with the most basic notions of morality or justice.

Explanation 2.—For the avoidance of doubt, the test as to whether there is a contravention with the fundamental policy of Indian law shall not entail a review on the merits of the dispute.]

[(2A) An arbitral award arising out of arbitrations other than international commercial arbitrations, may also be set aside by the Court, if the Court finds that the award is vitiated by patent illegality appearing on the face of the award:

Provided that an award shall not be set aside merely on the ground of an erroneous application of the law or by reappreciation of evidence.]

(3) An application for setting aside may not be made

after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the Court is satisfied that the applicant was prevented by sufficient cause from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the Court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award.

[(5) An application under this section shall be filed by a party only after issuing a prior notice to the other party and such application shall be accompanied by an affidavit by the applicant endorsing compliance with the said requirement.

(6) An application under this section shall be disposed of expeditiously, and in any event, within a period of one year from the date on which the notice referred to in sub-section (5) is served upon the other party.]"

(emphasis supplied)

11. He contends that where there is a prohibition on appreciating fresh evidence, there is no cause for gathering information which are contained in para 21; the impugned order have travelled beyond the scope of the pending section 9 proceedings; it is therefore erroneous and needs to be set-aside. Reliance is placed upon the

dicta of the Supreme Court in *Sutlej Construction Limited vs. Union Territory of Chandigarh* 2018 1 SCC 718, which reads *inter alia* as under:-

> *"...9. The learned Single Judge of the High Court, however, appears to have made an endeavour to reappreciate the evidence and sought to come to a different conclusion than what was arrived at by the arbitrator, the objections to which were dismissed by the learned Additional District Judge, Chandigarh. The reasoning of the learned Single Judge is predicated on the absence of any contractual obligation that the spreading of the earth brought to site was to be done by the Department nor was there a stipulation that the overhead lines and poles had to be removed by the respondent to make the area accessible. The respondent Department had not specified any space for unloading of the earth but only charges up to 5 km were to be paid. Thus, the finding is that the arbitrator misconducted himself by acting contrary to the terms of the contract.*
>
> *10. We are not in agreement with the approach adopted by the learned Single Judge. The dispute in question had resulted in a reasoned award. It is not as if the arbitrator has not appreciated the evidence. The arbitrator has taken a plausible view and, an in our view, as per us the correct view, that the very nature of job to be performed would imply that there has to be an area for unloading and that too in the vicinity of 5 km as that is all that the appellant was to be paid for. The route was also determined. In such a situation to say that the respondent owed no obligation to make available the site cannot be accepted by any stretch of imagination. The unpreparedness of the respondent is also apparent from the fact that even post-termination it took couple of years for the work to be carried out, which was meant to be completed within 45 days. The ability of the appellant to comply with its obligations*

was interdependent on the respondent meeting its obligations in time to facilitate appropriate areas for unloading of the earth and for its compacting. At least it is certainly a plausible view.

11. It has been opined by this Court that when it comes to setting aside of an award under the public policy ground, it would mean that the award should shock the conscience of the Court and would not include what the Court thinks is unjust on the facts of the case seeking to substitute its view for that of the arbitrator to do what it considers to be "justice". (Associate Builders v. DDA)

12. The approach adopted by the learned Additional District Judge, Chandigarh was, thus, correct in not getting into the act of reappreciating the evidence as the first appellate court from a trial court decree. An arbitrator is a chosen Judge by the parties and it is on limited parameters can the award be interfered with. (Sudarsan Trading Co. v. State of Kerala[3]; Harish Chandra & Co. v. State of U.P.4 and Swan Gold Mining Ltd. v. Hindustan Copper Lid.)

13. The learned Single Judge ought to have restrained himself from getting into the meanderings of evidence appreciation and acting like a second appellate court. In fact, even in second appeals, only questions of law are to be determined while the first appellate court is the final court on facts. In the present case, the learned Single Judge has, thus, acted in the first appeal against objections dismissed as if it was the first appellate court against a decree passed by the trial court...”

12. He further submits that the issue of 36% p.a. compound interest on loans does not require fresh adjudication because on an identical issue, this court in three cases has already upheld the validity of such clause. The cases are: in *M/s BPL Ltd. vs. M/s Morgan*

Securities & Credits Pvt. Ltd. [OMP (COMM) 176/2017], *Videocon Industries Ltd. vs. Morgan Securities & Credits Pvt. Ltd.* and *Another* [O.M.P. 665/2013] *& Modi Rubber Ltd. vs. Morgan Securities & Credits Pvt. Ltd. & Anr* 165 (2009) DLT 113. The Supreme Court too has taken a similar view in *Indian Bank vs. M/s Blue Jaggers Estates Limited and Others* 2010 8 SCC 129, which reads, *inter alia,* as under **:**

> *"...22. The argument of the learned counsel for the respondents that the rate of interest is unconscionable, expropriatory and contrary to law also merits rejection because at no stage the respondents had questioned the terms on which loan and other financial facilities were extended by the appellant. That apart, after having enjoyed those facilities for more than one decade, the respondents cannot turn around and raise an argument based on the judgments of this Court in Central Inland Water Transport Corpn. v. Brojo Nath Ganguly and Delhi Transport Corpn. v. D.T.C. Mazdoor Congress.*
>
> *23. It must be remembered that the respondents were not in a position of disadvantage vis-à-vis the appellant. If they so wanted, the respondents could have declined to avail loan and other financial facilities made available by the appellant. However, the fact of the matter is that they had signed the agreement with open eyes and agreed to abide by the terms on which the loan, etc. was offered by the appellant. Therefore, the doctrine of unconscionable contract cannot be invoked for frustrating the action initiated by the appellant for recovery of its dues.*
>
> *24. The respondents' accusation that the appellant had not treated them fairly sans credibility. It is they who had failed to repay the outstanding dues. Not only this, after signing two compromise deeds, they failed to fulfil their commitment and delayed the payment of ₹63.5 lakhs by*

almost three years. We have not felt impressed by the submission of the learned Senior Counsel appearing for the respondents that the default amount was too small to warrant initiation of proceedings under Section 13 of the Act..."

13. The learned Senior Advocate for the appellant expresses his reservations apropos the observation in the impugned order. Insofar as it has expressed a *prima facie* view that the demand of 36% p.a. compound interest is contrary to the basic notions of morality and justice, he submits that the law as it exists is the law of the land on which there would hardly be any occasion to adjudicate the morality with respect to a commercial contract. He submits that the said observation is prejudicing the interest of the appellant in other proceedings. He further submits that the issue of compound interest stands settled in *Renusagar Power Co. Ltd. v. General Electric Co.,* 1994 Supp (1) SCC 644, therefore, there is no occasion for revisiting the issue by the learned Single Judge. The Supreme Court in *Ssangyong Engg. & Construction Co. ltd. v NHAI,* 2019 15 SCC 131, has held that this is the law which existed and does not call for fresh adjudication.

14. There was an interim order protecting the interests of the appellant, however, it was modified by the impugned order dated 21.01.2021 to the effect that instead of the awarded amount being secured, the impugned order directed to deposit of a mere amount of Rs.3 crores. It has reasoned as under:-

"19. If the interest is computed on the outstanding amount of Rs.34,59,218 @ 36% simple interest, GBL would be liable to pay Rs.2, 11,49,564/- (till the date of the award i.e. 09 December, 2015) and Rs.2,74,58,040/- (calculated till 31st December, 2020) whereas Morgan is claiming Rs.90 crore by computing interest @ 36% per annum with monthly. According to GBL, the effective simple interest rate awarded by the learned arbitrator works out to be 1250% per annum. In that view of the matter, the direction to GBL to deposit Rs.3 crores at this stage would be fair and reasonable. If Morgan succeeds in this matter, GBL has sufficient means to satisfy the award.

20. The ex parte interim order dated 17th November, 2020 is modified to the extent that GBL is at liberty to act on the Resolutions passed in the Board meeting dated 07th October, 2020 and the special resolutions passed by way of Postal ballot on 06th November, 2020 with respect to the preferential allotment of shares of GBL pursuant to proposed Share Sale and Purchase Agreement, subject to deposit of Rs.3 crore by GBL with the Registrar General of this Court within one week towards the balance principal amount of Rs.34,59,218/- and simple interest @ 36 % per annum w.e.f. 28th September, 2001 upto this date. GBL shall not transfer, alienate or create any encumbrance with respect of its immovable assets without the permission of this Court till further orders. Morgan is permitted to seek the release of Rs.3 crore subject to the outcome of these petitions"

15.Furthermore, it has directed as under:-

"16. Morgan has filed OMP (I)(COMM.) No. 363/2020 under Section 9 of the Arbitration and Conciliation Act for restraining GBL from acting in furtherance to the resolutions with respect to the preferential allotment of

shares and the proposed share sale and purchase agreement with Stolt Rail Logistic Systems Limited in which vide ex parte interim order dated 17th November, 2020, this Court restrained GBL from acting in furtherance to the resolutions passed in board meeting dated 7th October, 2020 and the special resolutions passed by way of postal ballot on 6th November, 2020, with respect to the preferential allotment of shares of GBL pursuant to proposed Share Sale and Purchase Agreement (SSPA) with Stolt Rail Logistic Systems Limited, in any manner, whether directly or indirectly till the next date of the hearing.

17. GBL is seeking vacation of the ex-parte interim order dated 17th November, 2020, on various grounds inter alia that GBL is willing to deposit the outstanding Rs.2.75 crore towards principal amount of Rs. 34,59,218/- along with simple interest @36% per annum from 28th September, 2001 up to date with this Court. With respect to the claim of penal interest with monthly rest, it is submitted that the award is against the most basic notions of morality and justice. It is further submitted that GBL is in a very sound financial condition and has assets worth Rs.238 crore against secured loans of Rs.35 crore. It is submitted that GBL has sufficient means to satisfy the award if Morgan ultimately succeeds before this Court. It is further submitted GBL, proposes to acquire 86.52% shares of Stolt Rail Logistic Systems Limited against 1,05, 75,128 equity shares of GBL which would result in asset enhancement of Rs.65.75 crore.

18. This Court is of the prima facie view that the claim of 36% interest with monthly rest by which the principal amount of Rs.34,59,218/- along with interest has become Rs.90 crore (260 times) appears to be against the ***most basic notions of justice*** *and warrants serious consideration by this Court. In that view of the matter, the continuance of the ex-parte interim order is not warranted.*

.....

22. Both the parties have filed their brief note of submissions as well as video clips of their oral arguments. Learned senior counsels for both the parties have been further heard in the matters. Learned senior counsels for the parties seek time to file additional note to respond to the submissions of the opposite party. Let the same be filed within one week. List for continuation of the arguments on 09th February, 2021."

16. The reference in the aforequoted para 22 to the brief note of submissions as well as video clips of their arguments is a direction, which was passed in section 9 petition as is noted from order dated 06.01.2021 which had directed as under:

"6. All the parties including the applicant in I.A. 152/2021 shall file brief note of submissions not exceeding three pages along with copies of relevant documents/judgments on which they wish to rely with relevant portions duly highlighted along with the video clip of 15 minutes of their oral arguments for the convenience of this Court within four days.

7. The parties shall file additional two pages note to respond to the submissions of the opposite parties within four days thereafter. The parties shall file the video clip of 10 minutes of their oral arguments along with the additional note."

17. Albeit the section 34 petition was listed on 09.02.2021, separate orders were passed that day in the section 9 petition (OMP (I) (COMM) 363 of 2020), further time was granted to the Standing Counsel for the Central Government to comply with the directions

issued in para 21 of the order dated 21.01.2021.

18. No such directions were issued in OMP(COMM) 307/2016 which was separated from the section 9 proceedings and was directed to be listed on 04.03.2021. On 25.02.2021, only the section 9 petition was listed along with the appellant's Enforcement Petition and more time was granted to the petitioner as well as to the Central Government to comply with the directions contained in para 21 of the order dated 21.01.2021. It was directed to be listed for compliance on 19.04.2021.

19. Interestingly, the Single Bench itself clarified and directed that section 34 petition [OMP (COMM) 307/2016], which was otherwise scheduled for 04.03.2021, be listed on 11.04.2021. Again on 11.04.2021, further time was granted, specifically in section 9 petition [OMP (I) (COMM) 363 of 2020] for compliance with para 21, whereas the section 34 petition was simply re-notified for 25.07.2021. In effect, the learned Single Judge has treated para 21 as an order in the section 9 petition.

20. The records reflect that an ad interim order was granted on 17.11.2020. It was modified on 21.01.2021. The section 9 petition is pending, possibly for examination of such information as may be furnished and for determination of the issues articulated in para 21. Para 21 which reads as under:

> *"21. Morgan is directed to place on record an affidavit before the next date of hearing as to when they adopted the clause of 36% penal interest with monthly rest; how much loan amount they have advanced till date on the basis of this clause and how much amount they have recovered;*

whether this clause has been challenged by any debtor before any arbitration/Court and if so, the copies of the awards/judgments in which the aforesaid clause has been accepted/not accepted/rejected be placed on record; which other financial institutions have adopted such rate of interest; and whether any Rule/Regulation regulates the rate of interest in commercial contracts."

21. The appellant has sought interim protection of its interests by preservation of the relevant subject matter i.e. a direction that the assets of the respondent company be not disturbed and be secured so that the award could be satisfied therefrom. This interim measure of protection could have been granted under section 9 (1)(e) of the Act. As noted hereinabove, the section 9 and 34 petitions were initially listed together but were delinked after the impugned order dated 21.01.2021. Even the previous orders would show that the orders in the section 9 proceedings have all along been treated as separate. The order dated 21.01.2021 is an order, both under section 34 and section 9 proceedings. However, some aspects of it which pertained to section 9 proceedings have been clearly delineated and treated so by the learned Single Judge, as is evident from the orders dated 06.01.2021, 09.02.2021, 25.02.2021 and 11.04.2022 which have been passed exclusively in the section 9 proceedings.

22. The respondent has impugned the arbitral award under section 34 of the Act. It is pending adjudication. Whether the awarded amount is justified or constitutes a plausible view is an issue to be determined in that petition. The section 9 proceeding cannot tread

into the domain of the section 34 petition. All that the section 9 proceedings could do is to direct for furnishing of such security amount as may be deemed appropriate in the given circumstances. Albeit in the first instance, by order dated 17.11.2022, the interim relief had been granted, it was modified by the impugned order to less than 3% of the original interim relief. Simultaneously, the section 9 petition proceeded to examine the justification for the interim measure for the entire awarded amount of Rs.90 crores or so. However, as noted above, this exercise if at all to be initiated, could be done only in the section 34 proceedings.

23. During the course of this appeal, the parties have found it prudent to find a solution by way of a settlement agreement, which has been recorded in the orders dated 02.02.2023 and 13.04.2023. In effect, the appellant has been secured, in some measure, by the pledge of non-sale of shares to the appellant's satisfaction and the parties shall, till further orders, be bound to the same. According to the appellant, it is secured only if the assets are kept intact and not made the subject of transfer or encumbrances etc.

24. Para 21 of the impugned order is *ex facie* an inquiry into the history of the working of the appellant with respect to: i) the time since when it had adopted the 36% penal interest clause with monthly rest ii) the size of the business in terms of the said clause iii) how effective has the appellant been in recovering defaulted loan/advance/credit amounts and the said penal interests; and iv) all details of proceedings challenging such recoveries, the litigation history as well as the copies of the judgments and awards, as may

have been passed in all such proceedings. It also obligates the appellant to bring on record details of other unrelated financial institutions, which may have adopted a similar rate of interest, as well as to furnish the Rules and Regulations applicable regarding the rate of interest in commercial contracts.

25. The court is of the view that the extensive inquiry embarked upon is, *ex facie,* not germane to the petition under section 9 of the Act. It is more in the nature of an inquiry into the money lending business and extends to furnishing of information relating to virtually every financial institution/entity in that domain. It also seeks to look into the rates of interest charged in various commercial contracts. Such information will be onerous, difficult and well-nigh impossible for the appellant to furnish. When the Arbitral Award has neither been stayed nor set aside, the appellant would logically seek to secure its interests in terms of the Award. It was not for the appellant to justify the quantum of the interim relief. The amount to be paid by the respondent stood already quantified in the Award, which still subsists. The examination, if at all, of the justification for such of the awarded amount or if it was a plausible view, would at best be an exercise in the section 34 petition. Whether the latter exercise is to be undertaken is for the learned Single Judge to determine. The enquiry envisaged in terms of para 21, in the section 9 petition for the interim relief, extends into a domain already occupied by section 34. Therefore, the information, as directed in para 21 of the impugned order would not be warranted.

26. Nothing in this order shall be construed to be a comment or determination upon the merits of any aspect of the pending s. 34 petition.

27. In view of the above, the appeal is held as being maintainable and is allowed. The information in para 21 of the impugned order will not be required to be furnished.

28. The appeal and pending application, if any, stand disposed-off in terms of the above.

NAJMI WAZIRI, J

DR. SUDHIR KUMAR JAIN, J

JUNE 28, 2023